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Contents

Federal Register

Vol. 83, No. 116

Friday, June 15, 2018

Separate Parts In This Issue

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

To subscribe to the Federal Register Table of Contents electronic mailing list, go to https://public.govdelivery.com/accounts/USGPOOFR/subscriber/new, enter your e-mail address, then follow the instructions to join, leave, or manage your subscription.

CFR PARTS AFFECTED IN THIS ISSUE

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

7 CFR

Proposed Rules:
319.....27918

12 CFR

Proposed Rules:
612.....27922

14 CFR
39 (2 documents) 27889, 27891

21 CFR
101.....27894
876.....27895

29 CFR
4022.....27898
4044.....27898

33 CFR
165.....27899

Proposed Rules:
110.....27932

39 CFR

Proposed Rules:
265.....27933
266.....27933

40 CFR
52 (2 documents) 27901, 27910

Proposed Rules:
52 (3 documents) 27936, 27937, 27938
60.....28068

42 CFR
405.....27912
417.....27912
422.....27912
423.....27912
460.....27912
498.....27912

44 CFR
64.....27915

48 CFR
Ch. 1 (2 documents) 28140, 28149
1 (2 documents) 28141, 28145
4.....28141
9.....28145
12.....28145
13 (2 documents) 28141, 28145
39.....28141
52 (2 documents) 28141, 28145

Rules and Regulations

Federal Register
Vol. 83, No. 116
Friday, June 15, 2018

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

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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2017–0817; Product Identifier 2017–NE–30–AD; Amendment 39–19314; AD 2018–13–02]

RIN 2120–AA64

Airworthiness Directives; Pratt & Whitney Division Turbofan Engines

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: We are adopting a new airworthiness directive (AD) for all Pratt & Whitney Division (PW) PW4052, PW4056, PW4060, PW4062, PW4062A, PW4152, PW4156A, PW4158, PW4460, and PW4462 turbofan engine models, including engines identified with suffixes –1C, –1E, –3, –3A, or –3B. This AD was prompted by the discovery of multiple cracked 4th stage low-pressure turbine (LPT) air seals in the fleet. This AD requires removal from service of certain 4th stage LPT air seals. We are issuing this AD to address the unsafe condition on these products.

DATES: This AD is effective July 20, 2018.

ADDRESSES: For service information identified in this final rule, contact Pratt & Whitney Division, 400 Main St., East Hartford, CT 06118; phone: 800–565–0140; fax: 860–565–5442. You may view this service information at the FAA, Engine and Propeller Standards Branch, 1200 District Avenue, Burlington, MA 01803. For information on the availability of this material at the FAA, call 781–238–7759. It is also available on the internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2017–0817.

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–2017–0817; or in person at Docket Operations between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this final rule, the regulatory evaluation, any comments received, and other information. The address for Docket Operations (phone: 800–647–5527) is U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC 20590.

FOR FURTHER INFORMATION CONTACT: Jo-Ann Theriault, Aerospace Engineer, ECO Branch, FAA, 1200 District Avenue, Burlington, MA 01803; phone: 781–238–7105; fax: 781–238–7199; email: *jo-ann.theriault@faa.gov.*

SUPPLEMENTARY INFORMATION:

Discussion

We issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 by adding an AD that would apply to all Pratt & Whitney Division (PW) PW4052, PW4056, PW4060, PW4062, PW4062A, PW4152, PW4156A, PW4158, PW4460, and PW4462 turbofan engine models, including engines identified with suffixes –1C, –1E, –3, –3A, or –3B. The NPRM published in the **Federal Register** on October 12, 2017 (82 FR 47405). The NPRM was prompted by the discovery of multiple cracked 4th stage LPT air seals, part number (P/N) 50N346, in the fleet. An investigation determined there is insufficient clearance to the 4th stage LPT vane cluster honeycomb that makes up the other half of the sealing system. Also, the knife edge seals are uncoated so they are more susceptible to overheating if a hard rub with the honeycomb occurs. The NPRM proposed to require the removal from service of certain 4th stage LPT air seals. Replacement of the air seal also requires replacement of the 4th stage LPT vane cluster honeycomb. This condition, if not corrected, could result in failure of the air seal, uncontained air seal release, damage to the engine, and damage to the airplane. We are issuing this AD to address the unsafe condition on these products.

Comments

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

Request To Clarify Compliance Time

United Parcel Service, United Airlines, SR Technics, Delta Airlines (DAL), Atlas Air, Federal Express (FedEx), and the Boeing Company requested that we clarify the compliance time requirement specified in the NPRM, paragraph (f)(1), which stated ''at the next disassembly of the LPT module, remove 4th stage air seal, P/N 50N346, from service and replace with a part eligible for installation'' because the term ''disassembly'' is subjective and not defined elsewhere in the NPRM. DAL requested that we specify a compliance time in the final rule since paragraph (f)(1) of the NPRM indicates that the compliance actions should be done in accordance with the compliance times specified in the AD.

We agree. We clarified that the compliance in this AD should be performed ''the next time the 4th stage LPT vanes are removed from the LPT module.''

Request for Clarification on Installation Prohibition

DAL requested clarification on the acceptability of returning an LPT to service with P/N 50N346 installed if the air seal was not exposed at the piece-part level, because the LPT disassembly was limited.

An LPT module with a 4th stage air seal, P/N 50N346, installed, may be returned to service, if the 4th stage LPT vanes are not removed. However, replacement of the 4th stage air seal is required, when the 4th stage LPT vanes are removed. This would include, if the 4th stage LPT air seal was at the piece-part exposure level.

Request for Clarification on Replacement of Affected Air Seals

Cathay Pacific Airways (CPA) asked if replacing the 4th stage LPT air seal, P/N 50N346, with any of the other 4th stage LPT air seals depicted in the Illustrated Parts Catalog (IPC) fulfills the AD requirement or if P/N 51N113 is the only suitable air seal for replacement. CPA further requested that we define what is ''a part eligible for installation''

in paragraph (f)(1) of the NPRM which states ''at the next disassembly of the LPT module, remove 4th stage air seal, P/N 50N346, from service and replace with a part eligible for installation.''

Currently, P/N 51N113 is the only 4th stage LPT air seal suitable for P/N 50N346 replacement. However, new replacement air seals may be developed in the future. We did not change this AD.

Service Bulletin Comment

CPA stated that PW Service Bulletin (SB) PW4ENG A72–830, Revision No. 1, dated May 2, 2017, listed P/N 51N113 as the only part eligible for installation. However, the service bulletin is not clearly listed in paragraph (f) of the NPRM.

We disagree. We listed PW SB PW4ENG A72–830, Revision No. 1, dated May 2, 2017, in the ''Related Service Information'' section of the NPRM, which was the appropriate paragraph. We did not change this AD.

Request for Clarification on Applicability of AD

Atlas Air asked if the AD applies to engines with 4th stage LPT air seals, P/N 51N038, 50N478, or 50N478–001, installed.

We determined this AD only applies to engines with 4th stage LPT air seal, P/N 50N346, installed.

Request for Clarification on Repair Limits

Atlas Air asked if PW Clean, Inspect, Repair (CIR) 72–53–40 Inspection/Check-03 limits apply to the 4th stage LPT air seal, P/N 51N113. If so, Atlas Air is concerned that the reduced knife edge might get scrapped due to reduced diameters.

The intent of this AD is to install a 4th stage LPT air seal with reduced knife edge diameters. This AD does not impact the CIR 72–53–40 Inspection/Check-03 limits.

Request for Clarification on Re-Installation Prohibition

Atlas Air asked if 4th stage LPT air seals, P/N 51N038, 50N478, or 50N478–001 are prohibited from re-installation.

We determined that 4th stage LPT air seals, P/N 51N038, 50N478, and 50N478–001, are not applicable to the engines affected by this AD.

Request for Clarification on Effective Date

SR Technics asked when this AD will become effective.

This AD will be effective 35 days after publication in the **Federal Register**.

Request for Clarification on Part Modification

PW stated that the new part can be obtained by modification of the old part as specified in PW SB PW4ENG A72–830, Revision No. 1, dated May 2, 2017.

We agree. The new 4th stage LPT air seal, P/N 51N113, can be obtained through modification of the old air seal, P/N 50N346, as noted in PW SB PW4ENG A72–830, Revision No. 1, dated May 2, 2017.

Request for Clarification on Honeycomb Replacement

DAL and FedEx note that the NPRM states ''Replacement of the air seal also requires replacement of the 4th stage LPT vane cluster honeycomb'' in the ''Discussion'' paragraph. However, paragraph (f) in the NPRM does not address honeycomb replacement. The commenters asked if the FAA intends to require the replacement of the honeycomb.

This AD addresses the unsafe condition created by a cracked 4th stage LPT air seal by replacing the air seal with a part that does not crack. Installation of the new air seal without replacement of the 4th stage LPT vane cluster honeycomb results in an increased radial clearance between the honeycomb and air seals. This is not an approved configuration. Requirements for replacement of the honeycomb when an air seal is replaced are defined in the appropriate service information, such as PW CIR Manual P/N 51A357, Chapter/Section 72–53–24, Repair-02. We did not change this AD.

Supportive Comment

The Air Line Pilots Association International expressed support for this AD.

Conclusion

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

- Are consistent with the intent that was proposed in the NPRM for addressing the unsafe condition; and
- Do not add any additional burden upon the public than was already proposed in the NPRM.

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

Related Service Information

We reviewed PW SB PW4ENG A72–830, Revision No. 1, dated May 02, 2017. The SB describes procedures for replacement or modification of the 4th stage LPT air seals.

Costs of Compliance

We estimate that this AD affects 991 engines installed on aircraft of U.S. registry.

We estimate the following costs to comply with this AD:

ESTIMATED COSTS

Action	Labor cost	Parts cost	Cost per product	Cost on U.S. operators
Replacement of air seal	0 work-hours × $85 per hour = $0	$13,800	$13,800	$13,675,800

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.

This AD is issued in accordance with authority delegated by the Executive Director, Aircraft Certification Service, as authorized by FAA Order 8000.51C. In accordance with that order, issuance

of ADs is normally a function of the Compliance and Airworthiness Division, but during this transition period, the Executive Director has delegated the authority to issue ADs applicable to engines, propellers, and associated appliances to the Manager, Engine and Propeller Standards Branch, Policy and Innovation Division.

Regulatory Findings

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

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

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

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

(3) Will not affect intrastate aviation in Alaska and

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2018–13–02 Pratt & Whitney Division: Amendment 39–19314; Docket No. FAA–2017–0817; Product Identifier 2017–NE–30–AD.

(a) Effective Date

This AD is effective July 20, 2018.

(b) Affected ADs

None.

(c) Applicability

This AD applies to all Pratt & Whitney Division (PW) PW4052, PW4056, PW4060, PW4062, PW4062A, PW4152, PW4156A, PW4158, PW4460, and PW4462 turbofan engine models, including engines identified with suffixes –1C, –1E, –3, –3A, or –3B, with 4th stage low-pressure turbine (LPT) air seal, part number (P/N) 50N346, installed.

(d) Subject

Joint Aircraft System Component (JASC) Code 7240, Turbine Engine Combustion Section.

(e) Unsafe Condition

This AD was prompted by the discovery of multiple cracked air seals. We are issuing this AD to prevent failure of the 4th stage LPT air seal. This unsafe condition, if not addressed, could result in uncontained release of the air seal, damage to the engine, and damage to the airplane.

(f) Compliance

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

(g) Required Actions

The next time the 4th stage LPT vanes are removed from the LPT module, remove 4th stage air seal, P/N 50N346, from service and replace with a part eligible for installation.

(h) Installation Prohibition

After the effective date of this AD, do not install any 4th stage LPT air seal, P/N 50N346, into any LPT module.

(i) Alternative Methods of Compliance (AMOCs)

(1) The Manager, ECO Branch, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or local flight standards district office, as appropriate. If sending information directly to the manager of the certification office, send it to the attention of the person identified in paragraph (j) of this AD. You may email your request to: *ANE-AD-AMOC@faa.gov.*

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

(j) Related Information

For more information about this AD, contact Jo-Ann Theriault, Aerospace Engineer, ECO Branch, FAA, 1200 District Avenue, Burlington, MA 01803; phone: 781–238–7105; fax: 781–238–7199; email: *jo-ann.theriault@faa.gov.*

(k) Material Incorporated by Reference

None.

Issued in Burlington, Massachusetts, on June 11, 2018.

Robert J. Ganley,

Manager, Engine and Propeller Standards Branch, Aircraft Certification Service.

[FR Doc. 2018–12830 Filed 6–14–18; 8:45 am]

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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2018–0501; Product Identifier 2018–NE–19–AD; Amendment 39–19304; AD 2018–11–16]

RIN 2120–AA64

Airworthiness Directives; Engine Alliance Turbofan Engines

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; request for comments.

SUMMARY: We are adopting a new airworthiness directive (AD) for certain Engine Alliance (EA) GP7270, GP7272, and GP7277 turbofan engines. This AD requires a one-time eddy current inspection (ECI) of the engine fan hub blade slot bottom and blade slot front edge for cracks, a visual inspection of the engine fan hub for damage, and removal of parts if damage or defects are found that are outside serviceable limits. This AD was prompted by an uncontained failure of the engine fan hub. We are issuing this AD to address the unsafe condition on these products.

DATES: This AD is effective July 2, 2018.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in this AD as of July 2, 2018.

We must receive comments on this AD by July 30, 2018.

ADDRESSES: You may send comments, using the procedures found in 14 CFR 11.43 and 11.45, by any of the following methods:

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

For service information identified in this final rule, contact Engine Alliance, 411 Silver Lane, East Hartford, CT 06118; phone: 800–565–0140; email: *help24@pw.utc.com;* website: *www.engineallianceportal.com.* You may view this service information at the FAA, Engine and Propeller Standards

Branch, 1200 District Avenue, Burlington, MA. For information on the availability of this material at the FAA, call 781–238–7759. It is also available on the internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2018–0501.

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–2018–0501; or in person at Docket Operations between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this final rule, the regulatory evaluation, any comments received, and other information. The street address for the Docket Operations (phone: 800–647–5527) is listed above. Comments will be available in the AD docket shortly after receipt.

FOR FURTHER INFORMATION CONTACT: David Bethka, Aerospace Engineer, ECO Branch, FAA, 1200 District Avenue, Burlington, MA 01803; phone: 781–238–7129; fax: 781–238–7199; email: *david.bethka@faa.gov*.

SUPPLEMENTARY INFORMATION:

Discussion

We received information concerning an uncontained engine fan hub failure that occurred on an EA GP7200-series turbofan engine. AD 2017–23–03 (82 FR 51979, November 9, 2017), requires visual inspections of all engine fan hubs for damage. This AD requires additional visual inspections of the EA GP7200-series engine fan hub beyond those required by AD 2017–23–03. This AD also requires an ECI that was not required by AD 2017–23–03. This condition, if not addressed, could result in an uncontained failure of the engine fan hub, damage to the engine, and damage to the airplane. We are issuing this AD to address the unsafe condition on these products.

Related Service Information Under 1 CFR Part 51

We reviewed EA Alert Service Bulletin (ASB) EAGP7–A72–389, Revision No. 2, dated April 17, 2018. The ASB describes procedures for ECI and visual inspection of the GP7270, GP7272, and GP7277 engine fan hub. This service information is reasonably available because the interested parties have access to it through their normal course of business or by the means identified in the **ADDRESSES** section.

FAA's Determination

We are issuing this AD because we evaluated all the relevant information and determined the unsafe condition described previously is likely to exist or develop in other products of the same type design.

AD Requirements

This AD requires a one-time ECI of the GP7270, GP7272, and GP7277 engine fan hub blade slot bottom and blade slot front edge for cracks, a visual inspection of the engine fan hub for damage, and removal of the engine fan hub if damage or defects are found that are outside of serviceable limits.

Interim Action

We consider this AD interim action. An investigation to determine the cause of the failure is on-going and we may consider additional rulemaking if final action is identified.

FAA's Justification and Determination of the Effective Date

An unsafe condition exists that requires the immediate adoption of this AD without providing an opportunity for public comments prior to adoption. The FAA has found that the risk to the flying public justifies waiving notice and comment prior to the adoption of this rule because the compliance time for the required action is shorter than the time necessary for the public to comment and for us to publish the final rule. Therefore, we find good cause that notice and opportunity for prior public comment are impracticable. In addition, for the reason stated above, we find that good cause exists for making this amendment effective in less than 30 days.

Comments Invited

This AD is a final rule that involves requirements affecting flight safety and was not preceded by notice and an opportunity for public comment. However, we invite you to send any written data, views, or arguments about this final rule. Send your comments to an address listed under the **ADDRESSES** section. Include the docket number FAA–2018–0501 and Product Identifier 2018–NE–19–AD at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this final rule. We will consider all comments received by the closing date and may amend this final rule because of those comments.

We will post all comments we receive, without change, to *http://www.regulations.gov,* including any personal information you provide. We will also post a report summarizing each substantive verbal contact we receive about this final rule.

Costs of Compliance

We estimate that this AD affects 0 engines installed on airplanes of U.S. registry.

We estimate the following costs to comply with this AD:

ESTIMATED COSTS

Action	Labor cost	Parts cost	Cost per product	Cost on U.S. operators
ECI and visual inspection	14 work-hours × $85 per hour = $1190	$0	$1190	$0

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.

This AD is issued in accordance with authority delegated by the Executive Director, Aircraft Certification Service, as authorized by FAA Order 8000.51C. In accordance with that order, issuance of ADs is normally a function of the Compliance and Airworthiness

Division, but during this transition period, the Executive Director has delegated the authority to issue ADs applicable to engines, propellers, and associated appliances to the Manager, Engine and Propeller Standards Branch, Policy and Innovation Division.

Regulatory Findings

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

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

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

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

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

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2018–11–16 Engine Alliance: Amendment 39–19304 ; Docket No. FAA–2018–0501; Product Identifier 2018–NE–19–AD.

(a) Effective Date

This AD is effective July 2, 2018.

(b) Affected ADs

None.

(c) Applicability

This AD applies to Engine Alliance (EA) GP7270, GP7272, and GP7277 model turbofan engines with serial numbers (S/Ns) identified in Table 3 in Planning Information of Engine Alliance (EA) Alert Service Bulletin (ASB) EAGP7–A72–389, Revision No. 2, dated April 17, 2018.

(d) Subject

Joint Aircraft System Component (JASC) Code 7230, Turbine Engine Compressor Section.

(e) Unsafe Condition

This AD was prompted by an uncontained failure of the engine fan hub. We are issuing this AD to detect defects, damage, and cracks that could result in an uncontained failure of the engine fan hub. The unsafe condition, if not addressed, could result in uncontained failure of the engine fan hub, damage to the engine, and damage to the airplane.

(f) Compliance

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

(g) Required Actions

Within 120 days after the effective date of this AD:

(1) For engine fan hubs at the low-pressure compressor (LPC) module assembly level:

(i) Perform a visual inspection of the engine fan hub, in accordance with the Accomplishment Instructions, For Fan Hubs at LPC Module Assembly Level, paragraphs 1.A.(1), 1.A.(4), and 1.A.(6)(a), of EA ASB EAGP7–A72–389, Revision No. 2, dated April 17, 2018.

(ii) Perform an eddy current inspection (ECI) of the engine fan hub blade slot bottoms and front edges, in accordance with the Accomplishment Instructions, For Fan Hubs at LPC Module Assembly Level, paragraphs 2.A and 2.B, of EA ASB EAGP7–A72–389, Revision No. 2, dated April 17, 2018.

(2) For engine fan hubs at the piece part level:

(i) Perform a visual inspection of the engine fan hub, in accordance with the Accomplishment Instructions, For Fan Hubs at Piece Part Level, paragraphs 1.A.(1) and 1.A.(3), of EA ASB EAGP7–A72–389, Revision No. 2, dated April 17, 2018.

(ii) Perform an ECI of the engine fan hub blade slot bottoms and front edges, in accordance with the Accomplishment Instructions, For Fan Hubs at Piece Part Level, paragraphs 2.A and 2.B, of EA ASB EAGP7–A72–389, Revision No. 2, dated April 17, 2018.

(3) For engine fan hubs installed in an engine (on-wing or off-wing):

(i) Perform a visual inspection of the engine fan hub, in accordance with the Accomplishment Instructions, For Fan Hubs Installed in an Engine, paragraphs 1.C.(1), 1.C.(5), and 1.C.(7)(a), of EA ASB EAGP7–A72–389, Revision No. 2, dated April 17, 2018.

(ii) Perform an ECI of the engine fan hub blade slot bottoms and front edges, in accordance with the Accomplishment Instructions, For Fan Hubs Installed in an Engine, paragraphs 1.D.(1) and 1.D.(2), of EA ASB EAGP7–A72–389, Revision No. 2, dated April 17, 2018.

(4) If the engine fan hub visual inspection reveals defects or damage to the engine fan hub that are found outside the serviceable limits specified in Table 4 in the Accomplishment Instructions of EA ASB EAGP7–A72–389, Revision No. 2, dated April 17, 2018, remove the engine fan hub from service and replace with a part that is eligible for installation, prior to further flight.

(5) If the fan hub ECI results in a rejectable indication, per the Appendix, Added Data, of EA ASB EAGP7–A72–389, Revision No. 2, dated April 17, 2018, remove the hub from service and replace with a part that is eligible for installation, prior to further flight.

(h) Credit for Previous Actions

You may take credit for the inspection required by paragraph (g) of this AD if you performed the inspection before the effective date of this AD, using EA ASB EAGP7–A72–389, dated December 19, 2017, or EA ASB EAGP7–A72–389, Revision No. 1, dated January 19, 2018.

(i) Alternative Methods of Compliance (AMOCs)

(1) The Manager, ECO Branch, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or local Flight Standards District Office, as appropriate. If sending information directly to the manager of the certification office, send it to the attention of the person identified in paragraph (j) of this AD. You may email your request to: *ANE-AD-AMOC@faa.gov*.

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

(j) Related Information

For more information about this AD, contact David Bethka, Aerospace Engineer, ECO Branch, FAA, 1200 District Avenue, Burlington, MA 01803; phone: 781–238–7129; fax: 781–238–7199; email: *david.bethka@faa.gov*.

(k) Material Incorporated by Reference

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

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

(i) Engine Alliance Alert Service Bulletin EAGP7–A72–389, Revision No. 2, dated April 17, 2018.

(ii) Reserved.

(3) For Engine Alliance service information identified in this AD, contact Engine Alliance, 411 Silver Lane, East Hartford, CT 06118; phone: 800–565–0140; email: *help24@pw.utc.com;* website: *www.enginealliance portal.com*.

(4) You may view this service information at FAA, Engine and Propeller Standards Branch, 1200 District Avenue, Burlington, MA. For information on the availability of this material at the FAA, call 781–238–7759.

(5) You may view this service information that is incorporated by reference at the National Archives and Records

Administration (NARA). For information on the availability of this material at NARA, call 202–741–6030, or go to: *http://www.archives.gov/federal-register/cfr/ibr-locations.html.*

Issued in Burlington, Massachusetts, on June 8, 2018.

Robert J. Ganley,

Manager, Engine and Propeller Standards Branch, Aircraft Certification Service.

[FR Doc. 2018–12873 Filed 6–14–18; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 101

[Docket No. FDA–2018–D–1323]

The Declaration of Certain Isolated or Synthetic Non-Digestible Carbohydrates as Dietary Fiber on Nutrition and Supplement Facts Labels; Guidance for Industry; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notification of availability.

SUMMARY: The Food and Drug Administration (FDA or we) is announcing the availability of a final guidance for industry entitled ''The Declaration of Certain Isolated or Synthetic Non-Digestible Carbohydrates as Dietary Fiber on Nutrition and Supplement Facts Labels; Guidance for Industry.'' The guidance identifies eight specific, additional isolated or synthetic non-digestible carbohydrates that we intend to add to our regulatory definition of ''dietary fiber'' through our regular rulemaking process. In the interim, the guidance also advises manufacturers of our policy for when one or more of these eight non-digestible carbohydrates, present in a food, are included in the declared amount of ''dietary fiber,'' and for the use of a caloric value for polydextrose of 1 kilocalorie per gram (kcal/g).

DATES: The announcement of the guidance is published in the **Federal Register** on June 15, 2018.

ADDRESSES: You may submit either electronic or written comments on Agency guidances at any time as follows:

Electronic Submissions

Submit electronic comments in the following way:

- *Federal eRulemaking Portal: https://www.regulations.gov*. Follow the instructions for submitting comments. Comments submitted electronically, including attachments, to *https://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 *https://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):* Dockets Management Staff (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.
- For written/paper comments submitted to the Dockets Management Staff, 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–2018–D–1323 for ''The Declaration of Certain Isolated or Synthetic Non-Digestible Carbohydrates as Dietary Fiber on Nutrition and Supplement Facts Labels; Guidance for Industry.'' Received comments will be placed in the docket and, except for those submitted as ''Confidential Submissions,'' publicly viewable at *https://www.regulations.gov* or at the Dockets Management Staff 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.'' We will review this copy, including the claimed confidential information, in our 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 *https://www.regulations.gov.* Submit both copies to the Dockets Management Staff. 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: *https://www.gpo.gov/fdsys/pkg/FR-2015-09-18/pdf/2015-23389.pdf*.

Docket: For access to the docket to read background documents or the electronic and written/paper comments received, go to *https://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 Dockets Management Staff, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

You may submit comments on any guidance at any time (see 21 CFR 10.115(g)(5)).

Submit written requests for single copies of the guidance to the Office of Nutrition and Food Labeling, Center for Food Safety and Applied Nutrition (HFS–830), Food and Drug Administration, 5100 Campus Dr., College Park, MD 20740. Send two self-addressed adhesive labels to assist that office in processing your requests. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the guidance document.

FOR FURTHER INFORMATION CONTACT: Paula R. Trumbo, Center for Food Safety and Applied Nutrition (HFS–830), Food and Drug Administration, 5100 Campus Dr., College Park, MD 20740, 240–402–2579.

SUPPLEMENTARY INFORMATION:

I. Background

We are announcing the availability of a guidance for industry entitled ''The Declaration of Certain Isolated or Synthetic Non-Digestible Carbohydrates as Dietary Fiber on Nutrition and Supplement Facts Labels; Guidance for Industry.'' We are issuing this guidance consistent with our good guidance practices (GGP) regulation (§ 10.115 (21

CFR 10.115)). We are implementing this guidance without prior public comment because we have determined that prior public participation is not feasible or appropriate (§ 10.115(g)(2)). We made this determination because this guidance sets out compliance policy that reduces burden and is consistent with the public health. Although this guidance document is immediately in effect, it remains subject to comment in accordance with FDA's GGP regulation.

Before 2016, FDA regulations did not define the term ''dietary fiber'' for purposes of the Nutrition Facts and Supplement Facts labels. In the **Federal Register** of May 27, 2016 (81 FR 33742), we published a final rule amending our Nutrition Facts and Supplement Facts Labels regulations (hereafter referred to as ''the final rule''). The final rule, among other things, defines dietary fiber as non-digestible soluble and insoluble carbohydrates (with 3 or more monomeric units), and lignin that are intrinsic and intact in plants; isolated or synthetic non-digestible carbohydrates (with 3 or more monomeric units) determined by FDA to have physiological effects that are beneficial to human health (§ 101.9(c)(6)(i) (21 CFR 101.9(c)(6)(i))). The final rule also identifies seven isolated or synthetic non-digestible carbohydrates, each of which has a physiological effect that is beneficial to human health and that must be declared as dietary fiber on Nutrition and Supplement Facts labels when present in a food.

Interested parties can ask us to list additional isolated or synthetic non-digestible carbohydrates in the definition of dietary fiber in § 101.9(c)(6)(i). For example, a manufacturer can request FDA to include another added isolated or synthetic non-digestible carbohydrate in the listing of dietary fibers by submitting a citizen petition under 21 CFR 10.30. FDA would review the scientific evidence to determine whether the evidence supports the non-digestible carbohydrate as having a physiological effect that is beneficial to human health. If so, FDA would propose a rule to include the non-digestible carbohydrate in the listing of dietary fibers.

Based on our review of citizen petitions that FDA has received requesting that we identify additional isolated or synthetic non-digestible carbohydrates in the listing of dietary fibers, and comments that we have received on a draft guidance entitled ''Scientific Evaluation of the Evidence on the Beneficial Physiological Effects of Isolated or Synthetic Non-Digestible Carbohydrates Submitted as a Citizen Petition (21 CFR 10.30)'' and an accompanying document titled ''Evaluation of the Beneficial Physiological Effects of Isolated or Synthetic Non-Digestible Carbohydrates,'' the availability of which we announced in the **Federal Register** of November 23, 2016 (81 FR 84516 and 81 FR 84595), in addition to our independent evaluation of the available scientific data, we intend to add certain isolated or synthetic non-digestible carbohydrates to the dietary fiber definition in § 101.9(c)(6)(i) through our regular rulemaking process. The eight non-digestible carbohydrates that we intend to add are: Mixed plant cell wall fibers; arabinoxylan; alginate, inulin and inulin-type fructans; high amylose starch (resistant starch 2); galactooligosaccharide; polydextrose; and resistant maltodextrin/dextrin. One category of non-digestible carbohydrate that we intend to add to § 101.9(c)(6)(i) through our regular rulemaking process—mixed plant cell wall fibers—encompasses a number of fiber ingredients, such as rice bran fibers, soy fibers, and sugar cane fibers. We have tentatively determined that each of these isolated or synthetic non-digestible carbohydrates has a physiological effect that is beneficial to human health. Several petitions are still pending with FDA and reviewing this information is a very high priority for FDA. Firms also can submit new citizen petitions, and we will review the petitions on a rolling basis. Firms whose non-digestible carbohydrates do not meet our regulatory definition of ''dietary fiber'' and are not one of the eight non-digestible carbohydrates identified in the guidance can still use those non-digestible carbohydrates in foods. Although those non-digestible carbohydrates cannot be listed as dietary fiber in the Nutrition Facts label, they would still be declared as part of the amount of total carbohydrate and listed by name in the ingredients on the food package. In addition, based on our review of the scientific evidence, including evidence we received in a citizen petition, we intend to establish a caloric value for polydextrose at 1 kcal/g in § 101.9(c)(1)(i)(C).

Pending completion of the rulemaking process, we are announcing a policy for the eight identified isolated or synthetic non-digestible carbohydrates when one or more are present in food and declared in the amount of ''dietary fiber'' on Nutrition Facts and Supplement Facts labels and when the caloric value of 1 kcal/g is used to determine the calorie contribution of polydextrose. Section 101.9(g) requires manufacturers to make and keep records to verify the amount of non-digestible carbohydrates added to food that do not meet the definition of dietary fiber. Under our policy, when a mixture of dietary fiber and one or more of these eight added non-digestible carbohydrates (that are not currently listed as a ''dietary fiber'' in the definition in § 101.9(c)(6)(i)) are present in a food, we do not expect manufacturers to make and keep records in accordance with § 101.9(g)(10) and (11) to verify the declared amount of one or more of these eight added non-digestible carbohydrates in the label and labeling of food.

This guidance is being issued consistent with FDA's good guidance practices regulation (21 CFR 10.115). The guidance represents the current thinking of FDA on this topic. 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. This guidance is not subject to Executive Order 12866.

II. Electronic Access

Persons with access to the internet may obtain the document at either *https://www.fda.gov/FoodGuidances* or *https://www.regulations.gov*. Use the FDA website listed in the previous sentence to find the most current version of the guidance.

Dated: June 8, 2018.

Leslie Kux,

Associate Commissioner for Policy.

[FR Doc. 2018–12867 Filed 6–14–18; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 876

[Docket No. FDA–2018–N–1894]

Medical Devices; Gastroenterology-Urology Devices; Classification of the Fluid Jet System for Prostate Tissue Removal

AGENCY: Food and Drug Administration, HHS.

ACTION: Final order.

SUMMARY: The Food and Drug Administration (FDA or we) is classifying the fluid jet system for prostate tissue removal into class II (special controls). The special controls that apply to the device type are identified in this order and will be part of the codified language for the fluid jet

system for prostate tissue removal's classification. We are taking this action because we have determined that classifying the device into class II (special controls) will provide a reasonable assurance of safety and effectiveness of the device. We believe this action will also enhance patients' access to beneficial innovative devices, in part by reducing regulatory burdens.

DATES: This order is effective June 15, 2018. The classification was applicable on December 21, 2017.

FOR FURTHER INFORMATION CONTACT: Jessica Cades, Center for Devices and Radiological Health, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 66, Rm. G246, Silver Spring, MD, 20993–0002, 240–402–3900, *Jessica.Cades@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

Upon request, FDA has classified the fluid jet system for prostate tissue removal as class II (special controls), which we have determined will provide a reasonable assurance of safety and effectiveness. In addition, we believe this action will enhance patients' access to beneficial innovation, in part by reducing regulatory burdens by placing the device into a lower device class than the automatic class III assignment.

The automatic assignment of class III occurs by operation of law and without any action by FDA, regardless of the level of risk posed by the new device. Any device that was not in commercial distribution before May 28, 1976, is automatically classified as, and remains within, class III and requires premarket approval unless and until FDA takes an action to classify or reclassify the device (see 21 U.S.C. 360c(f)(1)). We refer to these devices as ''postamendments devices'' because they were not in commercial distribution prior to the date of enactment of the Medical Device Amendments of 1976, which amended the Federal Food, Drug, and Cosmetic Act (FD&C Act).

FDA may take a variety of actions in appropriate circumstances to classify or reclassify a device into class I or II. We may issue an order finding a new device to be substantially equivalent under section 513(i) of the FD&C Act to a predicate device that does not require premarket approval (see 21 U.S.C. 360c(i)). We determine whether a new device is substantially equivalent to a predicate by means of the procedures for premarket notification under section 510(k) of the FD&C Act (21 U.S.C. 360(k) and part 807 (21 CFR part 807).

FDA may also classify a device through ''De Novo'' classification, a common name for the process authorized under section 513(f)(2) of the FD&C Act (21 U.S.C. 360c(f)(2)). Section 207 of the Food and Drug Administration Modernization Act of 1997 established the first procedure for De Novo classification (Pub. L. 105–115). Section 607 of the Food and Drug Administration Safety and Innovation Act modified the De Novo application process by adding a second procedure (Pub. L. 112–144). A device sponsor may utilize either procedure for De Novo classification.

Under the first procedure, the person submits a 510(k) for a device that has not previously been classified. After receiving an order from FDA classifying the device into class III under section 513(f)(1) of the FD&C Act, the person then requests a classification under section 513(f)(2).

Under the second procedure, rather than first submitting a 510(k) and then a request for classification, if the person determines that there is no legally marketed device upon which to base a determination of substantial equivalence, that person requests a classification under section 513(f)(2) of the FD&C Act.

Under either procedure for De Novo classification, FDA shall classify the device by written order within 120 days. The classification will be according to the criteria under section 513(a)(1) of the FD&C Act. Although the device was automatically within class III, the De Novo classification is considered to be the initial classification of the device.

We believe this De Novo classification will enhance patients' access to beneficial innovation, in part by reducing regulatory burdens. When FDA classifies a device into class I or II via the De Novo process, the device can serve as a predicate for future devices of that type, including for 510(k)s (see 21 U.S.C. 360c(f)(2)(B)(i)). As a result, other device sponsors do not have to submit a De Novo request or PMA in order to market a substantially equivalent device (see 21 U.S.C. 360c(i), defining ''substantial equivalence''). Instead, sponsors can use the less-burdensome 510(k) process, when necessary, to market their device.

II. De Novo Classification

On April 17, 2017, PROCEPT BioRobotics Inc. submitted a request for De Novo classification of the AQUABEAM System. FDA reviewed the request in order to classify the device under the criteria for classification set forth in section 513(a)(1) of the FD&C Act.

We classify devices into class II if general controls by themselves are insufficient to provide reasonable assurance of safety and effectiveness, but there is sufficient information to establish special controls that, in combination with the general controls, provide reasonable assurance of the safety and effectiveness of the device for its intended use (see 21 U.S.C. 360c(a)(1)(B)). After review of the information submitted in the request, we determined that the device can be classified into class II with the establishment of special controls. FDA has determined that these special controls, in addition to the general controls, will provide reasonable assurance of the safety and effectiveness of the device.

Therefore, on December 21, 2017, FDA issued an order to the requester classifying the device into class II. FDA is codifying the classification of the device by adding 21 CFR 876.4350. We have named the generic type of device fluid jet system for prostate tissue removal, and it is identified as a prescription device intended for the resection and removal of prostatic tissue for the treatment of benign prostatic hyperplasia. The device cuts tissue by using a pressurized jet of fluid delivered to the prostatic urethra. The device is able to image the treatment area, or pairs with an imaging modality, to monitor treatment progress.

FDA has identified the following risks to health associated specifically with this type of device and the measures required to mitigate these risks in table 1.

TABLE 1—FLUID JET SYSTEM FOR PROSTATE TISSUE REMOVAL RISKS AND MITIGATION MEASURES

Identified risks	Mitigation measures
Injury from device operation causing one or more of the following: • Bleeding • Bruising • Penile or pelvic pain	Clinical performance testing, Animal testing, Labeling, and Training.

TABLE 1—FLUID JET SYSTEM FOR PROSTATE TISSUE REMOVAL RISKS AND MITIGATION MEASURES—Continued

Identified risks	Mitigation measures
• Dysuria • Incontinence • Bladder or prostate capsule perforation • Sexual dysfunction, including ejaculatory and erectile dysfunction • Transurethral resection syndrome • Urethral damage causing false passage or stricture • Rectal incontinence/perforation • Embolism	
Adverse tissue reaction	Biocompatibility evaluation.
Infection	Sterilization validation, Reprocessing validation, Shelf life testing, and Labeling.
Failure to remove target tissue or removal of non-target tissue	Clinical performance testing, Animal testing, Software verification, validation, and hazard analysis, Non-clinical performance testing, Labeling, and Training.
Electrical shock or electromagnetic interference	Electrical safety testing, Electromagnetic compatibility testing, and Labeling.

FDA has determined that special controls, in combination with the general controls, address these risks to health and provide reasonable assurance of safety and effectiveness. In order for a device to fall within this classification, and thus avoid automatic classification in class III, it would have to comply with the special controls named in this final order. The necessary special controls appear in the regulation codified by this order. We encourage sponsors to consult with us if they wish to use a non-animal testing method they believe is suitable, adequate, validated, and feasible. We will consider if such an alternative method could be assessed for equivalency to an animal test method. This device is subject to premarket notification requirements under section 510(k) of the FD&C Act.

At the time of classification, fluid jet systems for prostate tissue removal are for prescription use only. Prescription devices are exempt from the requirement for adequate directions for use for the layperson under section 502(f)(1) of the FD&C Act and 21 CFR 801.5, as long as the conditions of 21 CFR 801.109 are met (referring to 21 U.S.C. 352(f)(1)).

III. Analysis of Environmental Impact

The Agency has determined under 21 CFR 25.34(b) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

IV. Paperwork Reduction Act of 1995

This final order establishes special controls that refer to previously approved collections of information found in other FDA regulations and guidance. 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 the guidance document ''De Novo Classification Process (Evaluation of Automatic Class III Designation)'' have been approved under OMB control number 0910–0844; the collections of information in 21 CFR part 814, subparts A through E, regarding premarket approval, have been approved under OMB control number 0910–0231; the collections of information in part 807, subpart E, regarding premarket notification submissions, have been approved under OMB control number 0910–0120; and the collections of information in part 801, regarding labeling, have been approved under OMB control number 0910–0485.

List of Subjects in 21 CFR Part 876

Medical devices.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, 21 CFR part 876 is amended as follows:

PART 876—GASTROENTEROLOGY-UROLOGY DEVICES

■ 1. The authority citation for part 876 continues to read as follows:

Authority: 21 U.S.C. 351, 360, 360c, 360e, 360j, 360*l,* 371.

■ 2. Add § 876.4350 to subpart E to read as follows:

§ 876.4350 Fluid jet system for prostate tissue removal.

(a) *Identification.* A fluid jet system for prostate tissue removal is a prescription device intended for the resection and removal of prostatic tissue for the treatment of benign prostatic hyperplasia. The device cuts tissue by using a pressurized jet of fluid delivered to the prostatic urethra. The device is able to image the treatment area, or pairs with an imaging modality, to monitor treatment progress.

(b) *Classification.* Class II (special controls). The special controls for this device are:

(1) Clinical performance testing must evaluate the following:

(i) All adverse events associated with the device, and

(ii) Improvement in lower urinary tract symptoms (LUTS).

(2) Physician training must be provided that includes:

(i) Information on key aspects and use of the device, and

(ii) Information on how to override or stop resection.

(3) Animal testing must demonstrate that the device resects targeted tissue in a controlled manner without injury to adjacent non-target tissues.

(4) Non-clinical performance data must demonstrate that the device performs as intended under anticipated conditions of use. The following performance characteristics must be tested:

(i) Measurement of targeting accuracy and reproducibility of high velocity fluid jet, and

(ii) High pressure fluid jet verification testing at target and non-target tissues.

(5) Software verification, validation, and hazard analysis must be performed.

(6) The patient-contacting elements of the device must be demonstrated to be biocompatible.

(7) Performance data must demonstrate the electrical safety and electromagnetic compatibility of the device.

(8) Performance data must demonstrate the sterility of the patient-contacting components of the device.

(9) Performance data must support the shelf life of the device by demonstrating continued sterility, package integrity, and device functionality over the identified shelf life.

(10) Performance data must validate the instructions for reprocessing and reliability of reusable components.

(11) Labeling must include the following:

(i) A section that summarizes the clinical testing results, including the adverse event profile and improvement in LUTS;

(ii) A shelf life for single use components;

(iii) A use life for reusable components; and

(iv) Reprocessing instructions for reusable components.

Dated: June 8, 2018.

Leslie Kux,

Associate Commissioner for Policy.

[FR Doc. 2018–12829 Filed 6–14–18; 8:45 am]

BILLING CODE 4164–01–P

PENSION BENEFIT GUARANTY CORPORATION

29 CFR Parts 4022 and 4044

Allocation of Assets in Single-Employer Plans; Benefits Payable in Terminated Single-Employer Plans; Interest Assumptions for Valuing and Paying Benefits

AGENCY: Pension Benefit Guaranty Corporation.

ACTION: Final rule.

SUMMARY: This final rule amends the Pension Benefit Guaranty Corporation's regulations on Benefits Payable in Terminated Single-Employer Plans and Allocation of Assets in Single-Employer Plans to prescribe interest assumptions under the benefit payments regulation for valuation dates in July 2018 and interest assumptions under the asset allocation regulation for valuation dates in the third quarter of 2018. The interest assumptions are used for valuing and paying benefits under terminating single-employer plans covered by the pension insurance system administered by PBGC.

DATES: Effective July 1, 2018.

FOR FURTHER INFORMATION CONTACT: Hilary Duke (*duke.hilary@PBGC.gov*), Assistant General Counsel for Regulatory Affairs, Pension Benefit Guaranty Corporation, 1200 K Street NW, Washington, DC 20005, 202–326–4400, ext. 3839. (TTY users may call the Federal relay service toll free at 1–800–877–8339 and ask to be connected to 202–326–4400, ext. 3839.)

SUPPLEMENTARY INFORMATION: PBGC's regulations on Allocation of Assets in Single-Employer Plans (29 CFR part 4044) and Benefits Payable in Terminated Single-Employer Plans (29 CFR part 4022) prescribe actuarial assumptions—including interest assumptions—for valuing and paying plan benefits under terminating single-employer plans covered by title IV of the Employee Retirement Income Security Act of 1974 (ERISA). The interest assumptions in the regulations are also published on PBGC's website (*http://www.pbgc.gov*).

The interest assumptions in appendix B to part 4044 are used to value benefits for allocation purposes under ERISA section 4044. PBGC uses the interest assumptions in appendix B to part 4022 to determine whether a benefit is payable as a lump sum and to determine the amount to pay. Appendix C to part 4022 contains interest assumptions for private-sector pension practitioners to refer to if they wish to use lump-sum interest rates determined using PBGC's historical methodology. Currently, the rates in appendices B and C of the benefit payment regulation are the same.

The interest assumptions are intended to reflect current conditions in the financial and annuity markets. Assumptions under the asset allocation regulation are updated quarterly; assumptions under the benefit payments regulation are updated monthly. This final rule updates the benefit payments interest assumptions for July 2018 and updates the asset allocation interest assumptions for the third quarter (July through September) of 2018.

The third quarter 2018 interest assumptions under the allocation regulation will be 2.53 percent for the first 25 years following the valuation date and 2.64 percent thereafter. In comparison with the interest assumptions in effect for the second quarter of 2018, these interest assumptions represent an increase of 5 years in the select period (the period during which the select rate (the initial rate) applies), an increase of 0.26 percent in the select rate, and an increase of 0.05 percent in the ultimate rate (the final rate).

The July 2018 interest assumptions under the benefit payments regulation will be 1.25 percent for the period during which a benefit is in pay status and 4.00 percent during any years preceding the benefit's placement in pay status. In comparison with the interest assumptions in effect for June 2018, these interest assumptions represent no change in the immediate rate and no changes in i1, i2, or i3.

PBGC has determined that notice and public comment on this amendment are impracticable and contrary to the public interest. This finding is based on the need to determine and issue new interest assumptions promptly so that the assumptions can reflect current market conditions as accurately as possible.

Because of the need to provide immediate guidance for the valuation and payment of benefits under plans with valuation dates during July 2018, PBGC finds that good cause exists for making the assumptions set forth in this amendment effective less than 30 days after publication.

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 amendment, the Regulatory Flexibility Act of 1980 does not apply. See 5 U.S.C. 601(2).

List of Subjects

29 CFR Part 4022

Employee benefit plans, Pension insurance, Pensions, Reporting and recordkeeping requirements.

29 CFR Part 4044

Employee benefit plans, Pension insurance, Pensions.

In consideration of the foregoing, 29 CFR parts 4022 and 4044 are amended as follows:

PART 4022—BENEFITS PAYABLE IN TERMINATED SINGLE–EMPLOYER PLANS

■ 1. The authority citation for part 4022 continues to read as follows:

Authority: 29 U.S.C. 1302, 1322, 1322b, 1341(c)(3)(D), and 1344.

■ 2. In appendix B to part 4022, Rate Set 297 is added at the end of the table to read as follows:

Appendix B to Part 4022—Lump Sum Interest Rates for PBGC Payments

* * * * *

Rate set	For plans with a valuation date		Immediate annuity rate (percent)	Deferred annuities (percent)				
	On or after	Before		i_1	i_2	i_3	n_1	n_2
*	*		*	*	*	*	*	*
297	7–1–18	8–1–18	1.25	4.00	4.00	4.00	7	8

■ 3. In appendix C to part 4022, Rate Set 297 is added at the end of the table to read as follows:

Appendix C to Part 4022—Lump Sum Interest Rates for Private-Sector Payments

* * * * *

Rate set	For plans with a valuation date		Immediate annuity rate (percent)	Deferred annuities (percent)				
	On or after	Before		i_1	i_2	i_3	n_1	n_2
*	*		*	*	*	*	*	*
297	7–1–18	8–1–18	1.25	4.00	4.00	4.00	7	8

PART 4044—ALLOCATION OF ASSETS IN SINGLE-EMPLOYER PLANS

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

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

■ 5. In appendix B to part 4044, an entry for ''July–September 2018'' is added at the end of the table to read as follows:

Appendix B to Part 4044—Interest Rates Used To Value Benefits

* * * * *

For valuation dates occurring in the month—	The values of i_t are:					
	i_t	for t =	i_t	for t =	i_t	for t =
*	*	*	*	*	*	*
July–September 2018	0.0253	1–25	0.0264	>25	N/A	N/A

Issued in Washington, DC.

Hilary Duke,

Assistant General Counsel, Pension Benefit Guaranty Corporation.

[FR Doc. 2018–12549 Filed 6–14–18; 8:45 am]

BILLING CODE 7709–02–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket Number USCG–2018–0330]

RIN 1625–AA00

Safety Zone; Appomattox River, Hopewell, VA

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary safety zone for a marine event on the navigable waters of the Appomattox River at confluence with the James River in Hopewell, VA. This action is necessary to provide for the safety of life on these navigable waters in Hopewell, VA, during a fireworks display on June 30, 2018. This rule prohibits persons and vessels from being in the safety zone unless authorized by the Captain of the Port Hampton Roads or a designated representative.

DATES: This rule is effective from 9 p.m. to 11 p.m. on June 30, 2018.

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, call or email LCDR Barbara Wilk, Waterways Management Division Chief, Sector Hampton Roads, U.S. Coast Guard; telephone 757–668–5580, email *HamptonRoadsWaterways@uscg.mil.*

SUPPLEMENTARY INFORMATION:

I. Table of Abbreviations

CFR Code of Federal Regulations
COTP Captain of the Port
DHS Department of Homeland Security
FR Federal Register
NPRM Notice of proposed rulemaking
§ Section
U.S.C. United States Code

II. Background Information and Regulatory History

On March 27, 2018, the Hopewell Recreation and Parks Department notified the Coast Guard that it will be conducting a fireworks display from approximately 9:30 to 9:45 p.m. on June 30, 2018, to serve as the city of Hopewell's Fourth of July celebration. The fireworks are to be launched from a barge in the Appomattox River near City Point in Hopewell, VA. In response, on May 31, 2018, the Coast Guard published a notice of proposed rulemaking (NPRM) titled Safety Zone; Appomattox River, Hopewell, VA (83 FR 24950). There we stated why we issued the NPRM, and invited comments on our proposed regulatory action related to this fireworks display. During the comment period that ended June 7, 2018, we received no comments.

Under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**. Delaying the effective date of this rule would be impracticable because immediate action is needed to

respond to the potential safety hazards associated with fireworks displays including accidental discharge of fireworks, dangerous projectiles, and falling hot embers or other debris.

III. Legal Authority and Need for Rule

The Coast Guard is issuing this rule under authority in 33 U.S.C. 1231. The Captain of the Port Hampton Roads (COTP) has determined that potential hazards associated with the fireworks to be used in this display would be a safety concern for anyone within a 234-yard radius of the barge. The purpose of this rulemaking is to ensure the safety of vessels and the navigable waters within a 234-yard radius of the fireworks barge before, during, and after the scheduled event.

IV. Discussion of Comments, Changes, and the Rule

As noted above, we received no comments on our NPRM published May 31, 2018. There are no changes in the regulatory text of this rule from the proposed rule in the NPRM.

This rule establishes a safety zone from 9 to 11 p.m. on June 30, 2018. The safety zone would cover all navigable waters within 234 yards of a barge in the Appomattox River at approximate coordinates: 37°18′52.20″ N, 077°17′12.52″ W. The duration of the zone is intended to ensure the safety of vessels and these navigable waters before, during, and after the scheduled 9:30 to 9:45 p.m. fireworks display. No vessel or person will be permitted to enter the safety zone without obtaining permission from the COTP or a designated representative.

V. Regulatory Analyses

We developed this rule after considering numerous statutes and Executive orders related to rulemaking. Below we summarize our analyses based on a number of these statutes and Executive orders, and we discuss First Amendment rights of protestors.

A. Regulatory Planning and Review

Executive Orders 12866 and 13563 direct agencies to assess the costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits. Executive Order 13771 directs agencies to control regulatory costs through a budgeting process. This rule has not been designated a ''significant regulatory action,'' under Executive Order 12866. Accordingly, this rule has not been reviewed by the Office of Management and Budget (OMB), and pursuant to OMB guidance it is exempt from the requirements of Executive Order 13771.

This regulatory action determination is based on the size, location, duration, and time-of-year of the safety zone. Vessel traffic will be able to safely transit around this safety zone which will impact a small designated area of the Appomattox River at confluence with the James River in Hopewell, VA, for 2 hours. Moreover, the Coast Guard will issue Broadcast Notice to Mariners via VHF–FM marine channel 16 about the zone and the rule allows vessels to seek permission on-scene to enter the zone.

B. Impact on Small Entities

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

While some owners or operators of vessels intending to transit the safety zone may be small entities, for the reasons stated in section V.A above, this rule will not have a significant economic impact on any vessel owner or operator.

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we want to assist small entities in understanding this rule. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section.

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1–888–REG–FAIR (1–888–734–3247). The Coast Guard will not retaliate against small entities that question or complain about this rule or any policy or action of the Coast Guard.

C. Collection of Information

This rule will not call for a new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

D. Federalism and Indian Tribal Governments

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. We have analyzed this rule under that Order and have determined that it is consistent with the fundamental federalism principles and preemption requirements described in Executive Order 13132.

Also, this rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes. If you believe this rule has implications for federalism or Indian tribes, please contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section.

E. Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of $100,000,000 (adjusted for inflation) or more in any one year. Though this rule will not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

F. Environment

We have analyzed this rule under Department of Homeland Security Directive 023–01 and Commandant Instruction M16475.1D, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (42 U.S.C. 4321–4370f), and have determined that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human

environment. This rule involves a safety zone lasting 2 hours that will prohibit entry within 234 yards of a fireworks barge in the Appomattox River near City Point in Hopewell, VA. It is categorically excluded from further review under paragraph L60(a) of Appendix A, Table 1 of DHS Instruction Manual 023–01–001–01, Rev. 01. A Record of Environmental Consideration supporting this determination is available in the docket where indicated under **ADDRESSES**.

G. Protest Activities

The Coast Guard respects the First Amendment rights of protesters. Protesters are asked to contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section to coordinate protest activities so that your message can be received without jeopardizing the safety or security of people, places or vessels.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways.

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 165 as follows:

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

■ 1. The authority citation for part 165 continues to read as follows:

Authority: 33 U.S.C. 1231; 50 U.S.C. 191; 33 CFR 1.05–1, 6.04–1, 6.04–6, and 160.5; Department of Homeland Security Delegation No. 0170.1.

■ 2. Add § 165.T05–0330 to read as follows:

§ 165.T05–0330 Safety Zone, Appomattox River; Hopewell, VA.

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

(1) *Captain of the Port* means the Commander, Sector Hampton Roads.

(2) *Representative* means any Coast Guard commissioned, warrant or petty officer who has been authorized to act on the behalf of the Captain of the Port.

(3) *Participants* mean individuals and vessels involved in the fireworks display.

(b) *Location.* The following area is a safety zone: All navigable waters in the vicinity of the Appomattox River at confluence with the James River, within a 234 yard radius of the fireworks display barge in approximate position 37°18′52.20″ N, 077°17′12.52″ W (NAD 1983).

(c) *Regulations.* (1) Except as provided in paragraph (c)(4) of this section, all persons are required to comply with the general regulations governing safety zones of subpart C of this part.

(2) With the exception of participants, entry into or remaining in this safety zone is prohibited unless authorized by the Captain of the Port, Hampton Roads or his designated representatives. All vessels within this safety zone at the time it is implemented are to depart the zone immediately.

(3) The Captain of the Port, Hampton Roads or his representative can be contacted at telephone number (757) 668–5555. The Coast Guard and designated security vessels enforcing the safety zone can be contacted on VHF–FM marine band radio channel 13 (165.65 Mhz) and channel 16 (156.8 Mhz), or by visual or verbal hailing on-scene.

(4) This section does not apply to participants and vessels that are engaged in the following operations:

(i) Enforcing laws;

(ii) Servicing aids to navigation; and

(iii) Emergency response vessels.

Dated: June 11, 2018.

Richard J. Wester,

Captain, U.S. Coast Guard, Captain of the Port, Hampton Roads.

[FR Doc. 2018–12863 Filed 6–14–18; 8:45 am]

BILLING CODE 9110–04–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R03–OAR–2018–0277; FRL–9979–44—Region 3]

Approval and Promulgation of Air Quality Implementation Plans; Pennsylvania; Removal of Department of Environmental Protection Gasoline Volatility Requirements for the Pittsburgh-Beaver Valley Area

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: The Environmental Protection Agency (EPA) is taking direct final action to approve a revision to the Commonwealth of Pennsylvania state implementation plan (SIP) submitted by the Pennsylvania Department of Environmental Protection (PADEP) on May 2, 2018. This revision seeks the removal, from the Pennsylvania SIP, of the requirement limiting summertime gasoline volatility to 7.8 pounds per square inch (psi) Reid Vapor Pressure (RVP) to address nonattainment under the 1-hour ozone national ambient air quality standard (NAAQS) in the Pittsburgh-Beaver Valley ozone nonattainment area (hereafter Pittsburgh-Beaver Valley Area). The submitted SIP revision also includes a section 110(l) demonstration as required by the Clean Air Act (CAA) addressing emission impacts associated with the removal of the program. EPA is approving these revisions to the Pennsylvania SIP in accordance with the requirements of the Clean Air Act (CAA).

DATES: This rule is effective on August 14, 2018 without further notice, unless EPA receives adverse written comment by July 16, 2018. If EPA receives such comments, it will publish a timely withdrawal of the direct final rule in the **Federal Register** and inform the public that the rule will not take effect.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R03–OAR–2018–0277 at *http://www.regulations.gov,* or via email to *spielberger.susan@epa.gov.* For comments submitted at *Regulations.gov*, follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from *Regulations.gov*. For either manner of submission, 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, please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section. For 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: Brian Rehn, (215) 814–2176, or by email at *rehn.brian@epa.gov.*

SUPPLEMENTARY INFORMATION: Throughout this document whenever ''we,'' ''us,'' or ''our'' is used, we refer to EPA. This supplementary information section is arranged as follows:

I. Background

A. Federal Gasoline Volatility Controls Under the CAA

Under section 211(c) of the CAA, EPA promulgated regulations on March 22, 1989 (54 FR 11868) that set maximum federal limits for the RVP of gasoline sold during the regulatory control periods that were established on a state-by-state basis in the final rule. The regulatory control periods applied during the summer months when peak ozone concentrations were expected. These regulations constituted Phase I of a two phase nationwide program, which was designed to reduce the volatility of commercial gasoline during the high ozone season. Depending on the state and month, gasoline RVP was not to exceed 10.5 psi, 9.5 psi, or 9.0 psi. Phase I was applicable to calendar years 1989 through 1991. On June 11, 1990 (55 FR 23658), EPA promulgated more stringent volatility controls as Phase II of the volatility control program. These requirements established maximum RVP standards of 9.0 psi or 7.8 psi (depending on the state, the month, and the area's initial ozone attainment designation with respect to the 1-hour ozone NAAQS). Phase II is applicable to 1992 and subsequent years.

The 1990 amendments to the CAA established a new section, 211(h), to address fuel volatility. Section 211(h)(1) requires EPA to promulgate regulations making it unlawful to sell, offer for sale, dispense, supply, offer for supply, transport, or introduce into commerce gasoline with an RVP level in excess of 9.0 psi during the high ozone season. Section 211(h)(2) prohibits EPA from establishing a volatility standard more stringent than 9.0 psi in an attainment area, except that the Agency may impose a lower (more stringent) standard in any former ozone nonattainment area redesignated to attainment.

On December 12, 1991 (56 FR 64704), EPA modified the Phase II volatility regulations to make them consistent with section 211(h). The modified regulations prohibited the sale of gasoline, beginning in 1992, with a RVP above 9.0 psi in all areas designated attainment for ozone. For areas designated as nonattainment, the regulations retained the original Phase II standards published on June 11, 1990 (55 FR 23658), which included the 7.8 psi ozone season limitation for certain areas.

Under these requirements, the Commonwealth of Pennsylvania was required to meet a 9.0 psi RVP standard during the summer RVP control period, with the exception of the Philadelphia Area, which was at that time was designated as severe ozone nonattainment, and as such was subject to more stringent gasoline requirements of the reformulated gasoline program established under CAA section 211(k).

B. State Gasoline Volatility Controls for the Pittsburgh-Beaver Valley Area

On November 15, 1990, the CAA amendments of 1990 were signed into law. On November 6, 1991, EPA designated and classified the Pittsburgh-Beaver Valley Area as moderate nonattainment for the 1979 1-hour ozone NAAQS. As part of Pennsylvania's efforts to bring the Pittsburgh-Beaver Valley Area into attainment of the ozone standard, the Commonwealth adopted and implemented a range of ozone precursor emissions control measures for the area, including adoption of a state rule to limit summertime gasoline volatility to 7.8 psi RVP. Pennsylvania's RVP control rule applies to the entire Pittsburgh-Beaver Valley Area—Allegheny, Armstrong, Beaver, Butler, Fayette, Washington, and Westmoreland Counties.

PADEP promulgated this rule in the November 1, 1997 *Pennsylvania Bulletin* (27 Pa.B. 5601, effective November 1, 1997), which is codified in Subchapter C of Chapter 126 of the Pennsylvania Code of Regulations (25 Pa. Code Chapter 126, Subchapter C). On April 17, 1998, Pennsylvania submitted this state-adopted rule to EPA as a formal revision to its approved SIP. EPA published a final action approving Pennsylvania's RVP SIP revision in the June 8, 1998 **Federal Register** (63 FR 31116) and codified in the *Code of Federal Regulations* at 40 CFR 52.2020(c)(1).

The local air pollution control agency for Allegheny County, ACHD, later adopted a similar summertime gasoline volatility limit (Allegheny County Order No. 16782, Article XXI, sections 2102.40, 2105.90, and 2107.15; effective May 15, 1998, amended August 12, 1999). On March 23, 2000, PADEP formally submitted a SIP revision to EPA (on behalf of ACHD) to incorporate ACHD's own gasoline RVP summertime requirements into the Pennsylvania SIP. EPA approved that SIP revision establishing an independent ACHD gasoline RVP limit on April 17, 2001 (66 FR 19724), effective June 18, 2001.

II. What changes have been made to Pennsylvania's gasoline volatility standards?

In the 2013–14 session of the Pennsylvania General Assembly, the legislature passed and Governor Corbett signed into law Act 50 (Pub. L. 674, No. 50 of May 14, 2014). Act 50 amended the Pennsylvania Air Pollution Control Act to direct PADEP to initiate a process to obtain approval from EPA of a SIP revision that demonstrates continued compliance with the NAAQS, through utilization of substitute, commensurate emissions reductions to balance repeal of the Pittsburgh-Beaver Valley Area RVP limit. Upon approval of that demonstration revision, Act 50 directs PADEP to repeal the summertime gasoline RVP limit provisions of 25 Pa. Code Chapter 126, Subchapter C.

On May 2, 2018, PADEP submitted a SIP revision requesting that EPA remove from the Pennsylvania SIP Chapter 126, Subchapter C of the Pennsylvania Code (specifically removing 25 Pa. Code sections 126.301, 126.302, and 126.303), based upon a demonstration that the repeal of the RVP requirements rule (coupled with other ozone precursor emission reduction measures) would not interfere with the Pittsburgh-Beaver Valley Area's attainment of any NAAQS, per the requirements for noninterference set forth in section 110(l) of the CAA. Pennsylvania's SIP revision contains a Pennsylvania-specific analysis that the emissions impact from repeal of the 7.8 psi gasoline volatility requirement in Pittsburgh (to be replaced by the federal 9.0 psi summertime gasoline

requirement) would be offset by substitution of commensurate benefits from other emission reduction measures enacted by Pennsylvania, but not previously credited in any SIP towards attainment or maintenance of any NAAQS. This analysis is performed through analysis of emission inventory sectors and sources affected by both repeal of gasoline RVP limits and of the substitute measures enacted by Pennsylvania.

The May 2, 2018 SIP revision references the Commonwealth's regulatory amendment to Chapter 126, Subchapter C, as published in the April 7, 2018 *Pennsylvania Bulletin* (48 Pa. B. 1932, effective upon publication). This amendment serves to repeal the PADEP requirement for 7.8 psi RVP summer gasoline. The Commonwealth's rule amends 25 Pa. Code Section 126.301 (relating to gasoline volatility requirements) to remove the RVP requirement for the Pittsburgh-Beaver Valley Area RVP upon the effective date of EPA's approval of Pennsylvania's May 2, 2018 SIP revision. As a result, both state and federal repeal of the requirements for summertime RVP in the area will coincide with the effective date of EPA's final action to approve the Commonwealth's related SIP submittals.

III. What is the historic reason for adoption of gasoline volatility control and the status of air quality in the Pittsburgh-Beaver Valley Area?

The gasoline volatility limit was originally adopted by Pennsylvania as part of a suite of measures to address ground level ozone pollution in the Pittsburgh-Beaver Valley Area, which has historically been designated nonattainment for the ozone NAAQS. Since passage of the CAA in 1990, portions of the Pittsburgh-Beaver Valley Area have also been designated nonattainment for the daily and annual averaging period fine particulate matter ($PM_{2.5}$) NAAQS. Since the low-RVP gasoline program affects primarily volatile organic compounds (VOCs) and nitrogen oxides (NO_X) emissions, and to some degree directly emitted $PM_{2.5}$ emissions, our review of the removal of this rule focuses on the NAAQS for which these emissions contribute, either directly or as precursor emissions.

A. The Status of the Pittsburgh-Beaver Valley Area With Respect to the Ozone NAAQS

On November 6, 1991 (56 FR 56694), EPA designated and classified the Pittsburgh counties of Allegheny, Armstrong, Beaver, Butler, Fayette, Washington, and Westmoreland Counties as nonattainment for the 1-hour ozone NAAQS promulgated by EPA in 1979. RVP control was one of a suite of measures adopted by Pennsylvania to attain and maintain the 1-hour ozone NAAQS.

On April 9, 2001, Pennsylvania submitted a request to redesignate the Pittsburgh-Beaver Valley Area to attainment of the 1979 1-hour ozone NAAQS, along with a maintenance plan to demonstrate that the area would continue to attain for a 10-year period—a plan which relied, in part, on emissions reductions attributable to the summertime gasoline volatility control program. Subsequently, EPA determined that the Pittsburgh-Beaver Valley Area had attained the 1979 1-hour ozone NAAQS by its extended attainment date and approved the Commonwealth's 1-hour redesignation request and maintenance plan SIP revision on November 19, 2001 (66 FR 53094).

On July 18, 1997 (62 FR 38856), EPA issued a revised NAAQS for ozone, strengthening the primary and secondary standards to 0.080 parts per million (ppm) and changing the averaging time from 1-hour to 8-hours. EPA initially designated the Pittsburgh-Beaver Valley Area as nonattainment for the 1997 NAAQS, under the general part D, subpart 1 provisions of the CAA on July 15, 2004. However, in response to litigation, EPA later classified several areas, including Pittsburgh-Beaver Valley, as moderate under the CAA part D, subpart 2 provisions in May of 2012.[1]

On April 4, 2013, EPA determined that the Pittsburgh-Beaver Valley Area had attained the 1997 8-hour ozone NAAQS by its applicable attainment date (based on air monitoring data for the 2007–2009 period) and warranted a clean data determination. This latter determination suspended certain CAA planning requirements for the Area, including requirements for an attainment demonstration, associated reasonable further progress plan, contingency measures, reasonably available control measure (RACM) analysis, and other CAA part D planning requirements for moderate ozone nonattainment areas, for as long as the area continued to monitor attainment of the NAAQS.

On March 27, 2008 (73 FR 16436), EPA strengthened the 8-hour NAAQS from 0.080 to 0.075 ppm in 2008. On March 6, 2015 (77 FR 30088), EPA designated and classified the Pittsburgh-Beaver Valley Area as marginal nonattainment for the 2008 8-hour ozone NAAQS. Also on March 6, 2015 (80 FR 12264), EPA published its ozone implementation rule for the 2008 ozone NAAQS in which established the date of July 20, 2016 as a deadline for attainment of the 2008 NAAQS. On December 6, 2016 (81 FR 87819), EPA determined that the Pittsburgh-Beaver Valley Area had attained the 2008 ozone NAAQS by that July 20, 2016 deadline.[2] The Pittsburgh-Beaver Valley Area continues to attain the 2008 ozone NAAQS for the most recent 2015–2017 three-year monitoring period.

On October 1, 2015 (80 FR 65291), EPA promulgated a revised ozone NAAQS of 0.070 ppm. On November 6, 2017 (82 FR 54232), EPA issued final 2015 ozone NAAQS designations for most U.S. counties, designating all seven Pittsburgh-Beaver Valley Area counties as ''attainment/unclassifiable.''

Pennsylvania's May 2, 2018 SIP revision includes EPA's updated photochemical grid modeling results for the 2008 ozone NAAQS (*See* Appendix H), based on updated electric generating unit data for 2017.[3] This forecast data predicts that the Pittsburgh-Beaver Valley Area will continue to attain the 2008 ozone NAAQS and maintain attainment of the 2015 ozone NAAQS by 2023.

[1] In 2012, EPA finalized revisions to the 2004 Phase 1 Implementation Rule for the 1997 8-hour ozone NAAQS that specified requirements to meet the 1997 ozone NAAQS. (77 FR 28424, May 14, 2012). The revisions were EPA's response to a December 22, 2006 decision in *South Coast Air Quality Management District* v. *EPA,* 472 F.3d 882 (D.C. Cir. 2006), directing EPA to classify areas under Part D of the CAA. As a result, EPA reclassified the former subpart 1 nonattainment areas, like the Pittsburgh Beaver Valley Area, under subpart 2. The 1997 8-Hour Ozone NAAQS was eventually revoked on April 6, 2015, coincident with promulgation of the later 2008 ozone NAAQS.

[2] On February 16, 2018, the D.C. Circuit Court issued an opinion on the EPA's regulations implementing the 2008 ozone NAAQS, known as the 2008 Ozone SIP Requirements Rule. *South Coast Air Quality Mgmt. Dist.* v. *EPA,* No. 15–1115 (D.C. Cir. Feb. 16, 2018). The D.C. Circuit Court found certain provisions from the 2008 Ozone SIP Requirements rule unreasonable including EPA's provision for a ''redesignation substitute.'' The D.C. Circuit Court vacated these provisions and found redesignations must comply with all required elements in CAA section 107(d)(3) and thus found the ''redesignation substitute'' which did not require all items in CAA section 107(d)(3)(E) violated the CAA and was thus unreasonable. The D.C. Circuit. Court also vacated other provisions relating to anti-backsliding in the 2008 Ozone SIP Requirements Rule as the Court found them unreasonable. *Id.* The D.C. Circuit Court found other parts of the 2008 Ozone SIP Requirements Rule unrelated to anti-backsliding and this action reasonable and denied the petition for appeal on those. *Id.*

[3] EPA Projected 2023 Ozone Design Values for the Pittsburgh-Beaver Valley Area.

Source: Notice of Availability—Preliminary Interstate Ozone Transport Modeling Data for the 2015 Ozone NAAQS. Data Spreadsheet is available at: *https://www.epa.gov/sites/production/files/2016-12/2015_o3_naaqs_preliminary_transport_assessment_design_values_contributions.xlsx.*

B. The Status of the Pittsburgh-Beaver Valley Area With Respect to the Fine Particulate Matter NAAQS

On October 17, 2006, EPA published a revised 24-hour $PM_{2.5}$ NAAQS (71 FR 61144). On November 3, 2009, EPA designated the Pittsburgh-Beaver Valley Area as nonattainment for the 2006 $PM_{2.5}$ NAAQS (74 FR 58688) under CAA part D, subpart 1. On June 2, 2014, EPA reclassified the Pittsburgh-Beaver Valley Area as moderate nonattainment under CAA part D, subpart 4 (79 FR 31566), including all of Beaver, Butler, Washington, and Westmoreland Counties and portions of Allegheny, Armstrong, Greene, and Lawrence Counties. On May 2, 2014, EPA determined that the Pittsburgh-Beaver Valley area was in attainment of the 2006 annual and 24-hour $PM_{2.5}$ NAAQS based on 2010–2012 ambient monitoring data (79 FR 25014). On October 2, 2015 (80 FR 59624), EPA approved a request from Pennsylvania to redesignate the Pittsburgh Area to attainment of the 1997 annual and 2006 24-hour $PM_{2.5}$ NAAQS.

On January 15, 2015, EPA published a revised annual $PM_{2.5}$ NAAQS (79 FR 3086). On April 7, 2015, EPA designated Allegheny County as moderate nonattainment of the 2012 annual $PM_{2.5}$ NAAQS (80 FR 18535).[4] Allegheny County continues to be nonattainment for the 2012 annual $PM_{2.5}$ NAAQS.

IV. What is EPA's analysis of the Commonwealth's submittal?

A. Pennsylvania's Estimate of the Impacts of Removing the 7.8 psi RVP Requirement

EPA's primary consideration for determining the approvability of Pennsylvania's request to rescind the requirements for a gasoline volatility control program is whether this requested action complies with section 110 of the CAA, specifically section 110(l).[5] Section 110(l) of the CAA requires that a revision to the SIP not interfere with any applicable requirement concerning attainment and reasonable further progress (as defined in section 171), or any other applicable requirement of the CAA. EPA evaluates each section 110(l) noninterference demonstration on a case-by-case basis considering the circumstances of each SIP revision. EPA interprets CAA section 110(l) as applying to all NAAQS that are in effect, including those that have been promulgated, but for which EPA has not yet made designations.

In the absence of an attainment demonstration to demonstrate no interference with any applicable NAAQS or requirement of the CAA under section 110(l), EPA believes it is appropriate to allow states to substitute equivalent emissions reductions to compensate for any change to a SIP-approved program, if net actual emissions in the air do not increase. ''Equivalent'' emission reductions mean reductions which are equal to or greater than those reductions achieved by the control measure approved in the SIP. To show that compensating emission reductions are equivalent, modeling or adequate justification must be provided. The compensating, equivalent reductions must represent real, new emissions reductions achieved in a contemporaneous time frame to the change of the existing SIP control measure, in order to preserve the status quo level of emissions in the air. In addition to being contemporaneous, the equivalent emissions reductions must also be permanent, enforceable, quantifiable, and surplus to be approved into the SIP.

In its May 2, 2018 SIP revision, PADEP includes a section 110(l) demonstration that uses equivalent emission reductions to offset ''losses'' from emission reductions resulting from the removal of the SIP approved 7.8 psi RVP summertime gasoline requirement in the Pittsburgh-Beaver Valley Area of Pennsylvania. Specifically, PADEP demonstrates the emission reductions associated with the 7.8 psi RVP fuel requirement will be substituted with equivalent or greater emissions reductions from: (1) Reductions from an adopted, implemented Pennsylvania regulation relating to the use and application of adhesives, sealants, primers, and solvents at 25 Pa. Code Section 129.77 and (2) the permanent shutdown of a facility in the Pittsburgh-Beaver Valley Area. These substitute emissions are quantifiable, permanent, surplus, enforceable, and contemporaneous (*i.e.* occurring at approximately the same period of this demonstration and/or the anticipated cessation of the low RVP fuel program). With removal of the state 7.8 psi summertime RVP requirement, the federal 9.0 psi RVP limit remains as the applicable requirement.

To determine the emissions impact of removing the 7.8 psi RVP program requirements in the Pittsburgh-Beaver Valley Area, PADEP considered first the pollutants that impact any NAAQS that are controlled through lowering of gasoline RVP: VOCs, NO_X, and direct $PM_{2.5}$. PADEP's analysis focuses on VOC and NO_X emissions because low RVP requirements were adopted by the Commonwealth to address the ozone NAAQS and because VOCs and NO_X emissions are the primary precursors for ground-level ozone formation. Also, NO_X, VOC, and direct $PM_{2.5}$ emissions also contribute to formation of $PM_{2.5}$. PADEP limited its analysis to affected portions of the total emissions inventory for the Pittsburgh-Beaver Valley Area such as the highway vehicle emissions sector, nonroad vehicle emissions sector, and gasoline storage and distribution emissions sources within the stationary point source sector. EPA finds the Commonwealth's analysis of the affected universe of emissions sources reasonable, as the 7.8 psi RVP gasoline requirement impacts only emission sources that store, distribute, or combust gasoline. PADEP studied the impacts of low RVP program removal on the emissions inventory at several points in time representing a period just prior to removal of the low RVP program (*i.e.,* 2014), the year of RVP program cessation (*i.e.,* 2018), and a point five years after RVP program removal (*i.e.,* 2023).

Table 1 summarizes PADEP's estimates of the expected change in highway vehicle emissions from replacement of the Commonwealth's 7.8 psi summertime low RVP program with the federal 9.0 psi RVP limit. To generate these estimates, PADEP used the latest version of EPA's Motor Vehicle Emissions Simulator (MOVES), version MOVES2014a, to characterize motor vehicle emissions. EPA notes that increasing gasoline RVP in and of itself no longer results in an increase in emissions of VOCs in the highway vehicle sector, as increases in VOCs from evaporative loss and permeation through porous materials are offset by improved exhaust emissions reductions from improvements in new motor vehicles (*e.g.,* improved engine control, air/fuel management, timing management, etc.). Thus, as newer vehicles replace older ones in the fleet, the VOC benefits from low RVP gasoline for the highway vehicle sector of the

[4] This action corrects an initial final designations action for the 2012 $PM_{2.5}$ NAAQS, which was signed by EPA on December 18, 2014 and published January 15, 2015 (80 FR 2206). This correction included more recently available data for use in designating certain areas of the country.

[5] CAA section 193, with respect to removal of requirements in place prior to enactment of the 1990 CAA Amendments, is not relevant because Pennsylvania's RVP control requirements in the Pittsburgh-Beaver Valley Area were not included in the SIP prior to enactment of the 1990 CAA amendments.

area's total emission inventory are reduced.

TABLE 1—HIGHWAY EMISSIONS COMPARISON BETWEEN PADEP'S 7.8 psi LOW-RVP PROGRAM AND THE FEDERAL RVP PROGRAM FOR THE PITTSBURGH-BEAVER VALLEY AREA

[In tons per day (tpd) and tons per year (tpy)]

Scenario	2014					2018					2023				
	VOC		NO_X		$PM_{2.5}$	VOC		NO_X		$PM_{2.5}$	VOC		NO_X		$PM_{2.5}$
	tpd	tpy	tpd	tpy	tpy	tpd	tpy	tpd	tpy	tpy	tpd	tpy	tpd	tpy	tpy
Pennsylvania 7.8 psi RVP Program	38.7	14,134	77.1	28,142	902	25.1	9,082	49.4	17,403	614	18.2	6,650	30.4	10,834	430
Federal 9.0 psi RVP Program	.....	.....	.....	.....	.....	25.0	9,040	49.7	17,446	612	18.0	6,604	30.5	10,847	428
Reduction or Increase in Emissions (−) or (+)	.....	.....	.....	.....	.....	−0.18	−41.4	+0.3	+43.5	−2.0	−0.24	−46.5	+0.09	13.1	−2.2

PADEP modelled nonroad emissions using the MOVES NONROAD model, version 2014a, coupled with the 2014 NEI version 1 emission inventory, to compile a base year scenario. PADEP assumed this portion of the inventory would see an increase of three percent of total VOC emissions from removal of the Commonwealth's 7.8 psi RVP gasoline program. Table 2 summarizes the changes in nonroad vehicle and equipment emissions in the Pittsburgh-Beaver Valley area from repeal of the state low-RVP gasoline program.

TABLE 2—NONROAD MOBILE EMISSIONS COMPARISON BETWEEN PADEP'S 7.8 psi LOW-RVP PROGRAM VERSUS THE FEDERAL RVP PROGRAM FOR THE PITTSBURGH-BEAVER VALLEY AREA

[In tpy and tpd]

	2014	2018		2023	
	VOC	VOC		VOC	
	tpy	tpd	tpy	tpd	tpy
Pennsylvania 7.8 psi RVP Program	7,221	37.15	5,684	35.10	5,370
Federal 9.0 psi RVP Program	.....	38.15	5,837	36.11	5,525
Reduction or Increase in Emissions (−) or (+)	.....	1.00	153	1.01	155

Changes in gasoline RVP produce emissions from not only vehicles and equipment that store and combust the fuel, but also from evaporation and permeation from movement, storage, and transportation of the fuel as part of the gasoline distribution system. These sources include gasoline refineries and terminals, pipelines, gasoline tanker trucks, storage tanks, service station tanks, and portable gas cans. These are a combination of large, point sources of emissions and smaller area sources. PADEP estimates emissions from these sources by different means, ranging from use of emission factors (from EPA's AP–42 compendium of emission factors) coupled with activity information (or surrogates for activity like population) or gasoline sales numbers. Some larger sources (*e.g.,* refineries and bulk gasoline terminals) are sufficiently large to be estimated or measured more directly as discreet sources in the Area's periodic point source emission inventory. Table 3 contains a summary of PADEP's estimated emissions from these point and area sources resulting from a change from the Pennsylvania low-RVP gasoline rule to the federal rule. PADEP assumed this portion of the inventory would see an increase of three percent of total VOC emissions from removal of the Commonwealth's 7.8 psi RVP gasoline program.

TABLE 3—GASOLINE DISTRIBUTION SYSTEM POINT AND AREA SOURCES INCREASE IN VOC EMISSIONS FROM REMOVAL OF PENNSYLVANIA'S 7.8 psi RVP REQUIREMENT IN THE PITTSBURGH-BEAVER VALLEY AREA

[In tpy and tpd]

Point/area source category	2014 NEI VOC (tpy)
Gasoline Terminals	131.3.
Bulk Plants	74.9.
Tank Truck Transit	10.4.
Service Station Unloading	0.1.

TABLE 3—GASOLINE DISTRIBUTION SYSTEM POINT AND AREA SOURCES INCREASE IN VOC EMISSIONS FROM REMOVAL OF PENNSYLVANIA'S 7.8 psi RVP REQUIREMENT IN THE PITTSBURGH-BEAVER VALLEY AREA—Continued

[In tpy and tpd]

Point/area source category	2014 NEI VOC (tpy)
Total 2014 NEI Point Source RVP-Related Emissions.	216.7.
3% of 2014 Point Emissions, Attributable to 7.8 RVP repeal.	7 tpy (0.02 tpd).

Table 4 summarizes combined highway mobile, nonroad, and point and area source emissions impacts from the removal of the Commonwealth's 7.8 psi low-RVP program for the 2018 and 2023 scenarios.

TABLE 4—SUMMARY OF COMBINED EMISSION IMPACTS FROM REMOVAL OF THE 7.8 PSI PROGRAM IN THE PITTSBURGH-BEAVER VALLEY AREA IN 2018 AND 2023

[In tpy and tpd]

	VOC		NO_X		$PM_{2.5}$
	tpy	tpd	tpy	tpd	tpy
Highway	−41.4	−0.18	43.5	0.3	−2.0
Nonroad	153	1	0	0	0
Point/Area	7	−0.02	0	0	0
Total Change in 2018 Emissions	+119	+0.84	+43.5	+0.3	−2.0
Highway	−46.5	−0.24	13.1	0.09	−2.2
Nonroad	155	1.01	0	0	0
Point/Area	7	0.02	0	0	0
Total Change in 2023 Emissions	+116	+0.79	+13.1	+0.09	−2.2

Based on our review of the information provided, EPA finds that PADEP used reasonable methods and the appropriate tools (*e.g.,* emissions estimation models, emissions factors, and methodologies) in estimating the effect on emissions from removing the 7.8 psi RVP summertime gasoline program. PADEP determined that in 2018 the emissions increase resulting from removal of the 7.8 psi RVP requirement (and replacement with the federal 9.0 RVP gasoline program) would be 0.84 summertime tpd of VOC and 0.3 summertime tpd of NO_X in the Pittsburgh-Beaver Valley Area. PADEP's demonstration shows that direct emissions of $PM_{2.5}$ decrease by 2.0 tpy from removal of the 7.8 psi RVP requirement (and replacement with the federal 9.0 RVP gasoline program). By 2023, the emissions impact of removal of the 7.8 psi RVP requirement would slightly decrease from 2018, to 0.79 tpd of VOCs and 0.09 tpd of NO_X, with direct $PM_{2.5}$ emissions decreasing slightly more than 2018 estimates.

B. Pennsylvania's Substitution of Alternative Emissions Reduction Measures for the 7.8 psi Low-RVP Gasoline Program

PADEP has estimated lost and compensating emission reductions for the year of removal of the Commonwealth's low-RVP gasoline program (after considering the benefits from replacement with the federal 9.0 RVP gasoline program). PADEP has also estimated emissions impacts in the year 2023 to examine the future impacts of removal of the 7.8 psi state summertime RVP requirement. To compensate for the emissions impact of repeal of this requirement in the Pittsburgh-Beaver Valley Area, PADEP has analyzed the emission benefits associated with two substitute measures previously implemented but not ''claimed'' in any prior SIP attainment plan (under CAA section 172) for the Commonwealth. These measures are: (1) Overcontrol of VOC emissions from Pennsylvania's adhesives rule (25 Pa. Code § 129.77) and (2) unclaimed creditable emissions reductions associated with the permanent closure in 2015 of a glass manufacturing facility in Allegheny County, Guardian Industries Jefferson Hills facility.

1. Pennsylvania's Adhesives, Sealants, Primers, and Solvents Rule

Pennsylvania adopted emissions limits for adhesives and sealants consistent with the Ozone Transport Commission (OTC) model rule covering 37 categories of products, on December 24, 2010 (40 Pa. B. 7340). On June 25, 2015 (80 FR 36482), EPA approved the adhesives rule (25 Pa. Code Section 129.77) into the Pennsylvania SIP. Although this measure was implemented prior to the Commonwealth's repeal of the 7.8 psi low-RVP gasoline program, the emissions reductions from the adhesives rule have not previously been ''credited'' in any attainment, reasonable further progress, redesignation, or maintenance plan SIP for any NAAQS. PADEP has quantified the reductions from the OTC adhesives model rule using studies performed by the California Air Resources Board (CARB), upon which the OTC model rule was derived. As an area source measure, PADEP relied upon population based, per capita emission reduction estimates for the 7-county Pittsburgh-Beaver Valley Area. PADEP extrapolated its per capita emission factor estimate prepared when it adopted the adhesives rule (based on 2009 area population) by population data for 2014, 2018, and 2023. For purposes of comparison to the low-RVP rule, PADEP seasonally adjusted its original estimate for the adhesives rule (based on a 3-month June-August summer season) to reflect the longer low-RVP gasoline summertime season (*i.e.,* 5-month May-September control season). Table 5 summarizes the daily and annual VOC emissions benefit provided by the adhesives rule.

TABLE 5—SUMMARY OF PENNSYLVANIA'S ADHESIVES RULE VOC EMISSION REDUCTION ESTIMATES FOR 2014, 2018, AND 2023

	2014	2018	2023
Projected Pittsburgh-Beaver Valley Area Population (persons)	2, 358,096	2,346,571	2,338,002
PADEP Adhesives Rule VOC Annual Reduction Emission Factor (tons per person per year)	4.96×10^{-4}	4.96×10^{-4}	4.96×10^{-4}
PADEP Adhesives Rule VOC Daily Reduction Emission Factor (tons per person per day)	1.36×10^{-6}	1.36×10^{-6}	1.36×10^{-6}
VOC Reduction from PADEP Adhesives Rule (in tpy)	1,169	1,163	1,159
VOC Reduction from PADEP Adhesives Rule (in tpd)	3.21	3.20	3.19

2. Shutdown of Guardian Industries Jefferson Hills Facility

To further aid in offsetting emission reductions lost from the removal of the summertime 7.8 psi low-RVP gasoline requirement (after replacement with the federal 9.0 RVP gasoline program), PADEP is relying upon emission reductions from the permanent closure of a Guardian Industries Corporation glass manufacturing facility located in Jefferson Hills, Allegheny County (Facility ID 4200300342). This facility ceased operations in August 2015, and Guardian Industries did not request that potentially creditable emission reductions be preserved in the inventory within the one year deadline for doing so under 25 Pa. Code Chapter 127, Subchapter E (relating to emission reduction credit generation under Pennsylvania's new source review (NSR) program). Having missed the legal deadline for doing so, the associated emission reductions from the facility shutdown can no longer be used by any facility for complying with the NSR program. Pennsylvania asserts the reductions have not been used and cannot be used in the future by Pennsylvania to meet any other obligation, including attainment demonstration, facility emission limitation, reasonable further progress, or maintenance plan requirements for the area. The facility has been permanently closed and the emission source removed. The plan approvals and operating permits for the facility are no longer valid. Any new source at this facility would be subject to NSR permitting provisions (including securing emission offsets as required by CAA and Pennsylvania SIP) and would not be able to use any emission reductions from this closure for permitting purposes.

To quantify emission reductions from the Guardian Industries Jefferson Hills facility shutdown, PADEP applied requirements from Pennsylvania's creditable emissions decrease provisions for applicability determination under the NSR program (25 Pa. Code Section 127.203a), used for calculation of lookback periods and baseline credit determinations for emission reduction credit generation. Table 6 summarizes PADEP's estimate of creditable emission reductions from the Guardian Industry Jefferson Hills facility for use in partially offsetting the removal of the 7.8 psi RVP gasoline program.

TABLE 6—SUMMARY OF EMISSION REDUCTIONS FROM THE PERMANENT SHUTDOWN OF GUARDIAN INDUSTRIES JEFFERSON HILLS FACILITY

Permanent emission offsets for 24-month annual average (August 2013–July 2015)	Pollutant	Offsets (in tpy)
NO_X	625	1.8
VOC	13.8	0.04
$PM_{2.5}$	26.5	N/A

C. Comparison of Emissions Impacts From Removal of the Commonwealth's 7.8 psi RVP Gasoline Program and the Uncredited Emission Reductions From Substitute Measures

Pennsylvania is relying upon NO_X, VOC, and $PM_{2.5}$ emission reductions from its adoption of the OTC model adhesives rule and from the shutdown of Guardian Industries Jefferson Hills glass manufacturing facility in Allegheny County to offset the emissions impact of removing the Commonwealth's summertime gasoline volatility control rule and to support that its argument that removal of 7.8 psi RVP requirement from the SIP will not interfere with attainment of any NAAQS. Pennsylvania has elected to adjust upward by 25 percent its estimates for the emission impact of the removal of the 7.8 psi RVP gasoline program (as shown in Table 4), to account for uncertainty in its calculation of the estimates for the emissions benefits from that program. Table 7 summarizes the Pittsburgh-Beaver Valley Area emissions increases from repeal of the low-RVP gasoline program compared to the emissions benefits resulting from the alternative emission reduction measures.

TABLE 7—SUMMARY OF PITTSBURGH-BEAVER VALLEY IMPACTS FROM REMOVAL OF THE 7.8 psi GASOLINE VOLATILITY PROGRAM COMPARED TO EMISSIONS BENEFITS FROM ALTERNATIVE MEASURES

[In 2018 and 2023]

	VOC		NO_X		$PM_{2.5}$
	tpy	tpd	tpy	tpd	tpy
2018:					
Change in Emissions from RVP Rule Repeal[6]	119	0.84	43.5	0.3	−2.0
Emission Adjustment to RVP Change Estimate (25% increase)	30	0.21	11	0.08	−2.0
Total Emissions Requiring Offset	149	1.05	54.5	0.38	
Adhesives Rule Reductions for Offset	1,163	3.2	0	0	0
Facility Shutdown Reductions for Offset	13.8	0.04	625	1.8	26.5
Total Available Offset Emissions	1,177	3.24	625	1.8	28.5
Surplus Reductions After Offset (Total Emissions Requiring Offset—Total Available Offsets)	1,029	2.19	570.5	1.0	28.5
2023:					
Change in Emissions from RVP Rule Repeal[7]	116	0.79	13.1	0.09	−2.0
Emission Adjustment to RVP Change Estimate (25% increase)	29	0.20	3.3	0.02	
Total Emissions Requiring Offset	144	0.99	16.4	0.11	−2.0
Adhesives Rule Reductions for Offset	1,159	3.19	0	0	0

TABLE 7—SUMMARY OF PITTSBURGH-BEAVER VALLEY IMPACTS FROM REMOVAL OF THE 7.8 psi GASOLINE VOLATILITY PROGRAM COMPARED TO EMISSIONS BENEFITS FROM ALTERNATIVE MEASURES—Continued

[In 2018 and 2023]

	VOC		NO_X		$PM_{2.5}$
	tpy	tpd	tpy	tpd	tpy
Facility Shutdown Reductions for Offset	13.8	0.04	625	1.8	26.5
Total Available Offset Emissions	1,173	3.23	625	1.8	28.5
Surplus Reductions After Offset (Total Emissions Requiring Offset—Total Available Offsets)	1,029	2.24	608.6	1.69	28.5

As indicated in Table 7, Pennsylvania has a surplus of VOC, NO_X, and $PM_{2.5}$ emission reductions from the alternative emission reduction measures after offsetting the emissions reductions lost from repeal of the Commonwealth's low-RVP gasoline program, in both 2018 (the year of repeal of the low-RVP gasoline program) and in the 2023 future case. Although not needed to offset the low-RVP gasoline rule, PADEP is electing to retire all emissions reductions from the facility shutdown and will not use them for any future NSR program purposes. These surplus emission reductions, not previously claimed for any SIP-approved plan, will help to ensure that removal of the low-RVP gasoline program will not interfere with any NAAQS for the Pittsburgh-Beaver Valley Area.

EPA believes that the removal of the 7.8 psi low RVP fuel program requirements in the Pittsburgh-Beaver Valley Area does not interfere with Pennsylvania's ability to demonstrate compliance with any of the ozone or $PM_{2.5}$ NAAQS, which could potentially have been impacted by the NAAQS pollutant precursors that are the subject of the SIP revision. EPA's analyses of the Commonwealth's SIP revision for CAA 110(l) impact is supported by its use of alternate emission reduction measures that ensure permanent, enforceable, contemporaneous, surplus emissions reductions are achieved within the Pittsburgh-Beaver Valley Area which far exceed the slight increase in NO_X and VOC pollutants from the removal of low RVP fuel especially as Pennsylvania is still subject to the federal RVP fuel requirement of 9.0 psi. Based on Pennsylvania's CAA 110(l) analysis showing surplus emission reductions (see Table 7), EPA has no reason to believe that the removal of the low RVP fuel requirements in the Pittsburgh-Beaver Valley area will negatively impact the area's ability to attain or maintain any NAAQS including specifically ozone and $PM_{2.5}$ or interfere with reasonable further progress. In addition, EPA believes that removing the 7.8 psi low RVP program requirements in the Pittsburgh-Beaver Valley Area will not interfere with any other CAA requirement as the Area will remain subject to the federal low RVP fuel requirements.

V. Impacts on the Boutique Fuels List

Section 1541(b) of the Energy Policy Act of 2005 required EPA, in consultation with the U.S. Department of Energy, to determine the number of fuels programs approved into all SIPs as of September 1, 2004 and to publish a list of such fuels. On December 28, 2008 (71 FR 78192), EPA published the list of boutique fuels. EPA maintains the current list of boutique fuels on its website at: *https://www.epa.gov/gasoline-standards/state-fuels.* The final list of boutique fuels was based on a fuel type approach. CAA section 211(c)(4)(C)(v)(III) requires that EPA remove a fuel from the published list if it is either identical to a federal fuel or is removed from the SIP in which it is approved. Under the adopted fuel type approach, EPA interpreted this requirement to mean that a fuel would have to be removed from all SIPs in which it was approved in order for it to be removed from the list. (71 FR 78195).

The 7.8 psi RVP fuel program (as required by Pa. Code Chapter 126, Subchapter C), as approved into Pennsylvania's SIP, is a fuel type that is included in EPA's boutique fuel list (71 FR 78198–99; *https://www.epa.gov/gasoline-standards/state-fuels*). The specific counties in the Pittsburgh-Beaver Valley Area where summer low RVP gasoline is required are identified on EPA's Gasoline Reid Vapor Pressure web page (*https://www.epa.gov/gasoline-standards/gasoline-reid-vapor-pressure*). Subsequent to the final effective date of EPA's approval of Pennsylvania's May 2, 2018 SIP revision to remove Pennsylvania's Chapter 126, Subchapter C RVP requirement from the SIP, EPA will update the State Fuels and Gasoline Reid Vapor Pressure web pages with the effective date of the SIP removal. However, the entry for Pennsylvania will be not be completely deleted from the list of boutique fuels, as Allegheny County remains subject to a separate, SIP-approved 7.8 psi RVP gasoline requirement of ACHD's Rules and Regulations, Article XXI, pending future action by ACHD to repeal that rule and submit a formal SIP revision requesting its repeal from the Pennsylvania SIP. This deletion of Armstrong, Beaver, Butler, Fayette, Washington, and Westmoreland Counties from the list will not result in an opening on the boutique fuels list because the 7.8 psi RVP fuel type remains for one Pennsylvania County, and in other state SIPs.

VI. What action is EPA taking?

EPA is approving Pennsylvania's May 2, 2018 SIP revision to remove the low RVP fuel requirements at 25 Pa. Code Chapter 126, Subchapter C from the Pennsylvania SIP. With this action, EPA is also approving the Commonwealth's supporting CAA 110(l) demonstration in its May 2, 2018 submission that removal of the low RVP gasoline program does not interfere with the Commonwealth's ability to attain or maintain any NAAQS in the Pittsburgh-Beaver Valley Area. Our approval of the May 2, 2018 SIP submittal is in accordance with CAA requirements in section 110, including section 110(l) specifically.

EPA's approval of the May 2, 2018 Pennsylvania SIP revision does not remove the separate SIP requirement applicable requiring use of 7.8 psi RVP gasoline during summertime months in Allegheny County, under requirements set forth in Article XXI, Rules and

[6] This increase (or decrease) in emissions is the net emission change when comparing the Commonwealth's 7.8 psi requirement for the Pittsburgh-Beaver Valley Area to the federal 9.0 psi RVP program requirement that will remain upon removal of the Commonwealth's program.

[7] This increase (or decrease) in emissions is the net emission change when comparing the Commonwealth's 7.8 psi requirement for the Pittsburgh-Beaver Valley Area to the federal 9.0 psi RVP program requirement that will remain upon removal of the Commonwealth's program.

Regulations of the ACHD, which were approved by EPA as part of the Commonwealth's SIP on April 17, 2001 (66 FR 19724). PADEP will submit a SIP revision, at a later date, on behalf of ACHD to remove or otherwise amend the separate Allegheny County low RVP gasoline program rule. Neither ACHD's rule nor the related approved Pennsylvania SIP for Article XXI are the subject of this action or the Pennsylvania May 2, 2018 low RVP gasoline SIP revision.

EPA is publishing this rule without prior proposal because EPA views this as a noncontroversial amendment and anticipates no adverse comment. However, in the ''Proposed Rules'' section of today's **Federal Register**, EPA is publishing a separate document that will serve as the proposal to approve the SIP revision if adverse comments are filed. This rule will be effective on *August 14, 2018* without further notice unless EPA receives adverse comment by *July 16, 2018*. If EPA receives adverse comment, EPA will publish a timely withdrawal in the **Federal Register** informing the public that the rule will not take effect. EPA will address all public comments in a subsequent final rule based on the proposed rule. EPA will not institute a second comment period on this action. Any parties interested in commenting must do so at this time.

VII. Statutory and Executive Order Reviews

A. General Requirements

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

- Is not a ''significant regulatory action'' subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
- is not an Executive Order 13771 (82 FR 9339, February 2, 2017) regulatory action because SIP approvals are exempted under Executive Order 12866.
- does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4);
- does not have federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and
- does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, this rule does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because the SIP is not approved to apply in Indian country located in the state, and EPA notes that it will not impose substantial direct costs on tribal governments or preempt tribal law.

B. Submission to Congress and the Comptroller General

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

C. Petitions for Judicial Review

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by August 14, 2018. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. Parties with objections to this direct final rule are encouraged to file a comment in response to the parallel notice of proposed rulemaking for this action published in the proposed rules section of today's **Federal Register**, rather than file an immediate petition for judicial review of this direct final rule, so that EPA can withdraw this direct final rule and address the comment in the proposed rulemaking action. This action to remove from the Pennsylvania SIP requirements for low RVP fuel for the Pittsburgh Area may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Incorporation by reference, Intergovernmental relations, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Volatile organic compounds.

Dated: June 6, 2018.

Cecil Rodrigues,

Acting Regional Administrator, Region III.

40 CFR part 52 is amended as follows:

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

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

Authority: 42 U.S.C. 7401 *et seq.*

Subpart NN—Pennsylvania

■ 2. In § 52.2020, the table in paragraph (c)(1) is amended by removing the title and entries for ''Subchapter C—Gasoline Volatility Requirements'' under Title 25, Chapter 126 Standard for Motor Fuels.

[FR Doc. 2018–12703 Filed 6–14–18; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R05–OAR–2017–0157; FRL–9979–32—Region 5]

Air Plan Approval; Wisconsin; Regional Haze Progress Report

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is approving the regional haze progress report under the Clean Air Act (CAA) as a revision to the Wisconsin state implementation plan (SIP). Wisconsin has satisfied the progress report requirements of the Regional Haze Rule. Wisconsin has also provided a determination of the adequacy of its regional haze plan with the progress report.

DATES: This final rule is effective on July 16, 2018.

ADDRESSES: EPA has established a docket for this action under Docket ID No. EPA–R05–OAR–2017–0157. All documents in the docket are listed on the *www.regulations.gov* website. Although listed in the index, some information is not publicly available, *i.e.,* 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 through *www.regulations.gov* or at the Environmental Protection Agency, Region 5, Air and Radiation Division, 77 West Jackson Boulevard, Chicago, Illinois 60604. This facility is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding Federal holidays. We recommend that you telephone Gilberto Alvarez, Environmental Scientist, at (312) 886–6143 before visiting the Region 5 office.

FOR FURTHER INFORMATION CONTACT: Gilberto Alvarez, Environmental Scientist, Attainment Planning and Maintenance Section, Air Programs Branch (AR–18J), Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 886–6143, *alvarez.gilberto@epa.gov*.

SUPPLEMENTARY INFORMATION: Throughout this document whenever ''we,'' ''us,'' or ''our'' is used, we mean EPA. This supplementary information section is arranged as follows:

I. Background

States are required to periodically submit a progress report that evaluates progress towards the Reasonable Progress Goals (RPGs) for each mandatory Class I Federal area within the State and in each mandatory Class I Federal area outside the State which may be affected by emissions from within the state. *See* 40 CFR 51.308(g). States are also required to submit, at the same time as the progress report, a determination of the adequacy of the State's existing regional haze SIP. *See* 40 CFR 51.308(h). The first progress report is due five years after the submittal of the initial regional haze SIP.

Wisconsin submitted its regional haze plan on January 18, 2012. EPA approved Wisconsin's regional haze plan into its SIP on August 7, 2012 (77 FR 46952). Wisconsin submitted its five-year progress report on March 17, 2017. This is a report on the implementation of the regional haze plan and the progress made in the first implementation period towards RPGs for Class I areas outside of Wisconsin. Wisconsin does not have any Class I areas within its borders where visibility is an important value. This progress report SIP included a determination that Wisconsin's existing regional haze SIP requires no substantive revision to achieve the established regional haze visibility improvement and emissions reduction goals for 2018 for Class I areas impacted by Wisconsin emissions. EPA is approving Wisconsin's progress report on the basis that it satisfies the applicable requirements of the rule at 40 CFR 51.308.

EPA published a direct final rule (DFR) on October 20, 2017 (82 FR 48766), approving the Wisconsin regional haze progress report as a revision to the Wisconsin SIP, along with a proposed rule (82 FR 48780), that provided a 30-day public comment period. The DFR evaluated the Wisconsin submittal assessing its progress in implementing its regional haze plan during the first half of the first implementation period as well as the statutory and regulatory background for EPA's review of Wisconsin's regional haze plan. The DFR also provided a description of the regional haze requirements addressed in the Wisconsin progress report. The DFR serves as the detailed basis for this action. The adverse comments that EPA received are addressed below.

II. What is EPA's response to the comments?

EPA received two relevant comments on the DFR. One commenter supported the approval of the regional haze 5-year progress report SIP. A second commenter expressed concern over Cross State Air Pollution Rule (CSAPR) issues and measures not approved into the SIP. We address the second commenter's concerns here.

Comment—The commenter argued that EPA cannot approve the Wisconsin regional haze 5-year progress report because the State must revise its regional haze SIP to replace reliance on the Clean Air Interstate Rule (CAIR) and CSAPR with reliance on the ''CSAPR Update.'' The commenter stated that as CAIR and CSAPR are no longer in effect, these rules cannot be relied on for achieving reasonable progress goals, and that states cannot rely on federal implementation plans (FIPs) as measures must be contained in the SIP. The commenter also claimed that Wisconsin is taking credit for consent decrees, an Administrative Order on Consent for Georgia Pacific that is not approved into the SIP, and limits in title V permits that are not approved into the SIP. The commenter argued that because such measures are not federally enforceable, Wisconsin cannot take credit for them in its regional haze SIP. The commenter also argued that EPA cannot allow states to rely on trading programs to meet the source specific requirements for best available retrofit technology (BART).

EPA's Response—In its regional haze SIP, Wisconsin relied on participation in CSAPR to satisfy certain of the BART requirements for its subject electric generating units and to satisfy reasonable progress requirements for these sources. In its progress report, Wisconsin notes that significant contribution towards reasonable progress has been made through implementation of CAIR and CSAPR in the State. Although EPA promulgated CSAPR on August 8, 2011 (76 FR 48208), the timing of CSAPR's implementation was impacted by several court actions. EPA began implementing CSAPR on January 1, 2015, and CSAPR is now in force. The commenter, however, argues that because CSAPR has been recently modified, ''CSAPR'' as referenced in the EPA-approved Wisconsin BART SIP element is no longer in effect. Similarly, the commenter also states that because CAIR is no longer in effect, the State may not rely on CAIR to achieve reasonable progress goals.

EPA disagrees with the commenter for several reasons. First, although CAIR is no longer in effect, it was in effect during part of the time period addressed by the progress report. Thus, Wisconsin appropriately described reductions from CAIR in summarizing the emissions reductions achieved during the initial years of the first implementation period. Second, contrary to the commenter's assertion, CSAPR remains in effect and will continue to result in emissions reductions in Wisconsin and other states subject to the rule. The D.C. Circuit affirmed CSAPR in most respects in 2015. *EME Homer City Generation, L.P.* v. *EPA,* 795 F.3d 118 (D.C. Cir. 2015). In that decision, the court remanded, without vacating, some of the CSAPR budgets for a number of states. At this point, however, EPA has now taken all actions necessary to respond to that remand, and Wisconsin remains subject to CSAPR following EPA's actions. We also note that on September 29, 2017, EPA finalized a determination that the changes to the scope of CSAPR coverage following our actions on the remand do not alter EPA's conclusion that CSAPR remains better-than-BART. (82 FR 45481). Accordingly, we do not agree that Wisconsin erred in relying on CAIR and CSAPR in its progress report for ensuring the necessary emission reductions.

We also do not agree that States may not rely on FIPs in considering whether a regional haze implementation plan is sufficient to achieve the reasonable progress goals for nearby Class I areas. The Regional Haze Rule defines ''implementation plan'' for purposes of the visibility program to mean ''any [SIP], [FIP], or Tribal Implementation Plan.''. 40 CFR 51.301. Given this, measures in any issued FIP as well as those in a state's regional haze plan may be relied on in assessing the adequacy of the ''existing implementation plan'' under 40 CFR 51.308(g)(6) and (h).

The commenter also stated that Wisconsin is inappropriately taking credit in its progress report for consent decrees, an Administrative Consent Order for Georgia Pacific, and title V permits, none of which, the commenter claimed, are approved into the SIP. Again, we disagree with this comment for several reasons. First, with respect to Georgia Pacific, Wisconsin does describe the Administrative Consent Order for the source as a key element of its regional haze SIP; however, the Administrative Consent Order is incorporated by reference into the SIP. See 40 CFR 52.2570(c)(124)(i)(A). Second, it is unclear for which other consent decrees or title V permits Wisconsin is ''taking credit'' or in what way, but states in general are required to consider emission reductions due to ongoing air pollution control programs in developing a long-term strategy. 40 CFR 51.308(d)(3)(v). Given this, it is appropriate for a state to include a discussion in the progress report of the status of measures the state relied on in developing its long-term strategy.

Finally, the regulations governing progress reports do not include a requirement for states (or EPA) to ensure that all applicable regional haze requirements for the planning period have been met by the existing plan. As such, the comment raising concerns about the reliance on a regional trading program to satisfy the BART requirement raises issues outside the scope of this rulemaking. We do note, however, that 40 CFR 51.308(e)(4) explicitly allows a state to rely on participation in a CSAPR FIP to address the BART requirements for electric generating units (EGUs). *See Utility Air Regulatory Group* v. *EPA,* 885 F.3d 714, 721 (D.C. Cir. 2018)(upholding CSAPR as a BART alternative); *see also National Parks Conservation Association* v. *McCarthy,* 816 F.3d 989 (8th Cir. 2016).

In summary, EPA disagrees that the points raised by the commenter prevent approval of the progress report EPA finds that Wisconsin's progress report satisfies 40 CFR 51.308.

III. What action is EPA taking?

EPA is approving the Wisconsin regional haze progress report under the CAA as a revision to the Wisconsin SIP. EPA finds that Wisconsin has satisfied the progress report requirements of the Regional Haze Rule. Wisconsin has also met the requirements for a determination of the adequacy of its regional haze plan with its negative declaration submitted with the progress report.

IV. Statutory and Executive Order Reviews

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

- Is not a significant regulatory action subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
- Is not an Executive Order 13771 (82 FR 9339, February 2, 2017) regulatory action because SIP approvals are exempted under Executive Order 12866;
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4);
- Does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because this action does not involve technical standards; and
- Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, the SIP is not approved to apply on any Indian reservation land or in any other area where EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In those areas of Indian country, the rule does not have tribal implications and will not impose substantial direct costs on tribal governments or preempt tribal law as specified by Executive Order 13175 (65 FR 67249, November 9, 2000).

The Congressional Review Act, 5 U.S.C. 801 *et seq.,* as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this action and other required information to the U.S. Senate,

the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a ''major rule'' as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by August 14, 2018. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

Dated: June 4, 2018.

Cathy Stepp,

Regional Administrator, Region 5.

40 CFR part 52 is amended as follows:

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

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

Authority: 42 U.S.C. 7401 *et seq.*

■ 2. Section 52.2593 is added to read as follows:

§ 52.2593 Visibility protection.

(a) *Approval.* Wisconsin submitted its regional haze plan to EPA on January 18, 2012, supplemented on June 7, 2012. The Wisconsin regional haze plan meets the requirements of Clean Air Act section 169B and the Regional Haze Rule in 40 CFR 51.308.

(b) *Approval.* Wisconsin submitted its five-year progress report on March 17, 2017. The Progress Report meets the requirements of Clean Air Act sections 169A and 169B and the Regional Haze Rule in 40 CFR 51.308.

[FR Doc. 2018–12810 Filed 6–14–18; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

42 CFR Parts 405, 417, 422, 423, 460, and 498

[CMS–4182–CN2]

RIN 0938–AT08

Medicare Program; Medicare Program; Contract Year 2019 Policy and Technical Changes to the Medicare Advantage, Medicare Cost Plan, Medicare Fee-for-Service, the Medicare Prescription Drug Benefit Programs, and the PACE Program; Correction

AGENCY: Centers for Medicare & Medicaid Services (CMS), HHS.

ACTION: Final rule; correction.

SUMMARY: This document corrects technical and typographical errors that appeared in the final rule published in the **Federal Register** on April 16, 2018 titled ''Medicare Program; Contract Year 2019 Policy and Technical Changes to the Medicare Advantage, Medicare Cost Plan, Medicare Fee-for-Service, the Medicare Prescription Drug Benefit Programs, and the PACE Program.''

DATES: *Effective Date:* This correcting document is effective June 15, 2018.

FOR FURTHER INFORMATION CONTACT: Marie Manteuffel, (410) 786–3447. Lucia Patrone, (410) 786–8621.

SUPPLEMENTARY INFORMATION:

I. Background

In FR Doc. 2018–07179 of April 16, 2018 (83 FR 16440), there were a number of technical and typographical errors that are identified and corrected in the Correction of Errors section of this correcting document. The provisions in this correction document are effective as if they had been included in the document that appeared in the April 16, 2018 **Federal Register**. Accordingly, these corrections are effective June 15, 2018.

II. Summary of Errors

A. Summary of Errors in the Preamble

On page 16498, in our response to a comment regarding default enrollment, we made and error in referencing the Medicare and Medicaid programs.

On page 16503, in our response to a comment on passive enrollment eligibility, we included footnote that contains a hyperlink to the document by Health Management Associates titled ''Value Assessment of the Senior Care Options (SCO) Program'' that is no longer valid.

On pages 16679 through 16684, we made technical and typographical errors in the table numbering and references of the stop-loss insurance deductible tables.

On page 16684, in summarizing a comment and response regarding stop-loss coverage, we inadvertently included a response as part of the comment and excluded a sentence from part of a response.

On page 16703, in the regulatory impact analysis section, we erroneously stated the percentages of Medicare health plan organizations and Part D sponsors that are not-for-profit. In addition, we made factual and typographical errors in our discussion of the percentage of Medicare Advantage organizations (MAOs) that meet the minimum threshold for classification as small businesses.

On page 16710, in our discussion of the percentage of enrollees that are receiving services under capitated arrangements, we made technical and typographical errors in an assumption and our terminology.

B. Summary of Errors in the Regulations Text

On pages 16731 and 16732, in the regulations text changes for § 422.208, we made technical and typographical errors in the table numbering and references of the stop-loss insurance deductible tables.

On pages 16735 and 16754, in the regulations text for §§ 422.2260 and 423.2260, respectively, we made technical errors in the language and paragraph designations for the definitions of ''marketing,'' ''marketing materials,'' and ''materials that do not include the following are not considered marketing materials.''

On page 16735, in the regulations text for § 422.2268 we erroneously indicated that we were revising two paragraphs instead of indicating that we were revising the entire section.

On page 16738, in the regulations text for § 423.120, we made an inadvertent typographical error in punctuating the end of the paragraph.

On page 16755, in the regulations text for § 423.2262, we inadvertently omitted the asterisks before paragraph (d), indicating that paragraphs (a) through (c) are retained without change.

III. Waiver of Proposed Rulemaking and Delay in Effective Date

Under 5 U.S.C. 553(b) of the Administrative Procedure Act (APA), the agency is required to publish a notice of the proposed rule in the **Federal Register** before the provisions of a rule take effect. Similarly, section

1871(b)(1) of the Act requires the Secretary to provide for notice of the proposed rule in the **Federal Register** and provide a period of not less than 60 days for public comment. In addition, section 553(d) of the APA, and section 1871(e)(1)(B)(i) of the Act mandate a 30-day delay in effective date after issuance or publication of a rule. Sections 553(b)(B) and 553(d)(3) of the APA provide for exceptions from the notice and comment and delay in effective date APA requirements; in cases in which these exceptions apply, sections 1871(b)(2)(C) and 1871(e)(1)(B)(ii) of the Act provide exceptions from the notice and 60-day comment period and delay in effective date requirements of the Act as well. Section 553(b)(B) of the APA and section 1871(b)(2)(C) of the Act authorize an agency to dispense with normal rulemaking requirements for good cause if the agency makes a finding that the notice and comment process are impracticable, unnecessary, or contrary to the public interest. In addition, both section 553(d)(3) of the APA and section 1871(e)(1)(B)(ii) of the Act allow the agency to avoid the 30-day delay in effective date where such delay is contrary to the public interest and an agency includes a statement of support.

We believe that this correcting document does not constitute a rule that would be subject to the notice and comment or delayed effective date requirements of the APA or section 1871 of the Act. This correcting document corrects technical and typographic errors in the preamble and regulation text of the final rule but does not make substantive changes to the policies that were adopted in the final rule. As a result, this correcting document is intended to ensure that the information in the final rule accurately reflects the policies adopted in that final rule.

In addition, even if this were a rule to which the notice and comment procedures and delayed effective date requirements applied, we find that there is good cause to waive such requirements. Undertaking further notice and comment procedures to incorporate the corrections in this document into the final rule or delaying the effective date would be contrary to the public interest because it is in the public's interest to ensure that final rule accurately reflects our policies. Furthermore, such procedures would be unnecessary, as we are not altering payment eligibility or benefit methodologies or policies, but rather, simply implementing correctly the policies that we previously proposed, received comment on, and subsequently finalized. This correcting document is intended solely to ensure that the final rule accurately reflects these policies. Therefore, we believe we have good cause to waive the notice and comment and effective date requirements.

IV. Correction of Errors

In FR Doc. 2018–07179 of April 16, 2018 (83 FR 16440), make the following corrections:

A. Corrections of Errors in the Preamble

1. On page 16498, third column, first full paragraph, line 19, the phrase ''Medicare or Medicare is issued'' is corrected to read ''Medicaid or Medicare is issued''.

2. On page 16503, third column, footnote paragraphs (footnote 29), first bulleted paragraph, lines 3 through 5, the hyperlink ''*http://www.mahp.com/unify-files/HMAFinalSCOWhitePaper_2015_07_21.pdf*'' is corrected to read ''*http://www.mahp.com/wp-content/uploads/2017/04/SCO-White-Paper-HMA-2015_07_20-Final.pdf.*''

3. On page 16677, third column, first partial paragraph, lines 26 and 27, the parenthetical reference, ''(Table PIP–11)'' is corrected to read ''(Table 1)''.

4. On page 16679,

a. Top two-thirds of the page, third column, partial paragraph—

(1) Lines 22 and 23, the parenthetical reference, ''(Table PIP–11)'' is corrected to read ''(Table 1)''.

(2) Line 27, the reference, ''Table PIP–11'' is corrected to read ''Table PIP–1''.

(3) Line 29, the reference, ''Table PIP–11'' is corrected to read ''Table PIP–1''.

(4) Line 36, the reference, ''Table PIP–11'' is corrected to read ''Table PIP–1''.

b. Lower third of the page—

(1) In the table titled ''TABLE PIP–11—COMBINED STOP-LOSS INSURANCE DEDUCTIBLES'', the table title is corrected to read as follows: ''TABLE PIP–1—COMBINED STOP-LOSS INSURANCE DEDUCTIBLES''

(2) After the table, first column, partial paragraph, line 2, the reference ''Table 1'' is corrected to read ''Table PIP–1''.

5. On page 16680,

a. First column—

(1) First partial paragraph, line 11, the reference ''Table 1'' is corrected to read ''Table PIP–1''.

(2) Second partial paragraph, line 4, the phrase ''proposed Table 1'' is corrected to read ''proposed Table PIP–1''.

b. Second column,

(1) Line 6, the parenthetical reference, ''(Table PIP–12)'' is corrected to read ''(Table PIP–2)''.

(2) Line 15, the reference, ''Table PIP–12'' is corrected to read ''Table PIP–2''.

(3) Line 17, the reference, ''Table PIP–11'' is corrected to read ''Table PIP–1''.

(4) Line 19, the reference, ''Table PIP–12'' is corrected to read ''Table PIP–2''.

c. Third column, partial paragraph—

(1) Line 2, the reference, ''Table PIP–11'' is corrected to read ''Table PIP–1''.

(2) Line 4, the reference, ''Table PIP–12'' is corrected to read ''Table PIP–2''.

(3) Line 8, the reference, ''Table PIP–11'' is corrected to read ''Table PIP–1''.

(4) Lines 13 and 14, the reference, ''Table PIP–12'' is corrected to read ''Table PIP–2''.

(5) Line 16, the reference, ''Table PIP–12'' is corrected to read ''Table PIP–2''.

6. On pages 16681 and 16682,

a. Top of the page, in the table titled ''TABLE PIP–12—SEPARATE STOP-LOSS INSURANCE DEDUCTIBLES'', the table title is corrected to read as follows: ''TABLE PIP–2—SEPARATE STOP-LOSS INSURANCE DEDUCTIBLES''

b. Bottom of the page,

(1) Second column, partial paragraph, line 2, the reference, ''Table PIP–12'' is corrected to read ''Table PIP–2''.

(2) Third column, partial paragraph, line 2, the reference, ''Table PIP–11'' is corrected to read ''Table PIP–1''.

7. On page 16683,

a. First column,

(1) First partial paragraph,

(a) Lines 4 and 5, the reference, ''Table PIP–11'' is corrected to read ''Table PIP–1''.

(b) Line 5, the reference, ''Table PIP–12'' is corrected to read ''Table PIP–2''.

(c) Line 14, the reference, ''Table PIP–12'' is corrected to read ''Table PIP–2''.

(d) Lines 18 and 19, the reference, ''Table PIP–12'' is corrected to read ''Table PIP–2''.

b. Third column—

(1) Second full paragraph, lines 12 and 13, the parenthetical reference, ''(Tables PIP–11 and PIP–12)'' is corrected to read ''(Tables PIP–1 and PIP–2)''.

(2) Fourth full paragraph, lines 5 and 6, the parenthetical reference, ''(Table PIP–11)'' is corrected to read ''(Table PIP–1)''.

(3) Fifth full paragraph, lines 3 and 4 the parenthetical reference, ''(Table PIP–11 and Table PIP–12)'' is corrected to read ''(Tables PIP–1 and PIP–2)''.

8. On page 16684, lower two-thirds of the page (following the equation), first column—

a. Third full paragraph, the paragraph, ''*Comment:* We received a comment recommending that CMS consult with stop loss coverage experts in developing this regulation. We believe that this regulation, as finalized, is consistent with the applicable actuarial principles and practices.'' is corrected to read ''*Comment:* We received a comment recommending that CMS consult with

stop-loss coverage experts in developing this regulation.''

b. Fourth full paragraph, the paragraph ''*Response:* Over the years, CMS has had numerous discussions with qualified actuaries regarding our method of determining stop-loss insurance requirements.'' is corrected to read ''*Response:* We believe that this regulation, as finalized, is consistent with the applicable actuarial principles and practices. Over the years, CMS has had numerous discussions with qualified actuaries regarding our method of determining stop-loss insurance requirements.''

c. Last paragraph—

(1) Line 23, the parenthetical reference, ''(Table PIP–11)'' is corrected to read ''(Table PIP–1)''.

(2) Line 25, the parenthetical reference, ''(Table PIP–12)'' is corrected to read ''(Table PIP–2)''.

9. On page 16703, first column—

a. Second full paragraph, lines 5 through 8, the sentence ''42% of all Medicare health plan organizations are not-for-profit and 32% of all Part D sponsors and MA plans are not for profit'' is corrected to read ''Forty-three percent of all Medicare health plan organizations are not-for-profit and 31 percent of all Part D sponsors and MA plans are not-for-profit.''.

b. Third full paragraph, lines 14 through 16, ''which we have actual data on MAO net worth, also shows that 32 percent of all MAO falls'' is corrected to read, ''which we have complete data on MAO net worth, shows that 33 percent of all MAOs fall.''

10. On page 16710, first column, last paragraph—

a. Lines 4 through 8, the phrase ''based on CMS observation of managed care industry trends, we believe that the percentage is now higher, and we assume that 11 percent'' is corrected to read ''based on CMS observation of managed care industry trends, we assume that 11 percent''.

b. Line 9, the phrase ''now paid under'' is corrected to read ''now receiving services under''.

c. Line 13, the phrase ''MA members are paid under'' is corrected to read ''MA members are receiving services under''.

d. Line 21, the phrase ''beneficiaries paid under'' is corrected to read ''beneficiaries receiving services under''.

B. Correction of Errors in the Regulations Text

§ 422.208 [Corrected]

■ 1. On page 16731, third column, amendatory instruction 23a, lines 3 and 4, the parenthetical reference ''(Table PIP–11)'' is corrected to read ''(Table PIP–1)''.

§ 422.208 [Corrected]

■ 2. On page 16732,

■ a. First column—

(1) First full paragraph, line 2, the parenthetical reference ''(Table PIP–11)'' is corrected to read ''(Table PIP–1)''.

(2) Second full paragraph, line 9, the reference ''Tables PIP–11 and PIP–12'' is corrected to read ''Tables PIP–1 and PIP–2''.

(3) Third full paragraph,

(a) Line 6, the reference ''Table PIP–11'' is corrected to read ''Table PIP–1''.

(b) Line 8, the reference ''Table PIP–12'' is corrected to read ''Table PIP–2''.

(4) Sixth full paragraph—

(a) Lines 12 and 13, the reference ''Table PIP–11'' is corrected to read ''Table PIP–1''.

(b) Line 14, the reference ''Table PIP–11'' is corrected to read ''Table PIP–1''.

(c) Line 15, the reference ''Table PIP–12'' is corrected to read ''Table PIP–2''.

■ b. Second column,

(1) First partial paragraph, line 3, the reference ''Tables PIP–11 and PIP–12'' is corrected to read ''Tables PIP–1 and PIP–2''

(2) First full paragraph, line 1, the reference ''Table PIP–11'' is corrected to ''Table PIP–1''.

(3) Fourth full paragraph—

(a) Line 1, the reference ''Table 1'' is corrected to read ''Table PIP–1''.

(b) Line 3, the reference ''Table PIP–11'' is corrected to ''Table PIP–1''.

(4) Fifth full paragraph, line 25, the reference ''Table PIP–11'' is corrected to ''Table PIP–1''.

(5) Last partial paragraph, line 2, the reference ''Table PIP–11'' is corrected to ''Table PIP–1''.

■ c. Third column,

(1) First partial paragraph, line 3, the parenthetical reference ''(Table PIP–12)'' is corrected to read ''(Table PIP–2).''

(2) Second full paragraph, line 6, the reference ''Table 2'' is corrected to read ''Table PIP–2''.

(3) Third full paragraph—

■ a. Line 5, the reference ''Table PIP–11'' is corrected to read ''Table PIP–1''.

■ b. Line 6, the reference ''Table PIP–12'' is corrected to read ''Table PIP–2''.

■ c. Line 9, the reference ''Table PIP–12'' is corrected to read ''Table PIP–2''.

■ d. Line 11, the reference ''Table PIP–11'' is corrected to read ''Table PIP–1''.

■ e. Line 13, the reference ''Table PIP–12'' is corrected to read ''Table PIP–2''.

■ f. Lines 15 and 16, the reference ''Table PIP–11'' is corrected to read ''Table PIP–1''.

(4) Fourth full paragraph—

■ a. Line 1, the reference ''Table PIP–12'' is corrected to read ''Table PIP–2''.

■ b. Lines 2 and 3, the reference ''Table PIP–11'' is corrected to read ''Table PIP–1''.

(5) Eighth full paragraph, line 5, the reference ''Table PIP–11 and PIP–12'' is corrected to read ''Table PIP–1 and PIP–2.''

■ 3. On page 16735, in the first column, § 422.2260 is corrected to read as follows:

§ 422.2260 Definitions.

As used in this subpart—

Communications means activities and use of materials to provide information to current and prospective enrollees.

Communication materials means all information provided to current and prospective enrollees. Marketing materials are a subset of communication material.

Marketing means activities and use of materials that meet the following:

(1) Conducted by the MA organization or downstream entities.

(2) Intended to draw a beneficiary's attention to a MA plan or plans.

(3) Intended to influence a beneficiary's decision-making process when selecting a MA plan for enrollment or deciding to stay enrolled in a plan (that is, retention-based marketing).

Marketing materials—(1) Include, but are not limited to following:

(i) Materials such as brochures; posters; advertisements in media such as newspapers, magazines, television, radio, billboards, or the internet; and social media content.

(ii) Materials used by marketing representatives such as scripts or outlines for telemarketing or other presentations.

(iii) Presentation materials such as slides and charts.

(2) *Marketing materials* exclude materials that—

(i) Do not include information about the plan's benefit structure or cost sharing;

(ii) Do not include information about measuring or ranking standards (for example, star ratings);

(iii) Mention benefits or cost sharing, but do not meet the definition of marketing in this section;

(iv) Are required under § 422.111, unless otherwise specified by CMS based on their use or purpose; or

(v) Are specifically designated by CMS as not meeting the definition of the marketing definition based on their use or purpose.''

§ 422.2268 [Corrected]

■ 4. On page 16735, in the second column, amendatory instruction 47, the instructions beginning with the phrase

''a. Revising the section'' and ending with the phrase ''read as follows:'' are corrected to read as follows:

''Section 422.2268 is revised to read as follows:''

§ 423.120 [Corrected]

■ 5. On page 16738, in the third column, sixth full paragraph (§ 423.120(b)(5)(C)(*2*)), line 7, the phrase ''423.578; and'' is corrected to read ''423.578.''.

§ 423.160 [Corrected]

■ 6. On page 16743, first column, eighth full paragraph (§ 423.160(b)(1)(iv)), line 1, the date ''October 31, 2019'' is corrected to read ''December 31, 2019''.

§ 423.2260 [Corrected]

■ 7. Beginning on page 16754, in the third column fourth full paragraph, § 423.2260 is corrected to read as follows:''

§ 423.2260 Definitions.

As used in this subpart—

Communications means activities and use of materials to provide information to current and prospective enrollees.

Communication materials means all information provided to current and prospective enrollees. Marketing materials are a subset of communication materials.

Marketing means activities and use of materials that meet the following:

(1) Conducted by the MA organization or downstream entities.

(2) Intended to draw a beneficiary's attention to a MA plan or plans.

(3) Intended to influence a beneficiary's decision-making process when selecting a MA plan for enrollment or deciding to stay enrolled in a plan (that is, retention-based marketing).

Marketing materials—(1) Include, but are not limited to following:

(i) Materials such as brochures; posters; advertisements in media such as newspapers, magazines, television, radio, billboards, or the internet; and social media content.

(ii) Materials used by marketing representatives such as scripts or outlines for telemarketing or other presentations.

(iii) Presentation materials such as slides and charts.

(2) *Marketing materials* exclude materials that—

(i) Do not include information about the plan's benefit structure or cost sharing;

(ii) Do not include information about measuring or ranking standards (for example, star ratings);

(iii) Mention benefits or cost sharing, but do not meet the definition of marketing in this section;

(iv) Are required under § 423.128, unless otherwise specified by CMS based on their use or purpose; or

(v) Are specifically designated by CMS as not meeting the definition of the marketing definition based on their use or purpose.''

§ 423.2430 [Corrected]

■ 8. On page 16756, first column, amendatory instruction 113b, line 1, the words ''republishing the'' are corrected to read ''adding a new''.

Dated: June 11, 2018.

Ann C. Agnew,

Executive Secretary to the Department, Department of Health and Human Services.

[FR Doc. 2018–12843 Filed 6–14–18; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

44 CFR Part 64

[Docket ID FEMA–2018–0002; Internal Agency Docket No. FEMA–8533]

Suspension of Community Eligibility

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Final rule.

SUMMARY: This rule identifies communities where the sale of flood insurance has been authorized under the National Flood Insurance Program (NFIP) that are scheduled for suspension on the effective dates listed within this rule because of noncompliance with the floodplain management requirements of the program. If the Federal Emergency Management Agency (FEMA) receives documentation that the community has adopted the required floodplain management measures prior to the effective suspension date given in this rule, the suspension will not occur and a notice of this will be provided by publication in the **Federal Register** on a subsequent date. Also, information identifying the current participation status of a community can be obtained from FEMA's Community Status Book (CSB). The CSB is available at *https://www.fema.gov/national-flood-insurance-program-community-status-book.*

DATES: The effective date of each community's scheduled suspension is the third date (''Susp.'') listed in the third column of the following tables.

FOR FURTHER INFORMATION CONTACT: If you want to determine whether a particular community was suspended on the suspension date or for further information, contact Adrienne L. Sheldon, PE, CFM, Federal Insurance and Mitigation Administration, Federal Emergency Management Agency, 400 C Street SW, Washington, DC 20472, (202) 212–3966.

SUPPLEMENTARY INFORMATION: The NFIP enables property owners to purchase Federal flood insurance that is not otherwise generally available from private insurers. In return, communities agree to adopt and administer local floodplain management measures aimed at protecting lives and new construction from future flooding. Section 1315 of the National Flood Insurance Act of 1968, as amended, 42 U.S.C. 4022, prohibits the sale of NFIP flood insurance unless an appropriate public body adopts adequate floodplain management measures with effective enforcement measures. The communities listed in this document no longer meet that statutory requirement for compliance with program regulations, 44 CFR part 59. Accordingly, the communities will be suspended on the effective date in the third column. As of that date, flood insurance will no longer be available in the community. We recognize that some of these communities may adopt and submit the required documentation of legally enforceable floodplain management measures after this rule is published but prior to the actual suspension date. These communities will not be suspended and will continue to be eligible for the sale of NFIP flood insurance. A notice withdrawing the suspension of such communities will be published in the **Federal Register**.

In addition, FEMA publishes a Flood Insurance Rate Map (FIRM) that identifies the Special Flood Hazard Areas (SFHAs) in these communities. The date of the FIRM, if one has been published, is indicated in the fourth column of the table. No direct Federal financial assistance (except assistance pursuant to the Robert T. Stafford Disaster Relief and Emergency Assistance Act not in connection with a flood) may be provided for construction or acquisition of buildings in identified SFHAs for communities not participating in the NFIP and identified for more than a year on FEMA's initial FIRM for the community as having flood-prone areas (section 202(a) of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4106(a), as amended). This

prohibition against certain types of Federal assistance becomes effective for the communities listed on the date shown in the last column. The Administrator finds that notice and public comment procedures under 5 U.S.C. 553(b), are impracticable and unnecessary because communities listed in this final rule have been adequately notified.

Each community receives 6-month, 90-day, and 30-day notification letters addressed to the Chief Executive Officer stating that the community will be suspended unless the required floodplain management measures are met prior to the effective suspension date. Since these notifications were made, this final rule may take effect within less than 30 days.

National Environmental Policy Act. FEMA has determined that the community suspension(s) included in this rule is a non-discretionary action and therefore the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*) does not apply.

Regulatory Flexibility Act. The Administrator has determined that this rule is exempt from the requirements of the Regulatory Flexibility Act because the National Flood Insurance Act of 1968, as amended, Section 1315, 42 U.S.C. 4022, prohibits flood insurance coverage unless an appropriate public body adopts adequate floodplain management measures with effective enforcement measures. The communities listed no longer comply with the statutory requirements, and after the effective date, flood insurance will no longer be available in the communities unless remedial action takes place.

Regulatory Classification. This final rule is not a significant regulatory action under the criteria of section 3(f) of Executive Order 12866 of September 30, 1993, Regulatory Planning and Review, 58 FR 51735.

Executive Order 13132, Federalism. This rule involves no policies that have federalism implications under Executive Order 13132.

Executive Order 12988, Civil Justice Reform. This rule meets the applicable standards of Executive Order 12988.

Paperwork Reduction Act. This rule does not involve any collection of information for purposes of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*

List of Subjects in 44 CFR Part 64

Flood insurance, Floodplains.

Accordingly, 44 CFR part 64 is amended as follows:

PART 64—[AMENDED]

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

Authority: 42 U.S.C. 4001 *et seq.;* Reorganization Plan No. 3 of 1978, 3 CFR, 1978 Comp.; p. 329; E.O. 12127, 44 FR 19367, 3 CFR, 1979 Comp.; p. 376.

§ 64.6 [Amended]

■ 2. The tables published under the authority of § 64.6 are amended as follows:

State and location	Community No.	Effective date authorization/cancellation of sale of flood insurance in community	Current effective map date	Date certain federal assistance no longer available in SFHAs
Region II				
New Jersey:				
Little Silver, Borough of, Monmouth County.	340305	September 29, 1972, Emerg; February 1, 1978, Reg; June 20, 2018, Susp.	June 20, 2018 ..	June 20, 2018.
Long Branch, City of, Monmouth County.	340307	March 17, 1972, Emerg; May 5, 1976, Reg; June 20, 2018, Susp.	.....do	Do.
Middletown, Township of, Monmouth County.	340313	May 20, 1974, Emerg; February 15, 1984, Reg; June 20, 2018, Susp.	.....do	Do.
Monmouth Beach, Borough of, Monmouth County.	340315	July 30, 1971, Emerg; May 16, 1977, Reg; June 20, 2018, Susp.	.....do	Do.
Oceanport, Borough of, Monmouth County.	340320	July 14, 1972, Emerg; February 16, 1977, Reg; June 20, 2018, Susp.	.....do	Do.
Shrewsbury, Borough of, Monmouth County.	340326	July 3, 1975, Emerg; August 1, 1979, Reg; June 20, 2018, Susp.	.....do	Do.
Region IV				
Florida:				
Orlando, City of, Orange County	120186	August 30, 1974, Emerg; September 3, 1980, Reg; June 20, 2018, Susp.	.....do	Do.
North Carolina:				
Autryville, Town of, Sampson County ...	370358	September 29, 1980, Emerg; February 1, 1987, Reg; June 20, 2018, Susp.	.....do	Do.
Beulaville, Town of, Duplin County	370547	N/A, Emerg; December 29, 2008, Reg; June 20, 2018, Susp.	.....do	Do.
Clayton, Town of, Johnston County	370139	April 2, 1975, Emerg; April 1, 1982, Reg; June 20, 2018, Susp.	.....do	Do.
Clinton, City of, Sampson County	370263	July 2, 1975, Emerg; July 2, 1975, Reg; June 20, 2018, Susp.	.....do	Do.
Cumberland County, Unincorporated Area.	370076	November 3, 1975, Emerg; February 17, 1982, Reg; June 20, 2018, Susp.	.....do	Do.
Duplin County, Unincorporated Area	370083	November 29, 1979, Emerg; July 4, 1989, Reg; June 20, 2018, Susp.	.....do	Do.
Four Oaks, Town of, Johnston County	370502	N/A, Emerg; September 24, 2002, Reg; June 20, 2018, Susp.	June 20, 2018 ..	June 20, 2018.
Goldsboro, City of, Wayne County	370255	May 29, 1975, Emerg; June 1, 1982, Reg; June 20, 2018, Susp.	.....do	Do.

State and location	Community No.	Effective date authorization/cancellation of sale of flood insurance in community	Current effective map date	Date certain federal assistance no longer available in SFHAs
Pine Level, Town of, Johnston County	370505	N/A, Emerg; June 22, 2005, Reg; June 20, 2018, Susp.	.....do	Do.
Sampson County, Unincorporated Area	370220	March 29, 1982, Emerg; July 16, 1991, Reg; June 20, 2018, Susp.	.....do	Do.
Wallace, Town of, Duplin and Pender Counties.	370084	April 3, 1975, Emerg; April 2, 1986, Reg; June 20, 2018, Susp.	.....do	Do.
Warsaw, Town of, Duplin County	370633	December 29, 2005, Emerg; July 17, 2006, Reg; June 20, 2018, Susp.	.....do	Do.
Wayne County, Unincorporated Area ...	370254	N/A, Emerg; September 16, 1991, Reg; June 20, 2018, Susp.	.....do	Do.
Region V				
Ohio:				
Fort Jennings, Village of, Putnam County.	390468	September 26, 1978, Emerg; March 9, 1984, Reg; June 20, 2018, Susp.	.....do	Do.
Gilboa, Village of, Putnam County	390469	June 20, 1979, Emerg; May 16, 1995, Reg; June 20, 2018, Susp.	.....do	Do.
Glandorf, Village of, Putnam County	390470	January 16, 1975, Emerg; March 9, 1984, Reg; June 20, 2018, Susp.	.....do	Do.
Kalida, Village of, Putnam County	390471	May 9, 1978, Emerg; October 5, 1984, Reg; June 20, 2018, Susp.	.....do	Do.
Ottawa, Village of, Putnam County	390472	December 27, 1974, Emerg; February 15, 1979, Reg; June 20, 2018, Susp.	.....do	Do.
Ottoville, Village of, Putnam County	390473	June 2, 1975, Emerg; August 1, 1987, Reg; June 20, 2018, Susp.	.....do	Do.
Pandora, Village of, Putnam County	390474	September 5, 1974, Emerg; November 1, 1978, Reg; June 20, 2018, Susp.	.....do	Do.
Putnam County, Unincorporated Area ..	390465	April 18, 1984, Emerg; December 5, 1990, Reg; June 20, 2018, Susp.	.....do	Do.
Region X				
Oregon:				
Cannon Beach, City of, Clatsop County	410029	March 6, 1974, Emerg; September 1, 1978, Reg; June 20, 2018, Susp.	June 20, 2018 ..	June 20, 2018.
Clatsop County, Unincorporated Area ..	410027	February 7, 1974, Emerg; July 3, 1978, Reg; June 20, 2018, Susp.	.....do	Do.
Gearhart, City of, Clatsop County	410030	April 11, 1974, Emerg; May 15, 1978, Reg; June 20, 2018, Susp.	.....do	Do.
Seaside, City of, Clatsop County	410032	March 25, 1974, Emerg; September 5, 1979, Reg; June 20, 2018, Susp.	.....do	Do.
Warrenton, City of, Clatsop County	410033	July 16, 1975, Emerg; May 15, 1978, Reg; June 20, 2018, Susp.	.....do	Do.
Washington: San Juan County, Unincorporated Area.	530149	December 8, 1986, Emerg; March 1, 1991, Reg; June 20, 2018, Susp.	.....do	Do.

-do- = Ditto.
Code for reading third column: Emerg.—Emergency; Reg.—Regular; Susp.—Suspension.

Dated: June 4, 2018.

Eric Letvin,

Deputy Assistant Administrator for Mitigation, Federal Insurance and Mitigation Administration, Department of Homeland Security, Federal Emergency Management Agency.

[FR Doc. 2018–12883 Filed 6–14–18; 8:45 am]

BILLING CODE 9110–12–P

Proposed Rules

Federal Register
Vol. 83, No. 116
Friday, June 15, 2018

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

7 CFR Part 319

[Docket No. APHIS–2016–0099]

RIN 0579–AE45

Importation of Fresh Avocado Fruit From Continental Ecuador Into the Continental United States

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Proposed rule.

SUMMARY: We are proposing to amend the fruits and vegetables regulations to allow the importation into the continental United States of fresh avocado fruit from continental Ecuador. As a condition of entry, fresh avocado fruit from continental Ecuador would have to be produced in accordance with a systems approach that would include production site registration, field sanitation, packinghouse procedures designed to exclude the quarantine pests, and procedures for packing, storing, and shipping the avocado fruit. The fruit would also have to be imported in commercial consignments, with each consignment identified throughout its movement from place of production to port of entry in the continental United States. The systems approach for all fresh avocado fruit from continental Ecuador, except Hass avocados, would also have to include production site pest control measures. Consignments would have to be accompanied by a phytosanitary certificate issued by the national plant protection organization of Ecuador certifying that the fruit was produced in accordance with the systems approach. This proposed rule would allow for the importation of fresh avocados from continental Ecuador into the continental United States while continuing to provide protection against the introduction of quarantine pests.

DATES: We will consider all comments that we receive on or before August 14, 2018.

ADDRESSES: You may submit comments by either of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov/#!docketDetail;D=APHIS-2016-0099.*
- *Postal Mail/Commercial Delivery:* Send your comment to Docket No. APHIS–2016–0099, Regulatory Analysis and Development, PPD, APHIS, Station 3A–03.8, 4700 River Road, Unit 118, Riverdale, MD 20737–1238.

Supporting documents and any comments we receive on this docket may be viewed at *http://www.regulations.gov/#!docketDetail;D=APHIS-2016-0099* or in our reading room, which is located in room 1141 of the USDA South Building, 14th Street and Independence Avenue SW, Washington, DC. Normal reading room hours are 8 a.m. to 4:30 p.m., Monday through Friday, except holidays. To be sure someone is there to help you, please call (202) 799–7039 before coming.

FOR FURTHER INFORMATION CONTACT: Ms. Claudia Ferguson M.S., Senior Regulatory Policy Specialist, Regulatory Coordination and Compliance, PPQ, APHIS, 4700 River Road, Unit 133, Riverdale, MD 20737–1231; (301) 851–2352.

SUPPLEMENTARY INFORMATION:

Background

The regulations in ''Subpart-Fruits and Vegetables'' (7 CFR 319.56–1 through 319.56–83, referred to below as the regulations) prohibit or restrict the importation of fruits and vegetables into the United States from certain parts of the world to prevent the introduction and dissemination of plant pests that are new to or not widely distributed within the United States.

The national plant protection organization (NPPO) of Ecuador has requested that the Animal and Plant Health Inspection Service (APHIS) amend the regulations to allow fresh avocado (*Persea americana* Miller) from continental Ecuador to be imported into the continental United States. As part of our evaluation of Ecuador's request, we prepared a pest risk assessment (PRA) and a risk management document (RMD). Copies of the PRA and the RMD may be obtained from the person listed under **FOR FURTHER INFORMATION CONTACT** or viewed on the *Regulations.gov* website (see **ADDRESSES** above for instructions for accessing *Regulations.gov*).

The PRA, titled ''Importation of Fresh Avocado Fruit (*Persea americana* Miller) from Continental Ecuador into the Continental United States'' (July 18, 2017), evaluates the risks associated with the importation of fresh avocado fruit into the continental United States from continental Ecuador. The RMD draws upon the findings of the PRA to determine the phytosanitary measures necessary to ensure the safe importation into the United States of avocado from continental Ecuador.

The PRA identified four pests of quarantine significance present in continental Ecuador that could follow the pathway of consignments of fresh avocado imported from continental Ecuador into the continental United States:

- The Mediterranean fruit fly (Medfly), *Ceratitis capitata* Wiedemann,
- The South American fruit fly, *Anastrepha fraterculus* Wiedemann,
- The sapote fruit fly, *Anastrepha serpentina* Wiedemann, and
- The guava fruit fly, *Anastrepha striata* Schiner.

A quarantine pest is defined in § 319.56–2 as a pest of potential economic importance to the area endangered thereby and not yet present there, or present but not widely distributed and being officially controlled. Plant pest risk potentials associated with the importation of fresh avocado from continental Ecuador into the continental United States were derived by estimating the consequences and likelihood of introduction of each quarantine pest into the United States and ranking the risk potential as High, Medium, or Low. The PRA determined that these four quarantine pests pose a medium risk of following the pathway of fresh avocado from continental Ecuador into the continental United States and having negative effects on U.S. agriculture.

Based on the conclusions of the PRA, we have determined that Hass avocados are not hosts of the fruit flies present in Ecuador, while other varieties of avocado are considered to be poor hosts to fruit flies. Therefore, based on the conclusions of the PRA and RMD, we are proposing to allow the importation from continental Ecuador of avocados

subject to a systems approach. Under a systems approach, a set of phytosanitary conditions, at least two of which have an independent effect in mitigating the pest risk associated with the movement of commodities, is specified, whereby fruits and vegetables may be imported into the United States from countries that are not free of certain plant pests. For Hass avocados from continental Ecuador, the systems approach would be the same as for other varieties of avocado except that fruit fly trapping and treatment would not be required.

We are proposing to add the systems approach for avocado from continental Ecuador to the regulations in a new § 319.56–84. The specific mitigation measures required in the systems approach for each quarantine pest are discussed below, as well as in the risk management document.

General Requirements

Proposed paragraph (a) of § 319.56–84 would require the NPPO of Ecuador to provide an operational workplan to APHIS that details the activities that the NPPO would, subject to APHIS' approval of the workplan, carry out to meet the requirements of proposed § 319.56–84. The operational workplan would have to include and describe in detail the quarantine pest survey intervals and other specific requirements in proposed § 319.56–84.

An operational workplan is an agreement between APHIS' Plant Protection and Quarantine program, officials of the NPPO of a foreign government, and, when necessary, foreign commercial entities, that specifies in detail the phytosanitary measures that will be carried out to comply with our regulations governing the importation of a specific commodity. Operational workplans apply only to the signatory parties and establish detailed procedures and guidance for the day-to-day operations of specific import/export programs. Operational workplans also establish how specific phytosanitary issues are dealt with in the exporting country and make clear who is responsible for dealing with those issues. The implementation of a systems approach typically requires an operational workplan to be developed.

Proposed paragraph (b) of § 319.56–84 would require avocado from continental Ecuador to be imported only in commercial consignments. Produce grown commercially is less likely to be infested with plant pests than noncommercial consignments. Noncommercial consignments are more prone to infestations because the commodity is often ripe to overripe, could be of a variety with unknown susceptibility to pests, and is often grown with little or no pest control. Commercial consignments, as defined in § 319.56–2, are consignments that an inspector identifies as having been imported for sale and distribution. Such identification is based on a variety of indicators, including, but not limited to: Quantity of produce, type of packing, identification of grower or packinghouse on the packaging, and documents consigning the fruits or vegetables to a wholesaler or retailer.

Production Site Requirements

Paragraph (c)(1) of proposed § 319.56–84 would require that all production sites participating in the avocado export program be approved by and registered with the NPPO of Ecuador in accordance with the requirements of the operational workplan.

Paragraph (c)(2) of proposed § 319.56–84 would require the NPPO of Ecuador to visit and inspect the production sites monthly starting 2 months before harvest and continue until the end of the shipping season. APHIS may also monitor the places of production if necessary. If APHIS or the NPPO of Ecuador finds that a place of production is not complying with the requirements of the systems approach, no fruit from the place of production will be eligible for export to the United States until APHIS and the NPPO of Ecuador conduct an investigation and appropriate remedial actions have been implemented.

Paragraph (c)(3) would require that any fallen avocado fruit be removed from the production site at least once every 7 days, starting 2 months before harvest and continuing through the end of the harvest, and that fallen fruit may not be included in field containers of fruit to be packed for export. Fallen fruit is more susceptible to infestation by pests because it may be overripe or damaged.

Paragraph (c)(4) would require that, for production sites that produce non-Hass variety avocados, no other host of Medfly or *Anastrepha* spp. can be grown within 100 meters of the edge of the place of production.

Paragraph (c)(5) would require the NPPO of Ecuador conduct a fruit fly trapping program beginning at least 2 months before the beginning of harvest and continuing for the duration of the harvest period for the detection of Medfly and *Anastrepha* spp. at each production site that produces non-Hass variety avocados. This program would support efforts for pest-free production sites within a certified low pest prevalence area for fruit flies. Details of the trapping program would be specified in the operational workplan.

Paragraph (c)(6) would require that the NPPO of Ecuador maintain records of fruit fly detections for each trap in a non-Hass avocado production site and update the records each time the traps are checked. The trapping records would have to be maintained for at least 1 year and made available for APHIS' review upon request.

Paragraph (c)(7) would state that, if the number of flies per trap per day exceeds levels specified in the operational workplan for more than 2 consecutive weeks, the place of production would be prohibited from exporting avocados to the continental United States until APHIS and the NPPO of Ecuador jointly agree that the risk has been mitigated.

Paragraph (c)(8) would require that all harvested avocados be placed in field cartons or containers that are marked to identify the production site from which the consignment of fruit originated. Production site registration and container marking would facilitate traceback of a consignment of avocado fruit to the production site in which it was grown in the event that quarantine pests were discovered in the consignment at the port of first arrival into the United States. The fruit would have to be moved to the packinghouse within 3 hours of harvest or it must be protected from fruit fly infestation until moved.

Packinghouse Requirements

We are proposing several requirements for packinghouse activities, which would be contained in paragraph (d) of proposed § 319.56–84. Paragraph (d)(1) would require that all avocados be packed for export to the United States in pest-exclusionary packinghouses approved by and registered with the NPPO of Ecuador in accordance with the requirements of the operational workplan.

Paragraph (d)(2) would provide that consignments of avocados destined for export to the continental United States must be packed within 24 hours of harvest and safeguarded during movement from registered packinghouses to arrival at the port of entry into the continental United States as specified by the operational workplan. Such safeguarding could include the use of pest-proof screens or tarpaulins to cover the lots during transit, or other similar measures approved by APHIS and the NPPO of Ecuador. We would require these safeguards to remain intact until the consignment's arrival in the continental United States or the consignment would

be denied entry into the continental United States.

Paragraph (d)(3) would require that all openings to the outside of the packinghouse must be covered by screening with openings of not more than 1.6 mm or by some other barrier that prevents pests from entering. The packinghouse would have to have double doors at the entrance to the facility and at the interior entrance to the area where the avocados are packed.

Paragraph (d)(4) would require that, while in use for exporting avocado fruit to the continental United States, the packinghouses may only accept avocados from registered a pproved production sites and the fruit must be segregated from fruit intended for other markets. This requirement would prevent such avocados intended for export to the continental United States from being exposed to or otherwise mixed with avocados that are not produced according to the requirements of the systems approach. Avocados from other places of production may be produced under conditions that are less stringent than those of this proposed rule, and may therefore be a pathway for introduction of quarantine pests into the packinghouses.

Paragraph (d)(5) would require that the identity and origin of the fruit be maintained from the packinghouse through export of consignments to the United States. This requirement would ensure that APHIS and the NPPO of Ecuador could identify the packinghouse at which the fruit was packed if inspectors find quarantine pests in the fruit either before export or at the port of entry.

Treatment

Paragraph (e) would state that, if non-Hass variety avocados are ineligible for export under the systems approach due to the place of production exceeding the trapping threshold for fruit flies as established in the operational workplan, they may still be exported, but only after undergoing an APHIS approved treatment in accordance with 7 CFR part 305.

Currently, irradiation treatment under treatment schedule T105-a-1 is the only treatment approved for all fruit flies and may be used to export non-Hass avocados from Ecuador. Under this treatment, the fruit must be irradiated with a minimum absorbed dose of 150 Gy to be applied upon arrival in the United States and follow the requirements of 7 CFR part 305. In the future, when irradiation facilities become available in Ecuador, irradiation may be applied in Ecuador as long as the treatment follows all requirements of 7 CFR part 305.

Phytosanitary Inspection

Paragraph (f)(1) would require that a biometric sample of avocados, jointly agreed upon by APHIS and the NPPO of Ecuador, be inspected in Ecuador by the NPPO following post-harvest processing. The sample would have to be visually inspected for all quarantine pests and a portion of the fruit would be cut open, if the fruit shows signs of internal pests. If any quarantine pests are found, the entire consignment of avocados would be prohibited from import into the continental United States unless treated using an APHIS-approved treatment in accordance with 7 CFR part 305.

Paragraph (f)(2) would require that fruit presented for inspection at a U.S. port of entry be identified in the shipping documents accompanying each consignment of fruit that specify the place of production in which the fruit was produced and the packinghouse in which the fruit was processed. This identification would have to be maintained with the consignment until the fruit is released for entry into the continental United States.

Phytosanitary Certificate

Paragraph (g) would require that each consignment of avocado fruit be accompanied by a phytosanitary certificate issued by the NPPO of Ecuador that states that the avocados in the consignment have been produced in accordance with the requirements of §§ 319.56–84.

Executive Orders 12866 and 13771 and Regulatory Flexibility Act

This proposed rule has been determined to be not significant for the purposes of Executive Order 12866 and, therefore, has not been reviewed by the Office of Management and Budget. Further, because this rule is not significant, it is not a regulatory action under Executive Order 13771.

In accordance with the Regulatory Flexibility Act, we have analyzed the potential economic effects of this action on small entities. The analysis is summarized below. Copies of the full analysis are available by contacting the person listed under **FOR FURTHER INFORMATION CONTACT** or on the *Regulations.gov* website (see **ADDRESSES** above for instructions for accessing *Regulations.gov*).

APHIS is proposing to allow the importation of fresh avocados from continental Ecuador into the continental United States under certain pest mitigation measures. This would be the first opportunity Ecuador has had to export fresh avocados to the United States. Over the 6-year period 2010–2015, Ecuador's avocado exports declined precipitously, from over 8,000 metric tons (MT) in 2010 to about 1,000 MT in 2015. Over these 6 years, Ecuador's avocado exports averaged 4,884 MT per year, reportedly valued at about $310,000 for an average price of less than $0.07 per kilogram or $63.50 per MT. This price is inexplicably low and may well indicate data error.

The United States is a net importer of avocados. Over the same 6-year period, 2010–2015, annual U.S. avocado imports averaged more than 570,000 MT, valued at $1.1 billion. Mexico is the principal source, accounting for 86 percent of U.S. avocado imports.

If between 5 percent and 20 percent of Ecuador's average fresh avocado exports to the world, 2010–2015, that is, between 244 and 976 MT, were imported by the United States, we estimate that U.S. producer welfare would fall by between $95,000 and $383,000, consumer welfare would rise by between $428,000 to $1.72 million, for a net social welfare gain of between $332,000 and $1.33 million. At the midpoint of this range, the net social gain would be $833,000. In accordance with guidance on complying with Executive Order 13771, the primary estimate of the cost savings of this proposed rule is $833,000, the mid-point estimate of cost savings annualized in perpetuity using a 7 percent discount rate.

While most U.S. avocado farms are small entities, they would not be significantly affected by this proposed rule. Annual avocado imports by the United States from Ecuador of between 244 and 976 MT would be equivalent to between 0.04 and 0.17 percent of the quantity of avocados imported by the United States annually.

Under these circumstances, the Administrator of the Animal and Plant Health Inspection Service has determined that this action would not have a significant economic impact on a substantial number of small entities.

Executive Order 12988

This proposed rule would allow fresh avocado to be imported into the continental United States from continental Ecuador, subject to a systems approach. If this proposed rule is adopted, State and local laws and regulations regarding fresh avocado imported under this rule would be preempted while the fruit is in foreign commerce. Fresh avocados are generally imported for immediate distribution and

sale to the consuming public and would remain in foreign commerce until sold to the ultimate consumer. The question of when foreign commerce ceases in other cases must be addressed on a case-by-case basis. If this proposed rule is adopted, no retroactive effect will be given to this rule, and this rule will not require administrative proceedings before parties may file suit in court challenging this rule.

Paperwork Reduction Act

In accordance with section 3507(d) of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), reporting and recordkeeping requirements included in this proposed rule have been submitted for approval to the Office of Management and Budget (OMB). Please send comments on the Information Collection Request (ICR) to OMB's Office of Information and Regulatory Affairs via email to *oira_submissions@omb.eop.gov,* Attention: Desk Officer for APHIS, Washington, DC 20503. Please state that your comments refer to Docket No. APHIS–2016–0099. Please send a copy of your comments to the USDA using one of the methods described under **ADDRESSES** at the beginning of this document.

APHIS is proposing to amend the fruit and vegetable regulations to allow the importation of avocados from continental Ecuador into the continental United States. As a condition of entry, the avocados would have to be produced in accordance with a systems approach that would include requirements for importation in commercial consignments, registration and monitoring of places of production, field monitoring and pest-control practices, trapping, and inspection for quarantine pests by the NPPO of Ecuador.

Implementing this rule will require information collection activities such as an operational workplan, production site and packinghouse registrations, marking of fruit cartons, phytosanitary inspections and certificates, notices of suspension to export, notices of resumption to export, preclearance inspection documentation, import permit applications, notices of arrival, emergency action notifications, and creation and maintenance records.

We are soliciting comments from the public (as well as affected agencies) concerning our proposed information collection and recordkeeping requirements. These comments will help us:

(1) Evaluate whether the proposed information collection is necessary for the proper performance of our agency's functions, including whether the information will have practical utility;

(2) Evaluate the accuracy of our estimate of the burden of the proposed information collection, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the information collection on those who are to respond (such as 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).

Estimate of burden: Public reporting burden for this collection of information is estimated to average 0.012 hours per response.

Respondents: NPPO of Ecuador, production site and packinghouse managers, and importers of avocados from Ecuador.

Estimated annual number of respondents: 44.

Estimated annual number of responses per respondent: 1,154.

Estimated annual number of responses: 50,791.

Estimated total annual burden on respondents: 623 hours. (Due to averaging, the total annual burden hours may not equal the product of the annual number of responses multiplied by the reporting burden per response.)

A copy of the information collection may be viewed on the *Regulations.gov* website or in our reading room. (A link to *Regulations.gov* and information on the location and hours of the reading room are provided under the heading **ADDRESSES** at the beginning of this proposed rule.) Copies can also be obtained from Ms. Kimberly Hardy, APHIS' Information Collection Coordinator, at (301) 851–2483. APHIS will respond to any ICR-related comments in the final rule. All comments will also become a matter of public record.

E-Government Act Compliance

The Animal and Plant Health Inspection Service is committed to compliance 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. For information pertinent to E-Government Act compliance related to this proposed rule, please contact Ms. Kimberly Hardy, APHIS' Information Collection Coordinator, at (301) 851–2483.

List of Subjects in 7 CFR Part 319

Coffee, Cotton, Fruits, Imports, Logs, Nursery stock, Plant diseases and pests, Quarantine, Reporting and recordkeeping requirements, Rice, Vegetables.

Accordingly, we propose to amend 7 CFR part 319 as follows:

PART 319—FOREIGN QUARANTINE NOTICES

■ 1. The authority citation for part 319 continues to read as follows:

Authority: 7 U.S.C. 450 and 7701–7772, and 7781–7786; 21 U.S.C. 136 and 136a; 7 CFR 2.22, 2.80, and 371.3.

■ 2. Section 319.56–84 is added to read as follows:

§ 319.56–84 Fresh avocado fruit from continental Ecuador.

Fresh avocados (*Persea americana* Miller), may be imported into the continental United States from continental Ecuador only under the conditions described in this section. These conditions are designed to prevent the introduction of the following quarantine pests: *Anastrepha fraterculus* Wiedemann, *Anastrepha serpentina* Wiedemann, *Anastrepha striata* Schiner, and *Ceratitis capitata* Wiedemann.

(a) *Operational workplan.* The national plant protection organization (NPPO) of Ecuador must provide an operational workplan to APHIS that details the activities that the NPPO of Ecuador will, subject to APHIS' approval of the workplan, carry out to meet the requirements of this section. The operational workplan must include and describe the quarantine pest survey intervals and other specific requirements as set forth in this section.

(b) *Commercial consignments.* Avocados from continental Ecuador may be imported in commercial consignments only.

(c)(1) *Production site requirements.* All production sites that participate in the export program must be approved by and registered with the NPPO of Ecuador in accordance with the requirements of the operational workplan.

(2) The NPPO of Ecuador will visit and inspect the production sites monthly starting 2 months before harvest and continue until the end of the shipping season. APHIS may also monitor the places of production if necessary. If APHIS or the NPPO of Ecuador finds that a place of production is not complying with the requirements of this section, no fruit from the place of production will be eligible for export

to the United States until APHIS and the NPPO of Ecuador conduct an investigation and appropriate remedial actions have been implemented.

(3) Fallen avocado fruit must be removed from the production site at least once every 7 days, starting 2 months before harvest and continuing through the end of the harvest, and fallen fruit may not be included in field containers of fruit to be packed for export.

(4) At each non-Hass avocado production site, no other host of *A. fraterculus, A. serpentina, A. striata,* or *C. capitata* can be grown within 100 meters of the edge of the place of production.

(5) At each non-Hass avocado production site, the NPPO of Ecuador must conduct a fruit fly trapping program beginning at least 2 months before the beginning of harvest and continuing for the duration of the harvest period for the detection of *A. fraterculus, A. serpentina, A. striata,* and *C. capitata* in accordance with the operational workplan.

(6) The NPPO of Ecuador must maintain records of fruit fly detections for each trap in a non-Hass avocado production site and update the records each time the traps are checked. The trapping records must be maintained for at least 1 year and provided for APHIS' review, if requested.

(7) If the number of flies per trap per day exceeds levels specified in the operational workplan for more than 2 consecutive weeks, the place of production will be prohibited from exporting avocados to the continental United States until APHIS and the NPPO of Ecuador jointly agree that the risk has been mitigated.

(8) All avocados must be placed in field cartons or containers that are marked to identify the production site from which the consignment of fruit originated. The fruit must either be moved to the packinghouse within 3 hours of harvest or protected from fruit fly infestation until moved.

(d)(1) *Packinghouse requirements.* Avocados must be packed for export to the continental United States in pest-exclusionary packinghouses that are approved by and registered with the NPPO of Ecuador in accordance with the requirements of the operational workplan.

(2) The avocados must be packed within 24 hours of harvest in a pest-exclusionary packinghouse in accordance with the requirements of the operational workplan. The avocados must be safeguarded by an insect-proof mesh screen or plastic tarpaulin while in transit to the packinghouse and while awaiting packing. The avocados must be packed in insect-proof cartons or containers, or covered with insect-proof mesh or plastic tarpaulin, for transit into the continental United States. These safeguards must remain intact until arrival at the port of entry into the continental United States or the consignment will be denied entry into the continental United States.

(3) All openings to the outside of the packinghouse must be covered by screening with openings of not more than 1.6 mm or by some other barrier that prevents pests from entering. The packinghouse must have double doors at the entrance to the facility and at the interior entrance to the area where the avocados are packed.

(4) During the time the packinghouse is in use for exporting avocados to the continental United States, the packinghouse may only accept avocados from registered approved production sites and the fruit must be segregated from fruit intended for other markets.

(5) The identity and origin of the fruit must be maintained from the packinghouse through export of consignments to the United States.

(e) *Treatment.* If the non-Hass variety avocados are ineligible for export under the systems approach due to the place of production exceeding the trapping threshold for fruit flies as established in the operational workplan, they may still be exported, but only after undergoing an APHIS approved treatment in accordance with part 305 of this chapter.

(f) *Phytosanitary inspection.* (1) Inspectors from the NPPO of Ecuador must inspect a biometric sample of the fruit from each avocado consignment jointly agreed upon by APHIS and the NPPO of Ecuador, following post-harvest processing. The inspectors must visually inspect for quarantine pests listed in the operational workplan required by paragraph (a) of this section and must cut fruit if signs of quarantine pests that are internal feeders are observed. If quarantine pests are detected in this inspection, the consignment will be prohibited entry into the United States unless it is treated with an APHIS-approved quarantine treatment in accordance with part 305 of this chapter.

(2) Fruit presented for inspection at a U.S. port of entry must be identified in the shipping documents accompanying each consignment of fruit that specify the place of production in which the fruit was produced and the packinghouse in which the fruit was processed. This identification must be maintained until the fruit is released for entry into the continental United States.

(g) *Phytosanitary certificate.* Each consignment of avocado fruit must be accompanied by a phytosanitary certificate of inspection issued by the NPPO of Ecuador that states that the fruit in the consignment was produced in accordance with the requirements of § 319.56–84.

Done in Washington, DC, this 11th day of June 2018.

Kevin Shea,

Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 2018–12827 Filed 6–14–18; 8:45 am]

BILLING CODE 3410–34–P

FARM CREDIT ADMINISTRATION

12 CFR Part 612

RIN 3052–AC44

Standards of Conduct and Referral of Known or Suspected Criminal Violations; Standards of Conduct

AGENCY: Farm Credit Administration.

ACTION: Proposed rule.

SUMMARY: The Farm Credit Administration (FCA, we, or our) proposes to amend our regulations governing standards of conduct of directors and employees of Farm Credit System (FCS or System) institutions, excluding the Federal Agricultural Mortgage Corporation. The proposed rule would replace the original proposed rule, and would require every System institution to have or develop a Standards of Conduct Program based on core principles to put into effect ethical values as part of corporate culture.

DATES: You may send comments on or before September 13, 2018.

ADDRESSES: We offer a variety of methods for you to submit your comments. For accuracy and efficiency reasons, commenters are encouraged to submit comments by email or through FCA's website. As facsimiles (fax) are difficult for us to process and achieve compliance with section 508 of the Rehabilitation Act, we are no longer accepting comments submitted by fax. Regardless of the method you use, please do not submit your comment multiple times via different methods. You may submit comments by any of the following methods:

- *Email:* Send us an email at *reg-comm@fca.gov.*
- *FCA Website: http://www.fca.gov.* Select ''Public Commenters,'' then ''Public Comments'' and follow the directions for ''Submitting a Comment.''

• *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.

• *Mail:* Barry F. Mardock, Deputy Director, Office of Regulatory Policy, Farm Credit Administration, 1501 Farm Credit Drive, McLean, Virginia 22102–5090.

You may review copies of comments we receive at our office in McLean, Virginia, or from our website at *http://www.fca.gov.* Once you are in the website, select ''Public Commenters,'' then ''Public Comments'' and follow the directions for ''Reading Submitted Public Comments.'' We will show your comments as submitted but, for technical reasons, we may omit items such as logos and special characters. Identifying information that you provide, such as phone numbers and addresses, will be publicly available. However, we will attempt to remove email addresses to help reduce internet spam.

FOR FURTHER INFORMATION CONTACT: Jacqueline R. Melvin, Senior Policy Analyst, Office of Regulatory Policy, (703) 883–4498, TDD (703) 883–4056, *Melvinj@fca.gov,* or Mary Alice Donner, Senior Counsel, Office of General Counsel, (703) 883–4020, TDD (703) 883–4056, *Donnerm@fca.gov.*

SUPPLEMENTARY INFORMATION:

I. Objectives

The objectives of this proposed rule are to:

• Establish principles for ethical conduct and recognize each System institution's responsibility for promoting an ethical culture;

• Provide each System institution flexibility to develop specific guidelines on acceptable practices suitable for its business;

• Encourage each System institution to foster core ethical values and conduct as part of its corporate culture;

• Require each System institution to develop strategies and a system of internal controls to promote institution and individual accountability in ethical conduct, including by establishing a Standards of Conduct Program and adopting a Code of Ethics; and

• Remove prescriptive requirements that do not promote these objectives.

II. Background

Our standards of conduct regulations have not been significantly changed since their 1994 publication.[1] Over the past few years, there have been increasing concerns with governance, oversight, management practices and standards of conduct in the financial services industry. The proposed rule would update FCA's regulations in view of these concerns, and would address the ethical culture under which System institutions should operate.[2]

III. The Importance of Ethical Culture

Public confidence in the integrity and ethical business practices of any financial institution is fundamental to its ongoing viability. Unethical or preferential business practices can damage a financial institution's reputation and lead to earnings and credit risk. Congress granted the Farm Credit System certain attributes that result in Government-sponsored enterprise (GSE) status. This status confers on System institutions additional responsibility to strive for high ethical standards and business practices.

IV. The Proposed Rule

This rule would establish core principles for ethical conduct. It would set forth basic tenets of ethical business practices to compel each System institution to foster a culture of loyalty, honesty, integrity and accountability. The proposed rule would set forth principles by which a System institution must do business. The System institution would be responsible for establishing and enforcing policies that expand on these principles, and for clearly communicating expectations for acceptable behavior to directors and employees. FCA believes that the proposed rule would promote ethical conduct. At the same time, because it is less prescriptive than the current rule, it could reduce regulatory burden.

A. Organization

The proposed rule would change the organization of the current rule. It would consolidate, rename and assign new numbers to some sections and remove other sections altogether. The following bullets summarize the changes:

• Proposed § 612.2136 would set forth the principles that serve as the foundation for the rule. It would substantively revise and rename current § 612.2135 ''Director and employee responsibilities and conduct—generally''.

• Proposed § 612.2137 ''Elements of a Standards of Conduct Program,'' would consolidate current § 612.2160 ''Institution responsibilities'' and current § 612.2165 ''Policies and procedures''.

• Proposed § 612.2138 ''Conflicts of interest, reporting of financial interests'' would consolidate current ''Director reporting'' and current § 612.2155 ''Employee reporting''.

• Proposed § 612.2139 ''Prohibited conduct'' would consolidate current § 612.2140 ''Directors—prohibited conduct'' and § 612.2150 ''Employees—prohibited conduct''. It would also include the prohibitions in current § 612.2157 ''Joint employees'' and current § 612.2270 ''Purchase of System obligations''.

• Proposed § 612.2137 would require that institutions develop policies and procedures with respect to agents to avoid conflicts of interests and would replace current § 612.2260 ''Standards of conduct for agents''.

B. Definitions [Proposed § 612.2130]

The proposed rule would define ''Code of Ethics,'' ''resolved'' and ''Standards of Conduct Program''. We would change the term ''controlled entity and entity controlled by'' to ''reportable business entity'' and modify the definition of ''employee''. We would omit the definitions of ''officer'' and ''service corporation'' as redundant with the definitions of ''employee'' and ''System institution'', respectively. We would omit the definition of ''relative'' as redundant with the definition of ''family'' in the current rule and ''immediate family'' in § 620.1(e). We would make the definition of System institutions more concise. These and other changes and clarifications are discussed below.

Agent. We would modify the definition of ''agent'' to clarify that an agent includes someone who currently represents a System institution as a fiduciary in contacts with third parties. The proposed rule adds the language ''as a fiduciary'' to the definition of agent to explain that not all outside parties performing services for the System institution require the conflict of interest disclosure required of agents. For example, the contractor responsible for maintaining grounds would not be an agent. However, those with fiduciary responsibilities, such as lawyers, accountants, and those representing the System institution in contacts with third parties would be an agent. Each System institution should review the risks associated with its use of third parties and should expand or elaborate on the definition of agent, depending on the System institution's need for conflict disclosures in those relationships. Special consideration should be given to cyber security issues in third party relationships and information technology specialists should be subject

[1] The original proposed regulation was published in the **Federal Register** on February 20, 2014, (79 FR 9649). The objective was to build on the existing standards of conduct rules by adding a few new provisions, clarifying or augmenting some current provisions, and providing additional flexibility for others. After receiving comments, FCA determined to use a different approach.

[2] ''The Directors Role'' booklet states that sound ethics and adherence to standards of conduct, among other things, are essential to effective oversight.

to especially heightened ethical controls and confidentiality requirements.

Code of Ethics. The proposed rule would define ''Code of Ethics'' as a written statement of the principles and values the System institution follows to establish a culture of ethical conduct. The Code of Ethics directs professionalism and discourages misconduct so that the best interests of the institution and the System are advanced.

Conflict of interest. This definition would explain that a conflict can arise whenever a secondary or non-work-related interest might unduly influence or materially impact a director's or employee's work-related decision-making.

Employee. The proposed rule would define ''employee'' to mean any individual, including an officer, who works for the System institution. Every individual who works for the System institution, including temporary employees and interns, would be part of the ethical corporate culture, regardless of length or term of employment. System institutions should also consider whether and when third-party contractors should be included in the definition of employee or agent.

Entity. The proposed rule would add ''sole proprietorship'' to the definition of ''entity'' in the current rule and make other non-substantive changes.

Family. The proposed rule would include ''significant others'' in the definition of ''family''. The System institution could elaborate on this definition, and consider whether to include cousins or civil union partners.

Material. The definition of ''material'' in the proposed rule is not substantively different from the definition in the current rule. Each System institution must set its own specific parameters for what would constitute a material financial interest or transaction. The dollar amount or value of material, in the context of a financial interest or transaction, should be determined by the System institution board. This should be based on the institution's needs for tracking and supervising the potentially conflicting business and financial activities of its directors and employees.

Ordinary course of business. We would clarify that an ordinary course of business transaction is one that is usual and customary ''in the business in question'', on terms that are not preferential. Each System institution must determine what activities and transactions are in the ordinary course of business. Generally, a person provides goods or services in the ordinary course of business if the transaction is usual or customary for the kind of business in which the seller or service provider is engaged or with the seller's or service provider's own usual or customary practices. So, for example, a borrower sells crop inputs (seed, fertilizer, etc.), and a System institution director or employee wishes to purchase the crop inputs. A transaction in the ordinary course of business would mean that the borrower sells the crop inputs at the price and terms common to others in the industry. It would mean that the director or employee is typical of an ordinary purchaser of crop inputs in the industry. Also, the terms of the arrangement should be consistent with the other transactions, if any, between this borrower/seller and director or employee/buyer.

Another example involves services in the ordinary course of business, such as accounting, legal or medical. A System institution director may need a lawyer. The fact that the best lawyer is a borrower, does not preclude the director from engaging that lawyer for personal use, assuming no conflict, if the terms of the engagement are usual or customary practices in the legal field. The director must pay the lawyer at the going rate, the legal services must be of the kind the lawyer typically provides in the business, and the relationship cannot have any preferential terms or discounts.

Preferential. The proposed rule would not change the definition of ''preferential'' but would list it separately from the definition of ''ordinary course of business''.

Reportable business entity. The proposed rule would change the term ''controlled entity and entity controlled by'' and replace it with ''reportable business entity''. The proposed rule would provide that a reportable business entity is an entity in which the reporting individual, directly or indirectly or acting through or in concert with one or more persons, owns a material percentage of the equity; owns, controls, or has the power to vote a material percentage of any class of voting securities; or has the power to exercise a material influence over management of policies of such entity. We would make this change to avoid confusion with the term ''control'' in the corporate context, and to allow the System institution discretion to determine how much interest represents a conflict. This determination may vary depending on whether the entity is private, public, profit, or not for profit. The intent of this provision is to require directors and employees to identify and report any business interest that is significant enough to create a conflict of interest or the appearance of a conflict of interest when considered from the perspective of an ordinarily prudent and reasonable person.

Resolved. We would define ''resolved'' to mean an actual or apparent conflict of interest that has been addressed with an action such as recusal, divestiture, approval or exception, job reassignment, employee supervision, employment separation or other action, with the result that a reasonable person with knowledge of the relevant facts would conclude that the conflicting interest is unlikely to adversely affect the person's performance of official duties in an objective and fair manner and in furtherance of the interests and statutory purposes of the Farm Credit System.

Standards of Conduct Official. The proposed rule would modify the definition of Standards of Conduct Official (or Official). Because of the variety of institution sizes and resources, we do not require the Standards of Conduct Official to be a senior officer. However, the focus of this proposal is on accountability in ethical conduct; therefore, the Official must be an employee who is an officer appointed under § 612.2137(b), and must have the authority to report directly to the System institution board or designated board committee on standards of conduct matters. The Official should be an employee who is able to exert a positive influence in ethical matters on System institution directors and employees. The Official would be independent in his duties related to standards of conduct. It may be practical for some larger System institutions to appoint more than one Standards of Conduct Official.

Standards of Conduct Program. The proposed rule would define ''Standards of Conduct Program'' to mean the policies and procedures, internal controls, and other actions a System institution must implement to put into practice the requirements of this rule. The Standards of Conduct Program is the totality of the policies and procedures, internal controls, audit, training, and other activities that promote ethical behavior.

C. Standards of Conduct—Core Principles [Proposed § 612.2136]

As mentioned in Section A, we would substantively revise and rename current § 612.2135 ''Director and employees responsibilities and conduct—generally'' as proposed § 612.2136 ''Standards of conduct—core principles.'' Proposed § 612.2136 would establish principles that directors and employees must follow in performing

official duties. We specifically request comment on the effectiveness of the proposed principles in reaching the objective of fostering a culture of ethical conduct.

Paragraph (a) would establish core principles. Paragraph (b) would set forth certain basic minimum requirements to comply with the principles.

Proposed § 612.2136(a)(1) would set forth the first principle: To maintain the highest ethical standards of the financial banking industry, including standards of care, honesty, integrity and fairness. This principle establishes that these standards, important in the financial banking industry, are critical to the conduct expected of a GSE. System institution directors and employees should consider ethical conduct beyond reproach a component of their job responsibilities.

System institution directors and employees must avoid self-serving practices and hold performance of their duties to the institution above personal concerns. They must not use their position for personal advantage. Proposed § 612.2136(a)(2) would set forth the principle that institution directors and employees must act in the best interest of the institution. Proposed § 612.2136(a)(3) would set forth the principle to preserve the reputation of the institution and the public's confidence in the Farm Credit System. Proposed § 612.2136(a)(4) would set forth the principle to exercise diligence and good business judgment in carrying out duties and responsibilities.

Proposed § 612.2136(a)(5) would state as a principle the responsibility to report, vet and make all reasonable efforts to resolve conflicts and the appearance of conflicts in business relationships and activities. As a corollary, proposed § 612.2136(a)(6) would set forth the principle that directors and employees must avoid self-dealing and acceptance of gifts or favors that may influence or have the appearance of influencing official actions or decisions. Proposed rules concerning acceptance of gifts are set forth in proposed § 612.2137(d)(6). Proposed § 612.2136(a)(7) would require directors and employees, if applicable, to fulfill fiduciary duties.

Proposed § 612.2136(b)(1) would require institution directors and employees to comply with their System institution's Standards of Conduct Program and Code of Ethics. Proposed § 612.2136(b)(2) would require institution directors and employees to comply with all applicable laws and regulations when carrying out official duties. Applicable laws and regulations would include all FCA regulations and Federal laws. Proposed § 612.2136(b)(3) would require institution directors and employees to participate in annual standards of conduct training, and to acknowledge participation with a written certification. Section 612.2136(b)(4) would require directors and employees to report, under § 612.2137(e), known or suspected illegal or unethical activities, and known or suspected violations of the institution's rules on standards of conduct and Code of Ethics. Reporting would be made to the Standards of Conduct Official or through the institution's hotline or other method consistent with the institution's procedures for anonymous reporting.

D. Elements of a Standards of Conduct Program [Proposed § 612.2137]

The proposed rule would consolidate current § 612.2160 ''Institution responsibilities'' with current § 612.2165 ''Policies and procedures,'' in proposed § 612.2137 ''Elements of a Standards of Conduct Program.'' This section would require each System institution to establish a Standards of Conduct Program that incorporates the principles established in proposed § 612.2136 and provide resources for its implementation. A System institution may continue to use its existing Standards of Conduct Program if it incorporates the core principles and satisfies the requirements of this proposed rule.

The Standards of Conduct Program would set forth specific guidelines on acceptable and unacceptable business practices. Policies and procedures should include requirements and prohibitions as necessary to promote public confidence in the institution and the System, and further the objectives of the principles and this proposed rule. Each System institution should enhance these requirements with comprehensive rules as necessary to meet System institution goals. Each System institution would be required to allocate resources to administer the Standards of Conduct Program. This could include hiring personnel in addition to the Standards of Conduct Official, if necessary, to assist in responsibilities such as reviewing reports, providing training, and conducting investigations. It could include use of outside counsel, especially if the Standards of Conduct Official is not an attorney, and whatever additional resources are necessary to implement the Standards of Conduct Program and promote the ethical culture of the System institution.

The System institution board is ultimately responsible for implementing the principles and for compliance and oversight of the Standards of Conduct Program. Proposed § 612.2137(a) would require each institution to establish a Standards of Conduct Program that sets forth the core principles in § 612.2136. Proposed § 612.2137(b) would require the board of directors to appoint a Standards of Conduct Official, defined as an employee, who would be responsible for carrying out the duties set forth in proposed § 612.2170. To carry out these responsibilities and promote the ethical culture required by the proposed rule, the Standards of Conduct Official should have a close relationship with the employees of the System institution and be in a position of authority and trust. Because the board of directors is ultimately responsible for compliance, the Standards of Conduct Official must have direct access to the board or designated board committee on standards of conduct matters. The Standards of Conduct Official would be required to meet periodically with the board or designated board committee as proposed in § 612.2170(g).

Proposed § 612.2137(c) would require each System institution to adopt a written Code of Ethics that states the institution's principles and values and guides directors and employees in ethical conduct. These principles and values must include standards for appropriate professional conduct at the workplace and in matters related to employment. The Code of Ethics would be a component of the Standards of Conduct Program. To demonstrate commitment to its values and to provide transparency and accountability in ethical conduct, the proposed rule requires each System institution to post its Code of Ethics on the System institution's external (public) website.

Proposed § 612.2137(d) would require each System institution to establish policies and procedures to put into operation the Standards of Conduct Program and to comply with the provisions of this proposed rule.

Proposed § 612.2137(d)(1) would require each System institution to establish policies and procedures for reporting. At a minimum, these would include reporting requirements sufficient to identify any conflicts of interest, actual or apparent; any business transactions with directors, employees, borrowers and agents that are not in the ordinary course of business; any gifts; names of family members; and reportable business entities (or other related party as determined by the System institution).

As defined in proposed § 612.2130, ordinary course of business means a transaction that is usual and customary in the business in question, on terms

that are not preferential. We believe the System institution is in the best position to determine that which is an ordinary course of business transaction and that which is favorable or preferential in its region. Therefore, each System institution should develop policies and procedures to identify transactions that are preferential and not in the ordinary course of business and report the transactions pursuant to § 612.2137(d)(1)(ii).

Generally, ordinary course of business means business procedures and practices consistent with usual customs and practices in that line of business. Is the transaction of a type that other similar businesses and their customers would engage in as ordinary business? Is the transaction, and its terms, common in the specific industry? From an industry-wide perspective, is the transaction of the sort commonly undertaken? The practices of others in the industry would be helpful in making the determination.

Another consideration is the parties' own past relationship and past practice. Is the transaction ordinary in the context of the relationship already existing between the parties? A review of the parties' prior conduct and practices would be helpful in making this determination.

Certain special situations bear discussion. Transactions between a director/employee and that director's/employee's loan officer should be specifically addressed, and the general nature of these transactions should always be reported because of the high potential for conflict, even if the transactions are in the ordinary course of business. System institution policies and procedures should require reporting for other ordinary course of business transactions that may have a high potential for conflict.

Compliance with proposed § 612.2137(d)(1) would require the System institution to develop a method to monitor related-party transactions and make sure that directors and employees do not transact business on preferential or favorable terms and do not take advantage of their employment or position with the Farm Credit System in their business affairs. The policies and procedures should include specific dollar amounts as appropriate, and other criteria for pre-event versus post-event reporting. Reporting should include, at a minimum, financial transactions (recurring or one-time), and other relationships or arrangements (monetary or non-monetary) between directors, employees, agents or borrower/stockholders.

Proposed § 612.2137(d)(2) would require each System institution to establish policies and procedures to address how conflicts of interest would be resolved through an action such as recusal, divestiture, approval or exception, job reassignment, employee supervision, employment separation or other action. To resolve conflicts of interest, the director or employee should cooperate with the Standards of Conduct Official. Policies and procedures would include action taken in the event a conflict cannot be resolved. Compliance with proposed § 612.2137 requires that the System institution establish a process to report, vet, and resolve conflicts of interest effectively. It would be read in tandem with proposed § 612.2138, which speaks directly to directors and employees and sets forth their reporting requirements.

Agents, consultants and other third parties who represent the institution to the public, or upon whom the institution relies for professional services, must be bound by the same ethical responsibilities to the System institution and its borrower/shareholders as directors and employees. Proposed § 612.2137(d)(3) would require each System institution to establish policies and procedures to make sure that agents file conflict of interest disclosures, and that agents, consultants and other third-party contractors avoid misconduct and conflicts of interests. These third parties must be notified that their engagement is conditioned upon their agreement to avoid misconduct and conflicts of interest. These policies and procedures should include a mechanism to report, vet and resolve any conflicts of interest between third parties representing the institution and the System institution itself or its directors and employees. The System institution should also consider having the agent or consultant acknowledge its Code of Ethics, depending on the relative importance of the agent or consultant services to the institution. Consideration should be given to the sensitivity of the services, for example third-party performers of internet technology or cyber security services should be subject to a high degree of scrutiny. Consideration also should be given to whether the third party is covered by a professional code or standard that prescribes ethical conduct.

The rule provides specific authority to each System institution to monitor and enforce its standards of conduct rules and Code of Ethics. Violators should be subject to specific and appropriate action, as determined by the System institution. Proposed § 612.2137(d)(4) would require each System institution to establish policies and procedures for the enforcement of its Standards of Conduct Program. This would provide the mechanism by which the institution takes action against any person who violates the standards of conduct rules, Code of Ethics, or these regulations. This section places accountability for enforcing the ethical conduct outlined in this proposed rule and fundamental to the health and viability of the System institution directly with the System institution itself.

Proposed § 612.2137(d)(5) would require each System institution to establish policies and procedures to apply and enforce the prohibitions set forth in proposed § 612.2139 and any other provision in this subpart A.

Proposed § 612.2137(d)(6) would require policies and procedures to prohibit gifts. These should include a definition of gifts, and explanation of prohibited sources. Directors and employees are prohibited from accepting gifts or favors that could be viewed as offered to influence or give the appearance to influence decision-making or official action or to obtain information. A System institution may determine that certain gifts, for example those valued at $25.00 or less, are so low in value (*de minimis*) that they could not be perceived as influencing decision-making or official action. The System institution may allow its directors and employees to accept gifts of little or no value. However, it may do so only if it has policies and procedures in place that set forth controls that are consistent with the core principles established in this proposed rule and with the requirements of Federal laws including FCA regulations and the Federal Bank Bribery Act.[3] These policies and procedures would set forth the maximum value of any individual gift that a director or employee may accept, and the maximum value of gifts in the aggregate per year that a director or employee may accept. The policies and procedures would include reporting requirements for gifts and rules for disposing of impermissible gifts.

Proposed § 612.2137(e) would set forth minimum requirements for internal controls for all aspects of the System institution's Standards of Conduct Program.

Proposed § 612.2137(e)(1) would require the System institution to maintain all reports generated under subpart A of the Standards of Conduct regulations including those required by § 612.2137(d)(1) and records on any ethics investigations and

[3] *See* 18 U.S.C. 215 and 18 U.S.C. 20.

determinations, for a minimum of 6 years. Proposed § 612.2137(e)(2) would require internal controls to preserve the confidentiality of reports and other information maintained under the Standards of Conduct Program.

Proposed § 612.2137(e)(3) would require each System institution to establish a process for anonymous reporting of suspected standards of conduct or Code of Ethics violations. A reporting hotline is most effective when both internal parties (directors and employees) and external parties (agents, borrowers, shareholders, applicants, and others) can report a complaint, misconduct, or tip for corrective action without fear of retribution such as termination of employment, suspension, or other similar action.

Proposed § 612.2137(e)(4) requires periodic review of the Standards of Conduct Program for consistency with current practices at the System institution, financial banking industry best practices, and FCA regulations.

Internal controls to prevent self-dealing and conflict situations should be monitored and evaluated with an effective audit program. Proposed § 612.2137(e)(5) would require each System institution to arrange for periodic internal audits of the Standards of Conduct Program. The audit would identify weaknesses, review and measure the effectiveness of the Standards of Conduct Program, and prescribe necessary corrective actions. The audit would cover the entire System institution and include all activities conducted by the System institution including through an unincorporated business entity (UBE), such as those organized for the express purpose of investing in a Rural Business Investment Company pursuant to § 611.1150(b). The audit would test for compliance and recommend corrective action as necessary, and the results should be reported directly to the institution's board or designated board committee. The scope and depth of the audit would be determined by the needs of the institution. The System institution would document the audit process and results.

Proposed § 612.2137(f) would require each System institution to establish and provide standards of conduct training at least annually. This section should be read in tandem with § 612.2170. The institution's Standards of Conduct Program and ongoing training would encourage directors and employees to obtain counsel from the Standards of Conduct Official prior to engaging in transactions that could be perceived as preferential or not in the ordinary course of business. The Standards of Conduct Official could then provide advice to the director or employee on the permissibility of the transaction under the institution's Standards of Conduct Program and these proposed rules, or prescribe actions that would be necessary before or following the transaction to resolve a conflict of interest or the appearance of a conflict of interest. Training must include updates, if any, to the Standards of Conduct Program and Code of Ethics, and discussion of the System institution's procedures for the anonymous reporting of violations. It must include education on prohibited conduct, conflicts of interest and reporting requirements. Training on fiduciary responsibilities would be required, although the System institution may elect to have that service performed by outside counsel.

E. Conflicts of Interest, Reporting of Financial Interests [New § 612.2138]

It is incumbent upon each System institution to adopt the standards of conduct core principles, to make them part of the culture and lexicon of every director and employee. In addition, certain prescriptive rules directed to employees and directors are necessary to realize a baseline ethical standard. The baseline prescriptive requirements are set forth in proposed §§ 612.2138 and 612.2139, and each System institution should expand upon these prescriptive requirements as appropriate.

Section 612.2138 of the proposed rule would specifically address conflicts of interest and reporting of financial interests. This section would require directors and employees to take affirmative action to identify, report and resolve conflicts or potential conflicts of interest of which they are aware. It is intended to compel each director and employee to take ownership of and invest in ethical responsibilities.

Proposed § 612.2138(a) would require each director and employee to identify, report and resolve conflicts and potential conflicts. Proposed § 612.2138(b) would require that if a director or employee has a conflict of interest in a matter, transaction or activity that is subject to official action, or that is being considered by the board of directors, then that director or employee must disclose relevant non-privileged information including the existence, nature, and extent of his or her interests; refrain from participating in the official action or board discussion on the matter, activity or transaction (§ 612.2138(b)(2)); and not vote on or influence the decision-making on the matter, transaction or activity (§ 612.2138(b)(3)). Working together with other provisions of the proposed rule, this section is intended to bolster loyalty to the System institution and to reinforce personal responsibility and accountability in avoiding conflicts and acting ethically.

Proposed § 612.2138(c) would require a director or employee to report conflicts of interest to the Standards of Conduct Official at year-end and at such other times as may be required by the institution. At a minimum, this section would require reporting of information sufficient for a reasonable person to make a conflict of interest determination on any business matter to be considered by the System institution. Reporting consistent with part 620 is also required.

Proposed § 612.2138(c)(1) would require directors and employees to report any interest that they may have in any business matter before the System institution. This would include any interest in a loan, or in an entity making a loan application, or any other direct or indirect interest in a matter that pertains to the business of the System institution.

Proposed § 612.2138(c)(2) would require directors and employees to report the names of any family member who has transacted or is currently transacting business with the System institution. The System institution should determine how best to capture reporting of current transactions, and should consider whether to require a director or employee to report the name of a family member who has engaged in a transaction in the past.

Proposed § 612.2138(c)(3) would require directors and employees to report all material financial interests with any director, employee, agent, borrower or business affiliate of the System institution, supervised institution or supervising institution.

Proposed § 612.2138(c)(4) would require directors and employees to report any matter required to be disclosed by § 620.6 of this chapter, in accordance with System institution policies and procedures.

Proposed § 612.2138(c)(5) would require directors and employees to report the names of reportable business entities.

Proposed § 612.2138(c)(6) would require directors and employees to report the names of any person residing in the home if such person transacts business with the System institution, or any institution supervised by the System institution.

All the reporting in this section would be based on information the reporting

individual knows or has reason to know.

F. Prohibited Conduct [Proposed § 612.2139]

As stated in Section A, we would consolidate current § 612.2140 ''Directors—prohibited conduct'' with current § 612.2150 ''Employees—prohibited conduct,'' in proposed § 612.2139 ''Prohibited conduct.'' We would also incorporate current § 612.2157 ''Joint employees'' and current § 612.2270 ''Purchase of System obligations'' requirements in this section. Most of our revisions to the prohibited conduct rules are straightforward and provide clarification of an intended prohibition. For example, we would clarify that lending transactions with a party related to the System institution such as a director, employee or a borrower is permitted, but only if on terms that are not favorable or preferential. We would also add a new provision that would prohibit directors and employees from acting inconsistently with the core principles.

Proposed § 612.2139(a) would set forth the general prohibitions and their related exceptions for directors and employees, and proposed § 612.2139(b) would set forth additional prohibitions specifically for employees with their related exceptions.

Proposed § 612.2139(a)(1) would prohibit acting inconsistently with the core principles in proposed § 612.2136.

Proposed § 612.2139(a)(2) restates the director and employee prohibitions on participation in matters affecting financial interests in current §§ 612.2140(a) and 612.4150(a), respectively.

Proposed § 612.2139(a)(3) restates the director and employee prohibitions on use of information in current §§ 612.2140(b) and 612.4150(b), respectively.

Proposed § 612.2139(a)(4) would prohibit directors and employees from soliciting, obtaining or accepting, directly or indirectly, any gift, fee or other compensation that could be viewed as offered to influence decision-making, or official action or to obtain information. The System institution may determine that a gift that has an insignificant value would not trigger this prohibition, and may develop rules under which directors and employees may accept *de minimis* gifts. However, these System institution rules must be consistent with Federal rules and regulations including FCA rules and the Federal Bank Bribery Act. *De minimis* gifts may be accepted only as set forth under the institution's properly established policies and procedures (*see* § 612.2137(d)(6)).

Proposed § 612.2139(a)(5) would provide that, among other things, a director or employee may not knowingly purchase or otherwise acquire, directly or indirectly, unless through inheritance, any interest (including mineral interests) in any real or personal property that is currently owned, or within the 12 past months was owned, by the System institution, supervising institution or any supervised institution as a result of foreclosure, deed in lieu, or similar action. Like the current rule, the proposed rule would allow a director to purchase such property only through public auction or similar open, competitive bidding. By open competitive bidding, we mean bidding that is both competitive, allowing involvement of all interested parties, and open and unsealed. Open competitive bidding affords all interested parties an opportunity to counter-bid. The advantage to open bidding is that it discourages unethical behavior or favoritism. A public auction can be accomplished on-line only if there is an opportunity for all who may be interested in the auction to participate in the bidding process. A director may purchase acquired property through open competitive bidding only if the director did not participate in the decision to foreclose or dispose of the property, including setting the sale terms, and did not receive information that could provide an advantage over other potential bidders or purchasers of the property.

The proposed acquired property prohibitions do not reflect a substantive change from the current rule. We made revisions because the scope of misunderstanding and misapplication of the original provision warranted further clarification of the current rule's intent. The prohibition would apply to collateral acquired by a System institution, including collateral acquired directly or through use of an acquired property UBE. This provision of the rule does not change or alter any rights a borrower may have under title IV, part C of the Farm Credit Act of 1971, as amended, 12 U.S.C. 2199–2202, or FCA regulations promulgated thereunder.

Proposed § 612.2139(a)(6) would provide that a director or employee must not directly or indirectly borrow from, lend to, or become financially obligated with or on behalf of a director, employee, or agent of the System institution, supervising institution, or supervised institution or a borrower or loan applicant of the System institution. This section prohibits a director or employee from entering into a lending or borrowing transaction with those who may have a financial relationship with the System institution. Lending and borrowing relationships include providing loan guarantees or stand-by letters of credit and similar forms of financial obligation.

FCA recognizes that there are many situations in which a director or employee may enter into lending transactions or business relationships that involve other directors, employees, agents, borrowers, or loan applicants in the ordinary course of business. Financing in the ordinary course of business, as discussed earlier, is not a prohibited lending transaction. Each System institution should develop policies and procedures governing ordinary course of business transactions that include rules for reporting.

The proposed rule requires every System institution to develop policies and procedures for directors and employees to identify, vet, and resolve any lending transactions with prohibited sources that are on preferential terms. Evidence of a director or employee engaging in a preferential business arrangement with a borrower or other party related to the System institution would be a safety and soundness concern and might be evidence of non-compliance.

Proposed § 612.2139(a)(7) restates the prohibitions in current § 612.2270 on purchasing System obligations; and § 612.2165(b)(14) on purchasing or retiring preferred stock in advance of the release of material non-public information.

Proposed § 612.2139(b)(1) restates the prohibition in current § 612.2150(d) on serving as an officer or director of an entity other than a System institution, except that the proposed revisions would not include the exception in current § 612.2150(d) that allows an employee of a Farm Credit Bank or association to serve as a director of a cooperative that borrows from a bank for cooperatives. This exception has been dropped because of the conflicts that would arise as a result of merger activity. Proposed § 612.2139(b)(2) and (b)(3) restate the prohibitions in current § 612.2150(j) on acting as a real estate agent or broker; and current § 612.2150(k) on acting as an agent or broker; respectively. Proposed § 612.2139(b)(4) restates the prohibition in current § 612.2157 on joint employees, but allows an employee of a bank to serve as an officer of a supervised association in its district in an extraordinary situation if: Both boards authorize the service, the duties and compensation at each institution

are set forth in writing, and reasonable notice prior to the assumption of duties is provided to FCA.

G. Standards of Conduct Official [Proposed § 612.2170]

The proposed rule would enhance the role of the Standards of Conduct Official. The System institution board of directors is responsible for creating and fostering the institution culture, and for development of the Standards of Conduct Program. The institution board is also responsible for compliance with the Standards of Conduct Program. Proposed § 612.2170(a) would require that the Standards of Conduct Official must implement the Standards of Conduct Program. The Standards of Conduct Official is the authority to whom directors, employees, agents and consultants turn for advice on conflict of interest situations. Proposed § 612.2170(b) would require the Standards Conduct Official to provide guidance and information to directors and employees on conflicts of interest.

Proposed § 612.2170(c) should be read in tandem with proposed § 612.2137(f) and would require the Standards of Conduct Official to provide annual and new director and employee training. The training would review the institution's standards of conduct rules and the Code of Ethics and discuss any updates; review and discuss the anonymous reporting hotline or other reporting procedure; prohibited conduct; directors' and employees' fiduciary duties (this training could be separate from the training of employees who do not have fiduciary duties); the importance of identifying conflicts of interests and reporting of financial interests; and annual and ongoing reporting requirements.

The proposed rule would require the Standards of Conduct Official to report periodically to the board of directors or designated board committee on the Standards of Conduct Program and Code of Ethics matters. Proposed § 612.2170(d) would require the Standards of Conduct Official to help directors and employees identify conflicts of interest and report financial interests, in accordance with proposed § 612.2138. The Official would make written determinations on conflicts of interest and determine how to resolve them including by recusal, divestiture, approval or exception, job reassignment, employee supervision, employment separation, or other action consistent with the institution's Standards of Conduct Program as provided in proposed § 612.2170(e). Proposed § 612.2170(f) would require the Standards of Conduct Official to document all resolved and unresolved material or significant conflicts of interest. The Standards of Conduct Official would be required to maintain documentation that explains how conflicts are handled.

Proposed § 612.2170(g) would require the Standards of Conduct Official to report to the institution's board of directors or designated board committee any instance of non-compliance with the System institution's standards of conduct rules or Code of Ethics. It would also require periodic reporting on the administration of the Standards of Conduct Program. These reports would include a review of the Standards of Conduct Program required under proposed § 612.2137.

V. Regulatory Flexibility Act

Pursuant to section 605(b) of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), FCA hereby certifies that the proposed rule would not have a significant economic impact on a substantial number of small entities. Each of the banks in the System, considered together with its affiliated associations, has assets and annual income in excess of the amounts that would qualify them as small entities. Therefore, System institutions are not ''small entities'' as defined in the Regulatory Flexibility Act.

List of Subjects in 12 CFR Part 612

Agriculture, Banks, banking, Conflict of interests, Crime, Investigations, Rural areas.

For the reasons stated in the preamble, part 612 of chapter VI, title 12 of the Code of Federal Regulations is proposed to be amended as follows:

PART 612—STANDARDS OF CONDUCT AND REFERRAL OF KNOWN OR SUSPECTED CRIMINAL VIOLATIONS

■ 1. The authority citation for part 612 continues to read as follows:

Authority: Secs. 5.9, 5.17, 5.19 of the Farm Credit Act (12 U.S.C. 2243, 2252, 2254).

■ 2. Subpart A, consisting of §§ 661.2130 through 612.2270, is revised to read as follows:

Subpart A—Standards of Conduct

Sec.

Subpart A—Standards of Conduct

§ 612.2130 Definitions.

For purposes of this section, the following terms are defined:

Agent means any person, other than a director or employee, who currently represents a System institution as a fiduciary in contacts with third parties or who currently provides professional services to a System institution, such as legal, accounting, appraisal, cyber-security, internet technology and other similar services.

Code of Ethics means a written statement of the principles and values the System institution follows to establish a culture of ethical conduct for directors and employees.

Conflicts of interest means a set of circumstances that creates a risk that actions or judgments regarding a primary interest will be unduly influenced by a secondary interest. A conflict of interest (or the appearance of a conflict of interest) may exist when a person has a financial interest in a transaction, relationship, or activity that could materially impact that person's ability to perform official duties and responsibilities in a totally impartial manner and in the best interest of the institution, when viewed from the perspective of a reasonable person with knowledge of the relevant facts.

Employee means any individual, including an officer, working part-time, full-time, or on a temporary basis for the System institution.

Entity means a corporation, company, association, firm, joint venture, partnership, sole proprietorship, trust or other organization whether or not incorporated.

Family means spouse or significant other and anyone having the following relationship to either: Parent, spouse, son, daughter, sibling, stepparent, stepson, stepdaughter, stepbrother, stepsister, half-brother, half-sister, uncle, aunt, nephew, niece, grandparent, grandson, granddaughter, and the spouses of the foregoing.

Financial interest means an interest in an activity, transaction, property, or relationship with a person that involves receiving or providing something of monetary value or other present or deferred compensation.

Financially obligated with means having a legally enforceable joint obligation with, being financially obligated on behalf of (contingently or otherwise), having an enforceable legal obligation secured by property owned by another person, or owning property

that secures an enforceable legal obligation of another.

Material, when applied to a financial interest or transaction (including a series of transactions viewed in the aggregate), means that the interest or transaction is of sufficient magnitude that a reasonable person with knowledge of the relevant facts would question the ability of the person who has the interest or is party to such transaction(s) to perform the person's official duties objectively and impartially and in the best interest of the institution and its statutory purpose.

Mineral interest means any interest in minerals, oil or gas, including but not limited to, any right derived directly or indirectly from a mineral, oil, or gas lease, deed or royalty conveyance.

Ordinary course of business, when applied to a transaction, means:

(1) A transaction that is usual and customary in the business in question on terms that are not preferential; or

(2) A transaction with a person who is in the business of offering the goods or services that are the subject of the transaction on terms that are not preferential.

Person means individual or entity.

Preferential means that the transaction is not on the same terms as those prevailing at the same time for comparable transactions for other persons who are not directors, employees or agents of a System institution.

Reportable business entity means an entity in which the reporting individual, directly or indirectly, or acting through or in concert with one or more persons:

(1) Owns a material percentage of the equity;

(2) Owns, controls, or has the power to vote a material percentage of any class of voting securities; or

(3) Has the power to exercise a material influence over the management of policies of such entity.

Resolved means an actual or apparent conflict of interest that has been addressed with an action such as recusal, divestiture, approval or exception, job reassignment, employee supervision, employment separation or other action, with the result that a reasonable person with knowledge of the relevant facts would conclude that the conflicting interest is unlikely to adversely affect the person's performance of official duties in an objective and impartial manner and in furtherance of the interests and statutory purposes of the Farm Credit System.

Standards of Conduct Official means a System institution employee who is appointed as an officer under § 612.2137(b), and who reports directly to the board of directors or designated board committee on Standards of Conduct and Code of Ethics matters.

Standards of Conduct Program means the policies and procedures, internal controls and other actions a System institution must implement to put into practice the requirements of this rule and the System institution's Code of Ethics.

Supervised institution is a term that only applies within the context of a System bank or employee of a System bank and refers to each association supervised by that System bank.

Supervising institution is a term that only applies within the context of an association or employee of an association and refers to the System bank that supervises that association.

System institution and *institution* means any Farm Credit System bank, association, or service corporation chartered under section 4.25 of the Act, and the Federal Farm Credit Banks Funding Corporation. It does not include the Federal Agricultural Mortgage Corporation.

§ 612.2135 [Reserved]

§ 612.2136 Standards of conduct—core principles.

(a) If you are a System institution director or employee, you must:

(1) Maintain the highest ethical standards of the financial banking industry, including standards of care, honesty, integrity, and fairness.

(2) Act in the best interest of the institution.

(3) Preserve the reputation of the institution and the public's confidence in the Farm Credit System.

(4) Exercise diligence and good business judgment in carrying out official duties and responsibilities.

(5) Report, vet, and work with the Standards of Conduct Official to resolve conflicts of interest and the appearance of conflicts of interest in System business relationships and activities.

(6) Avoid self-dealing and acceptance of gifts or favors that may be deemed as offered, or have the appearance of being offered, to influence official actions or decisions.

(7) Fulfill your fiduciary duties, as applicable.

(b) To comply with core principles, all System institution directors and employees must:

(1) Comply with the institution's standards of conduct and Code of Ethics.

(2) Comply with all applicable laws and regulations.

(3) Certify, in writing, participation in the institution's annual standards of conduct training.

(4) Timely report to the Standards of Conduct Official or through the institution's reporting procedures under § 612.2137(e)(3) known or suspected:

(i) Illegal or unethical activities; and

(ii) Violations of the institution's standards of conduct and Code of Ethics.

§ 612.2137 Elements of a Standards of Conduct Program.

The System institution board is ultimately responsible for the implementation and oversight of, and compliance with, the Standards of Conduct Program. Each System institution board of directors must:

(a) Establish a Standards of Conduct Program that sets forth the core principles in § 612.2136 and provide adequate resources for its implementation.

(b) Appoint a Standards of Conduct Official. Provide the Standards of Conduct Official:

(1) Authority to carry out responsibilities set forth in this subpart A; and

(2) Direct access to the System institution board of directors or designated board committee on standards of conduct matters.

(c) Adopt a written Code of Ethics that establishes the System institution's values and expectations for the ethical conduct of directors and employees. Include standards for appropriate professional conduct at the workplace and in matters related to employment. Post the Code of Ethics on the institution's external website with access for the public.

(d) Establish policies and procedures to:

(1) Institute requirements for directors and employees to comply with the Standards of Conduct Program, including at a minimum, annual and interim reporting of:

(i) Actual or apparent conflicts of interest;

(ii) Transactions not in the ordinary course of business;

(iii) Names of family members;

(iv) Reportable business entities; and

(v) Gifts under paragraph (d)(6) of this section.

(2) Address how conflicts will be resolved, and provide action(s) to be taken when a conflict cannot be resolved to the satisfaction of the System institution;

(3) Address third-party relationships. Include policies and procedures to:

(i) Require agents to disclose conflicts of interest and act in a manner consistent with the ethical standards of the System institution; and

(ii) Notify agents, consultants and other third parties who represent the

institution, or who provide expert or professional services to the System institution that their engagement is conditioned upon their agreement to avoid misconduct and conflicts of interest;

(4) Enforce and monitor the System institution's Standards of Conduct Program. Take appropriate action against any director or employee who violates the standards of conduct rules, Code of Ethics or the regulations under this subpart A;

(5) Apply and enforce the prohibited conduct rules set forth in § 612.2139 and any other Farm Credit Administration rules in this subpart A; and

(6) Set forth rules prohibiting gifts. If the System institution allows directors and employees to accept *de minimis* gifts, establish a *de minimis* threshold dollar amount per gift and an aggregate amount per year consistent with applicable laws. Establish rules for disposing of impermissible gifts.

(e) Provide for Standards of Conduct Program internal controls to include at a minimum, a process to:

(1) Maintain conflicts of interest and other reports required under this subpart A, including paragraph (d)(1) of this section, along with any investigations, determinations and supporting documentation, for a minimum of 6 years.

(2) Protect against unauthorized disclosure of confidential information maintained by the institution, pursuant to this subpart A.

(3) Report anonymously known or suspected violations of the institution's Standards of Conduct Program and Code of Ethics, through a hotline or other reporting procedure.

(4) Periodically review the Standards of Conduct Program to ensure continued adequacy and consistency with changes in institution practices, financial banking industry best practices and Farm Credit Administration regulations.

(5) Perform internal audits of the Standards of Conduct Program to:

(i) Review the effectiveness of advancing the core principles,

(ii) Identify weaknesses;

(iii) Recommend and report necessary corrective actions directly to the institution's board or designated board committee; and

(iv) Cover the entire Standards of Conduct Program across the System institution and include all activities conducted through a System institution unincorporated business entity (UBE), including UBEs organized for the express purpose of investing in a Rural Business Investment Company pursuant to § 611.1150(b) of this chapter. The System institution must determine and document the scope and depth of the audit.

(f) Establish periodic standards of conduct training required under § 612.2170(c) at least annually.

§ 612.2138 Conflicts of interest, reporting of financial interests.

(a) If you are a director or employee of a System institution you must, to the best of your knowledge and belief:

(1) Identify conflicts of interest and potential conflicts of interest;

(2) Report conflicts of interest and potential conflicts of interest in any matters, transactions or activities pending at the System institution to the Standards of Conduct Official; and

(3) Cooperate with and provide information requested by the Standards of Conduct Official to resolve conflicts of interest and potential conflicts of interest.

(b) If you are a director or employee of a System institution and you have a conflict of interest in a matter, transaction or activity subject to official action, or before the board of directors then you must, to the best of your knowledge:

(1) Disclose relevant information including:

(i) The existence, nature, and extent of your interest; and

(ii) The facts known to you as to the matter, transaction or activity under consideration;

(2) Refrain from participating in the official action or board discussion of the matter, transaction or activity; and

(3) Not vote on, or influence the vote on, the matter, transaction or activity.

(c) If you are a director or employee, at least annually and at such other times as may be required by your institution policies and procedures, you must report to the Standards of Conduct Official, in sufficient detail for a reasonable person to make a conflict of interest determination, the following information to the best of your knowledge or belief:

(1) Any interest you have in any business matter to be considered by the System institution;

(2) The names of your family members who have transacted or are currently transacting, business with the System institution;

(3) All material financial interests with any director, employee, agent, borrower or business affiliate of your System institution, or supervised or supervising institution;

(4) Any matter you are required to disclose under § 620.6(f) of this chapter;

(5) The names of entities that are reportable business entities to you; and

(6) The name of any person residing in your home if, you know or have reason to know, such person transacts business with your System institution, or any institution supervised by the System institution.

§ 612.2139 Prohibited conduct.

(a) If you are a System institution director or employee you must not:

(1) *Act inconsistently with the core principles.* You must follow the core principles set forth in § 612.2136.

(2) *Use your position for personal gain or advantage.* Do not participate in deliberations on, or the determination of, any matter affecting your financial interest. Matters affecting your financial interest include financial interests of a family member, a person residing in your home, or a reportable business entity. You may participate in matters of general applicability affecting shareholders/borrowers of a particular class in a nondiscriminatory way.

(3) *Divulge confidential information.* Do not make use of any fact, information or document not generally available to the public that you acquired by virtue of your position. You may use confidential information in the performance of your official duties.

(4) *Accept gifts.* Do not solicit, obtain, or accept, directly or indirectly, any gift, fee or other compensation that could be viewed as offered to influence your decision-making, or official action, or to obtain information.

(5) *Purchase property owned by the institution.* Do not knowingly purchase or otherwise acquire, directly or indirectly except through inheritance, any interest (including mineral interests) in any real or personal property that currently is owned, or within the past 12 months was owned, by your employing or supervising institution, or any supervised institution as a result of foreclosure, deed in lieu, or similar action. *Exceptions:* As a director, in addition to the inheritance exception, you may purchase such property if you:

(i) Purchase the property through public auction or similar open, competitive bidding process;

(ii) Did not participate in the decision to foreclose or dispose of the property, including setting the sale terms; and

(iii) Have not received information as a result of your position that could give you an advantage over other potential bidders or purchasers of the property.

(6) *Enter into loan transactions with prohibited sources.* Do not directly or indirectly borrow from, lend to, or become financially obligated with or on behalf of a director, employee, or agent of your employing or supervising

institution, supervised institution, or a borrower or loan applicant of the employing institution. *Exceptions:* You may enter into transactions with family members and transactions in the ordinary course of business as determined and documented by the written policies and procedures of your institution.

(7) *Purchase System obligations.*

(i) Do not purchase any obligation of a System institution, including any joint, consolidated or System-wide obligation, unless such obligation is part of an offering available to the public; and purchased through a dealer or dealer bank affiliated with a member of the selling group designated by the Federal Farm Credit Banks Funding Corporation or purchased in the secondary market.

(ii) Do not purchase or retire any stock in advance of the release of material non-public information concerning the institution to other stockholders;

(iii) If you are a director or employee of the Federal Farm Credit Banks Funding Corporation, do not purchase or otherwise acquire, directly or indirectly, except by inheritance, any obligation or equity of a System institution, including any joint, consolidated or System-wide obligations, unless it is a common cooperative equity as defined in § 628.2 of this chapter.

(b) In addition to the prohibitions under paragraph (a) of this section, if you are a System institution employee you must not:

(1) *Serve as a director or employee of certain entities.* Do not serve as a director or employee of an entity that transacts business with your institution, another System institution in the district, or of any commercial bank, savings and loan or other non-System financial institution. For the purpose of this paragraph, ''transacts business'' does not include System institution loans to a reportable business entity; service on the board of directors of the Federal Agricultural Mortgage Corporation; or transactions with non-profit entities; or entities in which the System institution has an ownership interest. *Exceptions:* You may serve as a director or employee of an employee credit union, and you may serve as an employee of another System institution as permitted under paragraph (b)(4) of this section.

(2) *Act as a real estate agent or broker.* Do not act as a real estate agent or broker, unless you are buying or selling real estate for your own use or for a family member or a person living in your home.

(3) *Act as an insurance agent or broker.* Do not act as an insurance agent or broker for the sale and placement of insurance, unless authorized by section 4.29 of the Act.

(4) *Serve as a joint employee.*

(i) If you are currently employed as an officer with a System bank, you cannot serve as an employee of a supervised association.

(ii) If you are currently employed with a bank, but not as an officer, you may be an officer of a supervised association *only if:*

(A) Both boards authorize such service in an extraordinary situation;

(B) The duties and compensation at each institution is delineated in the board's approval; and

(C) Reasonable prior notice is provided to the Farm Credit Administration.

(iii) You may be both a non-officer employee at a System bank and a supervised association, if employee expenses are appropriately reflected in each institution's financial statements.

§§ 612.2140–612.2165 [Reserved]

§ 612.2170 Standards of Conduct Official.

The Standards of Conduct Official must:

(a) Implement and enforce the institution's Standards of Conduct Program.

(b) Provide guidance and information to directors and employees on conflicts of interest.

(c) Administer periodic, but at a minimum, annual standards of conduct training to directors and employees that includes:

(1) Procedures for the review of and recommendation for any revisions to the institution's standards of conduct rules and Code of Ethics;

(2) Procedures for reporting anonymously known or suspected violations of standards of conduct, Code of Ethics and unethical conduct;

(3) Rules for prohibited conduct;

(4) Fiduciary duties;

(5) Conflicts of interest and apparent conflicts of interest;

(6) Reporting requirements; and

(7) New director training within 60 calendar days before the beginning of the director's election or term; and new employee training within 5 business days of the beginning of employment.

(d) Help all directors and employees identify conflicts of interest and report financial interests in accordance with § 612.2138.

(e) Make written determinations on how conflicts of interest will be resolved consistent with your institution's Standards of Conduct Program.

(f) Document resolved and unresolved conflicts of interest that are material or significant. Maintain documentation that explains how conflicts are being handled.

(g) Report to your institution's board of directors or designated board committee:

(1) Instances of standards of conduct or Code of Ethics non-compliance, promptly upon completion of any investigation or determination; and

(2) Administration of the Standards of Conduct Program, periodically as determined by the written policies and procedures of your institution.

§§ 612.2260–612.2270 [Reserved]

Dated: June 12, 2018.

Dale L. Aultman,

Secretary, Farm Credit Administration Board.

[FR Doc. 2018–12874 Filed 6–14–18; 8:45 am]

BILLING CODE 6705–01–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 110

[Docket Number USCG–2018–0388]

Anchorage Ground; Sabine Pass, TX

AGENCY: Coast Guard, DHS.

ACTION: Notice of inquiry; request for comments.

SUMMARY: We are requesting your comments on a request we received from Sabine Pass LNG, L.P. for the disestablishment of the Sabine Pass Channel Anchorage Ground in Sabine, TX. The request indicates that deep draft ships do not use the anchorage and that disestablishment of the anchorage would not pose a concern for ship traffic. We seek your comments on whether we should consider a proposed rulemaking disestablishing the Sabine Pass Anchorage Ground based on this request or if other actions, such as reducing the size of the anchorage, should be considered.

DATES: Your comments and related material must reach the Coast Guard on or before July 16, 2018.

ADDRESSES: You may submit comments identified by docket number USCG–2018–0388 using the Federal 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 notice of inquiry, call or email Mr. Scott K. Whalen, Marine Safety Unit Port Arthur, U.S. Coast Guard; telephone 409–719–5086, email: *Scott.K.Whalen@uscg.mil.*

SUPPLEMENTARY INFORMATION:

I. Table of Abbreviations

CFR Code of Federal Regulations
DHS Department of Homeland Security
U.S.C. United States Code

II. Background and Purpose

In 1967, the Secretary of the Army transferred responsibility for certain functions, power, and duties to the Secretary of Transportation. Among the responsibilities transferred to the Secretary of Transportation was establishment and administration of water vessel anchorages. On December 12, 1967, the regulations for the Sabine Pass Anchorage Ground were republished in 33 CFR part 110, without change, under this new authority (32 FR 17726). The regulations for the Sabine Pass Channel Anchorage Ground in Sabine, TX are contained in 33 CFR 110.196.

The legal basis and authorities for this notice of inquiry are found in 33 U.S.C. 471, 1221 through 1236; 33 CFR 1.05–1, and Department of Homeland Security Delegation No. 0170.1, which collectively authorize the Coast Guard to propose, establish, and define regulatory anchorages. As reflected in title 33 CFR 109.05, the Commandant of the U.S. Coast Guard has delegated the authority to establish anchorage grounds to U.S. Coast Guard District Commanders. The Coast Guard is now requesting comments on considering a proposed rulemaking based on Sabine Pass LNG L.P.'s request for disestablishing the Sabine Pass Anchorage Ground, or if other actions, such as reducing the size of the anchorage, should also be considered.

As discussed earlier, administration of the Sabine Pass Anchorage Ground was originally transferred to the Coast Guard in 1967. Under 33 CFR 110.196, the anchorage ground is ''for the temporary use of vessels of all types, but especially for naval and merchant vessels awaiting weather and tidal conditions favorable to the resumption of their voyages.'' In 2006, Cheniere Energy began construction of a liquefied natural gas terminal on the eastern waterfront of the Sabine Pass Channel, immediately north and adjacent to the Sabine Pass Channel Anchorage Ground. On October 3, 2006, the Coast Guard published a notice of proposed rulemaking proposing to reduce the area of the Sabine Pass Anchorage Ground by 800 feet on the north end of the anchorage in order to reduce the risk of collision between anchored vessels and berthing and unberthing vessels at Cheniere's terminal, as well as to reduce the risk of grounding by providing a larger maneuvering area for vessels calling Cheniere's terminal (71 FR 58330). Both comments we received during that rulemaking process supported the proposed reduction on the basis of enhancing navigation safety. One commenter noted that ''the anchorage was infrequently used and would have minimal impact on the economy.'' On January 5, 2007, the Coast Guard published the final rule reducing the overall size of the anchorage consistent with the proposal (72 FR 463).

On November 8, 2017, we received a request from Sabine Pass LNG L.P. to disestablish the Sabine Pass Anchorage Ground in its entirety. The request states that the anchorage is rarely used and its disestablishment would not significantly impact vessels that use the area. A copy of this request is available in the docket where indicated under **ADDRESSES**.

A review of Vessel Traffic Service transit reports shows that deep draft ships have not made use of this anchorage during the last decade. It is estimated that the anchorage area is utilized an average of 27 times each year by shallow draft vessels (for example, tows, dredges, and work boats) for shortening tow or for use as a staging area for local work projects such as dredging.

III. Information Requested

We seek your comments on whether we should consider a proposed rulemaking to disestablish or otherwise modify the Sabine Pass Anchorage Ground. In particular, the Coast Guard requests your input to determine if there remains a need for a regulated anchorage in this area, and if so, to what extent and for what purpose; if a reduction in size of the anchorage would meet current and anticipated industry needs; or if other options should be considered. Recent U.S. Army Corps of Engineers survey data of the anchorage is available in the docket where indicated under **ADDRESSES**.

IV. Public Participation and Request for Comments

We encourage you to submit comments through the Federal 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. In your submission, please include the docket number for this notice of inquiry and provide a reason for each suggestion or recommendation.

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, visit *http://www.regulations.gov/privacyNotice.*

Documents mentioned in this notice of inquiry as being available in the docket, and all public comments, will be in our online docket at *http://www.regulations.gov* and can be viewed by following that website's instructions.

Dated: June 12, 2018.

Paul F. Thomas,

Rear Admiral, U.S. Coast Guard, Commander, Eighth Coast Guard District.

[FR Doc. 2018–12910 Filed 6–14–18; 8:45 am]

BILLING CODE 9110–04–P

POSTAL SERVICE

39 CFR Parts 265 and 266

Production or Disclosure of Material or Information

AGENCY: Postal Service™.

ACTION: Proposed rule.

SUMMARY: The Postal Service proposes to amend its Freedom of Information Act (FOIA) and Privacy Act regulations. These changes would improve clarity, make technical corrections, and create a definition of ''information of a commercial nature'' as it pertains to the Postal Reorganization Act's provisions concerning disclosure of information under the Freedom of Information Act.

DATES: Comments must be received on or before July 16, 2018.

ADDRESSES: Mail or deliver written comments to: Associate General Counsel and Chief Ethics & Compliance Officer, 475 L'Enfant Plaza SW, Room 6000, Washington, DC 20260–1135. Email and faxed comments are not accepted. You may inspect and photocopy all written comments, by appointment only, at USPS® Headquarters Library, 475 L'Enfant Plaza SW, 11th Floor North, Washington, DC 20260. These records are available for review on Monday through Friday, 9 a.m.–4 p.m., by calling 202–268–2904.

FOR FURTHER INFORMATION CONTACT: Ruth B. Stevenson, Attorney, Federal Compliance, *ruth.b.stevenson@usps.gov,* 202–268–6627.

SUPPLEMENTARY INFORMATION: The Postal Service proposes to amend 39 CFR part 265 to make technical corrections to conform to the FOIA and to establish a definition of information of a commercial nature. The amendments to Sections 265.1 and 265.3 correct citations. The amendment to Section 265.6 adds paragraph (e)(2) so as to conform to the FOIA Improvement Act of 2016. (130 Stat. 544). The amendment to Section 265.9 eliminates an internal cross reference to the CFR by stating the dollar amount to be charged by Postal Service personnel when reviewing records in response to a FOIA request. The amendments to Section 265.14 establish a definition of ''information of a commercial nature'' to comply with applicable case law and to provide examples of the type of information that may be commercial in nature. Section 265.14 is further amended to clarify that the Postal Service will release change of address information submitted by a business. It is further amended to limit the disclosure of change of address information submitted by domestic violence shelters. Finally, the Postal Service proposes to amend 39 CFR part 266 to conform with Privacy Act provisions pertaining to disclosure of information and to define a court of competent jurisdiction.

List of Subjects

39 CFR Part 265

Administrative practice and procedure, Courts, Freedom of information, Government employees.

39 CFR Part 266

Privacy.

For the reasons stated in the preamble, the Postal Service proposes to amend 39 CFR chapter I as follows:

PART 265—PRODUCTION OR DISCLOSURE OF MATERIAL OR INFORMATION

■ 1. The authority citation for part 265 continues to read as follows:

Authority: 5 U.S.C. 552; 5 U.S.C. App. 3; 39 U.S.C. 401, 403, 410, 1001, 2601; Pub. L. 114–185.

■ 2. Amend § 265.1 to revise paragraph (a)(1) to read as follows:

§ 265.1 General provisions.

(a) * * *

(1) This subpart contains the regulations that implement the Freedom of Information Act (FOIA), 5 U.S.C. 552, insofar as the Act applies to the Postal Service. These rules should be read in conjunction with the text of the FOIA and the Uniform Freedom of Information Act Fee Schedule and Guidelines published by the Office of Management and Budget (OMB Guidelines). The Postal Service FOIA Requester's Guide, an easy-to-read guide for making Postal Service FOIA requests, is available at *http://about.usps.com/who-we-are/foia/welcome.htm.*

* * * * *

■ 3. Amend § 265.3 to revise paragraphs (d) and (e) to read as follows:

§ 265.3 Procedure for submitting a FOIA request.

* * * * *

(d) *First-party requests.* A requester who is making a request for records about himself must provide verification of identity sufficient to satisfy the component as to his identity prior to release of the record. For Privacy Act-protected records, the requester must further comply with the procedures set forth in 39 CFR 266.5.

(e) *Third-party requests.* Where a FOIA request seeks disclosure of records that pertain to a third party, a requester may receive greater access by submitting a written authorization signed by that individual authorizing disclosure of the records to the requester, or by submitting proof that the individual is deceased (*e.g.,* a copy of a death certificate or an obituary). As an exercise of administrative discretion, each component can require a requester to supply a notarized authorization, a declaration, a completed Privacy Waiver as set forth in 39 CFR 266.5(b)(2)(iii), or other additional information if necessary in order to verify that a particular individual has consented to disclosure.

* * * * *

■ 4. Amend § 265.6 to add paragraph (e)(2) to read as follows:

§ 265.6 Responses to requests.

* * * * *

(e) * * *

(2) Any component invoking an exclusion must maintain an administrative record of the process of invocation and approval of exclusion by OIP.

■ 5. Amend § 265.9 to revise paragraph (c)(3) to read as follows:

§ 265.9 Fees.

* * * * *

(c) * * *

(3) *Review.* Commercial-use requesters shall be charged review fees at the rate of $21.00 for each half hour by personnel reviewing the records. Review fees shall be assessed in connection with the initial review of the record, *i.e.,* the review conducted by a component to determine whether an exemption applies to a particular record or portion of a record. No charge will be made for review at the administrative appeal stage of exemptions applied at the initial review stage. However, if a particular exemption is deemed to no longer apply, any costs associated with a component's re-review of the records in order to consider the use of other exemptions may be assessed as review fees.

* * * * *

■ 6. Amend § 265.14 to revise paragraphs (b), (d)(1), and (d)(2) to read as follows:

§ 265.14 Rules concerning specific categories of records.

* * * * *

(b) *Information not subject to mandatory public disclosure.* Certain types of information are exempt from mandatory disclosure under exemptions contained in the Freedom of Information Act and in 39 U.S.C. 410(c). The Postal Service will exercise its discretion, in accordance with the policy stated in § 265.1(c), as implemented by instructions issued by the Records Office with the approval of the General Counsel in determining whether the public interest is served by the inspection or copying of records that are:

(1) Related solely to the internal personnel rules and practices of the Postal Service.

(2) Trade secrets, or privileged or confidential commercial or financial information, obtained from any person.

(3) Information of a commercial nature, including trade secrets, whether or not obtained from a person outside the Postal Service, which under good business practice would not be publicly disclosed. Information is of a commercial nature if it relates to commerce, trade, profit, or the Postal Service's ability to conduct itself in a businesslike manner.

(i) When assessing whether information is commercial in nature, the Postal Service will consider whether the information:

(A) Relates to products or services subject to economic competition, including, but not limited to, ''competitive'' products or services as defined in 39 U.S.C. 3631 and by regulations and decisions of the Postal Regulatory Commission, an inbound international service, or an outbound international service for which rates or service features are treated as nonpublic in regulatory filings;

(B) Relates to the Postal Service's activities that are analogous to a private business in the marketplace;

(C) Would be of potential benefit to individuals or entities in economic competition with the Postal Service, its customers, suppliers, affiliates, or business partners or could be used to cause harm to a commercial interest of the Postal Service, its customers, suppliers, affiliates, or business partners;

(D) Is proprietary or includes conditions or protections on distribution and disclosure, is subject to a nondisclosure agreement, or a third party has otherwise expressed an interest in protecting such information from disclosure;

(E) Is the result of negotiations, agreements, contracts or business deals between the Postal Service and a business entity; or

(F) Relates primarily to the Postal Service's governmental functions or its activities as a provider of basic public services.

(ii) No one factor is determinative. Rather, each factor should be considered in conjunction with the other factors and the overall character of the particular information. Some examples of commercial information include, but are not limited to:

(A) Information related to methods of handling valuable registered mail.

(B) Records of money orders except as provided in Section 509.3 of the Domestic Mail Manual.

(C) Technical information concerning postage meters and prototypes submitted for Postal Service approval prior to leasing to mailers.

(D) Quantitative data, whether historical or current, reflecting the number of postage meters or PC postage accounts.

(E) Reports of market surveys conducted by or under contract on behalf of the Postal Service.

(F) Records indicating carrier or delivery lines of travel.

(G) Information which, if publicly disclosed, could materially increase procurement costs.

(H) Information which, if publicly disclosed, could compromise testing or examination materials.

(I) Service performance data on competitive services.

(J) Facility specific volume, revenue, and cost information.

(K) Country-specific international mail volume and revenue data.

(L) Non-public international volume, revenue and cost data.

(M) Pricing and negotiated terms in bilateral arrangements with foreign postal operators.

(N) Information identifying USPS business customers.

(O) Financial information in or the identities of parties to Negotiated Service Agreements or Package Incentive Agreements.

(P) Negotiated terms in contracts.

(Q) Negotiated terms in leases.

(R) Geolocation data.

(S) Proprietary algorithms or software created by the Postal Service.

(T) Sales performance goals, standards, or requirements.

(U) Technical information or specifications concerning mail processing equipment.

* * * * *

(d) * * *

(1) *Change of address.* The new address of any specific business or organization that has filed a permanent change of address order (by submitting PS Form 3575, a hand written order, or an electronically communicated order) will be furnished to any person upon request. If a domestic violence shelter has filed a letter on official letterhead from a domestic violence coalition stating:

(i) That such domestic violence coalition meets the requirements of 42 U.S.C. 10410; and

(ii) That the organization filing the change of address is a domestic violence shelter, the new address shall not be released except pursuant to applicable routine uses. The new address of any individual or family that has filed a permanent or temporary change of address order will be furnished only in those circumstances stated at paragraph (d)(5) of this section. Disclosure will be limited to the address of the specifically identified individual about whom the information is requested (not other family members or individuals whose names may also appear on the change of address order). The Postal Service reserves the right not to disclose the address of an individual for the protection of the individual's personal safety. Other information on PS Form 3575 or copies of the form will not be furnished except in those circumstances stated at paragraphs (d)(5)(i), (d)(5)(iii), or (d)(5)(iv) of this section.

(2) *Name and address of permit holder.* The name and address of the holder of a particular bulk mail permit, permit imprint or similar permit (but not including postage meter licenses), and the name of any person applying for a permit on behalf of a holder will be furnished to any person upon request. For the name and address of a postage meter license holder, see paragraph (d)(3) of this section. (Lists of permit holders may not be disclosed to members of the public. See paragraph (e)(1) of this section.)

* * * * *

PART 266—PRIVACY OF INFORMATION

■ 7. The authority citation for part 266 continues to read as follows:

Authority: 5 U.S.C. 552a; 39 U.S.C. 401.

■ 8. Amend § 266.3 to revise the introductory text of paragraph (a), paragraphs (a)(1)(iii) and (a)(3), (b)(1) introductory text, (b)(1)(i), (b)(1)(iii), (b)(2) introductory text, (b)(2)(iii), (b)(2)(xi), and the paragraph heading of (b)(5) to read as follows:

§ 266.3 Collection and disclosure of information about individuals.

(a) This section governs the collection of information about individuals, as defined in the Privacy Act of 1974, throughout the United States Postal Service and across its operations;

* * * * *

(3) The Postal Service will maintain no record describing how an individual exercises rights guaranteed by the First Amendment unless expressly authorized by statute or by the individual about whom the record is maintained or unless pertinent to and within the scope of an authorized law enforcement activity.

* * * * *

(b) * * *

(1) *Limitations.* The Postal Service will not disclose information about an individual unless reasonable efforts have been made to assure that the information is accurate, complete, timely and relevant to the extent provided by the Privacy Act and unless:

(i) The individual to whom the record pertains has requested in writing, or with the prior written consent of the individual to whom the record pertains, that the information be disclosed, unless the individual would not be entitled to access to the record under the Postal Reorganization Act, the Privacy Act, or other law;

* * * * *

(iii) The disclosure is in accordance with paragraph (b)(2) of this section.

(2) *Conditions of Disclosure.* Disclosure of personal information maintained in a system of records may be made:

* * * * *

(iii) For a routine use as contained in the system of records notices published in the **Federal Register**;

* * * * *

(xi) Pursuant to the order of a court of competent jurisdiction. A court of competent jurisdiction is defined in Article III of the United States Constitution including, but not limited to any United States District Court, any United States or Federal Court of

Appeals, the United States Court of Federal Claims, and the United States Supreme Court. For purposes of this section, state courts are not courts of competent jurisdiction.

* * * * *

(5) *Employment status.* * * *

* * * * *

Ruth Stevenson,

Attorney, Federal Compliance.

[FR Doc. 2018–12858 Filed 6–14–18; 8:45 am]

BILLING CODE 7710–12–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R01–OAR–2018–0212; FRL–9978–97—Region 1]

Air Plan Approval; Connecticut; Prevention of Significant Deterioration; Revisions to the Prevention of Significant Deterioration Greenhouse Gas Permitting Authority

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing to approve a State Implementation Plan (SIP) revision submitted by the State of Connecticut. This revision affects provisions applicable to greenhouse gases (GHGs) in the EPA's Prevention of Significant Deterioration (PSD) permit program. Connecticut requested the revision in response to the June 23, 2014, U.S. Supreme Court's decision in *Utility Air Regulatory Group (UARG)* v. *EPA* and the April 10, 2015, Amended Judgment by the United States Court of Appeals for the District of Columbia Circuit (D.C. Circuit) in *Coalition for Responsible Regulation* v. *EPA.* The intended effect of this action is to clarify that the State's PSD rules do not require a source to obtain a permit solely because the source emits or has the potential to emit (PTE) GHGs: Above the PSD applicability thresholds for new major sources; or for which there is a significant emissions increase from a modification. This action is being taken under the Clean Air Act.

DATES: Written comments must be received on or before July 16, 2018.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R01–OAR–2018–0212 at *www.regulations.gov,* or via email to. For comments submitted at *Regulations.gov,* follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from *Regulations.gov*. For either manner of submission, 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, please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section. For the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit *www.epa.gov/dockets/commenting-epa-dockets.* Publicly available docket materials are available at *www.regulations.gov* or at the U.S. Environmental Protection Agency, EPA New England Regional Office, Office of Ecosystem Protection, Air Quality Planning Unit, 5 Post Office Square—Suite 100, Boston, MA. The EPA requests that if at all possible, you contact the contact listed in the **FOR FURTHER INFORMATION CONTACT** section to schedule your inspection. The Regional Office's official hours of business are Monday through Friday, 8:30 a.m. to 4:30 p.m., excluding legal holidays.

FOR FURTHER INFORMATION CONTACT: Donald Dahl, Air Permits, Toxics, and Indoor Programs Unit, U.S. Environmental Protection Agency, EPA New England Regional Office, 5 Post Office Square—Suite 100, (Mail code OEP05–2), Boston, MA 02109–3912, tel. (617) 918–1657, email *dahl.donald@epa.gov.*

SUPPLEMENTARY INFORMATION: Throughout this document whenever ''we,'' ''us,'' or ''our'' is used, we mean the EPA.

Table of Contents

I. Background and Purpose

On February 28, 2018, the Connecticut Department of Energy and Environmental Protection (CT DEEP) submitted a revision to its State Implementation Plan (SIP) for the treatment of GHGs in the context of the PSD permit program under the Clean Air Act (CAA). The revision consists of removing the requirement that sources would have to obtain a PSD permit solely due to its GHG emissions, commonly known as ''Step 2'' sources.

On January 2, 2011, GHG emissions were, for the first time, covered by the PSD and title V operating permit programs. *See* 75 FR 17004, (April 2, 2010). To establish a process for phasing in the permitting requirements for stationary sources of GHGs under the CAA PSD and title V programs, on June 3, 2010, the EPA published a final rule entitled ''Prevention of Significant Deterioration and Title V Greenhouse Gas Tailoring Rule'' (hereinafter referred to as the GHG Tailoring Rule). *See* 75 FR 31514. In Step 1 of the GHG Tailoring Rule, which began on January 2, 2011, the EPA limited application of PSD and title V requirements to sources of GHG emissions only if they were subject to PSD or title V ''anyway'' due to their emissions of pollutants other than GHGs. These sources are referred to as ''anyway sources.'' In Step 2 of the GHG Tailoring Rule, which applied as of July 1, 2011, the PSD and title V permitting program requirements applied to some sources that were classified as major sources based solely on their GHG emissions or potential to emit GHGs. Step 2 also applied PSD permitting requirements to modifications of otherwise major sources that would increase only GHG emissions above the level in the EPA regulations. EPA generally described the sources covered by PSD during Step 2 of the GHG Tailoring Rule as ''Step 2 sources'' or ''GHG-only sources.''

The United States Supreme Court invalidated the EPA's regulation of Step 2 sources in *Utility Air Regulatory Group (UARG)* v. *EPA,* 134 S Ct. 2427 (2014). In accordance with that decision, the United States Court of Appeals for the District of Columbia Circuit vacated the federal regulations that implemented Step 2 of the GHG Tailoring Rule. *See Coalition for Responsible Regulation, Inc.* v. *EPA,* 606 Fed. Appx. 6, 7 (D.C. Cir. 2015). Subsequently, the EPA removed the vacated elements from its rules. *See* 80 FR 50199 (August 19, 2015). The EPA therefore has the authority to approve a state's request to remove Step 2 sources from the SIP.

II. EPA's Review

Section 110(l) of the CAA states that the EPA shall not approve a revision to the SIP if the revision would interfere with any applicable requirement concerning attainment (of the NAAQS)

and reasonable further progress (as defined in CAA section 7501) or any other requirement of the CAA. The EPA has reviewed the SIP revision and is proposing to find the revision is consistent with Section 110(l) of the CAA.

The EPA's analysis and rationale for proposing to approve Connecticut's SIP revision request can be found in the Technical Support Document (TSD) associated with this action. In addition to the finding under Section 110(l), the EPA reviewed the SIP revision to ensure it is consistent with the EPA's regulations at 40 CFR 51.166, which contain the requirements for a state's PSD permit program regulations. The EPA's May 15, 2018 TSD (which is included in the docket for this action) includes the state requirements revised or removed, a list of the relevant federal provisions relating to the State's revisions, and a description of how each state provision complies with the federal requirements.

During the EPA's review, the EPA noted that there was a typographical error in the certified copy of the regulatory changes Connecticut sent to the EPA. The difference between the certified copy and the state-adopted regulations was due to a clerical error. Connecticut subsequently submitted a revised and correct certified copy of the regulatory changes on May 7, 2018.

III. Proposed Action

Based on our analysis, the EPA is proposing to approve the Connecticut SIP revision, which was submitted on February 28, 2018, for the removal of the requirement that sources must obtain a PSD permit based solely on a source's GHG emissions. The EPA is soliciting public comments on the issues discussed in this notice or on other relevant matters. These comments will be considered before taking final action. Interested parties may participate in the Federal rulemaking procedure by submitting written comments to this proposed rule by following the instructions listed in the **ADDRESSES** section of this **Federal Register**.

IV. Incorporation by Reference

In this rule, the EPA is proposing to include in a final EPA rule regulatory text that includes incorporation by reference. In accordance with requirements of 1 CFR 51.5, the EPA is proposing to incorporate revised RSCA Section 22a–174–3a(a)(1) entitled ''Applicability,'' RSCA Section 22a–174–3a(j)(1) for when control technology applies, and RSCA Sections 22a–174–3a(k)(1) and (2) regarding applicability of GHGs for new major stationary sources and major modifications. All three state regulations were effective February 8, 2018. The EPA has made, and will continue to make, these documents generally available electronically through *www.regulations.gov* and/or in hard copy at the appropriate EPA office.

V. Statutory and Executive Order Reviews

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

- Is not a significant regulatory action subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
- Is not expected to be an Executive Order 13771 regulatory action because this action is not significant under Executive Order 12866.
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4);
- Does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the Clean Air Act; and
- Does not provide the EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, the SIP is not approved to apply on any Indian reservation land or in any other area where the EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In those areas of Indian country, the rule does not have tribal implications and will not impose substantial direct costs on tribal governments or preempt tribal law as specified by Executive Order 13175 (65 FR 67249, November 9, 2000).

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Incorporation by reference, Intergovernmental relations, Lead, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

Dated: June 12, 2018.

Alexandra Dunn,

Regional Administrator, EPA Region 1.

[FR Doc. 2018–12896 Filed 6–14–18; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R03–OAR–2018–0277; FRL–9979–43—Region 3]

Approval and Promulgation of Air Quality Implementation Plans; Pennsylvania; Removal of Department of Environmental Protection Gasoline Volatility Requirements for the Pittsburgh-Beaver Valley Area

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) proposes to approve a state implementation plan (SIP) revision submitted by the Commonwealth of Pennsylvania on May 2, 2018. The purpose of this SIP revision is to remove from the Pennsylvania SIP, the Commonwealth's existing requirements limiting summertime gasoline volatility to 7.8 pounds per square inch (psi) Reid Vapor Pressure (RVP) in seven counties in the Pittsburgh-Beaver Valley Area. In the Final Rules section of this **Federal Register**, EPA is approving the State's SIP submittal as a direct final rule without prior proposal because the

Agency views this as a noncontroversial submittal and anticipates no adverse comments. A detailed rationale for the approval is set forth in the direct final rule. If no adverse comments are received in response to this action, no further activity is contemplated. If EPA receives adverse comments relevant to this action, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed rule. EPA will not institute a second comment period. Any parties interested in commenting on this action should do so at this time.

DATES: Comments must be received in writing by July 16, 2018.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R03–OAR–2018–0277 at *http://www.regulations.gov,* or via email to *spielberger.susan@epa.gov.* For comments submitted at *Regulations.gov*, follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from *Regulations.gov*. For either manner of submission, 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. 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, please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section. For 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: Brian Rehn, (215) 814–2176, or by email at *rehn.brian@epa.gov*.

SUPPLEMENTARY INFORMATION: For further information on this action to remove requirements related to Pennsylvania Department of Environmental Protection (PADEP) requirements for a low RVP gasoline program in the Pittsburgh-Beaver Valley Area from the SIP, please see the information provided in the direct final action, with the same title, that is located in the ''Rules and Regulations'' section of this **Federal Register** publication.

Dated: June 6, 2018.

Cecil Rodrigues,

Acting Regional Administrator, Region III.

[FR Doc. 2018–12704 Filed 6–14–18; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R09–OAR–2017–0621; FRL–9979–49—Region 9]

Approval and Promulgation of Air Quality Implementation Plans; Arizona; Nonattainment Plan for the Miami SO_2 Nonattainment Area

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing to approve an Arizona state implementation plan (SIP) revision for attaining the 1-hour sulfur dioxide (SO_2) primary national ambient air quality standard (NAAQS or ''standard'') for the Miami SO_2 nonattainment area (NAA). This SIP revision (hereinafter called the ''Miami SO_2 Plan'' or ''Plan'') includes Arizona's attainment demonstration and other elements required under the Clean Air Act (CAA or ''Act''). In addition to an attainment demonstration, the Plan addresses the requirement for meeting reasonable further progress toward attainment of the NAAQS, reasonably available control measures and reasonably available control technology, base-year and projected emission inventories, enforceable emissions limitations and control measures, and contingency measures. The EPA proposes to conclude that Arizona has appropriately demonstrated that the Plan provides for attainment of the 2010 1-hour primary SO_2 NAAQS in the Miami SO_2 NAA by the attainment date of October 4, 2018 and that the Plan meets the other applicable requirements under the CAA.

DATES: Comments must be received on or before July 16, 2018.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R09–OAR–2017–0621 at *http://www.regulations.gov.* Follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from *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.*

FOR FURTHER INFORMATION CONTACT: Krishna Viswanathan, EPA, Region IX, Air Division, Air Planning Office, (520) 999–7880 or *viswanathan.krishna@epa.gov.*

SUPPLEMENTARY INFORMATION: Throughout this document whenever, ''we,'' ''us,'' or ''our'' is used, we mean the EPA.

Table of Contents

I. Why was Arizona required to submit a plan for the Miami SO_2 NAA?

On June 22, 2010, the EPA promulgated a new 1-hour primary SO_2 NAAQS of 75 parts per billion (ppb). This standard is met at an ambient air quality monitoring site when the 3-year average of the annual 99th percentile of daily maximum 1-hour average concentrations does not exceed 75 ppb, as determined in accordance with appendix T of 40 CFR part 50.[1] On August 5, 2013, the EPA designated a first set of 29 areas of the country as nonattainment for the 2010 SO_2 NAAQS, including the Miami SO_2 NAA within Arizona.[2] These area designations became effective on October 4, 2013. Section 191 of the CAA directs states to submit SIPs for areas

[1] *See* 75 FR 35520, codified at 40 CFR 50.17(a)–(b).

[2] *See* 78 FR 47191, codified at 40 CFR part 81, subpart C.

designated as nonattainment for the SO_2 NAAQS to the EPA within 18 months of the effective date of the designation, *i.e.,* by no later than April 4, 2015, in this case (hereinafter called ''plans'' or ''nonattainment plans''). Under CAA section 192, these plans are required to have measures that will help their respective areas attain the NAAQS as expeditiously as practicable, but no later than 5 years from the effective date of designation, which for the Miami SO_2 NAA is October 4, 2018.

For a number of areas, including the Miami SO_2 NAA, the EPA published a document on March 18, 2016, finding that Arizona and other pertinent states had failed to submit the required SO_2 nonattainment plan by the submittal deadline.[3] This finding, which became effective on April 18, 2016, initiated a deadline under CAA section 179(a) for the potential imposition of new source review offset and highway funding sanctions. Additionally, under CAA section 110(c), the finding triggered a requirement that the EPA promulgate a federal implementation plan (FIP) within two years of the effective date of the finding unless by that time the State had made the necessary complete submittal and the EPA had approved the submittal as meeting applicable requirements.

In response to the requirement for SO_2 nonattainment plan submittals, the Arizona Department of Environmental Quality (ADEQ) submitted the Miami SO_2 Plan on March 9, 2017, and submitted associated final rules on April 6, 2017.[4] The EPA issued letters dated July 17, 2017, and September 26, 2017, finding the submittals complete and halting the sanctions clock under CAA section 179(a).[5]

The remainder of this preamble describes the requirements that nonattainment plans must meet in order to obtain EPA approval, provides a review of the Miami SO_2 Plan with respect to these requirements, and describes the EPA's proposed action on the Plan.

II. Requirements for SO_2 Nonattainment Plans

Nonattainment plans for SO_2 must meet the applicable requirements of the CAA, specifically CAA sections 110, 172, 191 and 192. The EPA's regulations governing nonattainment SIP submissions are set forth at 40 CFR part 51, with specific procedural requirements and control strategy requirements residing at subparts F and G, respectively. Soon after Congress enacted the 1990 Amendments to the CAA, the EPA issued comprehensive guidance on SIP revisions in the ''General Preamble for the Implementation of Title I of the Clean Air Act Amendments of 1990.'' [6] Among other things, the General Preamble addressed SO_2 SIP submissions and fundamental principles for SIP control strategies.[7] On April 23, 2014, the EPA issued recommended guidance for meeting the statutory requirements in SO_2 SIP submissions, in a document entitled, ''Guidance for 1-Hour SO_2 Nonattainment Area SIP Submissions'' (''2014 SO_2 Guidance''). In the 2014 SO_2 Guidance, the EPA described the statutory requirements for a complete nonattainment plan, which include: An accurate emissions inventory of current emissions for all sources of SO_2 within the NAA; an attainment demonstration; demonstration of RFP; implementation of RACM (including RACT); new source review, enforceable emissions limitations and control measures, and adequate contingency measures for the affected area.

For the EPA to fully approve a SIP revision as meeting the requirements of CAA sections 110, 172 and 191–192 and the EPA's regulations at 40 CFR part 51, the plan for the affected area needs to demonstrate to the EPA's satisfaction that each of the aforementioned requirements has been met. Under CAA section 110(l), the EPA may not approve a plan that would interfere with any applicable requirement concerning NAAQS attainment and RFP, or any other applicable requirement. Under CAA section 193, no requirement in effect (or required to be adopted by an order, settlement, agreement, or plan in effect before November 15, 1990) in any area that is a NAA for any air pollutant may be modified in any manner unless it insures equivalent or greater emission reductions of such air pollutant.

III. Attainment Demonstration and Longer-Term Averaging

Section 172(c)(1) and 172(c)(6) of the CAA direct states with areas designated as nonattainment to demonstrate that the submitted plan provides for attainment of the NAAQS. 40 CFR part 51, subpart G further delineates the control strategy requirements that plans must meet, and the EPA has long required that all SIPs and control strategies reflect four fundamental principles of quantification, enforceability, replicability, and accountability.[8] SO_2 nonattainment plans must consist of two components: (1) Emission limits and other control measures that assure implementation of permanent, enforceable and necessary emission controls, and (2) a modeling analysis that meets the requirements of 40 CFR part 51, appendix W and demonstrates that these emission limits and control measures provide for timely attainment of the primary SO_2 NAAQS as expeditiously as practicable, but by no later than the attainment date for the affected area. In cases where the necessary emission limits have not previously been made a part of the state's SIP, or have not otherwise become federally enforceable, the plan needs to include the necessary enforceable limits in adopted form suitable for incorporation into the SIP in order for the plan to be approved by the EPA. In all cases, the emission limits and control measures must be accompanied by appropriate methods and conditions to determine compliance with the respective emission limits and control measures and must be quantifiable (*i.e.,* a specific amount of emission reduction can be ascribed to the measures), fully enforceable (*i.e.,* specifying clear, unambiguous and measurable requirements for which compliance can be practicably determined), replicable (*i.e.,* the procedures for determining compliance are sufficiently specific and non-subjective so that two independent entities applying the procedures would obtain the same result), and accountable (*i.e.,* source specific limits must be permanent and must reflect the assumptions used in the SIP demonstrations).

The EPA's 2014 SO_2 Guidance recommends that the emission limits be expressed as short-term average limits not to exceed the averaging time for the applicable NAAQS that the limit is intended to help maintain (*e.g.,* addressing emissions averaged over one or three hours), but it also describes the option to utilize emission limits with longer averaging times of up to 30 days as long as the state meets various suggested criteria.[9] The 2014 SO_2 Guidance recommends that—should states and sources utilize longer averaging times (such as 30 days)—the longer-term average limit should be set at an adjusted level that reflects a

[3] *See* 81 FR 14736.

[4] Letters from Tim Franquist, ADEQ, to Alexis Strauss, EPA, dated March 8, 2017, and April 6, 2017. Although the cover letter for the Miami SO_2 Plan was dated March 8, 2017, the Plan was transmitted to the EPA on March 9, 2017.

[5] Letters from Elizabeth Adams, EPA, to Tim Franquist, ADEQ, dated July 17, 2017, and September 26, 2017.

[6] *See* 57 FR 13498 (April 16, 1992) (General Preamble).

[7] *Id.* at 13545–49, 13567–68.

[8] *See* 57 FR at 13567–68 (April 16, 1992).

[9] *See* 2014 SO_2 Guidance, pages 22 to 39.

stringency comparable to the 1-hour average limit at the critical emission value shown to provide for attainment.

The 2014 SO_2 Guidance provides an extensive discussion of the EPA's rationale for concluding that appropriately set, comparably stringent limitations based on averaging times as long as 30 days can be found to provide for attainment of the 2010 SO_2 NAAQS. In evaluating this option, the EPA considered the nature of the standard, conducted detailed analyses of the impact of use of 30-day average limits on the prospects for attaining the standard, and carefully reviewed how best to achieve an appropriate balance among the various factors that warrant consideration in judging whether a state's plan provides for attainment.[10]

As specified in 40 CFR 50.17(b), the 1-hour primary SO_2 NAAQS is met at an ambient air quality monitoring site when the 3-year average of the annual 99th percentile of daily maximum 1-hour average concentrations is less than or equal to 75 ppb. In a year with 365 days of valid monitoring data, the 99th percentile would be the fourth highest daily maximum 1-hour value. The 2010 SO_2 NAAQS, including this form of determining compliance with the standard, was upheld by the U.S. Court of Appeals for the District of Columbia Circuit in *Nat'l Envt'l Dev. Ass'n's Clean Air Project* v. *EPA,* 686 F.3d 803 (D.C. Cir. 2012). Because the standard has this form, a single hourly exceedance does not create a violation of the standard. Instead, at issue is whether a source operating in compliance with a properly set longer-term average could cause hourly exceedances, and if so what the resulting frequency and magnitude of such exceedances would be, and in particular whether the EPA can have reasonable confidence that a properly set longer-term average limit will provide that the three-year average of the annual fourth highest daily maximum hourly value will be at or below 75 ppb. A synopsis of the EPA's review of how to judge whether such plans ''provide for attainment,'' based on modeling of projected allowable emissions and in light of the NAAQS' form for determining attainment at monitoring sites, follows.

For SO_2 plans based on 1-hour emission limits, the standard approach is to conduct modeling using fixed emission rates. The maximum emission rate that would be modeled to result in attainment (*i.e.,* in an ''average year'' [11] shows three, not four days with maximum hourly levels exceeding 75 ppb) is labeled the ''critical emission value.'' The modeling process for identifying this critical emissions value inherently considers the numerous variables that affect ambient concentrations of SO_2, such as meteorological data, background concentrations, and topography. In the standard approach, the state would then provide for attainment by setting a continuously applicable 1-hour emission limit at this critical emission value.

The EPA recognizes that some sources have highly variable emissions due, for example, to variations in fuel sulfur content and operating rate, that can make it extremely difficult, even with a well-designed control strategy, to ensure in practice that emissions for any given hour do not exceed the critical emission value. The EPA also acknowledges the concern that longer-term emission limits can allow short periods with emissions above the critical emissions value, which, if coincident with meteorological conditions conducive to high SO_2 concentrations, could in turn create the possibility of a NAAQS exceedance occurring on a day when an exceedance would not have occurred if emissions were continuously controlled at the level corresponding to the critical emission value. However, for several reasons, the EPA believes that the approach recommended in the 2014 SO_2 Guidance suitably addresses this concern. First, from a practical perspective, the EPA expects the actual emission profile of a source subject to an appropriately set longer-term average limit to be similar to the emission profile of a source subject to an analogous 1-hour average limit. The EPA expects this similarity because it has recommended that the longer-term average limit be set at a level that is comparably stringent to the otherwise applicable 1-hour limit (reflecting a downward adjustment from the critical emissions value) and that takes the source's emissions profile into account. As a result, the EPA expects either form of emission limit to yield comparable air quality.

Second, from a more theoretical perspective, the EPA has compared the likely air quality with a source having maximum allowable emissions under an appropriately set longer-term limit, as compared to the likely air quality with the source having maximum allowable emissions under the comparable 1-hour limit. In this comparison, in the 1-hour-average-limit scenario, the source is presumed at all times to emit at the critical emission level, and in the longer-term average limit scenario, the source is presumed occasionally to emit more than the critical emission value but on average, and presumably at most times, to emit well below the critical emission value. In an ''average year,'' compliance with the 1-hour limit is expected to result in three exceedance days (*i.e.,* three days with hourly values above 75 ppb) and a fourth day with a maximum hourly value at 75 ppb. By comparison, with the source complying with a longer-term limit, it is possible that additional exceedances would occur that would not occur in the 1-hour limit scenario (if emissions exceed the critical emission value at times when meteorology is conducive to poor air quality). However, this comparison must also factor in the likelihood that exceedances that would be expected in the 1-hour limit scenario would not occur in the longer-term limit scenario. This result arises because the longer-term limit requires lower emissions most of the time (because the limit is set well below the critical emission value). Therefore, a source complying with an appropriately set longer-term limit is likely to have lower emissions at critical times than would be the case if the source were emitting as allowed with a 1-hour limit.

The following hypothetical example illustrates the aforementioned points. Suppose there is a source that always emits 1000 pounds of SO_2 per hour and these emissions result in air quality at the level of the NAAQS (*i.e.,* a design value of 75 ppb).[12] For this source, in an ''average year'', these emissions cause the five highest maximum daily average 1-hour concentrations to be 100 ppb, 90 ppb, 80 ppb, 75 ppb, and 70 ppb. Subsequently, the source becomes subject to a 30-day average emission limit of 700 (lb/hr). It is theoretically possible for a source meeting this limit to have emissions that occasionally exceed 1000 lb/hr, but with a typical emissions profile, emissions would much more commonly be between 600 and 800 lb/hr. In this simplified example, assume a zero-background concentration, which allows one to

[10] *Id.* pages 22 to 39. *See* also *id.* at Appendices B and D.

[11] An ''average year'' is used to mean a year with average air quality. While 40 CFR part 50, appendix T provides for averaging three years of 99th percentile daily maximum hourly values (*e.g.,* the fourth highest maximum daily hourly concentration in a year with 365 days with valid data), this discussion and an example below uses a single ''average year'' in order to simplify the illustration of relevant principles.

[12] Design values are the metrics (*i.e.,* statistics) that are compared to the NAAQS levels to determine compliance. The design value for the primary 1-hour SO_2 NAAQS is the 3-year average of annual 99th percentile daily maximum 1-hour values for a monitoring site, calculated as specified in 40 CFR part 50, appendix T, section 5.

assume a linear relationship between emissions and air quality.[13] Air quality will depend on what emissions happen on what critical hours, but suppose that emissions at the relevant times on these five days are 800 lb/hr, 1100 lb/hr, 500 lb/hr, 900 lb/hr, and 1200 lb/hr, respectively. (This is a conservative example because the average of these emissions, 900 lb/hr, is well over the 30-day average emission limit.) These emissions would result in daily maximum 1-hour concentrations of 80 ppb, 99 ppb, 40 ppb, 67.5 ppb, and 84 ppb. In this example, the fifth day would have an exceedance that would not otherwise have occurred, but the third and fourth days would not have exceedances that otherwise would have occurred. In this example, the fourth highest maximum daily concentration under the 30-day average would be 67.5 ppb.

This simplified example illustrates the findings of a more complicated statistical analysis that the EPA conducted using a range of scenarios using actual plant data. As described in Appendix B of the 2014 SO_2 Guidance, the EPA found that the requirement for lower average emissions is highly likely to yield better air quality than is required with a comparably stringent 1-hour limit. Based on analyses described in appendix B of the 2014 SO_2 Guidance, the EPA expects that an emission profile with maximum allowable emissions under an appropriately set comparably stringent 30-day average limit is likely to have the net effect of having a *lower* number of exceedances and better air quality than an emission profile with maximum allowable emissions under a 1-hour emission limit at the critical emission value.

The EPA must evaluate whether a longer-term average emission limit approach, which is likely to produce a net lower number of overall exceedances of 75 ppb even though it may produce some exceedances of 75 ppb on occasions when emissions are above the critical emission value, meets the requirements in sections 110(a)(1) and 172(c)(1) and (6) for state implementation plans to ''provide for attainment'' of the NAAQS. For SO_2, as for other pollutants, it is generally impossible to design a nonattainment plan in the present that will guarantee that attainment will occur in the future. A variety of factors can cause a well-designed nonattainment plan to fail and unexpectedly not result in attainment (*e.g.,* if meteorology occurs that is more conducive to poor air quality than was anticipated in the plan). Therefore, in determining whether a plan meets the requirement to provide for attainment, the EPA's task is commonly to judge not whether the plan provides absolute certainty that attainment will in fact occur, but rather whether the plan provides an adequate level of confidence of prospective NAAQS attainment. From this perspective, in evaluating use of a 30-day average limit, the EPA must weigh the likely net effect on air quality. Such an evaluation must consider the risk that occasions with meteorology conducive to high concentrations will have elevated emissions leading to exceedances that would not otherwise have occurred, and it must also weigh the likelihood that the requirement for lower emissions on average will result in days not having exceedances that would have been expected with emissions at the critical emissions value. Additional policy considerations, such as in this case the desirability of accommodating real-world emissions variability without significant risk of violations, are also appropriate factors for the EPA to weigh in judging whether a plan provides a reasonable degree of confidence that the plan will lead to attainment. Based on these considerations, especially given the high likelihood that a continuously enforceable limit averaged over as long as 30 days, determined in accordance with the 2014 SO_2 Guidance, will result in attainment, the EPA believes as a general matter that such limits, if appropriately determined, can reasonably be considered to provide for attainment of the 2010 SO_2 NAAQS.

The 2014 SO_2 Guidance offers specific recommendations for determining an appropriate longer-term average limit. The recommended method starts with determination of the 1-hour emission limit that would provide for attainment (*i.e.,* the critical emission value) and applies an adjustment factor to determine the (lower) level of the longer-term average emission limit that would be estimated to have a stringency comparable to the otherwise necessary 1-hour emission limit. This method uses a database of continuous emission data reflecting the type of control that the source will be using to comply with the SIP emission limits, which may require use of an emission database from another source (*e.g.,* if compliance requires new controls). The recommended method involves using these data to compute a complete set of emission averages, calculated according to the averaging time and averaging procedures of the prospective emission limitation. In this recommended method, the ratio of the 99th percentile among these long-term averages to the 99th percentile of the 1-hour values represents an adjustment factor that may be multiplied by the candidate 1-hour emission limit to determine a longer-term average emission limit that may be considered comparably stringent.[14] The guidance also addresses a variety of related topics, such as the potential utility of setting supplemental emission limits (*e.g.,* mass-based limits) to reduce the likelihood and/or magnitude of elevated emission levels that might occur under the longer-term emission rate limit.

Preferred air quality models for use in regulatory applications are described in appendix A of the EPA's *Guideline on Air Quality Models* (40 CFR part 51, appendix W (''appendix W'')).[15] In general, nonattainment SIP submissions must demonstrate the adequacy of the selected control strategy using the applicable air quality model designated in appendix W.[16] However, where an air quality model specified in appendix W is inappropriate for the particular application, the model may be modified or another model substituted, if the EPA approves the modification or substitution.[17] In 2005, the EPA promulgated the American Meteorological Society/Environmental Protection Agency Regulatory Model (AERMOD) as the Agency's preferred near-field dispersion modeling for a wide range of regulatory applications addressing stationary sources (*e.g.,* in estimating SO_2 concentrations) in all types of terrain based on extensive developmental and performance evaluation. Supplemental guidance on modeling for purposes of demonstrating attainment of the SO_2 standard is provided in appendix A to the 2014 SO_2 Guidance. Appendix A provides extensive guidance on the modeling domain, the source inputs, assorted types of meteorological data, and background concentrations. Consistency with the recommendations in the 2014 SO_2 Guidance is generally necessary for the attainment demonstration to offer adequately reliable assurance that the plan provides for attainment.

As stated previously, attainment demonstrations for the 2010 1-hour

[13] A nonzero background concentration would make the mathematics more difficult but would give similar results.

[14] For example, if the critical emission value is 1000 pounds of SO_2 per hour, and a suitable adjustment factor is determined to be 70 percent, the recommended longer-term average limit would be 700 pounds per hour.

[15] The EPA published revisions to appendix W on January 17, 2017, 82 FR 5182.

[16] 40 CFR 51.112(a)(1).

[17] 40 CFR 51.112(a)(2); appendix W, section 3.2.

primary SO_2 NAAQS must demonstrate future attainment and maintenance of the NAAQS in the entire area designated as nonattainment (*i.e.,* not just at the violating monitor) by using air quality dispersion modeling (*see* appendix W) to show that the mix of sources and enforceable control measures and emission rates in an identified area will not lead to a violation of the SO_2 NAAQS. For a short-term (*i.e.,* 1-hour) standard, the EPA believes that dispersion modeling, using allowable emissions and addressing stationary sources in the affected area (and in some cases those sources located outside the NAA which may affect attainment in the area) is technically appropriate. This approach is also efficient and effective in demonstrating attainment in NAAs because it takes into consideration combinations of meteorological and source operating conditions that may contribute to peak ground-level concentrations of SO_2.

The meteorological data used in the analysis should generally be processed with the most recent version of AERMET, which is the meteorological data preprocessor for AERMOD. Estimated concentrations should include ambient background concentrations, follow the form of the standard, and be calculated as described in the EPA's August 23, 2010 clarification memo.[18]

IV. Review of Modeled Attainment Demonstration

The following discussion evaluates various features of the modeling that Arizona used in its attainment demonstration.

A. Model Selection

Arizona's attainment demonstration used a combination of AERMOD and the Buoyant Line and Point Source model (BLP).[19] The State used AERMOD version 14134 (''v14134''), the regulatory version at the time it conducted its nonattainment planning, for all emission sources except for those over the Freeport-McMoRan Miami Incorporated (FMMI) smelter (''Miami Smelter'' or ''Smelter'') building roofline. For AERMOD-only sources, the State used regulatory default options. To represent emissions from the Smelter roofline, the State used a combination of AERMOD v14134 and BLP (''BLP/AERMOD Hybrid Approach''). BLP was used to estimate hourly final plume rise and sigma-z (a measure of vertical size of the plume), which were then used to define volume sources in AERMOD. The State later repeated the simulation using AERMOD version 16216r, the current regulatory version, and showed no difference in predicted annual 4th high daily SO_2 hourly concentrations from the previous version.[20]

The copper smelting process produces large amounts of excess heat. Fugitive SO_2 is released from the Miami Smelter building roofline at an elevated temperature and velocity, leading to enhanced plume rise. AERMOD v14134 does not account for buoyant plume rise from line sources. At the time of preparation of the Miami SO_2 Plan, BLP was identified in appendix W as the preferred model for representing buoyant line sources.[21] As noted above, where an air quality model specified in appendix W is inappropriate for the particular application, the model may be modified or another model substituted if the EPA approves the modification or substitution.[22] Appendix W also specifies that for all such approvals, the EPA regional office will coordinate and seek the concurrence of the EPA's Model Clearinghouse.[23] Arizona has sought approval to use the BLP/AERMOD Hybrid Approach under appendix W, paragraph 3.2.2(b), condition (2), which allows for use of an alternative model where ''a statistical performance evaluation has been conducted using measured air quality data and the results of that evaluation indicate the alternative model performs better for the given application than a comparable model in appendix A.'' The State provided a statistical performance evaluation using measured air quality data that demonstrates the alternative model performs better than the preferred model for this application. Additionally, the State provided technical justification for the validity of the approach for the meteorology and topography affecting this area. EPA Region 9 requested and received concurrence from the EPA's Model Clearinghouse that the alternative model is appropriate for this particular application.[24] [25] For the reasons described in the concurrence documents, the EPA finds this selection appropriate and proposes to approve use of this alternative under 40 CFR 51.112(a)(2).

The modeling domain was centered on the Miami Smelter facility and extended to the edges of the Miami SO_2 NAA. A grid spacing of 25 meters was used to resolve AERMOD model concentrations along the ambient air boundary surrounding the Smelter and increased toward the edges of the NAA. Receptors were excluded within the ambient air boundary, which is defined by the facility's physical fence line, except in several segments where there is no fence and the State inspected and concluded steep topography precludes public access. We agree with the State's conclusion that the model receptors placed by the State correspond to ambient air.

B. Meteorological Data

Arizona conducted its modeling using three years of on-site surface meteorological data collected by FMMI between 2010 and 2013 at a 30.5-meter tower located approximately 0.32 kilometer (km) southwest of the Smelter. The State provided annual audit reports for the monitoring station to document that the station's installation and data collection were consistent with the EPA recommendations.[26] [27] Cloud cover and relative humidity were not measured at the onsite location and were taken from the National Weather Service (NWS) station at Safford Airport (Weather Bureau Army Navy (WBAN) 93084), which is 132 km to the southeast of the Smelter and representative of cloud cover and relative humidity to the Miami SO_2 NAA. The State used upper air data from the NWS station in Tucson, Arizona (WBAN 23160), which is 146 km south of the Smelter. The State used AERMET v14134 to process meteorological data for use with AERMOD and the Meteorological

[18] ''Applicability of Appendix W Modeling Guidance for the 1-hr SO_2 National Ambient Air Quality Standard'' (August 23, 2010).

[19] *See* Appendix C to Miami SO_2 Plan, ''Modeling Technical Support Document for the Miami Sulfur Dioxide (SO_2) Nonattainment Area'' (Modeling TSD).

[20] See letter from Farah Mohammadesmaeili, ADEQ, to Rynda Kay, EPA Region 9, dated March 16, 2018.

[21] The EPA has since approved AERMOD, with newly incorporated BLP algorithms, as the preferred model for buoyant line sources. *See* 82 FR 5182.

[22] 40 CFR 51.112(a)(2); Appendix W, section 3.2.

[23] *Id.* section 3.0(b).

[24] Further details can be found in ''Concurrence Request for Approval of Alternative Model: BLP/AERMOD Hybrid Approach for Modeling Buoyant Roofline Sources at the FMMI Copper Smelter in Miami, AZ'' (March 12, 2018).

[25] ''Model Clearinghouse Review of a BLP/AERMOD Hybrid Alternative Model Approach for Modeling Buoyant Roofline Sources at the FMMI Copper Smelter in Miami, AZ'' (March 26, 2018).

[26] See email from Farah Mohammadesmaeili, ADEQ, to Rynda Kay, EPA Region 9, dated March 16, 2018.

[27] ''EPA Meteorological Monitoring Guidance for Regulatory Modeling Applications.'' Publication No. EPA–454/R–99–005 (February 2000).

Processor for Regulatory Models for use with BLP.

The State used AERSURFACE version 13016 using data from the onsite location and the NWS Safford site to estimate the surface characteristics (*i.e.,* albedo, Bowen ratio, and surface roughness (z_o)). The State estimated z_o values for 12 spatial sectors out to 1 km at a seasonal temporal resolution for dry conditions. We conclude that the State appropriately selected meteorological sites, properly processed meteorological data, and adequately estimated surface characteristics.

The State used the Auer (1978) land use method, with land cover data from the United States Geological Survey National Land Cover Data 1992 archives, to determine that the 3-km area around the Miami Smelter is composed of 97.3% rural land types. Therefore, the State selected rural dispersion coefficients for modeling. We agree with the State's determination that the facility should be modeled as a rural source.

C. Emissions Data

Arizona completed a modeling emissions inventory for sources within the Miami SO_2 NAA and a 50-km buffer zone extending from the NAA boundary based on 2009–2011 data. In 2011, the Miami Smelter emitted 2,545 tpy SO_2, accounting for more than 99.5% of SO_2 emissions in the NAA. Other SO_2 sources in the NAA include the Carlota Copper Pinto Valley Mine (2011 SO_2 emissions of 32 tpy) and the Freeport McMoRan Miami Mine Smelter (2011 SO_2 emissions of 7 tpy), located 13 km and 3.3 km southwest of the Miami Smelter, respectively. No other sources had 2011 SO_2 emissions greater than 1 tpy SO_2 in the NAA. The ASARCO LLC (ASARCO) copper smelter is located 46 km south of the Miami Smelter and had 2011 SO_2 emissions of 21,747 tpy. The two smelters are separated by large mountains, making these two airsheds distinct. The State modeled the ASARCO stack emissions and determined that the modeled concentrations from that source were negligible in the Miami SO_2 NAA. The State determined that other than the Miami Smelter, no sources were drivers of nonattainment. The State also determined that no other sources have the potential to cause significant concentration gradients in the vicinity of the Miami SO_2 NAA affected by the Miami Smelter. Additionally, the State determined that all nearby sources are sufficiently captured by background monitored concentrations. We agree with the State's determination that only Miami Smelter emissions need to be included in the attainment modeling.

FMMI is undertaking substantial upgrades to the Smelter that will reduce SO_2 and other pollutant emissions (*see* section 4.3 of the Miami SO_2 Plan). The State estimated post-upgrade maximum 1-hour SO_2 emissions and used those estimates to model all facility emission sources subject to additional control. The State provided a justification for the control efficiencies assumed in the adjustments, which we reviewed and agree are reasonable.[28] The State also modeled additional sources within the Smelter complex, including intermittent emergency generators, smelter building leaks, slag storage area, and other small sources, which will not be subject to further control. These sources collectively account for an additional 8 pounds per hour (lb/hr) of SO_2 emissions, which we agree were appropriately calculated.[29] The resulting hourly emission rates used in the attainment modeling are shown in Table 1. Together these emissions accounted for a facility-wide critical emission value of 393 lb/hr (rounded to nearest whole number). The facility-wide critical emission value was used to derive a single facility-wide 30-day average emission limit, as described in section IV.D below.

TABLE 1—PROJECTED MAXIMUM SMELTER SO_2 EMISSIONS AFTER ADDITIONAL CONTROLS

Source	SO_2 Emissions (lb/hr)
Acid Plant Tail Gas Stack	3.2
Vent Fume Stack	13.0
Aisle Scrubber Stack—Normal Operations	14.3
Aisle Scrubber Stack—Bypass Operations	275.0
Isa Roof Vent	31.8
ELF Roof Vent	14.2
Converter Roof Vent	25.6
Anode Roof Vent	8.0
Additional Sources	8.0
Total	393

The State asserts that a single facility-wide emission limit will adequately regulate emissions from each Smelter source. The State provided an analysis of the Smelter's emissions variability, which showed that, due to the batch nature of the smelting process, emissions are independent of one another and therefore do not peak at the same time. This analysis indicates that the collection of future maximum potential emission rates for each source listed in Table 1 is a conservative estimate of the worst-case emission distribution at the Smelter.[30] Additionally, the State conducted a sensitivity analysis increasing the modeled emission rate of each source (except the bypass stack) by 21%, while proportionally decreasing the emission rate of the remaining sources so that total facility-wide emissions remained constant.[31] The resulting modeled design values were within 1% of those predicted by the attainment modeling and all below the NAAQS. These analyses suggest that variations in the location of peak emissions will not affect attainment so that a facility-wide limit would be sufficiently protective. We agree with the State that a facility-wide emission limit is appropriate in this case.

The State also adequately characterized source parameters for the emissions described above, as well as the Miami Smelter's building layout and location in its modeling. Where appropriate, the AERMOD component Building Profile Input Program for Plume Rise Model Enhancements (BPIPPRM) was used to assist in addressing building downwash.

D. Emission Limits

An important prerequisite for approval of a nonattainment plan is that the emission limits that provide for attainment be quantifiable, fully enforceable, replicable, and accountable.[32] The numeric emission limit on which Arizona's Plan relies is expressed as a 30-day average limit. Therefore, part of the review of Arizona's Plan must address the use of longer-term average limits, both with respect to the general suitability of using such limits for this purpose and with respect to whether the particular numeric emission limit included in the Plan has been suitably demonstrated to provide for attainment. The first subsection that follows addresses the enforceability of the limits in the Plan (including both the numeric 30-day emission limit as well as operation and maintenance requirements, which also constitute emission limits),[33] and the

[28] *See* ''FmmiReponseToEpaReview—20160721—Final w Signature.pdf'' and ''FMMI—Emissions-Inventory—2015–07–13—Past-Actuals-Using-Sulfur-Balance.xlsx.''

[29] *See* Appendix K of Modeling TSD.

[30] *See* Appendix E of Modeling TSD.

[31] *See* Appendix I of Modeling TSD.

[32] *See* 57 FR at 13567–68.

[33] *See* CAA section 302(k)(defining ''emission limit'' to include ''any requirement relating to the operation or maintenance of a source to assure continuous emission reduction.'').

second subsection that follows addresses the 30-day limit in particular.

1. Enforceability

The emission limits for the Miami Smelter are codified in the Arizona Administrative Code, Title 18, Chapter 2, Article 13, Section R18–2–C1302 (''Rule C1302''). After following proper public notice procedures, Rule C1302 was adopted by the State of Arizona through a final rulemaking in the Arizona Administrative Register. To ensure that the regulatory document was consistent with procedures for incorporating by reference, the EPA subsequently requested that ADEQ provide the version of this regulation that was codified in the Arizona Administrative Code as a supplement to the original SIP revision.

Subsection (A)(2) of Rule C1302 (''Effective Date'') states that, ''(e)xcept as otherwise provided, the provisions of this Section shall take effect on the later of the effective date of the Administrator's action approving it as part of the state implementation plan or January 1, 2018.'' Accordingly, the majority of the rule's requirements will come into effect upon final approval by the EPA of the rule. We proposed to approve Rule C1302 into the Arizona SIP on March 30, 2018 [34] and we intend to finalize action on the rule prior to taking final action on the Miami SO_2 Plan.

Rule C1302's 30-day rolling average emission limit of 142.45 lbs/hr applies to emissions from the tail gas stack, vent fume stack, aisle scrubber stack, and bypass stack, as well as any fugitives that may come from the roofline of the smelter structure. To ensure that all emission sources subject to the facility-wide limit are accurately monitored and reported, the rule also requires that continuous monitoring systems be installed on each of the aforementioned stacks and at the roofline to measure fugitive emissions. In addition, under subsection (E)(8) of Rule C1302, FMMI is required to develop and implement a roofline fugitive emissions monitoring plan for review and approval by ADEQ and the EPA. Furthermore, FMMI is required to develop and submit for EPA review and approval an Operations & Maintenance plan for capture and control systems at the smelter to ensure that these systems are functioning properly and are adequately maintained in order to minimize fugitive emissions. The rule also includes provisions for determining compliance with the emission limit, and the necessary monitoring, recordkeeping, and reporting requirements to ensure that the regulation as a whole is enforceable. As noted above, the EPA proposed to approve this regulation into the Arizona SIP in a separate action. Further discussion on the enforceability for Rule C1302 is included in the Technical Support Document (TSD) for that action.[35]

In accordance with EPA guidance on the use of federally enforceable limits, we find that the limits in Rule C1302 will be enforceable upon our approval of the rule, are supportive of attainment, and are suitable for inclusion into the Arizona SIP. We also find that the 30-day average limit is set at a lower level than the critical emission value used in the attainment demonstration; this relationship is discussed in detail in the following section.

2. Longer-Term Average Limits

The State modeled emissions from the Miami Smelter as described in Section IV.C of this notice to determine a facility-wide critical emission value of 393 lb/hr. Arizona demonstrated that the Smelter's ''Additional Sources'' listed in Table 1, which account for 8 lb/hr, have a negligible contribution to the predicted design value concentration and asserted that these emissions need not be a part of the facility's enforceable emission limit.[36] As such, Arizona used an adjusted critical emission value of 385 lb/hr (*i.e.,* 393 lb/hr minus 8 lb/hr) in the calculation of the facility's longer-term average limit.

To derive a longer-term average emission limit, the State used hourly SO_2 data collected using continuous emission monitors from May 2013 to October 2014, adjusted to account for facility upgrades and increased production capacity, as a representative emission distribution for the Smelter's future configuration. The State summed the emissions from all point and fugitive sources, which yielded the hourly emissions data that provided for calculation of the 30-day average emission rates used to determine an appropriate adjustment factor. The 99th percentile of the 30-day and 1-hour SO_2 emission rates were 102.4 lb/hr and 276.7 lb/hr, respectively. The ratio of these two values (*i.e.,* the computed adjustment factor) was 0.37. Compared to the national average adjustment factors (*i.e.,* 0.63–0.79) estimated for Electrical Generating Units (EGUs) and listed in Table 1 of Appendix D of the 2014 SO_2 Guidance, the ratio reflects the high variability in Smelter emissions. Although the adjustment factor is out of the range derived for EGUs, this is expected, as smelters exhibit a greater range of variability due to feed and operational variability. In general, we expect operations with large variability to require bigger adjustments (lower adjustment factors) and result in lower longer-term average emissions limits relative to the 1-hour critical emission value. The adjustment factor was multiplied by the adjusted critical emission value (*i.e.,* 385 lb/hr) to derive a longer-term 30-day average emission limit of 142.45 lb/hr. Based on a review of the State's submittal, the EPA believes that the 30-day average limit for the Miami Smelter provides a justified alternative to establishing a 1-hour average emission limit for this source.

The 2014 SO_2 Guidance does not directly address the establishment of limits governing the sum of emissions from multiple units, and the it provides no specific recommendations for a methodology for determining appropriate adjustment factors for deriving comparably stringent longer-term limits in such cases. Nevertheless, the 2014 SO_2 Guidance recommends computing adjustment factors based on emissions data that have been determined in accordance with the methods used to determine compliance with the limit. Therefore, in this case, it is appropriate to use facility total emissions data as the basis for a statistical analysis of the degree of adjustment warranted in determining a 30-day facility-wide emission limit that is comparably stringent to the plant total 1-hour emission limit that would otherwise have been set.

The State has used an appropriate data base and the methodology specified in the 2014 SO_2 Guidance to derive an emission limit that has comparable stringency to the 1-hour average limit that the State determined would otherwise have been necessary to provide for attainment. While the 30-day average limit allows occasions in which emissions may be higher than the level that would be allowed with the 1-hour limit, the State's limit compensates by requiring average emissions to be lower than the level that would otherwise have been required by a 1-hour average limit. For reasons described above and explained in more detail in the 2014 SO_2 Guidance, the EPA finds that appropriately set longer-term average limits provide a reasonable basis by which nonattainment plans

[34] 83 FR 13716.

[35] ''Technical Support Document for the EPA's Rulemaking for the Arizona State Implementation Plan; Arizona Administrative Code, Title 18, Chapter 2, Article 13, Part C—Miami, Arizona, Planning Area; R18–2–C1302—Limits on SO_2 Emissions from the Miami Smelter'' (March 2018) (Rule C1302 TSD).

[36] *See* Appendix K of the Modeling TSD.

may provide for attainment. Based on our review of this general information as well as the particular information in Arizona's Plan, the EPA finds that the 30 day-average limit will provide for attainment of the SO_2 standard in the Miami SO_2 NAA.

E. Background Concentrations

Arizona selected background SO_2 concentrations using ambient air measurements recorded between 2009 and 2013 during Smelter shutdown periods at the Jones Ranch (Air Quality System (AQS) ID: 04–007–0011), Townsite (AQS ID: 04–007–0012) and Ridgeline (AQS ID: 04–007–0009) monitors. The State calculated the 5-year averages of the daily maximum 99th percentile 1-hour average SO_2 during Smelter shutdowns at each site, which were 8.1, 6.7, and 7.2 ppb, respectively. The State chose to use the Jones Ranch value of 8.1 ppb (21.2 micrograms per cubic meter ($\mu g/m^3$)) as background concentrations of SO_2 to add to modeled design values. We agree that the State appropriately and conservatively calculated background concentrations.

F. Summary of Results

The EPA has reviewed Arizona's submitted modeling supporting the attainment demonstration for the Miami SO_2 NAA and has preliminarily determined that this modeling is consistent with CAA requirements, appendix W and the 2014 SO_2 Guidance. The State's modeling indicates that with a critical emission value of 393 lb/hr, the highest predicted 99th percentile daily maximum 1-hour concentration within the Miami SO_2 NAA would be 194.1 $\mu g/m^3$, below the NAAQS level of 196.4 $\mu g/m^3$ (75 ppb). This modeled concentration includes the background concentration of SO_2 of 21.2 $\mu g/m^3$. The modeling indicates that the Smelter upgrades and resulting 30-day emission limit of 142.45 lb/hr are sufficient for the Miami SO_2 NAA to attain the 2010 SO_2 NAAQS.

V. Review of Other Plan Requirements

A. Emissions Inventory

The emissions inventory and source emission rate data for an area serve as the foundation for air quality modeling and other analyses that enable states to estimate the degree to which different sources within a NAA contribute to violations within the affected area and assess the expected improvement in air quality within the NAA due to the adoption and implementation of control measures. As noted above, the state must develop and submit to the EPA a comprehensive, accurate and current inventory of actual emissions from all sources of SO_2 emissions in each NAA, as well as any sources located outside the NAA which may affect attainment in the area.[37]

The base year inventory establishes a baseline that is used to evaluate emission reductions achieved by the control strategy and to assess reasonable further progress requirements. Arizona used 2011 as the base year for emission inventory preparation. At the time of preparation of the Plan, 2011 reflected the most recent triennial National Emission Inventory, supported the requirement for timeliness of data, and was also representative of a year with violations of the primary SO_2 NAAQS. Arizona reviewed and compiled actual emissions of all sources of SO_2 in the NAA in the 2011 base year emission inventory. In addition to developing an emission inventory of SO_2 emission sources within the NAA, Arizona also provided an SO_2 emission inventory for those emission sources within a 50 kilometer buffer zone of the NAA. Table 2 below summarizes 2011 base year SO_2 emissions inventory data for the NAA, categorized by emission source type (rounded to the nearest whole number).

TABLE 2—2011 BASE YEAR SO_2 EMISSION INVENTORY FOR THE MIAMI SO_2 NAA

[Tons/year]

Year	Point source	Nonpoint source	Mobile source (onroad)	Mobile source (non-road)	Total
2011	2,583	13	2	>1	2,598

As seen above, the majority of SO_2 emissions in the 2011 base year inventory can be attributed to the point source category. Emissions for this category are provided in further detail in Table 3 below.

TABLE 3—2011 BASE YEAR SO_2 EMISSION INVENTORY

[Point sources]

Point source	Emissions (tons/year)
Freeport McMoRan Miami Smelter	2,545
Freeport McMoRan Miami Mine	7
BHP Copper Pinto Valley Miami Unit	>1
BHP Copper Pinto Valley Mine	>1
Carlota Copper Pinto Valley Mine	31
Total	2,583

A projected attainment year emission inventory should also be included in the SIP submission according to the 2014 SO_2 Guidance. This emission inventory should include, in a manner consistent with the attainment demonstration, estimated emissions for all SO_2 emission sources that were determined to have an impact on the affected NAA for the projected attainment year. Table 4 below summarizes Arizona's projected 2018 SO_2 emissions inventory data for the NAA, categorized by source type. 2011 base year emissions, as well as the projected change between base year and projected year emissions, are also summarized below (rounded to nearest whole number).

[37] *See* CAA section 172(c)(3).

TABLE 4—PROJECTED 2018 SO_2 EMISSION INVENTORY FOR THE MIAMI SO_2 NAA

[Tons/year]

Year	Point source	Nonpoint source	Mobile source (onroad)	Mobile source (non-road)	Total
2011	2,583	13	2	>1	2,598
2018	685	13	2	>1	700
Change	−1,898	0	0	0	−1,898

As seen above, both the majority of SO_2 emissions in the projected 2018 emission inventory, as well as the majority of projected SO_2 emission reductions, can be attributed to point sources. Emissions for this category are provided in further detail in Table 5 below.

TABLE 5—PROJECTED 2018 SO_2 EMISSION INVENTORY

[Point sources]

Point source	2011 Base year emissions (tons/year)	2018 Projected year emissions (tons/year)	Change
Freeport McMoRan Miami Smelter	2,545	660	−1,885
Freeport McMoRan Miami Mine	7	8	1
BHP Copper Pinto Valley Miami Unit	>1	>1	0
BHP Copper Pinto Valley Mine	>1	14	13
Carlota Copper Pinto Valley Mine	31	3	−28
Total	2,583	685	−1,898

As seen above, the single largest decrease in emissions is attributed to the Miami Smelter. The projected 2018 SO_2 emissions for the Miami Smelter are consistent with allowable emission limits for the Miami Smelter that Arizona is requesting that the EPA approve into the SIP. For other point sources, projected 2018 SO_2 emissions were determined by Arizona based on existing permit allowable SO_2 limits or other federally enforceable SO_2 emission limits.

The EPA has evaluated Arizona's 2011 base year inventory and projected 2018 emission inventory for the Miami SO_2 NAA, and considers these inventories to have been developed consistent with EPA guidance. As a result, the EPA is proposing to determine that the Miami SO_2 Plan meets the requirements of CAA Section 172(c)(3) and (4) for the Miami SO_2 NAA.

B. Reasonably Available Control Measures and Reasonably Available Control Technology

Arizona's Plan for attaining the 1-hour SO_2 NAAQS in the Miami SO_2 NAA is based on implementation of controls at the Miami Smelter. ADEQ conducted a reasonably available control measures and reasonably available control technology (RACM/RACT) analysis in the Miami SO_2 Plan, comparing the requirements at the Miami Smelter with controls in use at other large sources of SO_2 to identify potentially available control measures, eliminating any measures that were not feasible at the Miami Smelter or not more stringent than those measures already being implemented. ADEQ then compared the proposed control measures for the Miami Smelter with the measures not eliminated in the first step of the RACM/RACT analysis, and concluded that the proposed control measures would be more stringent. We provide an assessment below of whether ADEQ's RACM/RACT analysis is consistent with EPA guidance.

The State's RACM/RACT analysis can be found in section 4.4.3 of the Miami SO_2 Plan. ADEQ compared SO_2 controls at eight different facilities and found that all of these units used an acid plant to recover or reduce SO_2 emissions. Some of these facilities also used acid absorption equipment (wet and dry scrubbers) to further control SO_2. ADEQ also noted that enhanced capture systems (such as additional hooding, improved ventilation systems and enhanced ductwork) at the Miami Smelter would contribute to reducing uncontrolled fugitive emissions from the smelter structure. While enhanced capture does not inherently reduce SO_2 emissions, these capture systems will route a greater amount of gas to control devices that do reduce SO_2 emissions.

The State concluded that upgrades to the acid plant, the installation of additional and improved scrubbers, and the installation of improved capture systems at the IsaSmelt furnace, electric furnace, converter department, and anode casting operations at the Miami Smelter constituted RACM/RACT and would allow the facility to meet the 142.45 lb/hr emission limit and other requirements outlined in Rule C1302. As explained in the Rule C1302 TSD, we agree that Rule C1302 generally requires implementation of reasonable controls for the Miami Smelter. We also find that it was appropriate for Arizona to focus its RACM/RACT analysis solely on this source, given that the Miami Smelter accounted for more than 99.5 percent of SO_2 emissions in the NAA during the 2011 base year.[38]

As noted above, most of the requirements of Rule C1302 will become enforceable only after final approval of the rule by the EPA. However, the Plan itself provides that the owner or operator of the Miami Smelter will complete construction of the relevant control measures no later than January 1, 2018, including steps that ADEQ will undertake if the owner or operator failed to complete construction by January 1, 2018.[39] On December 19, 2017, FMMI notified the EPA and ADEQ that it had completed construction of the SO_2 capture and control system upgrades

[38] Miami SO_2 Plan, Section 3.1.1, page 33.

[39] *Id.,* page 84.

and had initiated associated commissioning activities.[40]

As explained above, we find that Arizona has demonstrated that implementation of the control measures required under the Plan are sufficient to provide for attainment of the NAAQS. Given that these controls have already been installed and will be fully operational prior to October 4, 2018, we propose to conclude that the State has satisfied the requirement in section 172(c)(1) and (6) to adopt and submit all RACM and emissions limitations and control measures as needed to attain the standards as expeditiously as practicable and the requirement in section 192(b) to provide for attainment by October 4, 2018.

C. New Source Review

On November 2, 2015, the EPA published a final limited approval and limited disapproval of revisions to ADEQ's new source review (NSR) rules.[41] On May 4, 2018, the EPA approved additional rule revisions to address many of the deficiencies identified in the 2015 action.[42] Collectively these rule revisions will ensure that ADEQ's rules provide for appropriate NSR for SO_2 sources undergoing construction or major modification in the Miami SO_2 NAA without need for further modification. Therefore, the EPA concludes that the NSR requirement has been met for this area. We note that Rule C1302 subsection (I) indicates that the smelter emission limits contained in the rule shall be determined to be SO_2 RACT for purposes of minor NSR requirements. This provision does not interfere with or adversely affect existing nonattainment NSR rules.

D. Reasonable Further Progress

In the Miami SO_2 Plan, Arizona explained its rationale for concluding that the Plan meets the requirement for reasonable further progress (RFP) in accordance with EPA guidance. Specifically, Arizona's rationale is based on EPA guidance interpreting the RFP requirement being satisfied for SO_2 if the Plan requires ''adherence to an ambitious compliance schedule'' that ''implement[s] appropriate control measures as expeditiously as practicable.'' Arizona noted that its Plan provides for attainment as expeditiously as practicable, *i.e.,* by October 4, 2018, and finds that the Plan thereby satisfies the requirement for RFP.

Arizona finds that the Miami SO_2 Plan requires affected sources to implement appropriate control measures as expeditiously as practicable in order to ensure attainment of the standard by the applicable attainment date. Arizona concludes that the Plan therefore provides for RFP in accordance with the approach to RFP described in the 2014 SO_2 Guidance. The EPA concurs and proposes to conclude that the Plan provides for RFP.

E. Contingency Measures

In the Miami SO_2 Plan, Arizona explained its rationale for concluding that the Plan meets the requirement for contingency measures. Specifically, Arizona relies on the 2014 SO_2 Guidance, which notes the special circumstances that apply to SO_2 and explains on that basis why the contingency requirement in CAA section 172(c)(9) is met for SO_2 by having a comprehensive program to identify sources of violations of the SO_2 NAAQS and to undertake an aggressive follow-up for compliance and enforcement of applicable emissions limitations. Arizona stated that it has such an enforcement program pursuant to state law in Arizona Revised Statutes (ARS) sections 49–461, 49–402, 49–404 and 49–406. Arizona also describes the process under State law to apply contingency measures for failure to make RFP and/or for failure to attain the SO_2 NAAQS by the attainment date and concludes that Arizona's Plan satisfies contingency measure requirements. The EPA concurs with this assessment. We note that the EPA has approved ARS 49–402, 49–404, 49–406 and 49–461 into the Arizona SIP.[43] In addition, we have approved ARS 49–422(A) (''Powers and Duties''), which authorizes ADEQ to require sources of air contaminants to ''monitor, sample or perform other studies to quantify emissions of air contaminants or levels of air pollution that may reasonably be attributable to that source'' for purposes of determining whether the source is in violation of a control requirement. We have also approved ARS 49–460 through 49–463, which authorize ADEQ to request compliance-related information from sources, to issue orders of abatement upon reasonable cause to believe a source has violated or is violating an air pollution control requirement, to establish injunctive relief, to establish civil penalties of up to $10,000 per day per violation, and to conduct criminal enforcement, as appropriate through the Attorney General.[44] Therefore, we agree that the Arizona SIP establishes a comprehensive enforcement program, allowing for the identification of sources of SO_2 NAAQS violations and aggressive compliance and enforcement follow-up. We propose to approve Arizona's Plan as meeting the contingency measure requirement in this manner.

VI. Conformity

Generally, as set forth in section 176(c) of the CAA, conformity requires that actions by federal agencies do not cause new air quality violations, worsen existing violations, or delay timely attainment of the relevant NAAQS. General conformity applies to federal actions, other than certain highway and transportation projects, if the action takes place in a nonattainment area or maintenance area (*i.e.,* an area which submitted a maintenance plan that meets the requirements of section 175A of the CAA and has been redesignated to attainment) for ozone, particulate matter, nitrogen dioxide, carbon monoxide, lead, or SO_2. The EPA's General Conformity Rule establishes the criteria and procedures for determining if a federal action conforms to the SIP.[45] With respect to the 2010 SO_2 NAAQS, federal agencies are expected to continue to estimate emissions for conformity analyses in the same manner as they estimated emissions for conformity analyses under the previous NAAQS for SO_2. The EPA's General Conformity Rule includes the basic requirement that a federal agency's general conformity analysis be based on the latest and most accurate emission estimation techniques available.[46] When updated and improved emissions estimation techniques become available, the EPA expects the federal agency to use these techniques.

Transportation conformity determinations are not required in SO_2 nonattainment and maintenance areas. The EPA concluded in its 1993 transportation conformity rule that highway and transit vehicles are not significant sources of SO_2. Therefore, transportation plans, transportation improvement programs and projects are presumed to conform to applicable implementation plans for SO_2.[47]

VII. The EPA's Proposed Action

The EPA is proposing to approve the Miami SO_2 Plan, which includes Arizona's attainment demonstration for the Miami SO_2 NAA and addresses requirements for RFP, RACT/RACM,

[40] Letter from Byron Belew, FMMI, to Alexis Strauss, EPA, and Timothy Franquist, ADEQ (December 19, 2017).

[41] 80 FR 67319 (November 2, 2015).

[42] 83 FR 19631 (May 4, 2018).

[43] *See* 40 CFR 52.120(e), Table 3.

[44] 77 FR 66398 (November 5, 2012).

[45] 40 CFR 93.150 to 93.165.

[46] 40 CFR 93.159(b).

[47] *See* 58 FR 3776 (January 11, 1993).

base-year and projected emission inventories, and contingency measures. The EPA proposes to determine that the Miami SO_2 Plan meets applicable requirements of sections 110, 172, 191 and 192 of the CAA for the 2010 SO_2 NAAQS.

The EPA is taking public comments for thirty days following the publication of this proposed action in the **Federal Register**. We will take all relevant comments into consideration in our final action.

VIII. Statutory and Executive Order Reviews

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

- Is not a ''significant regulatory action'' subject to review by the Office of Management and Budget under Executive Order 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
- Is not an Executive Order 13771 (82 FR 9339, February 2, 2017) regulatory action because SIP approvals are exempted under Executive Order 12866;
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4);
- Does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and
- Does not provide the EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, the SIP is not approved to apply on any Indian reservation land or in any other area where the EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In those areas of Indian country, the rule does not have tribal implications and will not impose substantial direct costs on tribal governments or preempt tribal law as specified by Executive Order 13175 (65 FR 67249, November 9, 2000).

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Reporting and recordkeeping requirements, Sulfur oxides.

Authority: 42 U.S.C. 7401 *et seq.*

Dated: June 4, 2018.

Michael B. Stoker,

Regional Administrator, EPA Region IX.

[FR Doc. 2018–12913 Filed 6–14–18; 8:45 am]

BILLING CODE 6560–50–P

Notices

Federal Register
Vol. 83, No. 116
Friday, June 15, 2018

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

Submission for OMB Review; Comment Request

June 12, 2018.

The Department of Agriculture will submit the following information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13 on or after the date of publication of this notice. Comments are requested regarding: (1) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) the accuracy of the agency's estimate of burden including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on 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 should be addressed to: Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), New Executive Office Building, Washington, DC; New Executive Office Building, 725 17th Street NW, Washington, DC, 20503. Commenters are encouraged to submit their comments to OMB via email to: *OIRA_Submission@omb.eop.gov* or fax (202) 395–5806 and to Departmental Clearance Office, USDA, OCIO, Mail Stop 7602, Washington, DC 20250–7602.

Comments regarding these information collections are best assured of having their full effect if received by July 16, 2018. Copies of the submission(s) may be obtained by calling (202) 720–8681.

An agency may not conduct or sponsor a collection of information unless the collection of information displays a currently valid OMB control number and the agency informs potential persons who are to respond to the collection of information that such persons are not required to respond to the collection of information unless it displays a currently valid OMB control number.

National Agricultural Statistics Service

Title: Census of Aquaculture.

OMB Control Number: 0535–0237.

Summary of Collection: The primary objective of the 2018 Census of Aquaculture is to obtain a comprehensive and detailed picture of the aquaculture sector of the economy. The census of agriculture is required by law under the ''Census of Agriculture Act of 1997,'' Public Law 105–113 (Title 7, United States Code, Section 2204g). The census of aquaculture will be the only source of data comparable and consistent at the national and State levels for the aquaculture industry. It will cover all operations, commercial or noncommercial, for which $1,000 or more of aquaculture products were sold or normally would have been sold during the census year. The census of aquaculture is one of a series of special study programs that comprise the follow-on study to the Census of Agriculture and is designed to provide detailed statistics on the aquaculture industry.

Need and Use of the Information: The National Agricultural Statistics Service will collect data to provide a comprehensive inventory on the number of operations, freshwater and saltwater acreage used for aquaculture production, water sources used for production, methods of production, total production, sales outlets, value of aquaculture products sold and sales by aquaculture species, products distributed for recreation, restoration, or conservation by species. These data will provide information on the aquaculture industry necessary for farmers, government, and various groups, concerned with the aquaculture industry to evaluate policy and programs, make marketing decisions, and determine the economic impact on the economy.

Description of Respondents: Farms; Business or other for-profit.

Number of Respondents: 6,100.

Frequency of Responses: Reporting: One-time (Every 5-years).

Total Burden Hours: 3,073.

Ruth Brown,

Departmental Information Collection Clearance Officer.

[FR Doc. 2018–12860 Filed 6–14–18; 8:45 am]

BILLING CODE 3410–20–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–831]

Fresh Garlic From the People's Republic of China: Final Results and Partial Rescission of the 22nd Antidumping Duty Administrative Review and Final Result and Rescission, in Part, of the New Shipper Reviews; 2015–2016

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: The Department of Commerce (Commerce) published the Preliminary Results of the 22nd administrative review and two concurrent new shipper reviews of the antidumping duty order on fresh garlic from the People's Republic of China (China) on December 7, 2017. The period of review (POR) is November 1, 2015, through October 31, 2016. We made no changes to the margin calculated for mandatory respondent Shandong Jinxiang Zhengyang Import & Export Co., Ltd. (Zhengyang), or for new shipper respondent Zhengzhou Yudi Shengjin Agricultural Trade Co., Ltd. (Yudi), and continue to find that they made sales below normal value. In addition, we are rescinding the new shipper review with respect to Qingdao Joinseafoods Co., Ltd. and Join Food Ingredient Inc.'s (collectively, Join).

DATES: Applicable June 15, 2018.

FOR FURTHER INFORMATION CONTACT: Kathryn Wallace or Alexander Cipolla, AD/CVD Operations, Office VII, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone 202–482–6251 or 202–482–4956, respectively.

SUPPLEMENTARY INFORMATION: The mandatory respondents in this administrative review are: Zhengzhou

Harmoni Spice Co., Ltd. (Harmoni), and Zhengyang. The new shipper review (NSR) respondents are Join and Yudi. Commerce published the *Preliminary Results* on December 7, 2017, in which it preliminarily determined that Zhengyang, Join, and Yudi sold merchandise to the United States at less than normal value.[1] We also preliminarily granted a separate rate to six companies which demonstrated their eligibility for separate rate status, but were not selected for individual examination.[2] We preliminarily rescinded the review with respect to the seven companies, including Harmoni, for which a valid review request did not exist.[3] In accordance with 19 CFR 351.309, we invited parties to comment on our *Preliminary Results.* The petitioners,[4] the CFTG,[5] Zhengyang, Join, and Yudi timely filed case briefs, pursuant to our regulations.[6] Additionally, the petitioners, Join, and Harmoni timely filed rebuttal briefs.[7] The deadline for the final results of this review was originally April 9, 2018. On March 14, 2018, Commerce extended the deadline in this proceeding by 60 days to June 8, 2018.[8]

Based upon our analysis of the comments and information received, Commerce continues to find that the review request made by the Coalition for Fair Trade in Garlic (the CFTG) was not valid, and accordingly have rescinded the review with respect to seven companies, including the other mandatory respondent Harmoni, for which a valid review request does not exist. As discussed below, Commerce finds that Join withheld requested information, significantly impeded the new shipper review, and did not cooperate to the best of its ability. Accordingly, pursuant to sections 776(a) and (b) of the Tariff Act of 1930, as amended (the Act), we have used an adverse inference in selecting from among the facts otherwise available, and have found Join's sale not *bona fide,* and have rescinded the review of Join.

Scope of the Order

The merchandise covered by the order includes all grades of garlic, whole or separated into constituent cloves. Fresh garlic that are subject to the order are currently classified under the Harmonized Tariff Schedule of the United States (HTSUS) 0703.20.0000, 0703.20.0005, 0703.20.0010, 0703.20.0015, 0703.20.0020, 0703.20.0090, 0710.80.7060, 0710.80.9750, 0711.90.6000, 0711.90.6500, 2005.90.9500, 2005.90.9700, 2005.99.9700. Although the HTSUS numbers are provided for convenience and customs purposes, the written product description remains dispositive. For a full description of the scope of this order, please see ''Scope of the Order'' in the accompanying Issues and Decision Memorandum.[9]

Partial Rescission of Administrative Review

As discussed in the IDM,[10] Commerce is rescinding the review with respect to seven companies, including mandatory respondent Harmoni, based on Commerce's determination that the CFTG's request for review was not valid. *See* Appendix IV for the companies for which administrative reviews have been rescinded in these final results.

Analysis of Comments Received

We addressed all issues raised in the case and rebuttal briefs by parties in this review in the IDM. Appendix I provides a list of the issues which parties raised. The IDM is a public document and is on file in the Central Records Unit (CRU), Room B8024 of the main Department of Commerce building, as well as 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 CRU. In addition, a complete version of the IDM can be accessed directly on the internet at *http://enforcement.trade.gov/frn/index.html.* The signed IDM and the electronic versions of the IDM are identical in content.

Changes Since the Preliminary Results

Based on a review of the record and comments received from interested parties regarding our *Preliminary Results,* and for the reasons explained in the IDM, including the application of facts available with an adverse inference, we revised our decision regarding Join's cooperation and have rescinded the new shipper review, as discussed below. Further, we have determined that the QTF-Entity is eligible for a separate rate.

Rescission of New Shipper Review

As discussed in the IDM, Commerce has analyzed the *bona fides* of Join's single sale and found that it was not a *bona fide* sale, and thus not reviewable pursuant to section 751(a)(2)(B)(iv) of the Act.[11] Commerce reached this conclusion based on its consideration of the totality of circumstances, including: The timing of the payment, the parties' implementation of the terms of sale, incomplete information concerning the affiliates involved with the sale, missing or underreported expenses related to the sale, and the single sale. For a complete discussion *see* the IDM at 10–15, and Comment 5.

For the foregoing reasons, Commerce finds that Join's sale is not *bona fide,* and that the sale does not provide a reasonable or reliable basis for calculating a dumping margin. Accordingly, Commerce is rescinding the NSR with respect to Join.

Final Determination of No Shipments

In the *Preliminary Results,* Commerce preliminarily determined that the

[1] *See Fresh Garlic from the People's Republic of China: Preliminary Results, Preliminary Rescission, and Final Rescission, in Part, of the 22nd Antidumping Duty Administrative Review and Preliminary Results of the New Shipper Reviews; 2015–2016,* 82 FR 57718 (December 7, 2017) (*Preliminary Results*) and accompanying Issues and Decision Memorandum (PDM).

[2] *Id.*

[3] *Id.*

[4] The petitioners are the Fresh Garlic Producers Association (FGPA) and its individual members: Christopher Ranch LLC, The Garlic Company, Valley Garlic, and Vessey and Company, Inc.

[5] The CFTG, at the time of initiation, consisted of Mr. Avrum Katz of Boxcar Farm, Mr. Stanley Crawford of El Bosque Farm, Ms. Susanne Sanford of Sanford Farm, and Mr. Alex Pino of Revolution Farm.

[6] *See* CFTG's Letter, ''Case Brief: Filed on Behalf of the Coalition for Fair Trade in Garlic in the 22nd Administrative Review of Fresh Garlic from China,'' dated April 25, 2018 (CFTG's Case Brief); *see also* Zhengyang's Letter, ''Fresh Garlic from the People's Republic of China—Case Brief,'' dated April 25, 2018. (Commerce rejected Zhengyang's Case Brief for containing unsolicited new factual information. see Commerce's Letter, ''22nd Antidumping Duty Administrative Review of Fresh Garlic from the People's Republic of China: Request for Removal of Untimely New Factual Information'' dated May 15, 2018. Memorandum); *see also* Yudi's Letter, ''Case Brief'' dated April 25, 2018 (Yudi's Case Brief); *see also* Join's Letter, ''Case Brief'' dated April 25, 2018 (Join's Case Brief); *see also* the Petitioners' Letter, ''Petitioners' Case Brief'' dated April 25, 2018 (Petitioners' NSR Case Brief).

[7] *See* the Petitioners' Letter, ''Petitioners' Rebuttal Brief,'' dated May 2, 2018 (Petitioners' NSR Rebuttal Brief); *see also* Join's Letter, ''Rebuttal Case Brief'' dated May 2, 2018 (Join's Rebuttal Brief); *see also* the Petitioners' Letter, ''Fresh Garlic from the People's Republic of China: Petitioners' Rebuttal Brief,'' dated May 2, 2018 (the Petitioners' Rebuttal Brief); *see also* Harmoni's Letter, ''Harmoni Administrative Review Reply Brief: 22nd Administrative Review of the Antidumping Duty Order on Fresh Garlic from the People's Republic of China (A–570–831),'' dated May 2, 2018 (Harmoni's Rebuttal Brief).

[8] *See* Memorandum, ''Fresh Garlic from the People's Republic of China—22nd Administrative Review (2015–2016): extension of Deadline for the Final Results of the Review,'' dated March 15, 2017.

[9] *See* Memorandum, ''Issues and Decision Memorandum for the Final Results and Final Rescission of the Antidumping Duty Administrative Review and New Shipper Reviews: Fresh Garlic from the People's Republic of China; 2014–2015,'' dated concurrently with this notice (IDM).

[10] *See* IDM at 6, 24.

[11] *See* IDM at 10–15, and Comment 5.

companies listed in Appendix III timely filed ''no shipment'' certifications and did not have any reviewable transactions during the POR. Consistent with Commerce's assessment practice in non-market economy (NME) cases, we completed the review with respect to the companies listed in Appendix III. For the companies listed in Appendix III, CBP provided no evidence to contradict the claims of these companies of no shipments.

As noted in the ''Assessment Rates'' section below, Commerce intends to issue appropriate instructions to CBP for the companies listed below based on the final results of this review.

PRC-Wide Entity

As discussed in the *Preliminary Results,* Commerce's policy regarding conditional review of the PRC-wide entity applies to this administrative review.[12] Under this policy, the PRC-wide entity will not be under review unless a party specifically requests, or Commerce self-initiates, a review of the entity. Because no party requested a review of the PRC-wide entity, the entity is not under review and the entity's rate (*i.e.,* $4.71/kg) is not subject to change. Aside from the no shipment companies discussed below, Commerce considers all other companies for which a review was requested, and which did not qualify for a separate rate, to be part of the PRC-wide entity. *See* Appendix II.

Separate Rates

In the *Preliminary Results,* Commerce found that non-selected companies Jining Shunchang Import & Export Co., Ltd., Jinxiang Feiteng Import & Export Co., Ltd., Qingdao Sea-Line International Trading Co., Ltd., Shenzhenn Bainon Co., Ltd., Shenzhen Xinboda Industrial Co., Ltd., and Weifang Hongqiao International Logistics Co., Ltd., demonstrated their eligibility for a separate rate. We continue to find that those six companies are eligible for a separate rate.[13] As discussed in the IDM, Commerce granted the QTF-Entity separate status in these final results.[14]

In the *Preliminary Results,* we assigned the non-selected separate rate companies the dumping margin calculated for Zhengyang. No parties commented on this. We continue to use Zhengyang's margin as the margin for the non-selected separate rate companies in these final results.

Final Results of Administrative Review

The weighted-average dumping margins for the administrative review are as follows:

Exporter	Weighted-average margin (dollars per kilogram)
Shandong Jinxiang Zhengyang Import & Export Co., Ltd	$2.69
Jining Shunchang Import & Export Co., Ltd	2.69
Jinxiang Feiteng Import & Export Co., Ltd	2.69
Qingdao Sea-Line International Trading Co., Ltd	2.69
QTF-Entity[15]	2.69
Shenzhen Bainong Co., Ltd	2.69
Shenzhen Xinboda Industrial Co., Ltd	2.69
Weifang Hongqiao International Logistics Co., Ltd	2.69

Final Results of New Shipper Review

The weighted-average dumping margin for the new shipper review:

Exporter	Weighted-average margin (dollars per kilogram)
Zhengzhou Yudi Shengjin Agricultural Trade Co., Ltd	$3.19

Assessment Rates

Pursuant to section 751(a)(2)(A) and (C) of the Act, and 19 CFR 351.212(b), Commerce has determined, and U.S. Customs and Border Protection (CBP) shall assess, antidumping duties on all appropriate entries of subject merchandise in accordance with the final results of these reviews. We intend to issue appropriate assessment instructions directly to CBP 15 days after publication of the final results of this administrative review, and the new shipper reviews.

Where the respondent reported reliable entered values, we calculated importer- (or customer-) specific *ad valorem* rates by aggregating the dumping margins calculated for all U.S. sales to each importer (or customer) and dividing this amount by the total entered value of the sales to each importer (or customer).[16] Where we calculated a weighted-average dumping margin by dividing the total amount of dumping for reviewed sales to that party by the total sales quantity associated with those transactions, we will direct CBP to assess importer-specific assessment rates based on the resulting

[12] *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 (November 4, 2013).

[13] *See Preliminary Results* at Appendix II.

[14] *See* IDM at 7–8.

[15] The QTF-Entity includes: Qingdao Tiantaixing Foods Co., Ltd.; Qingdao Tianhefeng Foods Co., Ltd.; Qingdao Beixing Trading Co., Ltd.; Qingdao Lianghe International Trade Co., Ltd.; Qingdao Xintianfeng Foods Co., Ltd.; Hebei Golden Bird Trading Co., Ltd.; and Huamei Consulting; *see Fresh Garlic from the People's Republic of China: Final Results and Partial Rescission of the 21st Antidumping Duty Administrative Review; 2014–2015,* 82 FR 27230 (June 14, 2017), and accompanying Issues and Decision Memorandum at Comment 4.

[16] *See* 19 CFR 351.212(b)(1).

per-unit rates.[17] Where an importer- (or customer-) specific *ad valorem* or per-unit rate is greater than *de minimis,* we will instruct CBP to collect the appropriate duties at the time of liquidation.[18] Where an importer- (or customer-) specific *ad valorem* or per-unit rate is zero or *de minimis,* we will instruct CBP to liquidate appropriate entries without regard to antidumping duties.[19] We intend to instruct CBP to liquidate entries containing subject merchandise exported by the PRC-wide entity at the PRC-wide rate.

Pursuant to Commerce's assessment practice, for entries that were not reported in the U.S. sales databases submitted by companies individually examined during this review, we will instruct CBP to liquidate such entries at the PRC-wide entity rate. Additionally, if we determine that an exporter had no shipments of the subject merchandise, any suspended entries that entered under that exporter's case number (*i.e.*, at that exporter's rate) will be liquidated at the PRC-wide entity rate.[20]

As Commerce is rescinding the NSR with respect to Join, we are not making a determination as to whether or not Join qualifies for a separate rate. Therefore, Join remains part of the PRC-wide entity. The PRC-wide entity is not under review in the ongoing administrative review. Accordingly, Join's entry will be assessed at the rate equal to the cash deposit of estimated antidumping duties required on its merchandise at the time of entry, or withdrawal from warehouse, for consumption. We intend to issue liquidation instructions for any entries during the relevant period made by Join 15 days after publication of this notice.

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 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 the exporter listed above, the cash deposit rate will be the rate established in the final results of review (except, if the rate is zero or *de minimis, i.e.*, less than 0.5 percent, a zero cash deposit rate will be required for that company); (2) for previously investigated or reviewed PRC and non-PRC exporters not listed above that have separate rates, the cash deposit rate will continue to be the exporter-specific rate published for the most recent period; (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 the PRC-wide rate of $4.71 per kilogram; 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 exporters that supplied that non-PRC exporter. The deposit requirements shall remain in effect until further notice.

Disclosure

We intend to disclose the calculations performed within five days of the date of publication of this notice to parties in this proceeding in accordance with 19 CFR 351.224(b).

Notification to Importers

This notice also serves as a final 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 POR. Failure to comply with this requirement could result in Commerce's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of doubled antidumping duties.

Administrative Protective Orders

This notice also serves as a reminder to parties subject to administrative protective order (APO) of their responsibility concerning the return or destruction 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 terms of an APO is a violation which is subject to sanction.

Notification to Interested Parties

We are issuing and publishing these final results of administrative review in accordance with sections 751(a)(1) and 777(i) of the Act and 19 CFR 351.213.

Dated: June 8, 2018.

Gary Taverman,

Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations, performing the non-exclusive functions and duties of the Assistant Secretary for Enforcement and Compliance.

Appendix I

List of Issues Discussed in the Issues and Decision Memorandum

Administrative Review

1. Whether Section 751 of the Act Requires Commerce to Conduct an AR of Harmoni Following the CFTG's Request for Review
2. Whether the CFTG's Review Request was Valid, and Whether the Members of the CFTG are Producers or Wholesalers of a Domestic Like Product
3. Whether Harmoni and the FGPA Obstructed or Impaired Legitimate Government Activity

New Shipper Reviews

4. Whether Yudi's Sale was Made on a *Bona Fide* Basis
5. Whether Join's Sale was Made on a *Bona Fide* Basis
6. Whether Commerce Properly Selected Romania as the Surrogate Country

Appendix II

List of Companies Under Review Subject to the PRC-Wide Rate

1. China Union Agri. (Qingdao) Co., Ltd.
2. Juxian Huateng Organic Ginger Co., Ltd.
3. Qingdao Jiashan Trading Co., Ltd.
4. Shandong Helu International Trade Co., Ltd.
5. Weifang Wangyuan Food Co., Ltd.
6. Zhengzhou Yudishengjin Farm Products Co., Ltd.

Appendix III

Companies That Have Certified No Shipments

1. Jinan Farmlady Trading Co., Ltd.
2. Jining Shengtai Fruits & Vegetables Co., Ltd.
3. Jining Yifa Garlic Produce Co., Ltd.
4. Jinxiang Richfar Fruits & Vegetables Co., Ltd.
5. Shijiazhuang Goodman Trading Co., Ltd.

Appendix IV

Companies for Which Administrative Reviews Have Been Rescinded

1. Jinxiang Jinma Fruits Vegetables Products Co., Ltd.
2. Juxian Huateng Food Co., Ltd.
3. Qingdao Hailize (Sea-Line) International Trading Co., Ltd.
4. Qingdao Jiuyihongrun Foods Co., Ltd.
5. Qingdao Ritai Food Co., Ltd.
6. Zhengzhou Harmoni Spice Co., Ltd.
7. Zhonglian Nongchan Co., Ltd.

[FR Doc. 2018–12898 Filed 6–14–18; 8:45 am]

BILLING CODE 3510–DS–P

[17] *Id.*

[18] *Id.*

[19] *See* 19 CFR 351.106(c)(2).

[20] *See Non-Market Economy Antidumping Proceedings: Assessment of Antidumping Duties,* 76 FR 65694 (October 24, 2011).

DEPARTMENT OF COMMERCE

International Trade Administration

[A–122–863, A–570–077, A–484–803, A–533–881, A–580–897, A–489–833]

Large Diameter Welded Pipe From Canada, Greece, India, the People's Republic of China, the Republic of Korea, and the Republic of Turkey: Postponement of Preliminary Determinations in the Less-Than-Fair-Value Investigations

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

DATES: Applicable June 15, 2018.

FOR FURTHER INFORMATION CONTACT: Susan Pulongbarit at (202) 482–4031 (Canada); Brittany Bauer at (202) 482–3860 (Greece); Jaron Moore at (202) 482–3640 (India); Kabir Archuletta at (202) 482–8024 (the People's Republic of China (China)); Jesus Saenz at (202) 482–8184 (the Republic of Korea (Korea)); and Rebecca Janz at (202) 482–2972 (the Republic of Turkey (Turkey)), AD/CVD Operations, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230.

SUPPLEMENTARY INFORMATION:

Background

On February 9, 2018, the U.S. Department of Commerce (Commerce) initiated less-than-fair-value (LFTV) investigations of imports of large diameter welded pipe from Canada, China, Greece, India, Korea, and Turkey.[1] Currently, the preliminary determinations are due no later than June 29, 2018.[2]

Postponement of Preliminary Determinations

Section 733(b)(1)(A) of the Tariff Act of 1930, as amended (the Act), requires Commerce to issue the preliminary determination in an LTFV investigation within 140 days after the date on which Commerce initiated the investigation. However, section 733(c)(1) of the Act permits Commerce to postpone the preliminary determination until no later than 190 days after the date on which Commerce initiated the investigation if: (A) The petitioner makes a timely request for a postponement; or (B) Commerce concludes that the parties concerned are cooperating, that the investigation is extraordinarily complicated, and that additional time is necessary to make a preliminary determination. Pursuant to 19 CFR 351.205(e), the petitioner must submit a request to postpone 25 days or more before the scheduled date of the preliminary determination, and must state the reasons for postponement. Commerce will grant the request unless it finds compelling reasons to deny the request. *See* 19 CFR 351.205(e).

On May 23, 2018, the petitioners [3] submitted a timely request that Commerce postpone the preliminary determinations in these LTFV investigations.[4] The petitioners stated that the purpose of their request is to provide Commerce with adequate time to solicit information from the respondents and to allow Commerce sufficient time to analyze respondents' questionnaire responses.[5]

In accordance with 19 CFR 351.205(e), there are no compelling reasons to deny the request. Therefore, in accordance with section 733(c)(1)(A) of the Act and 19 CFR 351.205(e), we are postponing the preliminary determinations in these LTFV investigations by 50 days (*i.e.,* 190 days after the date on which these investigations were initiated). Additionally, Commerce exercised its discretion to toll deadlines affected by the closure of the Federal Government from January 20 through 22, 2018.[6] Accordingly, Commerce is postponing the deadline for the preliminary determinations to August 20, 2018.[7] Pursuant to section 735(a)(1) of the Act and 19 CFR 351.210(b)(1), the deadline for the final determinations of these investigations will continue to be 75 days after the date of the preliminary determinations, unless postponed.

This notice is issued and published pursuant to section 733(c)(2) of the Act and 19 CFR 351.205(f)(1).

Dated: June 8, 2018.

Gary Taverman,

Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations, performing the non-exclusive functions and duties of the Assistant Secretary for Enforcement and Compliance.

[FR Doc. 2018–12899 Filed 6–14–18; 8:45 am]

BILLING CODE 3510–DS–P

[1] *See Large Diameter Welded Pipe from Canada, Greece, India, the People's Republic of China, the Republic of Korea, and the Republic of Turkey: Initiation of Less-Than-Fair-Value Investigations,* 83 FR 7154 (February 20, 2018).

[2] Commerce has exercised its discretion to toll deadlines for the duration of the closure of the Federal Government from January 20 through 22, 2018. *See* Memorandum, ''Deadlines Affected by the Shutdown of the Federal Government,'' dated January 23, 2018 (Tolling Memorandum). Accordingly, all deadlines in this segment of the proceeding have been extended by 3 days.

[3] American Cast Iron Pipe Company, Berg Steel Pipe Corp., Berg Spiral Pipe Corp., Dura-Bond Industries, and Stupp Corporation, individually and as members of the American Line Pipe Producers Association; Greens Bayou Pipe Mill, LP; JSW Steel (USA) Inc.; Skyline Steel; and Trinity Products LLC (collectively, the petitioners).

[4] *See* Petitioners' Letters, ''Large Diameter Welded Pipe from Canada: Petitioners' Request for Postponement of the Preliminary Determination,'' dated May 23, 2018; ''Large Diameter Welded Pipe from China: Petitioners' Request for Postponement of the Preliminary Determination,'' dated May 23, 2018; ''Large Diameter Welded Pipe from Greece: Petitioners' Request for Postponement of the Preliminary Determination,'' dated May 23, 2018; ''Large Diameter Welded Pipe from India: Petitioners' Request for Postponement of the Preliminary Determination,'' dated May 23, 2018; ''Large Diameter Welded Pipe from Korea: Petitioners' Request for Postponement of the Preliminary Determination,'' dated May 23, 2018; ''Large Diameter Welded Pipe from Turkey: Petitioners' Request for Postponement of the Preliminary Determination,'' dated May 23, 2018.

[5] *Id.*

[6] *See* Tolling Memorandum.

[7] Note that the revised deadline reflects a full postponement to 190 days after the date on which this investigation was initiated, in addition to a 3-day extension due to closure of the Federal Government. As this new deadline falls on a Saturday, the deadline moves to the next business day. *See Notice of Clarification: Application of ''Next Business Day'' Rule for Administrative Determination Deadlines Pursuant to the Tariff Act of 1920, as Amended,* 70 FR 24533 (May 10, 2005).

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Submission for OMB Review; Comment Request

The Department of Commerce will submit to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act.

Agency: National Oceanic and Atmospheric Administration (NOAA).

Title: Western Pacific Community Development Program.

OMB Control Number: 0648–0612.

Form Number(s): None.

Type of Request: Regular (extension of a currently approved information collection).

Number of Respondents: 5.

Average Hours per Response: 6.

Burden Hours: 30.

Needs and Uses: This request is for extension of a current information collection.

The Federal regulations at 50 CFR part 665 authorize the Regional Administrator of the National Marine Fisheries Service (NMFS), Pacific Island Region to provide eligible western Pacific communities with access to fisheries that they have traditionally depended upon, but may not have the capabilities to support continued and substantial participation, possibly due

to economic, regulatory, or other barriers. To be eligible to participate in the western Pacific community development program, a community must meet the criteria set forth in 50 CFR part 665.20, and submit a community development plan that describes the purposes and goals of the plan, the justification for proposed fishing activities, and the degree of involvement by the indigenous community members, including contact information.

This collection of information provides NMFS and the Western Pacific Fishery Management Council (Council) with data to determine whether a community that submits a community development plan meets the regulatory requirements for participation in the program, and whether the activities proposed under the plan are consistent with the intent of the program, the Magnuson-Stevens Fishery Conservation and Management Act, and other applicable laws. The information is also important for evaluating potential impacts of the proposed community development plan activities on fish stocks, endangered species, marine mammals, and other components of the affected environment for the purposes of compliance with the National Environmental Policy Act, the Endangered Species Act and other applicable laws.

Affected Public: Individuals or households; business or other for-profit organizations; not for profit institutions.

Frequency: On occasion.

Respondent's Obligation: Required to obtain or retain benefits.

This information collection request may be viewed at *reginfo.gov.* Follow the instructions to view Department of Commerce collections currently under review by OMB.

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to *OIRA_Submission@omb.eop.gov* or fax to (202) 395–5806.

Dated: June 12, 2018.

Sarah Brabson,

NOAA PRA Clearance Officer.

[FR Doc. 2018–12882 Filed 6–14–18; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XF986

Takes of Marine Mammals Incidental to Specified Activities; Taking Marine Mammals Incidental to a Low-Energy Geophysical Survey in the Northwest Atlantic Ocean

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

ACTION: Notice; issuance of an incidental harassment authorization.

SUMMARY: In accordance with the regulations implementing the Marine Mammal Protection Act (MMPA) as amended, notification is hereby given that NMFS has issued an incidental harassment authorization (IHA) to the Scripps Institution of Oceanography (SIO) to take marine mammals incidental to a low-energy marine geophysical survey in the Northwest Atlantic Ocean.

DATES: This authorization is valid for one year from the date of issuance.

FOR FURTHER INFORMATION CONTACT: Jordan Carduner, Office of Protected Resources, NMFS, (301) 427–8401. Electronic copies of the application and supporting documents, as well as a list of the references cited in this document, may be obtained online at: *www.fisheries.noaa.gov/national/marine-mammal-protection/incidental-take-authorizations-research-and-other-activities.* In case of problems accessing these documents, please call the contact listed above.

SUPPLEMENTARY INFORMATION:

Background

Sections 101(a)(5)(A) and (D) of the MMPA (16 U.S.C. 1361 *et seq.*) direct the Secretary of Commerce (as delegated to NMFS) to allow, upon request, the incidental, but not intentional, taking of small numbers of marine mammals by U.S. citizens who engage in a specified activity (other than commercial fishing) within a specified geographical region if certain findings are made and either regulations are issued or, if the taking is limited to harassment, a notice of a proposed authorization is provided to the public for review.

An authorization for incidental takings shall be granted if NMFS finds that the taking will have a negligible impact on the species or stock(s), will not have an unmitigable adverse impact on the availability of the species or stock(s) for subsistence uses (where relevant), and if the permissible methods of taking and requirements pertaining to the mitigation, monitoring and reporting of such takings are set forth.

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.

The MMPA states that the term ''take'' means to harass, hunt, capture, kill or attempt to harass, hunt, capture, or kill any marine mammal.

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).

National Environmental Policy Act

To comply with the National Environmental Policy Act of 1969 (NEPA; 42 U.S.C. 4321 *et seq.*) and NOAA Administrative Order (NAO) 216–6A, NMFS must review our proposed action (*i.e.,* the issuance of an incidental harassment authorization) with respect to potential impacts on the human environment. This action is consistent with categories of activities identified in Categorical Exclusion B4 (incidental harassment authorizations with no anticipated serious injury or mortality) of the Companion Manual for NOAA Administrative Order 216–6A, which do not individually or cumulatively have the potential for significant impacts on the quality of the human environment and for which we have not identified any extraordinary circumstances that would preclude this categorical exclusion. Accordingly, NMFS has determined that the issuance of the IHA qualifies to be categorically excluded from further NEPA review.

Summary of Request

On November 20, 2017, NMFS received a request from SIO for an IHA to take marine mammals incidental to conducting a low-energy marine geophysical survey in the Northwest Atlantic Ocean. On February 8, 2018, we deemed SIO's application for authorization to be adequate and complete. SIO's request is for take of a

small number of 35 species of marine mammals by Level B harassment and Level A harassment. Neither SIO nor NMFS expects mortality to result from this activity, and, therefore, an IHA is appropriate. The planned activity is not expected to exceed one year, hence, we do not expect subsequent MMPA incidental harassment authorizations would be issued for this particular activity.

Description of Specified Activity

Overview

SIO plans to conduct a low-energy marine seismic survey in the Northwest Atlantic Ocean for approximately 25 days during June–July 2018. The survey would occur in International Waters, between ~33.5° and 53.5° N, and 37° and 49° W, at water depths ranging from 1,800 to over 5,000 meters (m) (see Figure 1 in the IHA application) and would entail one source vessel, the R/V *Atlantis,* which would tow a pair of 45 cubic inch (in^3) GI airguns at a depth of 2–4 m with a total discharge volume of approximately 90 in^3 as an energy source along predetermined lines. The receiving system would consist of one hydrophone streamer, either 200 or 600 m in length. The program consists of a site survey in support of a potential future International Ocean Discovery Program project and would examine regional seismic stratigraphy and provide seismic images of changing sediment distributions from deepwater production changes. The Principal Investigators are Drs. M. Lyle (Oregon State University), G. Mountain (Rutgers University), and K. Miller (Rutgers University).

The survey would use two different types of airgun array configurations. The first would entail a pair of 45-in^3 airguns spaced 8 m apart at a water depth of 2–4 m with a 200 m hydrophone streamer and with the vessel traveling at 8 knots (kt). The second would entail a pair of 45-in^3 airguns, but with airguns spaced 2 m apart at a depth of 2–4 m with a 600 m hydrophone streamer and with the vessel traveling at 5 kt to achieve especially high-quality seismic reflection data. Data would be collected within six grids, and also along track lines between the six grid locations (see Figure 1 in the IHA application). A total of 7,911 kilometers (km) of seismic acquisition would occur, including 4,334 km of data collected within the survey grids (2667 km at 8 kt and 1667 km at 5 kt) and an additional 3,577 km of track lines connecting the grids. There could be additional seismic operations in the project area associated with equipment testing, re-acquisition due to equipment malfunction, data degradation during poor weather, or interruption due to shutdown or track deviation in compliance with IHA requirements.

In addition to the operations of the airgun array, a multibeam echosounder (MBES) and a sub-bottom profiler (SBP) would also be operated continuously throughout the survey, but not during transits to and from the project area. The MBES (a Kongsberg EM122) operates at 10.5–13 (usually 12) kilohertz (kHz) and is hull-mounted, with the transmitting beamwidth 1 or 2° fore-aft and 150° athwartship. The SBP (a Knudsen 3260) is normally operated to provide information about the near seafloor sedimentary features and the bottom topography that is mapped simultaneously by the MBES. The beam of the SBP is transmitted as a 27° cone, which is directed downward by a 3.5-kHz transducer in the hull of the vessel.

TABLE 1—SPECIFICATIONS OF THE R/V ATLANTIS AIRGUN ARRAY

Number of airguns	2.
Gun positions used	Two inline airguns 2- or 8-m apart.
Tow depth of energy source	2–4 m.
Dominant frequency components	0–188 Hz.
Air discharge volume	Approximately 90 in^3.
Shot interval	9.72 seconds (2 m airgun separation survey) and 12.15 seconds (8 m airgun separation survey).

A detailed description of SIO's planned survey is provided in the **Federal Register** notice for the proposed IHA (83 FR 18644; April 27, 2018). Since that time, no changes have been made to SIO's planned survey activities. Therefore, a detailed description is not provided here. Please refer to that **Federal Register** notice for the description of the specific activity. Mitigation, monitoring, and reporting measures are described in detail later in this document (please see ''Mitigation'' and ''Monitoring and Reporting'').

Comments and Responses

NMFS published a notice of proposed IHA in the **Federal Register** on April 27, 2018 (83 FR 18644). During the 30-day public comment period, NMFS received a comment letter from the Marine Mammal Commission (Commission). NMFS has posted the comments online at: *www.fisheries.noaa.gov/national/marine-mammal-protection/incidental-take-authorizations-research-and-other-activities.* NMFS addresses any comments specific to SIO's application related to the statutory and regulatory requirements or findings that NMFS must make under the MMPA in order to issue an Authorization. The following is a summary of the public comments and NMFS' responses.

Comment 1: The Commission expressed concerns regarding SIO's method to estimate the extent of the Level A and Level B harassment zones and the numbers of marine mammal takes. The Commission stated that the model is not the best available science because it assumes spherical spreading, a constant sound speed, and no bottom interactions for surveys in deep water, and that the model provides results to a water depth of 2,000 m while SIO's planned survey would occur in waters from 1,800 to more than 5,000 m in depth. In light of their concerns, the Commission recommended that NMFS require SIO, in collaboration with Lamont-Doherty Earth Observatory of Columbia University (LDEO) (which performed the modeling of Level A and Level B harassment zones) to re-estimate the Level A and Level B harassment zones and associated takes of marine mammals using (1) operational (including number/type/spacing of airguns, tow depth, source level/operating pressure, operational volume) and site-specific environmental (including sound speed profiles, bathymetry, and sediment characteristics at a minimum) parameters; (2) a comprehensive source model (*i.e.,* Gundalf Optimizer or AASM) and (3) an appropriate sound propagation model for the proposed IHA. Specifically, the Commission states that LDEO should be using the ray-tracing sound propagation model BELLHOP, rather than the MATLAB code currently used.

NMFS Response: NMFS acknowledges the Commission's concerns about LDEO's current modeling approach for estimating Level A and Level B harassment zones and takes. SIO's application (LGL, 2018) and the **Federal Register** notice of the proposed IHA (83 FR 18644; April 27, 2018) describe the applicant's approach to modeling Level A and Level B harassment zones. The model LDEO currently uses does not allow for the consideration of environmental and site-specific parameters as requested by the Commission.

SIO's application (LGL, 2018) describes their approach to modeling Level A and Level B harassment zones. In summary, LDEO acquired field measurements for several array configurations at shallow, intermediate, and deep-water depths during acoustic verification studies conducted in the northern Gulf of Mexico in 2007 and 2008 (Tolstoy *et al.,* 2009). Based on the empirical data from those studies, LDEO developed a sound propagation modeling approach that predicts received sound levels as a function of distance from a particular airgun array configuration in deep water. For this survey, LDEO modeled Level A and Level B harassment zones based on the empirically-derived measurements from the Gulf of Mexico calibration survey (Appendix H of NSF–USGS 2011). LDEO used the deep-water radii obtained from model results down to a maximum water depth of 2,000 m (Figure 2 and 3 in Appendix H of NSF–USGS 2011).

In 2015, LDEO explored the question of whether the Gulf of Mexico calibration data described above adequately informs the model to predict exclusion isopleths in other areas by conducting a retrospective sound power analysis of one of the lines acquired during L–DEO's seismic survey offshore New Jersey in 2014 (Crone, 2015). NMFS presented a comparison of the predicted radii (*i.e.,* modeled exclusion zones) with radii based on in situ measurements (*i.e.,* the upper bound [95th percentile] of the cross-line prediction) in a previous notice of issued Authorization for LDEO (see 80 FR 27635, May 14, 2015, Table 1). Briefly, the analysis presented in Crone (2015), specific to the survey site offshore New Jersey, confirmed that in-situ, site specific measurements and estimates of 160 decibel (dB) and 180 dB isopleths collected by the hydrophone streamer of the *R/V Marcus Langseth* in shallow water were smaller than the modeled (*i.e.,* predicted) zones for two seismic surveys conducted offshore New Jersey in shallow water in 2014 and 2015. In that particular case, Crone's (2015) results showed that LDEO's modeled 180 dB and 160 dB zones were approximately 28 percent and 33 percent smaller, respectively, than the in-situ, site-specific measurements, thus confirming that LDEO's model was conservative in that case.

The following is a summary of two additional analyses of in-situ data that support LDEO's use of the modeled Level A and Level B harassment zones in this particular case. In 2010, LDEO assessed the accuracy of their modeling approach by comparing the sound levels of the field measurements acquired in the Gulf of Mexico study to their model predictions (Diebold *et al.,* 2010). They reported that the observed sound levels from the field measurements fell almost entirely below the predicted mitigation radii curve for deep water (*i.e.,* greater than 1,000 m; 3280.8 ft) (Diebold *et al.,* 2010). In 2012, LDEO used a similar process to model distances to isopleths corresponding to Level A and Level B harassment thresholds for a shallow-water seismic survey in the northeast Pacific Ocean offshore Washington State. LDEO conducted the shallow-water survey using a 6,600 in^3 airgun configuration aboard the *R/V Marcus Langseth* and recorded the received sound levels on both the shelf and slope using the *Langseth's* 8 km hydrophone streamer. Crone *et al.* (2014) analyzed those received sound levels from the 2012 survey and confirmed that in-situ, site specific measurements and estimates of the 160 dB and 180 dB isopleths collected by the *Langseth's* hydrophone streamer in shallow water were two to three times smaller than LDEO's modeling approach had predicted. While the results confirmed the role of bathymetry in sound propagation, Crone *et al.* (2014) were also able to confirm that the empirical measurements from the Gulf of Mexico calibration survey (the same measurements used to inform LDEO's modeling approach for the planned surveys in the northwest Atlantic Ocean) overestimated the size of the exclusion and buffer zones for the shallow-water 2012 survey off Washington State and were thus precautionary, in that particular case.

NMFS continues to work with LDEO to address the issue of incorporating site-specific information for future authorizations for seismic surveys. However, LDEO's current modeling approach (supported by the three data points discussed previously) represents the best available information for NMFS to reach determinations for this IHA. As described earlier, the comparisons of LDEO's model results and the field data collected at multiple locations (*i.e.,* the Gulf of Mexico, offshore Washington State, and offshore New Jersey) illustrate a degree of conservativeness built into LDEO's model for deep water, which NMFS expects to offset some of the limitations of the model to capture the variability resulting from site-specific factors. Based upon the best available information (*i.e.,* the three data points, two of which are peer-reviewed, discussed in this response), NMFS finds that the Level A and Level B harassment zone calculations are appropriate for use in this particular IHA.

LDEO has conveyed to NMFS that additional modeling efforts to refine the process and conduct comparative analysis may be possible with the availability of research funds and other resources. Obtaining research funds is typically accomplished through a competitive process, including those submitted to U.S. Federal agencies. The use of models for calculating Level A and Level B harassment zones and for developing take estimates is not a requirement of the MMPA incidental take authorization process. Further, NMFS does not provide specific guidance on model parameters nor prescribe a specific model for applicants as part of the MMPA incidental take authorization process at this time, although we do review methods to ensure adequate for prediction of take. There is a level of variability not only with parameters in the models, but also the uncertainty associated with data used in models, and therefore, the quality of the model results submitted by applicants. NMFS considers this variability when evaluating applications and the take estimates and mitigation measures that the model informs. NMFS takes into consideration the model used, and its results, in determining the potential impacts to marine mammals; however, it is just one component of the analysis during the MMPA authorization process as NMFS also takes into consideration other factors associated with the activity (*e.g.,* geographic location, duration of activities, context, sound source intensity, etc.).

Comment 2: The Commission recommended that NMFS better evaluate the numbers of Level A and B harassment takes it plans to propose for authorization by considering both ecological/biological information and implementation of mitigation measures for all proposed authorizations prior to submitting them for publication in the **Federal Register**. The Commission specifically questioned the proposed authorization of 42 Level A takes of

harbor porpoises and recommended that NMFS reduce the numbers of Level A takes for that particular species.

NMFS Response: We appreciate the Commission's concern with authorizing appropriate numbers of take and their suggestion regarding the specific number of Level A takes that it deems appropriate in this instance. We base take analyses on the best available information; in this case, as SIO's survey is planned in a geographic area where data on marine mammal abundance and density is relatively limited, the best available information on cetacean density (including harbor porpoise density) was represented by density modeling by Mannocci *et al.* (2017). We relied on this information to calculate the estimated numbers of takes (including Level A takes of harbor porpoise), as described in the proposed IHA. We also acknowledged in the proposed IHA that harbor porpoises would be expected to be relatively uncommon in the proposed survey area, and that take estimates are conservative. That said, given the fact that Mannocci *et al.* (2017) predict relatively high densities of harbor porpoises in offshore waters north of ~40° N (where much of the survey would occur) and given the relative lack of information regarding the marine mammals that may be encountered by SIO's survey, we do not think a reduction in the number of Level A takes of harbor porpoises is necessary in this instance, given the applicant's request.

Comment 3: the Commission questioned the necessity of the 100 m exclusion zone, specifically for mid-frequency (MF) cetaceans, noting that the Level A harassment zone is estimated to be less than 1 m for MF cetaceans. The Commission stated that NMFS should ensure that marine mammals are sufficiently protected from Level A harassment and that activities can be completed in an appropriate manner and within an appropriate timeframe, and recommended that NMFS more thoroughly assess the proposed exclusion zones that are to be implemented for this authorization and for future proposed incidental take authorizations, prior to publication in the **Federal Register**.

NMFS Response: NMFS agrees with the Commission that mitigation measures should ensure sufficient protection of marine mammals while facilitating the timely completion of the specified activities so as to minimize the overall duration of those activities and their impacts on marine mammals. It is for this reason that NMFS has included a waiver to the shutdown requirement specifically for small delphinoids (which are expected to constitute the vast majority of MF cetaceans encountered by SIO's survey) that would otherwise result in a shutdown of SIO's survey. The shutdown requirement referenced by the Commission will be in place for marine mammals with the exception of small delphinoids (which are all in the MF functional hearing group) under certain circumstances. The small delphinoid group is intended to encompass those members of the Family Delphinidae most likely to voluntarily approach the source vessel for purposes of interacting with the vessel and/or airgun array (*e.g.,* bow riding). The exception to the shutdown requirement applies solely to specific genera of small dolphins—*Tursiops, Steno, Stenella, Lagenorhynchus* and *Delphinus.* We have included this exception because shutdown requirements for small delphinoids under all circumstances represent practicability concerns without likely commensurate benefits for the animals in question, as referenced by the Commission. Small delphinoids are generally the most commonly observed marine mammals in the specific geographic region and would typically be the only marine mammals likely to intentionally approach the vessel. As referenced by the Commission, auditory injury is extremely unlikely to occur for MF cetaceans (*e.g.,* delphinids), as this group is relatively insensitive to sound produced at the predominant frequencies in an airgun pulse while also having a relatively high threshold for the onset of auditory injury. We refer the reader to the **Federal Register** notice for the proposed IHA (83 FR 18644; April 27, 2018) for further discussion of sound metrics and thresholds and marine mammal hearing.

A large body of anecdotal evidence indicates that small delphinoids commonly approach vessels and/or towed arrays during active sound production for purposes of bow riding, with no apparent effect observed in those delphinoids (*e.g.,* Barkaszi *et al.,* 2012). As referenced by the Commission, the potential for increased shutdowns resulting from such a measure would require the *Atlantis* to revisit the missed track line to reacquire data, potentially resulting in an increase in the total duration over which the survey is active in a given area and an overall increase in the total sound energy input to the marine environment. Although other mid-frequency hearing specialists (*e.g.,* large delphinoids) are no more likely to incur auditory injury than are small delphinoids, they are much less likely to approach vessels. Therefore, contrary to the Commission's concerns, retaining a shutdown requirement for large delphinoids would not have similar impacts in terms of either practicability for the applicant or corollary increase in sound energy output and time on the water. We also anticipate some benefit for a shutdown requirement for large delphinoids in that it simplifies somewhat the total range of decision-making for protected species observers (PSOs) and may preclude any potential for physiological effects other than to the auditory system as well as some more severe behavioral reactions for any such animals in close proximity to the source vessel. Shutdown requirements, including the waiver to shutdown requirements for small delphinoids, are discussed in greater detail in the *Mitigation* section below.

Comment 4: The Commission expressed concern that the method used to estimate the numbers of takes, which summed fractions of takes for each species across project days, does not account for and negates the intent of NMFS' 24-hour reset policy, and recommended that NMFS provide the draft criteria for take calculation in a timely manner.

NMFS Response: We appreciate the Commission's ongoing concern in this matter. Calculating predicted takes is not an exact science and there are arguments for taking different mathematical approaches in different situations, and for making qualitative adjustments in other situations. We believe, however, that the methodology used for take calculation in this IHA remains appropriate and is not at odds with the 24-hour reset policy the Commission references. We will share draft guidance on this issue as soon as possible with the Commission.

Comment 5: The Commission expressed concern that information was missing or incorrect in the proposed IHA and SIO's application, including information on the proposed activities related to the proposed source levels, shot intervals, and source velocities and mitigation measures. Therefore the Commission recommended that NMFS review more thoroughly applications prior to deeming them complete and NMFS' draft notices prior to submitting them for publication in the **Federal Register**.

NMFS Response: We appreciate the Commission pointing out the deficiencies in the notice of proposed IHA. In response to the Commission's concerns we have ensured source levels, shot intervals, source velocities and mitigation measures are accurately

described in this notice and are accurately factored into harassment zones and authorized take numbers. Resultant changes to harassment zones and take estimates are minimal and are described in the *Take Estimate* section below. NMFS thoroughly reviews all applications prior to deeming them complete, and thoroughly reviews draft notices prior to publishing in the **Federal Register**, and will continue to do so.

Comment 6: The Commission requested clarification regarding certain issues associated with NMFS' notice that one-year renewals could be issued in certain limited circumstances and expressed concern that the process would bypass the public notice and comment requirements. The Commission recommended that NMFS refrain from implementing its proposed renewal process and instead use abbreviated **Federal Register** notices and reference existing documents to streamline the incidental harassment authorization process. The Commission suggested that NMFS should discuss the possibility of renewals through a more general route, such as a rulemaking, instead of notice in a specific authorization. The Commission further recommended that if NMFS did not pursue a more general route, that the agency provide the Commission and the public with a legal analysis supporting our conclusion that this process is consistent with the requirements of section 101(a)(5)(D) of the MMPA.

NMFS Response: The process of issuing a renewal IHA does not bypass the public notice and comment requirements of the MMPA. The notice of the proposed IHA expressly notifies the public that under certain, limited conditions an applicant could seek a renewal IHA for an additional year. The notice describes the conditions under which such a renewal request could be considered and expressly seeks public comment in the event such a renewal is sought. Importantly, such renewals would be limited to circumstances where: The activities are identical or nearly identical to those analyzed in the proposed IHA; monitoring does not indicate impacts that were not previously analyzed and authorized; and, the mitigation and monitoring requirements remain the same, all of which allow the public to comment on the appropriateness and effects of a renewal at the same time the public provides comments on the initial IHA. NMFS has, however, modified the language for future proposed IHAs to clarify that all IHAs, including renewal IHAs, are valid for no more than one year and that the agency would consider only one renewal for a project at this time. In addition, notice of issuance or denial of a renewal IHA would be published in the **Federal Register**, as they are for all IHAs. The option for issuing renewal IHAs has been in NMFS's incidental take regulations since 1996. We will provide any additional information to the Commission and consider posting a description of the renewal process on our website before any renewal is issued utilizing this process.

Description of Marine Mammals in the Area of Specified Activity

Sections 3 and 4 of SIO's IHA application summarize available information regarding status and trends, distribution and habitat preferences, and behavior and life history, of the potentially affected species. Additional information regarding population trends and threats may be found in NMFS' Stock Assessment Reports (SAR; *www.fisheries.noaa.gov/national/marine-mammal-protection/marine-mammal-stock-assessment-reports-region*) and more general information about these species (*e.g.,* physical and behavioral descriptions) may be found on NMFS' website (*www.fisheries.noaa.gov/species-directory*).

The populations of marine mammals considered in this document do not occur within the U.S. exclusive economic zone (EEZ) and are therefore not assigned to stocks and are not assessed in NMFS' Stock Assessment Reports (SAR). As such, information on potential biological removal (PBR; defined by the MMPA as the maximum number of animals, not including natural mortalities, that may be removed from a marine mammal stock while allowing that stock to reach or maintain its optimum sustainable population) and on annual levels of serious injury and mortality from anthropogenic sources are not available for these marine mammal populations. Abundance estimates for marine mammals in the survey location are lacking; therefore the abundance estimates presented here are based on the U.S. Atlantic SARs (Hayes *et al.,* 2017) and on the Canadian Trans-North Atlantic Sighting Survey which provided full coverage of the Atlantic Canadian coast (Lawson and Gosselin, 2009), as these sources are considered the best available information on potential abundance of marine mammals in the area. However, as described above, the marine mammals encountered by the proposed survey are not assigned to stocks. All abundance estimate values presented in Table 2 are the most recent available at the time of publication and are available in the 2017 U.S. Atlantic draft SARs (*e.g.,* Hayes *et al.* 2017) available online at: *www.fisheries.noaa.gov/national/marine-mammal-protection/marine-mammal-stock-assessments,* except where noted otherwise.

Table 2 lists all species with expected potential for occurrence in the survey area and with the potential to be taken as a result of the proposed survey, and summarizes information related to the population, including regulatory status under the MMPA and ESA. For taxonomy, we follow Committee on Taxonomy (2016).

TABLE 2—MARINE MAMMAL SPECIES POTENTIALLY PRESENT IN THE PROJECT AREA AND THAT MAY BE AFFECTED BY THE SPECIFIED ACTIVITIES

Species	Stock	ESA/MMPA status; strategic (Y/N) [1]	Abundance [2]	Relative occurrence in project area
Order Cetartiodactyla—Cetacea—Superfamily Mysticeti (baleen whales)				
Family: Balaenopteridae				
Humpback whale [3] (*Megaptera novaeangliae*)	n/a	-/-; N	12,312	Uncommon.
Minke whale [4] (*Balaenoptera acutorostrata)*	n/a	-/-; N	20,741	Uncommon.
Bryde's whale (*Balaenoptera brydei*)	n/a	-/-; N	unknown	Uncommon.
Sei whale (*Balaenoptera borealis*)	n/a	E/D; Y	357	Uncommon.
Fin whale [4] (*Balaenoptera physalus*)	n/a	E/D; Y	3,522	Uncommon.

TABLE 2—MARINE MAMMAL SPECIES POTENTIALLY PRESENT IN THE PROJECT AREA AND THAT MAY BE AFFECTED BY THE SPECIFIED ACTIVITIES—Continued

Species	Stock	ESA/ MMPA status; strategic (Y/N) [1]	Abundance [2]	Relative occurrence in project area
Blue whale (*Balaenoptera musculus*)	n/a	E/D; Y	440	Uncommon.
Order Cetartiodactyla—Cetacea—Superfamily Odontoceti (toothed whales, dolphins, and porpoises)				
Family: Physeteridae				
Sperm whale (*Physeter macrocephalus*)	n/a	E/D; Y	2,288	Uncommon.
Order Cetartiodactyla—Cetacea—Superfamily Odontoceti (toothed whales, dolphins, and porpoises)				
Family: Kogiidae				
Pygmy sperm whale [5] (*Kogia breviceps*)	n/a	-/-; N	3,785	Rare.
Dwarf sperm whale [5] (*Kogia sima*)	n/a	-/-; N	3,785	Rare.
Order Cetartiodactyla—Cetacea—Superfamily Odontoceti (toothed whales, dolphins, and porpoises)				
Family delphinidae				
Killer whale (*Orcinus orca*)	n/a	-/-; N	unknown	Uncommon.
False killer whale (*Pseudorca crassidens*)	n/a	-/-; N	442	Uncommon.
Pygmy killer whale (*Feresa attenuata*)	n/a	-/-; N	unknown	Rare.
Short-finned pilot whale (*Globicephala macrorhynchus*)	n/a	-/-; N	21,515	Uncommon.
Long-finned pilot whale (*Globicephala melas*)	n/a	-/-; N	5,636	Uncommon.
Harbor porpoise (*Phocoena phocoena)*	n/a	-/-; N	79,833	Uncommon.
Bottlenose dolphin (*Tursiops truncatus*)	n/a	-/-; N	77,532	Uncommon.
Striped dolphin (*Stenella coeruleoala*)	n/a	-/-; N	54,807	Uncommon.
Risso's dolphin (*Grampus griseus*)	n/a	-/-; N	18,250	Uncommon.
Common dolphin [4] (*Delphinus delphis*)	n/a	-; N	173,486	Uncommon.
Atlantic white-sided dolphin (*Lagenorhynchus obliquidens*)	n/a	-; N	48,819	Uncommon.
Atlantic spotted dolphin (*Stenella frontalis*)	n/a	-; N	44,715	Uncommon.
Pantropical spotted dolphin (*Stenella attenuate*)	n/a	-; N	3,333	Uncommon.
White beaked dolphin (*Lagenorhynchus albirostris*)	n/a	-; N	2,003	Uncommon.
Rough-toothed dolphin (*Steno bredanensis*)	n/a	-; N	271	Rare.
Order Cetartiodactyla—Cetacea—Superfamily Odontoceti (toothed whales, dolphins, and porpoises)				
Family: Ziphiidae				
Cuvier's beaked whale (*Ziphius cavirostris*)	n/a	-/-; N	6,532	Uncommon.
Blainville's beaked whale [6] (*Mesoplodon densirostris*)	n/a	-; N	7,092	Uncommon.
True's beaked whale [6] (*Mesoplodon mirus*)	n/a	-/-; N	7,092	Rare.
Gervais beaked whale [6] (*Mesoplodon europaeus*)	n/a	-; N	7,092	Uncommon.
Sowerby's beaked whale [6] (*Mesoplodon bidens*)	n/a	-; N	7,092	Uncommon.
Northern bottlenose whale (*Hyperoodon ampullatus*)	n/a	-; N	unknown	Uncommon.
Order Carnivora—Superfamily Pinnipedia				
Family Phocidae (earless seals)				
Hooded seal (*Cystophora cristata*)	n/a	-; N	592,100	Rare.
Harp seal (*Pagophilus groenlandicus*)	n/a	-; N	7,100,000	Rare.
Ringed seal (*Pusa hispida*) [7]	n/a	-; N	unknown	Rare.

[1] Endangered Species Act (ESA) status: Endangered (E), Threatened (T)/MMPA status: Depleted (D). A dash (-) indicates that the species is not listed under the ESA or designated as depleted under the MMPA. Under the MMPA, a strategic stock is one for which the level of direct human-caused mortality exceeds PBR or which is determined to be declining and likely to be listed under the ESA within the foreseeable future. Any species or stock listed under the ESA is automatically designated under the MMPA as depleted and as a strategic stock.

[2] Abundance estimates are from the NMFS 2017 draft Atlantic SAR (Hayes *et al.,* 2017) unless otherwise noted. We note that marine mammals in the survey area would not belong to NMFS stocks, as the survey area is outside the geographic boundaries for stock assessments, thus stock abundance estimates are provided for comparison purposes only.

[3] NMFS defines a stock of humpback whales only on the basis of the Gulf of Maine feeding population; however, multiple feeding populations originate from the Distinct Population Segment (DPS) that is expected to occur in the proposed survey area (the West Indies DPS). As West Indies DPS whales from multiple feeding populations may be encountered in the proposed survey area, the total abundance of the West Indies DPS best reflects the abundance of the population that may encountered by the proposed survey. The West Indies DPS abundance estimate shown here reflects the latest estimate as described in the NMFS Status Review of the Humpback Whale under the Endangered Species Act (Bettridge *et al.,* 2015).

[4] Abundance for these species is from the 2007 TNASS, which provided full coverage of the Atlantic Canadian coast (Lawson and Gosselin, 2009). Abundance estimates from TNASS were corrected for perception and availability bias, when possible. In general, where the TNASS survey effort provided superior coverage of a stock's range (as compared with NOAA shipboard survey effort), we elect to use the resulting abundance estimate over the current NMFS abundance estimate (derived from survey effort with inferior coverage of the stock range).

[5] Abundance estimate represents pygmy and dwarf sperm whales combined.

[6] Abundance estimate represents all species of *Mesoplodon* in the Atlantic.

[7] NMFS does not have a defined stock of ringed seals in the Atlantic Ocean.

Four marine mammal species that are listed under the Endangered Species Act (ESA) may be present in the survey area and are included in the take request: The fin whale, sei whale, blue whale and sperm whale. Though marine mammal species other than those described in Table 2 are known to occur in the North Atlantic Ocean, the temporal and/or spatial occurrence of several of these species is such that take of these species is not expected to occur, and they are therefore not discussed further beyond the explanation provided here. Four cetacean species, although present in the wider North Atlantic Ocean, likely would not be found near the proposed project area because their ranges generally do not extend as far north: Clymene dolphin, Fraser's dolphin, spinner dolphin, and melon-headed whale. Another cetacean species, the North Atlantic right whale, occurs in nearshore waters off the U.S. coast, and its range does not extend as far offshore as the proposed project area. Another three cetacean species occur in arctic waters, and their ranges generally do not extend as far south as the proposed project area: The bowhead whale, narwhal, and beluga. Two additional cetacean species, the Atlantic humpback dolphin (which occurs in coastal waters of western Africa) and the long-beaked common dolphin (which occurs in coastal waters of South America and western Africa) do not occur in deep offshore waters. Several pinniped species also are known to occur in North Atlantic waters, but are not expected to occur in deep offshore waters of the proposed project area, including the gray seal, harbor seal, and bearded seal.

A detailed description of the species likely to be affected by SIO's survey, including brief introductions to the species and relevant stocks as well as available information regarding population trends and threats, and information regarding local occurrence, were provided in the **Federal Register** notice of the proposed IHA (83 FR 18644; April 27, 2018); since that time, we are not aware of any changes in the status of these species and stocks; therefore, detailed descriptions are not repeated here. Please refer to that **Federal Register** notice for these descriptions. Please also refer to NMFS' website (*www.fisheries.noaa.gov/species-directory*) for generalized species accounts.

Information concerning marine mammal hearing, including marine mammal functional hearing groups, was provided in the **Federal Register** notice of the proposed IHA (83 FR 18644; April 27, 2018), therefore that information is not repeated here; please refer to that **Federal Register** notice for this information. For further information about marine mammal functional hearing groups and associated frequency ranges, please see NMFS (2016) for a review of available information. Thirty-three marine mammal species (thirty cetacean and three pinniped (all phocid) species) have the reasonable potential to co-occur with the proposed survey activities (Table 2). Of the cetacean species that may be present, six are classified as low-frequency cetaceans (*i.e.,* all mysticete species), twenty-two are classified as mid-frequency cetaceans (*i.e.,* all delphinid species, beaked whales, and sperm whale), and three are classified as a high-frequency cetaceans (*i.e.,* harbor porpoise, pygmy and dwarf sperm whales).

Potential Effects of Specified Activities on Marine Mammals and Their Habitat

The effects of underwater noise from SIO's survey activities have the potential to result in behavioral harassment of marine mammals in the vicinity of the survey area. The **Federal Register** notice of the proposed IHA (83 FR 18644; April 27, 2018) included a discussion of the effects of anthropogenic noise on marine mammals and their habitat, therefore that information is not repeated here; please refer to that **Federal Register** notice for that information. No instances of hearing threshold shifts, injury, serious injury, or mortality are expected as a result of the planned activities.

Estimated Take

This section provides an estimate of the number of incidental takes authorized through this IHA, which will inform both NMFS' consideration of ''small numbers'' and the negligible impact determination.

Harassment is the only type of take expected to result from these activities. Except with respect to certain activities not pertinent here, section 3(18) of 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).

Authorized takes would primarily be by Level B harassment, as use of the seismic airguns have the potential to result in disruption of behavioral patterns for individual marine mammals. There is also some potential for auditory injury (Level A harassment) to result, primarily for high frequency cetaceans. Auditory injury is unlikely to occur for low- and mid-frequency cetaceans given very small modeled zones of injury for those species. The mitigation and monitoring measures are expected to minimize the severity of such taking to the extent practicable. As described previously, no mortality is anticipated or authorized for this activity. Below we describe how the take is estimated.

Described in the most basic way, we estimate take by considering: (1) Acoustic thresholds above which NMFS believes the best available science indicates marine mammals will be behaviorally harassed or incur some degree of permanent hearing impairment; (2) the area or volume of water that will be ensonified above these levels in a day; (3) the density or occurrence of marine mammals within these ensonified areas; and (4) and the number of days of activities. Below, we describe these components in more detail and present the exposure estimate and associated numbers of take authorized.

Acoustic Thresholds

Using the best available science, NMFS has developed acoustic thresholds that identify the received level of underwater sound above which exposed marine mammals would be reasonably expected to be behaviorally harassed (equated to Level B harassment) or to incur PTS of some degree (equated to Level A harassment).

Level B Harassment for non-explosive sources—Though significantly driven by received level, the onset of behavioral disturbance from anthropogenic noise exposure is also informed to varying degrees by other factors related to the source (*e.g.,* frequency, predictability, duty cycle), the environment (*e.g.,* bathymetry), and the receiving animals (hearing, motivation, experience, demography, behavioral context) and can be difficult to predict (Southall *et al.,* 2007, Ellison *et al.* 2011). Based on the best available science and the practical need to use a threshold based on a factor that is both predictable and measurable for most activities, NMFS uses a generalized acoustic threshold based on received level to estimate the onset of behavioral harassment. NMFS predicts that marine mammals are likely to be behaviorally harassed in a manner we consider to fall under Level B harassment when exposed to underwater anthropogenic noise above received levels of 120 dB re 1 μPa (rms) for continuous (*e.g.* vibratory pile-

driving, drilling) and above 160 dB re 1 μPa (rms) for non-explosive impulsive (*e.g.,* seismic airguns) or intermittent (*e.g.,* scientific sonar) sources. SIO's proposed activity includes the use of impulsive seismic sources. Therefore, the 160 dB re 1 μPa (rms) criteria is applicable for analysis of level B harassment.

Level A harassment for non-explosive sources— NMFS' Technical Guidance for Assessing the Effects of Anthropogenic Sound on Marine Mammal Hearing (NMFS, 2016) identifies dual criteria to assess auditory injury (Level A harassment) to five different marine mammal groups (based on hearing sensitivity) as a result of exposure to noise from two different types of sources (impulsive or non-impulsive). As described above, SIO's proposed activity includes the use of intermittent and impulsive seismic sources. These thresholds are provided in Table 3.

These thresholds are provided in the table below. The references, analysis, and methodology used in the development of the thresholds are described in NMFS 2016 Technical Guidance, which may be accessed at: *http://www.nmfs.noaa.gov/pr/acoustics/guidelines.htm.*

TABLE 3—THRESHOLDS IDENTIFYING THE ONSET OF PERMANENT THRESHOLD SHIFT IN MARINE MAMMALS

Hearing group	PTS onset thresholds	
	Impulsive *	Non-impulsive
Low-Frequency (LF) Cetaceans	$L_{pk,flat}$: 219 dB $L_{E,LF,24h}$: 183 dB	$L_{E,LF,24h}$: 199 dB.
Mid-Frequency (MF) Cetaceans	$L_{pk,flat}$: 230 dB $L_{E,MF,24h}$: 185 dB	$L_{E,MF,24h}$: 198 dB.
High-Frequency (HF) Cetaceans	$L_{pk,flat}$: 202 dB $L_{E,HF,24h}$: 155 dB	$L_{E,HF,24h}$: 173 dB.
Phocid Pinnipeds (PW) (Underwater)	$L_{pk,flat}$: 218 dB $L_{E,PW,24h}$: 185 dB	$L_{E,PW,24h}$: 201 dB.
Otariid Pinnipeds (OW) (Underwater)	$L_{pk,flat}$: 232 dB $L_{E,OW,24h}$: 203 dB	$L_{E,OW,24h}$: 219 dB.

Note: * Dual metric acoustic thresholds for impulsive sounds: Use whichever results in the largest isopleth for calculating PTS onset. If a non-impulsive sound has the potential of exceeding the peak sound pressure level thresholds associated with impulsive sounds, these thresholds should also be considered.

Note: Peak sound pressure (Lpk) has a reference value of 1 μPa, and cumulative sound exposure level (LE) has a reference value of 1μPa2s. In this Table, thresholds are abbreviated to reflect American National Standards Institute standards (ANSI 2013). However, peak sound pressure is defined by ANSI as incorporating frequency weighting, which is not the intent for this Technical Guidance. Hence, the subscript "flat" is being included to indicate peak sound pressure should be flat weighted or unweighted within the generalized hearing range. The subscript associated with cumulative sound exposure level thresholds indicates the designated marine mammal auditory weighting function (LF, MF, and HF cetaceans, and PW and OW pinnipeds) and that the recommended accumulation period is 24 hours. The cumulative sound exposure level thresholds could be exceeded in a multitude of ways (*i.e.,* varying exposure levels and durations, duty cycle). When possible, it is valuable for action proponents to indicate the conditions under which these acoustic thresholds will be exceeded.

Ensonified Area

Here, we describe operational and environmental parameters of the activity that will feed into estimating the area ensonified above the acoustic thresholds.

The survey would entail the use of a 2-airgun array with a total discharge of 90 in^3 at a tow depth of 2–4 m. The distances to the predicted isopleths corresponding to the threshold for Level B harassment (160 dB re 1 μPa) were calculated for both array configurations based on results of modeling performed by LDEO. Received sound levels were predicted by LDEO's model (Diebold *et al.* 2010) as a function of distance from the airgun array. The LDEO modeling approach uses ray tracing for the direct wave traveling from the array to the receiver and its associated source ghost (reflection at the air-water interface in the vicinity of the array), in a constant-velocity half-space (infinite homogeneous ocean layer unbounded by a seafloor). In addition, propagation measurements of pulses from a 36-airgun array at a tow depth of 6 m have been reported in deep water (~1,600 m), intermediate water depth on the slope (~600–1100 m), and shallow water (~50 m) in the Gulf of Mexico in 2007–2008 (Tolstoy *et al.* 2009; Diebold *et al.* 2010). The estimated distances to Level B harassment isopleths for the two configurations of the *Atlantis* airgun array are shown in Table 4.

TABLE 4—PREDICTED RADIAL DISTANCES FROM R/V ATLANTIS 90 IN^3 SEISMIC SOURCE TO ISOPLETH CORRESPONDING TO LEVEL B HARASSMENT THRESHOLD

Array configuration	Predicted distance to threshold (160 dB re 1 μPa)
2 m airgun separation	578 m
8 m airgun separation	539 m

For modeling of radial distances to predicted isopleths corresponding to harassment thresholds in deep water (>1,000 m), LDEO used the deep-water radii for various Sound Exposure Levels obtained from LDEO model results down to a maximum water depth of 2,000 m (see Figures 2 and 3 in the IHA application). LDEO's modeling methodology is described in greater detail in the IHA application (LGL, 2018) and we refer to the reader to that document rather than repeating it here.

Predicted distances to Level A harassment isopleths, which vary based on marine mammal functional hearing groups (Table 3), were calculated based on modeling performed by LDEO using the Nucleus software program and the NMFS User Spreadsheet, described below. The updated acoustic thresholds for impulsive sounds (such as airguns) contained in the Technical Guidance (NMFS, 2016) were presented as dual metric acoustic thresholds using both cumulative sound exposure level (SEL_{cum}) and peak sound pressure level metrics. As dual metrics, NMFS considers onset of PTS (Level A harassment) to have occurred when either one of the two metrics is exceeded *(i.e.,* metric resulting in the largest isopleth). The SEL_{cum} metric considers both level and duration of exposure, as well as auditory weighting functions by marine mammal hearing group. In recognition of the fact that the requirement to calculate Level A harassment ensonified areas could be more technically challenging to predict due to the duration component and the use of weighting functions in the new SEL_{cum} thresholds, NMFS developed an optional User Spreadsheet that includes tools to help predict a simple isopleth that can be used in conjunction with marine mammal density or occurrence to facilitate the estimation of take numbers.

The values for SEL_{cum} and peak SPL for the *Atlantis* airgun array were derived from calculating the modified farfield signature (Table 5). The farfield signature is often used as a theoretical

representation of the source level. To compute the farfield signature, the source level is estimated at a large distance below the array (*e.g.,* 9 km), and this level is back projected mathematically to a notional distance of 1 m from the array's geometrical center. However, when the source is an array of multiple airguns separated in space, the source level from the theoretical farfield signature is not necessarily the best measurement of the source level that is physically achieved at the source (Tolstoy *et al.* 2009). Near the source (at short ranges, distances <1 km), the pulses of sound pressure from each individual airgun in the source array do not stack constructively, as they do for the theoretical farfield signature. The pulses from the different airguns spread out in time such that the source levels observed or modeled are the result of the summation of pulses from a few airguns, not the full array (Tolstoy *et al.* 2009). At larger distances, away from the source array center, sound pressure of all the airguns in the array stack coherently, but not within one time sample, resulting in smaller source levels (a few dB) than the source level derived from the farfield signature. Because the farfield signature does not take into account the array effect near the source and is calculated as a point source, the modified farfield signature is a more appropriate measure of the sound source level for distributed sound sources, such as airgun arrays. Though the array effect is not expected to be as pronounced in the case of a 2-airgun array as it would be with a larger airgun array, the modified farfield method is considered more appropriate than use of the theoretical farfield signature.

TABLE 5—MODELED SOURCE LEVELS (dB) FOR R/V ATLANTIS 90 IN^3 AIRGUN ARRAY

Functional hearing group	8-kt survey with 8-m airgun separation: Peak SPL_{flat}	8-kt survey with 8-m airgun separation: SEL_{cum}	5-kt survey with 2-m airgun separation: Peak SPL_{flat}	5-kt survey with 2-m airgun separation: SEL_{cum}
Low frequency cetaceans ($L_{pk,flat}$: 219 dB; $L_{E,LF,24h}$: 183 dB)	228.8	207	232.8	206.7
Mid frequency cetaceans ($L_{pk,flat}$: 230 dB; $_{LE,MF,24h}$: 185 dB)	N/A	206.7	229.8	206.9
High frequency cetaceans ($L_{pk,flat}$: 202 dB; $L_{E,HF,24h}$: 155 dB)	233	207.6	232.9	207.2
Phocid Pinnipeds (Underwater) ($L_{pk,flat}$: 218 dB; $L_{E,HF,24h}$: 185 dB)	230	206.7	232.8	206.9
Otariid Pinnipeds (Underwater) ($L_{pk,flat}$: 232 dB; $L_{E,HF,24h}$: 203 dB)	N/A	203	225.6	207.4

In order to more realistically incorporate the Technical Guidance's weighting functions over the seismic array's full acoustic band, unweighted spectrum data for the *Atlantis'*s airgun array (modeled in 1 Hz bands) was used to make adjustments (dB) to the unweighted spectrum levels, by frequency, according to the weighting functions for each relevant marine mammal hearing group. These adjusted/weighted spectrum levels were then converted to pressures (μPa) in order to integrate them over the entire broadband spectrum, resulting in broadband weighted source levels by hearing group that could be directly incorporated within the User Spreadsheet (*i.e.,* to override the Spreadsheet's more simple weighting factor adjustment). Using the User Spreadsheet's ''safe distance'' methodology for mobile sources (described by Sivle *et al.,* 2014) with the hearing group-specific weighted source levels, and inputs assuming spherical spreading propagation, a source velocity of 2.57 m/second (for the 2 m airgun separation survey) and 4.12 m/second (for the 8 m airgun separation survey), and a shot interval of 9.72 seconds (for the 2 m airgun separation survey) and 12.15 seconds (for the 8 m airgun separation survey) (LGL, 2018), potential radial distances to auditory injury zones were calculated for SEL_{cum} thresholds, for both array configurations. Inputs to the User Spreadsheet are shown in Table 5. Outputs from the User Spreadsheet in the form of estimated distances to Level A harassment isopleths are shown in Table 6. As described above, the larger distance of the dual criteria (SEL_{cum}or Peak SPL_{flat}) is used for estimating takes by Level A harassment. The weighting functions used are shown in Table 3 of the IHA application.

TABLE 6—MODELED RADIAL DISTANCES (m) FROM R/V ATLANTIS 90 IN^3 AIRGUN ARRAY TO ISOPLETHS CORRESPONDING TO LEVEL A HARASSMENT THRESHOLDS

Functional hearing group (Level A harassment thresholds)	8-kt survey with 8-m airgun separation: Peak SPL_{flat}	8-kt survey with 8-m airgun separation: SEL_{cum}	5-kt survey with 2-m airgun separation: Peak SPL_{flat}	5-kt survey with 2-m airgun separation: SEL_{cum}
Low frequency cetaceans ($L_{pk,flat}$: 219 dB; $L_{E,LF,24h}$: 183 dB)	3.08	2.4	4.89	6.5
Mid frequency cetaceans ($L_{pk,flat}$: 230 dB; $L_{E,MF,24h}$: 185 dB)	0	0	0.98	0
High frequency cetaceans ($L_{pk,flat}$: 202 dB; $L_{E,HF,24h}$: 155 dB)	[1] 35.53	0	[1] 35.13	0
Phocid Pinnipeds (Underwater) ($L_{pk,flat}$: 218 dB; $L_{E,HF,24h}$: 185 dB)	4.02	0	5.51	0.1
Otariid Pinnipeds (Underwater) ($L_{pk,flat}$: 232 dB; $L_{E,HF,24h}$: 203 dB)	0	0	0.48	0

[1] Distances to isopleths corresponding to Level A harassment threshold for HF cetaceans (peak SPL) have been revised from those shown in the proposed IHA based on use of radial distances (vs radii) to estimate Level A isopleths for high frequency cetaceans.

We note that radial distances to isopleths corresponding to the Level A harassment threshold for high frequency cetaceans shown in Table 6, for the peak SPL metric, are slightly different than the distances that were presented in the proposed IHA. The proposed IHA presented the radii (versus radial distances) to the Level A isopleth for high frequency cetaceans, for the peak SPL metric, as shown in Table 6 of the IHA application (the distances to radii are 34.62 m for the 2-m airgun separation survey and 34.84 m for the 8-m airgun separation survey). However,

as radial distances to the Level A isopleth for high frequency cetaceans, for the peak SPL metric, are slightly larger than the radii, we determined that, to be conservative, the radial distances (as shown in Table 6) should be used to calculate ensonified areas and to estimate take.

Note that because of some of the assumptions included in the methods used, isopleths produced may be overestimates to some degree, which will ultimately result in some degree of overestimate of Level A take. However, these tools offer the best way to predict appropriate isopleths when more sophisticated 3D modeling methods are not available, and NMFS continues to develop ways to quantitatively refine these tools and will qualitatively address the output where appropriate. For mobile sources, such as the proposed seismic survey, the User Spreadsheet predicts the closest distance at which a stationary animal would not incur PTS if the sound source traveled by the animal in a straight line at a constant speed.

Marine Mammal Occurrence

In this section we provide the information about the presence, density, or group dynamics of marine mammals that will inform the take calculations. The best available scientific information was considered in conducting marine mammal exposure estimates (the basis for estimating take). For all cetacean species, densities calculated by Mannocci *et al.* (2017) were used. These represent the most comprehensive and recent density data available for cetacean species in the survey area. Mannocci *et al.* (2017) modeled marine mammal densities using available line transect survey data and habitat-based covariates and extrapolated model predictions to unsurveyed regions, including the proposed survey area. The authors considered line transect surveys that used two or more protected species observers and met the assumptions of the distance sampling methodology as presented by Buckland *et al.* (2001), and included data from shipboard and aerial surveys conducted from 1992 to 2014 by multiple U.S. organizations (details provided in Roberts *et al.* (2016)). The data underlying the model predictions for the proposed survey area originated from shipboard survey data presented in Waring *et al.* (2008). To increase the success of model transferability to new regions, the authors considered biological covariates expected to be related directly to cetacean densities (Wenger & Olden, 2012), namely biomass and production of epipelagic micronekton and zooplankton predicted with the Spatial Ecosystem and Population DYnamics Model (SEAPODYM) (Lehodey *et al.* 2010). Zooplankton and epipelagic micronekton (*i.e.,* squid, crustaceans, and fish) constitute potential prey for many of the cetaceans considered, in particular dolphins and mysticetes (Pauly *et al.* 1998), and all these covariates correlate with cetacean distributions (*e.g.,* Ferguson *et al.* 2006; Doniol-Valcroze et al. 2007; Lambert *et al.* 2014). There is some uncertainty related to the estimated density data and the assumptions used in their calculations, as with all density data estimates. However, the approach used is based on the best available data.

Take Calculation and Estimation

Here we describe how the information provided above is brought together to produce a quantitative take estimate. In order to estimate the number of marine mammals predicted to be exposed to sound levels that would result in Level B harassment or Level A harassment, radial distances to predicted isopleths corresponding to the Level A harassment and Level B harassment thresholds are calculated, as described above (Table 7). Those distances are then used to calculate the area(s) around the airgun array predicted to be ensonified to sound levels that exceed the Level A and Level B harassment thresholds. The areas estimated to be ensonified in a single day of the survey are then calculated, based on the areas predicted to be ensonified around the array and the estimated trackline distance traveled per day (Table 8). This number is then multiplied by the number of survey days (*i.e.,* 7.5 days for the 5-kt survey with 2-m airgun separation and 17.5 days for the 8-kt survey with 8-m airgun separation). The product is then multiplied by 1.25 to account for an additional 25 percent contingency for potential additional seismic operations due to airgun testing, mechanical failure, etc. This results in an estimate of the total areas (km^2) expected to be ensonified to the Level A harassment and Level B harassment thresholds. For purposes of Level B take calculations, areas estimated to be ensonified to Level A harassment thresholds are subtracted from total areas estimated to be ensonified to Level B harassment thresholds in order to avoid double counting the animals taken (*i.e.,* if an animal is taken by Level A harassment, it is not also counted as taken by Level B harassment). Areas estimated to be ensonified over the duration of the survey are shown in Table 9. The marine mammals predicted to occur within these respective areas, based on estimated densities, are assumed to be incidentally taken. Estimated takes for all marine mammal species are shown in Table 10.

TABLE 7—DISTANCES (m) TO ISOPLETHS CORRESPONDING TO LEVEL A AND LEVEL B HARASSMENT THRESHOLDS

Survey	Level B harassment threshold	Level A harassment threshold [1]				
	All marine mammals	Low frequency cetaceans	Mid frequency cetaceans	High frequency cetaceans	Otariid pinnipeds	Phocid pinnipeds
5-kt survey with 2-m airgun separation ...	539	6.5	0.98	[2] 35.13	5.51	0.48
8-kt survey with 8-m airgun separation ...	578	3.08	0	[2] 35.53	4.02	0

[1] Level A ensonified areas are estimated based on the greater of the distances calculated to Level A isopleths using dual criteria (SEL_{cum} and peak SPL).

[2] Distances to isopleths corresponding to Level A harassment threshold for HF cetaceans have been revised from those shown in the proposed IHA based on use of radial distances (vs radii) to estimate Level A isopleths for high frequency cetaceans, as described above.

TABLE 8—AREAS (km^2) ESTIMATED TO BE ENSONIFIED TO LEVEL A AND LEVEL B HARASSMENT THRESHOLDS PER DAY

Survey	Level B harassment threshold	Level A harassment threshold [1]				
	All marine mammals	Low frequency cetaceans	Mid frequency cetaceans	High frequency cetaceans	Otariid pinnipeds	Phocid pinnipeds
5-kt survey with 2-m airgun separation ...	240.68	2.90	0.44	[2] 15.63	2.45	0.21
8-kt survey with 8-m airgun separation ...	412.10	2.19	0	[2] 25.28	2.86	0

[1] Level A ensonified areas are estimated based on the greater of the distances calculated to Level A isopleths using dual criteria (SEL_{cum} and peak SPL).
[2] Ensonified areas have been revised from those shown in the proposed IHA based on use of radial distances (vs radii) to estimate Level A isopleths for high frequency cetaceans, as described above.
Note: Estimated areas shown for single day do not include additional 25 percent contingency.

TABLE 9—AREAS (km^2) ESTIMATED TO BE ENSONIFIED TO LEVEL A AND LEVEL B HARASSMENT THRESHOLDS OVER DURATION OF SURVEY

Survey	Level B harassment threshold	Level A harassment threshold [1]				
	All marine mammals	Low frequency cetaceans	Mid frequency cetaceans	High frequency cetaceans	Otariid pinnipeds	Phocid pinnipeds
5-kt survey with 2-m airgun separation ...	2256.33	27.10	4.09	[2] 146.57	22.97	2.0
8-kt survey with 8-m airgun separation ...	9014.56	47.84	0	[2] 552.93	62.50	0

[1] Level A ensonified areas are estimated based on the greater of the distances calculated to Level A isopleths using dual criteria (SEL_{cum} and peak PL).
[2] Ensonified areas have been revised from those shown in the proposed IHA based on use of radial distances (vs radii) to estimate Level A isopleths for high frequency cetaceans, as described above.
Note: Estimated areas shown include additional 25 percent contingency.

TABLE 10—NUMBERS OF POTENTIAL INCIDENTAL TAKE OF MARINE MAMMALS AUTHORIZED

Species	Density (#/1,000 km^2)	Estimated Level A takes	Authorized Level A takes	Estimated Level B takes	Authorized Level B takes	Total takes authorized	Total instances of takes as a percentage of SAR abundance [1]
Humpback whale [2]	10	1	0	112	113	113	*0.9
Minke whale	4	0	0	45	45	45	*0.2
Bryde's whale	0.1	0	0	1	1	1	unknown
Sei whale [2]	10	1	0	112	113	113	31.4
Fin whale	8	1	0	89	90	90	*2.6
Blue whale	0	0	0	0	1	1	0.2
Sperm whale	40	0	0	451	451	451	19.7
Cuvier's beaked whale [3]	60	0	0	135	135	135	2.0
Northern bottlenose whale [4]	0.8	0	0	9	9	9	unknown
True's beaked whale [3]	60	0	0	135	135	135	1.9
Gervais beaked whale [3]	60	0	0	135	135	135	1.9
Sowerby's beaked whale [3]	60	0	0	135	135	135	1.9
Blainville's beaked whale [3]	60	0	0	135	135	135	1.9
Rough-toothed dolphin	3	0	0	34	34	34	12.5
Bottlenose dolphin [4]	60	0	0	676	676	676	0.9
Pantropical spotted dolphin	10	0	0	113	113	113	3.4
Atlantic spotted dolphin	40	0	0	451	451	451	1.0
Striped dolphin	80	0	0	902	902	902	1.6
Atlantic white-sided dolphin [4]	60	0	0	676	676	676	1.4
White-beaked dolphin ..	1	0	0	11	11	11	0.6
Common dolphin	800	3	0	9014	9017	9017	*5.2
Risso's dolphin [4]	20	0	0	225	225	225	1.2
Pygmy killer whale [5]	1.5	0	0	17	17	17	unknown
False killer whale	2	0	0	23	23	23	5.2
Killer whale [5 6]	0.2	0	0	2	5	5	unknown

TABLE 10—NUMBERS OF POTENTIAL INCIDENTAL TAKE OF MARINE MAMMALS AUTHORIZED—Continued

Species	Density (#/1,000 km²)	Estimated Level A takes	Authorized Level A takes	Estimated Level B takes	Authorized Level B takes	Total takes authorized	Total instances of takes as a percentage of SAR abundance [1]
Long-finned/short-finned Pilot whale [7]	200	1	0	2253	2254	2254	8.3
Pygmy/dwarf sperm whale	0.6	0	0	7	7	7	0.2
Harbor porpoise [8]	60	42	42	634	634	676	0.8
Ringed seal [5]	0	0	0	0	1	1	unknown
Hooded seal	0	0	0	0	1	1	<0.1
Harp seal	0	0	0	0	1	1	<0.1

[1] While we have in most cases provided comparisons of the instances of takes as a percentage of SAR abundance as the best available information regarding population abundance, we note that these are likely underestimates of the relevant North Atlantic populations, as the proposed survey area is outside the U.S. EEZ.

* Instances of takes are shown as a percentage of abundance as described by TNASS or NMFS Status Review, as described above.

[2] Level A takes of these species were estimated based on NMFS' take calculation methodology, but NMFS has determined Level A take of these species is not likely to occur, as described in more detail in the text below. To avoid undercounting the takes estimated to occur, the number of takes by Level A harassment that had been estimated for these species, but that NMFS has determined are unlikely to occur as described below, are therefore assumed to be Level B harassment takes. Thus the number of Level A harassment takes that had been calculated for these species has been added to the number of Level B takes authorized for the species.

[3] Density value represents the density for all beaked whale species combined. Requested take and take authorized are based on the proportion of all beaked whales expected to be taken (thus 677 total estimated beaked whale takes were calculated based on the density of all beaked whales combined, and this number has been divided by 5 (for the 5 species of beaked whales expected to be taken) for a total of 135 takes per species of beaked whale.

[4] Number of take authorized has been revised slightly from that shown in proposed IHA due to math error.

[5] The population abundance for the species is unknown.

[6] Authorized take number for killer whales has been increased from the calculated take to mean group size for the species. Source for mean group size is Waring *et al.* (2008).

[7] Values for density, take number, and percentage of population authorized are for short-finned and long-finned pilot whales combined.

[8] Number of Level A and Level B takes authorized is slightly different than shown in proposed IHA due to use of radial distance (vs radii) to level A isopleth as described above.

For some marine mammal species, we authorize a different number of incidental takes than the number of incidental takes requested by SIO (see Table 8 in the IHA application for requested take numbers). For instance, SIO requested 1 take of a North Atlantic right whale and 3 takes of bowhead whales; however, we have determined the likelihood of the survey encountering these species is so low as to be discountable, therefore we do not authorize takes of these species. Also, SIO requested Level A takes of humpback whales, sei whales, fin whales, common dolphins, and pilot whales; however, due to very small zones corresponding to Level A harassment for low-frequency and mid-frequency cetaceans (Table 6) we have determined the likelihood of Level A take occurring for species from these functional hearing groups is so low as to be discountable, therefore we do not authorize Level A take of these species. Note that the Level A takes that were calculated for these species (humpback whales, sei whales, fin whales, common dolphins, and pilot whales) have been included in the number of Level B takes. Finally, SIO requested 2,254 takes of short-finned pilot whales and 2,254 takes of long-finned pilot whales (total 4,508 pilot whale takes requested); however, as Mannocci *et al.* (2017) presents one single density estimate for all pilot whales (the pilot whale ''guild''), a total of 2,254 takes of pilot whales were calculated as potentially taken by the proposed survey. Thus SIO's request take number is actually double the number of take that was calculated. We do not think doubling the take estimate is warranted, thus we authorize a total of 2,254 takes of pilot whales (short-finned and long-finned pilot whales combined). We note that numbers of take authorized for bottlenose dolphin, Atlantic white-sided dolphin, and Risso's dolphin have changed slightly (each has been reduced by one take) from the numbers of take presented in the proposed IHA due to a math error. We note also that the number of instances of authorized Level A take of harbor porpoise has increased by one, and the number of instances of authorized Level B take of harbor porpoise has decreased by one, versus the numbers of take presented in the proposed IHA, due to the slight change in the estimate of the Level A ensonified area for high frequency cetaceans as described above; the total number of harbor porpoise takes has not changed from the total presented in the proposed IHA.

Species with Take Estimates Less than Mean Group Size: Using the approach described above to estimate take, the take estimate for killer whales was less than the average group size estimated for the species (Waring *et al.,* 2008). Information on the social structure and life history of the species indicates it is common for the species to be encountered in groups. The results of take calculations support the likelihood that SIO's survey may encounter and incidentally take the species, and we believe it is likely that the species may be encountered in groups; therefore it is reasonable to conservatively assume that one group of the species will be taken during the proposed survey. We therefore authorize the take of the average (mean) group size for the species to account for the possibility that SIO's survey encounters a group of killer whales.

Species with No Available Density Data: No density data were available for the blue whale; however, blue whales have been observed in the survey area (Waring *et al.,* 2008), thus we determined there is a possibility that the proposed survey may encounter one blue whale and that one blue whale may be taken by Level B harassment by the proposed survey; we therefore authorize one take of blue whale as requested by

SIO. No density data were available for ringed seal, hooded seal or harp seal; however based on the ranges of these species we have determined it is possible they may be encountered and taken by Level B harassment by the proposed survey, therefore we authorize one take of each species as requested by SIO.

It should be noted that the take numbers shown in Table 10 are believed to be conservative for several reasons. First, in the calculations of estimated take, 25 percent has been added in the form of operational survey days (equivalent to adding 25 percent to the proposed line km to be surveyed) to account for the possibility of additional seismic operations associated with airgun testing, and repeat coverage of any areas where initial data quality is sub-standard.

Mitigation

In order to issue an IHA 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 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 (latter not applicable for this action). NMFS regulations require applicants for incidental take authorizations to include information about the availability and feasibility (economic and technological) of equipment, methods, and manner of conducting such activity or other means of effecting the least practicable adverse impact upon the affected species or stocks and their habitat (50 CFR 216.104(a)(11)).

In evaluating how mitigation may or may not be appropriate to ensure the least practicable adverse impact on species or stocks and their habitat, as well as subsistence uses where applicable, we carefully consider two primary factors:

(1) The manner in which, and the degree to which, the successful implementation of the measure(s) is expected to reduce impacts to marine mammals, marine mammal species or stocks, and their habitat. This considers the nature of the potential adverse impact being mitigated (likelihood, scope, range). It further considers the likelihood that the measure will be effective if implemented (probability of accomplishing the mitigating result if implemented as planned) the likelihood of effective implementation (probability implemented as planned); and

(2) The practicability of the measures for applicant implementation, which may consider such things as cost, impact on operations, and, in the case of a military readiness activity, personnel safety, practicality of implementation, and impact on the effectiveness of the military readiness activity.

SIO has reviewed mitigation measures employed during seismic research surveys authorized by NMFS under previous incidental harassment authorizations, as well as recommended best practices in Richardson *et al.* (1995), Pierson *et al.* (1998), Weir and Dolman (2007), Nowacek *et al.* (2013), Wright (2014), and Wright and Cosentino (2015), and has incorporated a suite of mitigation measures into their project description based on the above sources.

To reduce the potential for disturbance from acoustic stimuli associated with the activities, SIO has proposed to implement the following mitigation measures for marine mammals:

(1) Vessel-based visual mitigation monitoring;

(2) Establishment of a marine mammal exclusion zone (EZ);

(3) Shutdown procedures;

(4) Ramp-up procedures; and

(5) Vessel strike avoidance measures.

In addition to the measures proposed by SIO, NMFS has incorporated the following mitigation measure: Establishment of a marine mammal buffer zone.

PSO observations will take place during all daytime airgun operations and nighttime start-ups (if applicable) of the airguns. If airguns are operating throughout the night, observations will begin 30 minutes prior to sunrise. If airguns are operating after sunset, observations will continue until 30 minutes following sunset. Following a shutdown for any reason, observations will occur for at least 30 minutes prior to the planned start of airgun operations. Observations will also occur for 30 minutes after airgun operations cease for any reason. Observations will also be made during daytime periods when the *Atlantis* is underway without seismic operations, such as during transits, to allow for comparison of sighting rates and behavior with and without airgun operations and between acquisition periods. Airgun operations will be suspended when marine mammals are observed within, or about to enter, the designated EZ (as described below).

During seismic operations, three visual PSOs will be based aboard the *Atlantis.* PSOs will be appointed by SIO with NMFS approval. During the majority of seismic operations, two PSOs will monitor for marine mammals around the seismic vessel. A minimum of one PSO must be on duty at all times when the array is active. PSO(s) will be on duty in shifts of duration no longer than 4 hours. Other crew will also be instructed to assist in detecting marine mammals and in implementing mitigation requirements (if practical). Before the start of the seismic survey, the crew will be given additional instruction in detecting marine mammals and implementing mitigation requirements.

The *Atlantis* is a suitable platform from which PSOs will watch for marine mammals. Standard equipment for marine mammal observers will be 7×50 reticule binoculars and optical range finders. At night, night-vision equipment will be available. The observers will be in communication with ship's officers on the bridge and scientists in the vessel's operations laboratory, so they can advise promptly of the need for avoidance maneuvers or seismic source shutdown.

The PSOs must have no tasks other than to conduct observational effort, record observational data, and communicate with and instruct relevant vessel crew with regard to the presence of marine mammals and mitigation requirements. PSO resumes will be provided to NMFS for approval. At least one PSO must have a minimum of 90 days at-sea experience working as PSOs during a seismic survey. One ''experienced'' visual PSO will be designated as the lead for the entire protected species observation team. The lead will serve as primary point of contact for the vessel operator. The PSOs must have successfully completed relevant training, including completion of all required coursework and passing a written and/or oral examination developed for the training program, and must have successfully attained a bachelor's degree from an accredited college or university with a major in one of the natural sciences and a minimum of 30 semester hours or equivalent in the biological sciences and at least one undergraduate course in math or statistics. The educational requirements may be waived if the PSO has acquired the relevant skills through alternate training, including (1) secondary education and/or experience comparable to PSO duties; (2) previous work experience conducting academic, commercial, or government-sponsored marine mammal surveys; or (3) previous work experience as a PSO; the PSO should demonstrate good standing and

consistently good performance of PSO duties.

Exclusion Zone and Buffer Zone

An EZ is a defined area within which occurrence of a marine mammal triggers mitigation action intended to reduce the potential for certain outcomes, *e.g.,* auditory injury, disruption of critical behaviors. The PSOs will establish a minimum EZ with a 100 m radius for the airgun array. The 100 m EZ will be based on radial distance from any element of the airgun array (rather than being based on the center of the array or around the vessel itself). With certain exceptions (described below), if a marine mammal appears within, enters, or appears on a course to enter this zone, the acoustic source will be shut down (see Shutdown Procedures below).

The 100 m radial distance of the standard EZ is precautionary in the sense that it would be expected to contain sound exceeding injury criteria for all marine mammal hearing groups (Table 6) while also providing a consistent, reasonably observable zone within which PSOs would typically be able to conduct effective observational effort. In this case, the 100 m radial distance would also be expected to contain sound that would exceed the Level A harassment threshold based on sound exposure level (SEL_{cum}) criteria for all marine mammal hearing groups (Table 6). In the 2011 Programmatic Environmental Impact Statement for marine scientific research funded by the National Science Foundation or the U.S. Geological Survey (NSF–USGS 2011), Alternative B (the Preferred Alternative) conservatively applied a 100 m EZ for all low-energy acoustic sources in water depths >100 m, with low-energy acoustic sources defined as any towed acoustic source with a single or a pair of clustered airguns with individual volumes of ≤250 in^3. Thus the 100 m EZ for this survey is consistent with the PEIS.

Our intent in prescribing a standard EZ distance is to (1) encompass zones within which auditory injury could occur on the basis of instantaneous exposure; (2) provide additional protection from the potential for more severe behavioral reactions (*e.g.,* panic, antipredator response) for marine mammals at relatively close range to the acoustic source; (3) provide consistency for PSOs, who need to monitor and implement the EZ; and (4) define a distance within which detection probabilities are reasonably high for most species under typical conditions.

PSOs will also establish and monitor a 200 m buffer zone. During use of the acoustic source, occurrence of marine mammals within the buffer zone (but outside the EZ) will be communicated to the operator to prepare for potential shutdown of the acoustic source. The buffer zone is discussed further under *Ramp Up Procedures* below.

Shutdown Procedures

If a marine mammal is detected outside the EZ but is likely to enter the EZ, the airguns will be shut down before the animal is within the EZ. Likewise, if a marine mammal is already within the EZ when first detected, the airguns will be shut down immediately.

Following a shutdown, airgun activity will not resume until the marine mammal has cleared the 100 m EZ. The animal will be considered to have cleared the 100 m EZ if the following conditions have been met:

- It is visually observed to have departed the 100 m EZ; or
- it has not been seen within the 100 m EZ for 15 min in the case of small odontocetes and pinnipeds; or
- it has not been seen within the 100 m EZ for 30 min in the case of mysticetes and large odontocetes, including sperm, pygmy and dwarf sperm, and beaked whales.

This shutdown requirement will be in place for all marine mammals, with the exception of small delphinoids under certain circumstances. As defined here, the small delphinoid group is intended to encompass those members of the Family Delphinidae most likely to voluntarily approach the source vessel for purposes of interacting with the vessel and/or airgun array (*e.g.,* bow riding). This exception to the shutdown requirement will apply solely to specific genera of small dolphins—*Tursiops, Steno, Stenella, Lagenorhynchus* and *Delphinus*—and will only apply if the animals were traveling, including approaching the vessel. If, for example, an animal or group of animals is stationary for some reason (*e.g.,* feeding) and the source vessel approaches the animals, the shutdown requirement applies. An animal with sufficient incentive to remain in an area rather than avoid an otherwise aversive stimulus could either incur auditory injury or disruption of important behavior. If there is uncertainty regarding identification (*i.e.,* whether the observed animal(s) belongs to the group described above) or whether the animals are traveling, the shutdown will be implemented.

We include this small delphinoid exception because shutdown requirements for small delphinoids under all circumstances represent practicability concerns without likely commensurate benefits for the animals in question. Small delphinoids are generally the most commonly observed marine mammals in the specific geographic region and would typically be the only marine mammals likely to intentionally approach the vessel. As described below, auditory injury is extremely unlikely to occur for mid-frequency cetaceans (*e.g.,* delphinids), as this group is relatively insensitive to sound produced at the predominant frequencies in an airgun pulse while also having a relatively high threshold for the onset of auditory injury (*i.e.,* permanent threshold shift). Please see the **Federal Register** notice of proposed IHA (83 FR 18644; April 27, 2018) for further discussion of sound metrics and thresholds and marine mammal hearing.

A large body of anecdotal evidence indicates that small delphinoids commonly approach vessels and/or towed arrays during active sound production for purposes of bow riding, with no apparent effect observed in those delphinoids (*e.g.,* Barkaszi *et al.,* 2012). The potential for increased shutdowns resulting from such a measure would require the *Atlantis* to revisit the missed track line to reacquire data, resulting in an overall increase in the total sound energy input to the marine environment and an increase in the total duration over which the survey is active in a given area. Although other mid-frequency hearing specialists (*e.g.,* large delphinoids) are no more likely to incur auditory injury than are small delphinoids, they are much less likely to approach vessels. Therefore, retaining a shutdown requirement for large delphinoids would not have similar impacts in terms of either practicability for the applicant or corollary increase in sound energy output and time on the water. We do anticipate some benefit for a shutdown requirement for large delphinoids in that it simplifies somewhat the total range of decision-making for PSOs and may preclude any potential for physiological effects other than to the auditory system as well as some more severe behavioral reactions for any such animals in close proximity to the source vessel.

Shutdown of the acoustic source will also be required upon observation of any of the following:

- A large whale (*i.e.,* sperm whale or any baleen whale) with a calf observed at any distance;
- an aggregation of six or more large whales of any species (*i.e.,* sperm whale or any baleen whale) that does not appear to be traveling (*e.g.,* feeding, socializing, etc.) observed at any distance; or

• a species for which authorization has not been granted, or, a species for which authorization has been granted but the authorized number of takes are met, observed approaching or within the Level A or B harassment zone.

Ramp-up Procedures

Ramp-up of an acoustic source is intended to provide a gradual increase in sound levels following a shutdown, enabling animals to move away from the source if the signal is sufficiently aversive prior to its reaching full intensity. Ramp-up will be required after the array is shut down for any reason. Ramp-up will begin with the activation of one 45 in^3 airgun, with the second 45 in^3 airgun activated after 5 minutes.

At least two PSOs will be required to monitor during ramp-up. During ramp up, the PSOs will monitor the EZ, and if marine mammals were observed within the EZ or buffer zone, a shutdown will be implemented as though the full array were operational. If airguns have been shut down due to PSO detection of a marine mammal within or approaching the 100 m EZ, ramp-up will not be initiated until all marine mammals have cleared the EZ, during the day or night. Criteria for clearing the EZ will be as described above.

Thirty minutes of pre-clearance observation are required prior to ramp-up for any shutdown of longer than 30 minutes (*i.e.,* if the array were shut down during transit from one line to another). This 30 minute pre-clearance period may occur during any vessel activity (*i.e.,* transit). If a marine mammal were observed within or approaching the 100 m EZ during this pre-clearance period, ramp-up will not be initiated until all marine mammals cleared the EZ. Criteria for clearing the EZ will be as described above. If the airgun array has been shut down for reasons other than mitigation (*e.g.,* mechanical difficulty) for a period of less than 30 minutes, it may be activated again without ramp-up if PSOs have maintained constant visual observation and no detections of any marine mammal have occurred within the EZ or buffer zone. Ramp-up will be planned to occur during periods of good visibility when possible. However, ramp-up is allowed at night and during poor visibility if the 100 m EZ and 200 m buffer zone have been monitored by visual PSOs for 30 minutes prior to ramp-up.

The operator is required to notify a designated PSO of the planned start of ramp-up as agreed-upon with the lead PSO; the notification time should not be less than 60 minutes prior to the planned ramp-up. A designated PSO must be notified again immediately prior to initiating ramp-up procedures and the operator must receive confirmation from the PSO to proceed. The operator must provide information to PSOs documenting that appropriate procedures were followed. Following deactivation of the array for reasons other than mitigation, the operator is required to communicate the near-term operational plan to the lead PSO with justification for any planned nighttime ramp-up.

Vessel Strike Avoidance Measures

Vessel strike avoidance measures are intended to minimize the potential for collisions with marine mammals. These requirements do not apply in any case where compliance creates an imminent and serious threat to a person or vessel or to the extent that a vessel is restricted in its ability to maneuver and, because of the restriction, cannot comply.

The measures include the following: Vessel operator and crew will maintain a vigilant watch for all marine mammals and slow down or stop the vessel or alter course to avoid striking any marine mammal. A visual observer aboard the vessel will monitor a vessel strike avoidance zone around the vessel according to the parameters stated below. Visual observers monitoring the vessel strike avoidance zone will be either third-party observers or crew members, but crew members responsible for these duties will be provided sufficient training to distinguish marine mammals from other phenomena. Vessel strike avoidance measures will be followed during surveys and while in transit.

The vessel will maintain a minimum separation distance of 100 m from large whales (*i.e.,* baleen whales and sperm whales). If a large whale is within 100 m of the vessel the vessel will reduce speed and shift the engine to neutral, and will not engage the engines until the whale has moved outside of the vessel's path and the minimum separation distance has been established. If the vessel is stationary, the vessel will not engage engines until the whale(s) has moved out of the vessel's path and beyond 100 m. The vessel will maintain a minimum separation distance of 50 m from all other marine mammals (with the exception of delphinids of the genera *Tursiops, Steno, Stenella, Lagenorhynchus* and *Delphinus* that approach the vessel, as described above). If an animal is encountered during transit, the vessel will attempt to remain parallel to the animal's course, avoiding excessive speed or abrupt changes in course. Vessel speeds will be reduced to 10 knots or less when mother/calf pairs or large assemblages of cetaceans (what constitutes ''large'' will vary depending on species) are observed within 500 m of the vessel. Mariners may use professional judgment as to when such circumstances warranting additional caution are present.

Based on our evaluation of the applicant's proposed measures, NMFS has determined that the mitigation measures provide the means effecting the least practicable impact on the affected species or stocks and their habitat, paying particular attention to rookeries, mating grounds, and areas of similar significance.

Monitoring and Reporting

In order to issue an IHA 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 are expected to be present in the proposed action area. Effective reporting is critical both to compliance as well as ensuring that the most value is obtained from the required monitoring.

Monitoring and reporting requirements prescribed by NMFS should contribute to improved understanding of one or more of the following:

• Occurrence of marine mammal species or stocks in the area in which take is anticipated (*e.g.,* presence, abundance, distribution, density);

• Nature, scope, or context of likely marine mammal exposure to potential stressors/impacts (individual or cumulative, acute or chronic), through better understanding of: (1) Action or environment (*e.g.,* source characterization, propagation, ambient noise); (2) affected species (*e.g.,* life history, dive patterns); (3) co-occurrence of marine mammal species with the action; or (4) biological or behavioral context of exposure (*e.g.,* age, calving or feeding areas);

• Individual marine mammal responses (behavioral or physiological) to acoustic stressors (acute, chronic, or cumulative), other stressors, or cumulative impacts from multiple stressors;

• How anticipated responses to stressors impact either: (1) Long-term fitness and survival of individual marine mammals; or (2) populations, species, or stocks;

• Effects on marine mammal habitat (*e.g.,* marine mammal prey species, acoustic habitat, or other important physical components of marine mammal habitat); and

• Mitigation and monitoring effectiveness.

SIO submitted a marine mammal monitoring and reporting plan in their IHA application. Monitoring that is designed specifically to facilitate mitigation measures, such as monitoring of the EZ to inform potential shutdowns of the airgun array, are described above and are not repeated here.

SIO's monitoring and reporting plan includes the following measures:

Vessel-Based Visual Monitoring

As described above, PSO observations will take place during daytime airgun operations and nighttime start-ups (if applicable) of the airguns. During seismic operations, three visual PSOs will be based aboard the *Atlantis.* PSOs will be appointed by SIO with NMFS approval. During the majority of seismic operations, one PSO will monitor for marine mammals around the seismic vessel. PSOs will be on duty in shifts of duration no longer than 4 hours. Other crew will also be instructed to assist in detecting marine mammals and in implementing mitigation requirements (if practical). During daytime, PSOs will scan the area around the vessel systematically with reticle binoculars (*e.g.,* 7×50 Fujinon) and with the naked eye. At night, PSOs will be equipped with night-vision equipment.

PSOs will record data to estimate the numbers of marine mammals exposed to various received sound levels and to document apparent disturbance reactions or lack thereof. Data will be used to estimate numbers of animals potentially 'taken' by harassment (as defined in the MMPA). They will also provide information needed to order a shutdown of the airguns when a marine mammal is within or near the EZ. When a sighting is made, the following information about the sighting will be recorded:

(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; and

(2) Time, location, heading, speed, activity of the vessel, sea state, visibility, and sun glare.

All observations and shutdowns will be recorded in a standardized format. Data will be entered into an electronic database. The accuracy of the data entry will be verified by computerized data validity checks as the data are entered and by subsequent manual checking of the database. These procedures will allow initial summaries of data to be prepared 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. The time, location, heading, speed, activity of the vessel, sea state, visibility, and sun glare will also be recorded 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.

Results from the vessel-based observations will provide:

(1) The basis for real-time mitigation (*e.g.,* airgun shutdown);

(2) Information needed to estimate the number of marine mammals potentially taken by harassment, which must be reported to NMFS;

(3) Data on the occurrence, distribution, and activities of marine mammals in the area where the seismic study is conducted;

(4) Information to compare the distance and distribution of marine mammals relative to the source vessel at times with and without seismic activity; and

(5) Data on the behavior and movement patterns of marine mammals seen at times with and without seismic activity.

Reporting

A report will be submitted to NMFS within 90 days after the end of the survey. The report will describe the operations that were conducted and sightings of marine mammals near the operations. The report will provide full documentation of methods, results, and interpretation pertaining to all monitoring and will summarize the dates and locations of seismic operations, and all marine mammal sightings (dates, times, locations, activities, associated seismic survey activities). The report will also include estimates of the number and nature of exposures that occurred above the harassment threshold based on PSO observations, including an estimate of those on the trackline but not detected.

Negligible Impact Analysis and Determination

NMFS has defined negligible impact 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 (50 CFR 216.103). A negligible impact finding is based on the lack of likely adverse effects on annual rates of recruitment or survival (*i.e.,* population-level effects). 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 harassment, NMFS considers other factors, such as the likely nature of any responses (*e.g.,* intensity, duration), the context of any responses (*e.g.,* critical reproductive time or location, migration), as well as effects on habitat, and the likely effectiveness of the mitigation. We also assess the number, intensity, and context of estimated takes by evaluating this information relative to population status. Consistent with the 1989 preamble for NMFS's implementing regulations (54 FR 40338; September 29, 1989), the impacts from other past and ongoing anthropogenic activities are incorporated into this analysis via their impacts on the environmental baseline (*e.g.,* as reflected in the regulatory status of the species, population size and growth rate where known, ongoing sources of human-caused mortality, or ambient noise levels).

To avoid repetition, our analysis applies to all the species listed in Table 2, given that NMFS expects the anticipated effects of the planned seismic survey 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.

NMFS does not anticipate that serious injury or mortality will occur as a result of SIO's planned seismic survey, even in the absence of mitigation. Thus the authorization does not authorize any mortality. As discussed in the *Potential Effects* section, non-auditory physical effects, stranding, and vessel strike are not expected to occur.

We authorize a limited number of instances of Level A harassment (Table 10) for one species. However, we believe

that any PTS incurred in marine mammals as a result of the planned activity would be in the form of only a small degree of PTS and not total deafness that would not be likely to affect the fitness of any individuals, because of the constant movement of both the *Atlantis* and of the marine mammals in the project area, as well as the fact that the vessel is not expected to remain in any one area in which individual marine mammals would be expected to concentrate for an extended period of time (*i.e.,* since the duration of exposure to loud sounds will be relatively short). Also, as described above, we expect that marine mammals would be likely to move away from a sound source that represents an aversive stimulus, especially at levels that would be expected to result in PTS, given sufficient notice of the *Atlantis's* approach due to the vessel's relatively low speed when conducting seismic surveys. We expect that the majority of takes would be in the form of short-term Level B behavioral harassment in the form of temporary avoidance of the area or decreased foraging (if such activity were occurring), reactions that are considered to be of low severity and with no lasting biological consequences (*e.g.,* Southall *et al.,* 2007).

Potential impacts to marine mammal habitat were discussed previously in this document (see *Potential Effects of the Specified Activity on Marine Mammals and their Habitat*). Marine mammal habitat may be impacted by elevated sound levels, but these impacts would be temporary. Feeding behavior is not likely to be significantly impacted, as marine mammals appear to be less likely to exhibit behavioral reactions or avoidance responses while engaged in feeding activities (Richardson *et al.,* 1995). Prey species are mobile and are broadly distributed throughout the project area; therefore, marine mammals that may be temporarily displaced during survey activities are expected to be able to resume foraging once they have moved away from areas with disturbing levels of underwater noise. Because of the temporary nature of the disturbance, the availability of similar habitat and resources in the surrounding area, and the lack of important or unique marine mammal habitat, the impacts to marine mammals and the food sources that they utilize are not expected to cause significant or long-term consequences for individual marine mammals or their populations. In addition, there are no feeding, mating or calving areas known to be biologically important to marine mammals within the proposed project area.

As described above, though marine mammals in the survey area would not be assigned to NMFS stocks, for purposes of the small numbers analysis we rely on stock numbers from the U.S. Atlantic SARs as the best available information on the abundance estimates for the species of marine mammals that could be taken. The activity is expected to impact a very small percentage of all marine mammal populations that would be affected by SIO's planned survey (less than 32 percent each for all marine mammal stocks, when compared with stocks from the U.S. Atlantic as described above). Additionally, the acoustic ''footprint'' of the proposed survey would be very small relative to the ranges of all marine mammals that would potentially be affected. Sound levels would increase in the marine environment in a relatively small area surrounding the vessel compared to the range of the marine mammals within the proposed survey area. The seismic array would be active 24 hours per day throughout the duration of the proposed survey. However, the very brief overall duration of the proposed survey (25 days) would further limit potential impacts that may occur as a result of the proposed activity.

The mitigation measures are expected to reduce the number and/or severity of takes by allowing for detection of marine mammals in the vicinity of the vessel by visual and acoustic observers, and by minimizing the severity of any potential exposures via shutdowns of the airgun array. Based on previous monitoring reports for substantially similar activities that have been previously authorized by NMFS, we expect that the mitigation measures will be effective in preventing at least some extent of potential PTS in marine mammals that may otherwise occur in the absence of mitigation measures.

Of the marine mammal species under our jurisdiction that are likely to occur in the project area, the following species are listed as endangered under the ESA: fin, sei, blue, and sperm whales. There are currently insufficient data to determine population trends for these species (Hayes *et al.,* 2017); however, we are authorizing very small numbers of takes for these species (Table 10), relative to their population sizes (again, when compared to U.S. Atlantic stocks, for purposes of comparison only), therefore we do not expect population-level impacts to any of these species. The other marine mammal species that may be taken by harassment during SIO's seismic survey are not listed as threatened or endangered under the ESA. There is no designated critical habitat for any ESA-listed marine mammals within the project area; of the non-listed marine mammals for which we authorize take, none are considered ''depleted'' or ''strategic'' by NMFS under the MMPA.

NMFS concludes that exposures to marine mammal species due to SIO's seismic survey would result in only short-term (temporary and short in duration) effects to individuals exposed, or some small degree of PTS to a very small number of individuals of four species. Marine mammals may temporarily avoid the immediate area, but are not expected to permanently abandon the area. Major shifts in habitat use, distribution, or foraging success are not expected. NMFS does not anticipate the take estimates to impact annual rates of recruitment or survival.

In summary and as described above, the following factors primarily support our determination that the impacts resulting from this activity are not expected to adversely affect the species or stock through effects on annual rates of recruitment or survival:

- No mortality is anticipated or authorized;
- The anticipated impacts of the proposed activity on marine mammals would primarily be temporary behavioral changes due to avoidance of the area around the survey vessel. The relatively short duration of the proposed survey (25 days) would further limit the potential impacts of any temporary behavioral changes that would occur;
- The number of instances of PTS that may occur are expected to be very small in number (Table 10). Instances of PTS that are incurred in marine mammals would be of a low level, due to constant movement of the vessel and of the marine mammals in the area, and the nature of the survey design (not concentrated in areas of high marine mammal concentration);
- The availability of alternate areas of similar habitat value for marine mammals to temporarily vacate the survey area during the proposed survey to avoid exposure to sounds from the activity;
- The proposed project area does not contain areas of significance for feeding, mating or calving;
- The potential adverse effects on fish or invertebrate species that serve as prey species for marine mammals from the proposed survey would be temporary and spatially limited; and
- The mitigation measures, including visual and acoustic monitoring and shutdowns, are expected to minimize potential impacts to marine mammals.

Based on the analysis contained herein of the likely effects of the specified activity on marine mammals and their habitat, and taking into consideration the implementation of the monitoring and mitigation measures, NMFS finds that the total marine mammal take from the specified activity will have a negligible impact on all affected marine mammal species or stocks.

Small Numbers

As noted above, only small numbers of incidental take may be authorized under Section 101(a)(5)(D) of the MMPA for specified activities other than military readiness activities. The MMPA does not define small numbers and so, in practice, where estimated numbers are available, NMFS compares the number of individuals taken to the most appropriate estimation of abundance of the relevant species or stock in our determination of whether an authorization is limited to small numbers of marine mammals. Additionally, other qualitative factors may be considered in the analysis, such as the temporal or spatial scale of the activities.

Due to the location of SIO's survey, some of the marine mammals potentially taken by the proposed survey would not be expected to originate from the U.S. Atlantic stocks as defined by NMFS (Hayes *et al.,* 2017). Population abundance data for marine mammal species in the survey area is not available. Therefore, in most cases the U.S. Atlantic SARs represent the best available information on marine mammal abundance in the Northwest Atlantic Ocean. For certain species (*i.e.,* fin whale, minke whale and common dolphin) the 2007 Canadian Trans-North Atlantic Sighting Survey (TNASS), which provided full coverage of the Atlantic Canadian coast (Lawson and Gosselin, 2009) represents the best available information on abundance, as noted previously. Abundance estimates from TNASS were corrected for perception and availability bias, when possible. In general, where the TNASS survey effort provided more extensive coverage of a stock's range (as compared with NOAA shipboard survey effort), we elected to use the resulting abundance estimate over the current NMFS abundance estimate (derived from survey effort with more limited coverage of the stock range). For the humpback whale, NMFS defines a stock of humpback whales in the Atlantic only on the basis of the Gulf of Maine feeding population; however, multiple feeding populations originate from the DPS of humpback whales that is expected to occur in the proposed survey area (the West Indies DPS). As West Indies DPS whales from multiple feeding populations may be encountered in the proposed survey area, the total abundance of the West Indies DPS best reflects the abundance of the population that may encountered by the proposed survey. The West Indies DPS abundance estimate used here reflects the latest estimate as described in the NMFS Status Review of the Humpback Whale under the Endangered Species Act (Bettridge *et al.,* 2015). Therefore, we use abundance data from the SARs in most cases, as well as from the TNASS and NMFS Status Review, for purposes of the small numbers analysis.

The numbers of takes that we authorize are less than 10 percent of the population abundance for the majority of species and stocks, and 20 percent for sperm whales and 31 percent for fin whales, when compared to abundance estimates from U.S. Atlantic SARs and TNASS and NMFS Status Review (Table 10). We again note that while some animals from U.S. stocks may occur in the proposed survey area, the proposed survey area is outside the geographic boundaries of the U.S. Atlantic SARs, thus populations of marine mammals in the proposed survey area would not be limited to the U.S. stocks and those populations may in fact be larger than the U.S. stock abundance estimates. In addition, it should be noted that take numbers represent instances of take, not individuals taken. Given the relatively small survey grids (Figure 1 in the IHA application), it is reasonable to expect that some individuals may be exposed more than one time, which would mean that the number of individuals taken is somewhat smaller than the total instances of take indicated in Table 10.

No known current regional population estimates are available for five marine mammal species that could be incidentally taken as a result of the planned survey: the Bryde's whale, killer whale, pygmy killer whale, Northern bottlenose whale, and ringed seal. NMFS has reviewed the geographic distributions of these species in determining whether the numbers of takes authorized are likely to represent small numbers. Bryde's whales are distributed worldwide in tropical and sub-tropical waters (Kato and Perrin, 2009). Killer whales are broadly distributed in the Atlantic from the Arctic ice edge to the West Indies (Waring *et al.,* 2015). The pygmy killer whale is distributed worldwide in tropical to sub-tropical waters (Jefferson *et al.* 1994). Northern bottlenose whales are distributed in the North Atlantic from Nova Scotia to about 70° N in the Davis Strait, along the east coast of Greenland to 77° N and from England, Norway, Iceland and the Faroe Islands to the south coast of Svalbard (Waring *et al.,* 2015). The harp seal occurs throughout much of the North Atlantic and Arctic Oceans (Lavigne and Kovacs 1988). Based on the broad spatial distributions of these species relative to the areas where the proposed survey would occur, NMFS concludes that the authorized take of these species represent small numbers relative to the affected species' overall population sizes, though we are unable to quantify the authorized take numbers as a percentage of population.

Based on the analysis contained herein of the specified activity (including the mitigation and monitoring measures) and the anticipated take of marine mammals, NMFS finds that small numbers of marine mammals will be taken relative to the population size of the affected species or stocks.

Unmitigable Adverse Impact Analysis and Determination

There are no relevant subsistence uses of the affected marine mammal stocks or species implicated by this action. Therefore, NMFS has determined that the total taking of affected species or stocks would not have an unmitigable adverse impact on the availability of such species or stocks for taking for subsistence purposes.

Endangered Species Act (ESA)

Section 7(a)(2) of the ESA of 1973 (16 U.S.C. 1531 *et seq.*) requires that each Federal agency insure that any action it authorizes, funds, or carries out is not likely to jeopardize the continued existence of any endangered or threatened species or result in the destruction or adverse modification of designated critical habitat. To ensure ESA compliance for the issuance of IHAs, NMFS consults internally, in this case with the ESA Interagency Cooperation Division, whenever we propose to authorize take for endangered or threatened species.

The NMFS Permits and Conservation Division is authorizing the incidental take of 4 species of marine mammals which are listed under the ESA: The sei whale, fin whale, blue whale and sperm whale. Under Section 7 of the ESA, we requested initiation of Section 7 consultation with the NMFS OPR Interagency Cooperation Division for the issuance of this IHA. In June, 2018, the NMFS OPR Interagency Cooperation Division issued a Biological Opinion with an incidental take statement, which concluded that the issuance of

the IHA was not likely to jeopardize the continued existence of the sei whale, fin whale, blue whale and sperm whale. The Biological Opinion also concluded that the issuance of the IHA would not destroy or adversely modify designated critical habitat for these species.

Authorization

NMFS has issued an IHA to SIO for the potential harassment of small numbers of 35 marine mammal species incidental to a low-energy marine geophysical survey in the northwest Atlantic Ocean, provided the previously mentioned mitigation, monitoring and reporting requirements are incorporated.

Dated: June 12, 2018.

Donna S. Wieting,

Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 2018–12907 Filed 6–14–18; 8:45 am]

BILLING CODE 3510–22–P

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Procurement List; Proposed Additions and Deletions

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

ACTION: Proposed additions to and deletions from the Procurement List.

SUMMARY: The Committee is proposing to add products and a service to the Procurement List that will be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities, and deletes products and a service previously furnished by such agencies.

DATES: Comments must be received on or before: July 15, 2018.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, 1401 S Clark Street, Suite 715, Arlington, Virginia 22202–4149.

FOR FURTHER INFORMATION CONTACT: For further information or to submit comments contact: Amy B. Jensen, Telephone: (703) 603–7740, Fax: (703) 603–0655, or email *CMTEFedReg@AbilityOne.gov.*

SUPPLEMENTARY INFORMATION: This notice is published pursuant to 41 U.S.C. 8503 (a)(2) and 41 CFR 51–2.3. Its purpose is to provide interested persons an opportunity to submit comments on the proposed actions.

Additions

If the Committee approves the proposed additions, the entities of the Federal Government identified in this notice will be required to procure the products and service listed below from nonprofit agencies employing persons who are blind or have other severe disabilities.

The following products and service are proposed for addition to the Procurement List for production by the nonprofit agencies listed:

Products

NSN(s)—Product Name(s):
8405–00–NIB–0542—Kit, Pre-Cut Fabric, Pinpoint Dress Shirt, Coast Guard, Men's, Long Sleeve, White, 13½ x 32
8405–00–NIB–0543—Kit, Pre-Cut Fabric, Pinpoint Dress Shirt, Coast Guard, Men's, Long Sleeve, White, 14½ x 30
8405–00–NIB–0544—Kit, Pre-Cut Fabric, Pinpoint Dress Shirt, Coast Guard, Men's, Long Sleeve, White, 14½ x 31
8405–00–NIB–0545—Kit, Pre-Cut Fabric, Pinpoint Dress Shirt, Coast Guard, Men's, Long Sleeve, White, 14½ x 32
8405–00–NIB–0546—Kit, Pre-Cut Fabric, Pinpoint Dress Shirt, Coast Guard, Men's, Long Sleeve, White, 14½ x 33
8405–00–NIB–0547—Kit, Pre-Cut Fabric, Pinpoint Dress Shirt, Coast Guard, Men's, Long Sleeve, White, 14½ x 34
8405–00–NIB–0548—Kit, Pre-Cut Fabric, Pinpoint Dress Shirt, Coast Guard, Men's, Long Sleeve, White, 14½ x 35
8405–00–NIB–0549—Kit, Pre-Cut Fabric, Pinpoint Dress Shirt, Coast Guard, Men's, Long Sleeve, White, 14 x 30
8405–00–NIB–0550—Kit, Pre-Cut Fabric, Pinpoint Dress Shirt, Coast Guard, Men's, Long Sleeve, White, 14 x 32
8405–00–NIB–0551—Kit, Pre-Cut Fabric, Pinpoint Dress Shirt, Coast Guard, Men's, Long Sleeve, White, 14 x 33
8405–00–NIB–0552—Kit, Pre-Cut Fabric, Pinpoint Dress Shirt, Coast Guard, Men's, Long Sleeve, White, 14 x 34
8405–00–NIB–0553—Kit, Pre-Cut Fabric, Pinpoint Dress Shirt, Coast Guard, Men's, Long Sleeve, White, 15½ x 30
8405–00–NIB–0554—Kit, Pre-Cut Fabric, Pinpoint Dress Shirt, Coast Guard, Men's, Long Sleeve, White, 15½ x 31
8405–00–NIB–0555—Kit, Pre-Cut Fabric, Pinpoint Dress Shirt, Coast Guard, Men's, Long Sleeve, White, 15½ x 32
8405–00–NIB–0556—Kit, Pre-Cut Fabric, Pinpoint Dress Shirt, Coast Guard, Men's, Long Sleeve, White, 15½ x 33
8405–00–NIB–0557—Kit, Pre-Cut Fabric, Pinpoint Dress Shirt, Coast Guard, Men's, Long Sleeve, White, 15½ x 34
8405–00–NIB–0558—Kit, Pre-Cut Fabric, Pinpoint Dress Shirt, Coast Guard, Men's, Long Sleeve, White, 15½ x 35
8405–00–NIB–0559—Kit, Pre-Cut Fabric, Pinpoint Dress Shirt, Coast Guard, Men's, Long Sleeve, White, 15½ x 36
8405–00–NIB–0560—Kit, Pre-Cut Fabric, Pinpoint Dress Shirt, Coast Guard, Men's, Long Sleeve, White, 15 x 30
8405–00–NIB–0561—Kit, Pre-Cut Fabric, Pinpoint Dress Shirt, Coast Guard, Men's, Long Sleeve, White, 15 x 31
8405–00–NIB–0562—Kit, Pre-Cut Fabric, Pinpoint Dress Shirt, Coast Guard, Men's, Long Sleeve, White, 15 x 32
8405–00–NIB–0563—Kit, Pre-Cut Fabric, Pinpoint Dress Shirt, Coast Guard, Men's, Long Sleeve, White, 15 x 33
8405–00–NIB–0564—Kit, Pre-Cut Fabric, Pinpoint Dress Shirt, Coast Guard, Men's, Long Sleeve, White, 15 x 34
8405–00–NIB–0565—Kit, Pre-Cut Fabric, Pinpoint Dress Shirt, Coast Guard, Men's, Long Sleeve, White, 15 x 35
8405–00–NIB–0566—Kit, Pre-Cut Fabric, Pinpoint Dress Shirt, Coast Guard, Men's, Long Sleeve, White, 15 x 36
8405–00–NIB–0567—Kit, Pre-Cut Fabric, Pinpoint Dress Shirt, Coast Guard, Men's, Long Sleeve, White, 15 x 37
8405–00–NIB–0568—Kit, Pre-Cut Fabric, Pinpoint Dress Shirt, Coast Guard, Men's, Long Sleeve, White, 16½ x 31
8405–00–NIB–0569—Kit, Pre-Cut Fabric, Pinpoint Dress Shirt, Coast Guard, Men's, Long Sleeve, White, 16½ x 32
8405–00–NIB–0570—Kit, Pre-Cut Fabric, Pinpoint Dress Shirt, Coast Guard, Men's, Long Sleeve, White, 16½ x 33
8405–00–NIB–0571—Kit, Pre-Cut Fabric, Pinpoint Dress Shirt, Coast Guard, Men's, Long Sleeve, White, 16½ x 34
8405–00–NIB–0572—Kit, Pre-Cut Fabric, Pinpoint Dress Shirt, Coast Guard, Men's, Long Sleeve, White, 16½ x 35
8405–00–NIB–0573—Kit, Pre-Cut Fabric, Pinpoint Dress Shirt, Coast Guard, Men's, Long Sleeve, White, 16½ x 36
8405–00–NIB–0574—Kit, Pre-Cut Fabric, Pinpoint Dress Shirt, Coast Guard, Men's, Long Sleeve, White, 16½ x 37
8405–00–NIB–0575—Kit, Pre-Cut Fabric, Pinpoint Dress Shirt, Coast Guard, Men's, Long Sleeve, White, 16 x 31
8405–00–NIB–0576—Kit, Pre-Cut Fabric, Pinpoint Dress Shirt, Coast Guard, Men's, Long Sleeve, White, 16 x 32
8405–00–NIB–0577—Kit, Pre-Cut Fabric, Pinpoint Dress Shirt, Coast Guard, Men's, Long Sleeve, White, 16 x 33
8405–00–NIB–0578—Kit, Pre-Cut Fabric, Pinpoint Dress Shirt, Coast Guard, Men's, Long Sleeve, White, 16 x 34
8405–00–NIB–0579—Kit, Pre-Cut Fabric, Pinpoint Dress Shirt, Coast Guard, Men's, Long Sleeve, White, 16 x 35
8405–00–NIB–0580—Kit, Pre-Cut Fabric, Pinpoint Dress Shirt, Coast Guard, Men's, Long Sleeve, White, 16 x 36
8405–00–NIB–0581—Kit, Pre-Cut Fabric, Pinpoint Dress Shirt, Coast Guard, Men's, Long Sleeve, White, 17½ x 32
8405–00–NIB–0582—Kit, Pre-Cut Fabric, Pinpoint Dress Shirt, Coast Guard, Men's, Long Sleeve, White, 17½ x 33
8405–00–NIB–0583—Kit, Pre-Cut Fabric, Pinpoint Dress Shirt, Coast Guard, Men's, Long Sleeve, White, 17½ x 34
8405–00–NIB–0584—Kit, Pre-Cut Fabric, Pinpoint Dress Shirt, Coast Guard, Men's, Long Sleeve, White, 17½ x 35
8405–00–NIB–0585—Kit, Pre-Cut Fabric, Pinpoint Dress Shirt, Coast Guard, Men's, Long Sleeve, White, 17½ x 36
8405–00–NIB–0586—Kit, Pre-Cut Fabric, Pinpoint Dress Shirt, Coast Guard, Men's, Long Sleeve, White, 17 x 32
8405–00–NIB–0587—Kit, Pre-Cut Fabric, Pinpoint Dress Shirt, Coast Guard, Men's, Long Sleeve, White, 17 x 33

8405–00–NIB–0588—Kit, Pre-Cut Fabric, Pinpoint Dress Shirt, Coast Guard, Men's, Long Sleeve, White, 17 x 34
8405–00–NIB–0589—Kit, Pre-Cut Fabric, Pinpoint Dress Shirt, Coast Guard, Men's, Long Sleeve, White, 17 x 35
8405–00–NIB–0590—Kit, Pre-Cut Fabric, Pinpoint Dress Shirt, Coast Guard, Men's, Long Sleeve, White, 17 x 36
8405–00–NIB–0591—Kit, Pre-Cut Fabric, Pinpoint Dress Shirt, Coast Guard, Men's, Long Sleeve, White, 17 x 37
8405–00–NIB–0592—Kit, Pre-Cut Fabric, Pinpoint Dress Shirt, Coast Guard, Men's, Long Sleeve, White, 18½ x 33
8405–00–NIB–0593—Kit, Pre-Cut Fabric, Pinpoint Dress Shirt, Coast Guard, Men's, Long Sleeve, White, 18½ x 34
8405–00–NIB–0594—Kit, Pre-Cut Fabric, Pinpoint Dress Shirt, Coast Guard, Men's, Long Sleeve, White, 18½ x 35
8405–00–NIB–0595—Kit, Pre-Cut Fabric, Pinpoint Dress Shirt, Coast Guard, Men's, Long Sleeve, White, 18½ x 36
8405–00–NIB–0596—Kit, Pre-Cut Fabric, Pinpoint Dress Shirt, Coast Guard, Men's, Long Sleeve, White, 18½ x 37
8405–00–NIB–0597—Kit, Pre-Cut Fabric, Pinpoint Dress Shirt, Coast Guard, Men's, Long Sleeve, White, 18½ x 38
8405–00–NIB–0598—Kit, Pre-Cut Fabric, Pinpoint Dress Shirt, Coast Guard, Men's, Long Sleeve, White, 18 x 32
8405–00–NIB–0599—Kit, Pre-Cut Fabric, Pinpoint Dress Shirt, Coast Guard, Men's, Long Sleeve, White, 18 x 33
8405–00–NIB–0600—Kit, Pre-Cut Fabric, Pinpoint Dress Shirt, Coast Guard, Men's, Long Sleeve, White, 18 x 34
8405–00–NIB–0601—Kit, Pre-Cut Fabric, Pinpoint Dress Shirt, Coast Guard, Men's, Long Sleeve, White, 18 x 35
8405–00–NIB–0602—Kit, Pre-Cut Fabric, Pinpoint Dress Shirt, Coast Guard, Men's, Long Sleeve, White, 18 x 36
8405–00–NIB–0603—Kit, Pre-Cut Fabric, Pinpoint Dress Shirt, Coast Guard, Men's, Long Sleeve, White, 18 x 37
8405–00–NIB–0604—Kit, Pre-Cut Fabric, Pinpoint Dress Shirt, Coast Guard, Men's, Long Sleeve, White, 19 x 33
8405–00–NIB–0605—Kit, Pre-Cut Fabric, Pinpoint Dress Shirt, Coast Guard, Men's, Long Sleeve, White, 19 x 34
8405–00–NIB–0606—Kit, Pre-Cut Fabric, Pinpoint Dress Shirt, Coast Guard, Men's, Long Sleeve, White, 19 x 35
8405–00–NIB–0607—Kit, Pre-Cut Fabric, Pinpoint Dress Shirt, Coast Guard, Men's, Long Sleeve, White, 19 x 36
8405–00–NIB–0608—Kit, Pre-Cut Fabric, Pinpoint Dress Shirt, Coast Guard, Men's, Long Sleeve, White, 19 x 37
8405–00–NIB–0609—Kit, Pre-Cut Fabric, Pinpoint Dress Shirt, Coast Guard, Men's, Long Sleeve, White, 20 x 33
8405–00–NIB–0610—Kit, Pre-Cut Fabric, Pinpoint Dress Shirt, Coast Guard, Men's, Long Sleeve, White, 20 x 34
8405–00–NIB–0611—Kit, Pre-Cut Fabric, Pinpoint Dress Shirt, Coast Guard, Men's, Long Sleeve, White, 20 x 35
8405–00–NIB–0612—Kit, Pre-Cut Fabric, Pinpoint Dress Shirt, Coast Guard, Men's, Long Sleeve, White, 20 x 36
8410–00–NIB–0031—Kit, Pre-Cut Fabric, Pinpoint Dress Shirt, USMC, Women's, Short Sleeve, White, XOS
8410–00–NIB–0032—Kit, Pre-Cut Fabric, Pinpoint Dress Shirt, USMC, Women's, Short Sleeve, White, 18L
8410–00–NIB–0033—Kit, Pre-Cut Fabric, Pinpoint Dress Shirt, USMC, Women's, Short Sleeve, White, 2S
8410–00–NIB–0034—Kit, Pre-Cut Fabric, Pinpoint Dress Shirt, USMC, Women's, Short Sleeve, White, 2R
8410–00–NIB–0035—Kit, Pre-Cut Fabric, Pinpoint Dress Shirt, USMC, Women's, Short Sleeve, White, 4S
8410–00–NIB–0036—Kit, Pre-Cut Fabric, Pinpoint Dress Shirt, USMC, Women's, Short Sleeve, White, 4R
8410–00–NIB–0037—Kit, Pre-Cut Fabric, Pinpoint Dress Shirt, USMC, Women's, Short Sleeve, White, 4L
8410–00–NIB–0038—Kit, Pre-Cut Fabric, Pinpoint Dress Shirt, USMC, Women's, Short Sleeve, White, 6S
8410–00–NIB–0039—Kit, Pre-Cut Fabric, Pinpoint Dress Shirt, USMC, Women's, Short Sleeve, White, 6R
8410–00–NIB–0040—Kit, Pre-Cut Fabric, Pinpoint Dress Shirt, USMC, Women's, Short Sleeve, White, 6L
8410–00–NIB–0041—Kit, Pre-Cut Fabric, Pinpoint Dress Shirt, USMC, Women's, Short Sleeve, White, 8S
8410–00–NIB–0042—Kit, Pre-Cut Fabric, Pinpoint Dress Shirt, USMC, Women's, Short Sleeve, White, 8R
8410–00–NIB–0043—Kit, Pre-Cut Fabric, Pinpoint Dress Shirt, USMC, Women's, Short Sleeve, White, 8L
8410–00–NIB–0044—Kit, Pre-Cut Fabric, Pinpoint Dress Shirt, USMC, Women's, Short Sleeve, White, 10S
8410–00–NIB–0045—Kit, Pre-Cut Fabric, Pinpoint Dress Shirt, USMC, Women's, Short Sleeve, White, 10R
8410–00–NIB–0046—Kit, Pre-Cut Fabric, Pinpoint Dress Shirt, USMC, Women's, Short Sleeve, White, 10L
8410–00–NIB–0047—Kit, Pre-Cut Fabric, Pinpoint Dress Shirt, USMC, Women's, Short Sleeve, White, 12S
8410–00–NIB–0048—Kit, Pre-Cut Fabric, Pinpoint Dress Shirt, USMC, Women's, Short Sleeve, White, 12R
8410–00–NIB–0049—Kit, Pre-Cut Fabric, Pinpoint Dress Shirt, USMC, Women's, Short Sleeve, White, 12L
8410–00–NIB–0050—Kit, Pre-Cut Fabric, Pinpoint Dress Shirt, USMC, Women's, Short Sleeve, White, 14S
8410–00–NIB–0051—Kit, Pre-Cut Fabric, Pinpoint Dress Shirt, USMC, Women's, Short Sleeve, White, 14R
8410–00–NIB–0052—Kit, Pre-Cut Fabric, Pinpoint Dress Shirt, USMC, Women's, Short Sleeve, White, 14L
8410–00–NIB–0053—Kit, Pre-Cut Fabric, Pinpoint Dress Shirt, USMC, Women's, Short Sleeve, White, 16S
8410–00–NIB–0054—Kit, Pre-Cut Fabric, Pinpoint Dress Shirt, USMC, Women's, Short Sleeve, White, 16R
8410–00–NIB–0055—Kit, Pre-Cut Fabric, Pinpoint Dress Shirt, USMC, Women's, Short Sleeve, White, 16L
8410–00–NIB–0056—Kit, Pre-Cut Fabric, Pinpoint Dress Shirt, USMC, Women's, Short Sleeve, White, 18R
8410–00–NIB–0057—Kit, Pre-Cut Fabric, Pinpoint Dress Shirt, USMC, Women's, Short Sleeve, White, XOR
8410–00–NIB–0058—Kit, Pre-Cut Fabric, Pinpoint Dress Shirt, Navy, Women's, Short Sleeve, White, 32 x 12
8410–00–NIB–0059—Kit, Pre-Cut Fabric, Pinpoint Dress Shirt, Navy, Women's, Short Sleeve, White, 32 x 13
8410–00–NIB–0060—Kit, Pre-Cut Fabric, Pinpoint Dress Shirt, Navy, Women's, Short Sleeve, White, 34 x 12
8410–00–NIB–0061—Kit, Pre-Cut Fabric, Pinpoint Dress Shirt, Navy, Women's, Short Sleeve, White, 34 x 13
8410–00–NIB–0062—Kit, Pre-Cut Fabric, Pinpoint Dress Shirt, Navy, Women's, Short Sleeve, White, 34 x 14
8410–00–NIB–0063—Kit, Pre-Cut Fabric, Pinpoint Dress Shirt, Navy, Women's, Short Sleeve, White, 34 x 15
8410–00–NIB–0064—Kit, Pre-Cut Fabric, Pinpoint Dress Shirt, Navy, Women's, Short Sleeve, White, 36 x 13
8410–00–NIB–0065—Kit, Pre-Cut Fabric, Pinpoint Dress Shirt, Navy, Women's, Short Sleeve, White, 36 x 14
8410–00–NIB–0066—Kit, Pre-Cut Fabric, Pinpoint Dress Shirt, Navy, Women's, Short Sleeve, White, 36 x 15
8410–00–NIB–0067—Kit, Pre-Cut Fabric, Pinpoint Dress Shirt, Navy, Women's, Short Sleeve, White, 38 x 13
8410–00–NIB–0068—Kit, Pre-Cut Fabric, Pinpoint Dress Shirt, Navy, Women's, Short Sleeve, White, 38 x 14
8410–00–NIB–0069—Kit, Pre-Cut Fabric, Pinpoint Dress Shirt, Navy, Women's, Short Sleeve, White, 38B x 15N
8410–00–NIB–0070—Kit, Pre-Cut Fabric, Pinpoint Dress Shirt, Navy, Women's, Short Sleeve, White, 38 x 16
8410–00–NIB–0071—Kit, Pre-Cut Fabric, Pinpoint Dress Shirt, Navy, Women's, Short Sleeve, White, 40 x 14
8410–00–NIB–0072—Kit, Pre-Cut Fabric, Pinpoint Dress Shirt, Navy, Women's, Short Sleeve, White, 40 x 15
8410–00–NIB–0073—Kit, Pre-Cut Fabric, Pinpoint Dress Shirt, Navy, Women's, Short Sleeve, White, 40 x 16
8410–00–NIB–0074—Kit, Pre-Cut Fabric, Pinpoint Dress Shirt, Navy, Women's, Short Sleeve, White, 42 x 15
8410–00–NIB–0075—Kit, Pre-Cut Fabric, Pinpoint Dress Shirt, Navy, Women's, Short Sleeve, White, 42 x 16
8410–00–NIB–0076—Kit, Pre-Cut Fabric, Pinpoint Dress Shirt, Navy, Women's, Short Sleeve, White, 44 x 14
8410–00–NIB–0077—Kit, Pre-Cut Fabric, Pinpoint Dress Shirt, Navy, Women's, Short Sleeve, White, 44 x 15
8410–00–NIB–0078—Kit, Pre-Cut Fabric, Pinpoint Dress Shirt, Navy, Women's, Short Sleeve, White, 44 x 16
8410–00–NIB–0079—Kit, Pre-Cut Fabric, Pinpoint Dress Shirt, Navy, Women's, Short Sleeve, White, 46 x 14
8410–00–NIB–0080—Kit, Pre-Cut Fabric, Pinpoint Dress Shirt, Navy, Women's, Short Sleeve, White, 46 x 15

8410–00–NIB–0081—Kit, Pre-Cut Fabric, Pinpoint Dress Shirt, Navy, Women's, Short Sleeve, White, 46 x 16
8410–00–NIB–0082—Kit, Pre-Cut Fabric, Pinpoint Dress Shirt, Navy, Women's, Short Sleeve, White, 46 x 17
8410–00–NIB–0083—Kit, Pre-Cut Fabric, Pinpoint Dress Shirt, Navy, Women's, Short Sleeve, White, 48 x 14
8410–00–NIB–0084—Kit, Pre-Cut Fabric, Pinpoint Dress Shirt, Navy, Women's, Short Sleeve, White, 48 x 15
8410–00–NIB–0085—Kit, Pre-Cut Fabric, Pinpoint Dress Shirt, Navy, Women's, Short Sleeve, White, 48 x 16
8410–00–NIB–0086—Kit, Pre-Cut Fabric, Pinpoint Dress Shirt, Navy, Women's, Short Sleeve, White, 48 x 17
8410–00–NIB–0087—Kit, Pre-Cut Fabric, Pinpoint Dress Shirt, Navy, Women's, Short Sleeve, White, 50 x 14
8410–00–NIB–0088—Kit, Pre-Cut Fabric, Pinpoint Dress Shirt, Navy, Women's, Short Sleeve, White, 50 x 15
8410–00–NIB–0089—Kit, Pre-Cut Fabric, Pinpoint Dress Shirt, Navy, Women's, Short Sleeve, White, 50 x 16
8410–00–NIB–0090—Kit, Pre-Cut Fabric, Pinpoint Dress Shirt, Navy, Women's, Short Sleeve, White, 50B x 17N
8410–00–NIB–0091—Kit, Pre-Cut Fabric, Pinpoint Dress Shirt, Navy, Women's, Short Sleeve, White, 50 x 18
8410–00–NIB–0092—Kit, Pre-Cut Fabric, Pinpoint Dress Shirt, Navy, Women's, Short Sleeve, White, 52 x 14
8410–00–NIB–0093—Kit, Pre-Cut Fabric, Pinpoint Dress Shirt, Navy, Women's, Short Sleeve, White, 52 x 15
8410–00–NIB–0094—Kit, Pre-Cut Fabric, Pinpoint Dress Shirt, Navy, Women's, Short Sleeve, White, 52 x 16
8410–00–NIB–0095—Kit, Pre-Cut Fabric, Pinpoint Dress Shirt, Navy, Women's, Short Sleeve, White, 52 x 17
Mandatory for: 100% of the requirements of Federal Prison Industries
Mandatory Source(s) of Supply: Winston-Salem Industries for the Blind, Inc., Winston-Salem, NC
Contracting Activity: Federal Prison System
Distribution: C-List

Service

Service Type: Recycling Service
Mandatory for: U.S. Army, Walter Reed Army Institute of Research, Safety & Environment Department, Forest Glen Annex, Buildings 500, 501, 503, 508, 509, 511 & the Temporary Phasing Facilities, 503 Robert Grant Avenue, Silver Spring, MD
Mandatory Source of Supply: MVLE, Inc., Springfield, VA
Contracting Activity: Dept. of the Army, W4PZ USA MED RSCH ACQUIS ACT

Deletions

The following products and service are proposed for deletion from the Procurement List:

Products

NSN(s)—Product Name(s):
7520–01–496–5479—Planner, Hanging Kit, EA
7520–01–584–0877—Planner, Hanging Kits, 20 Kits
Mandatory Source of Supply: Chicago Lighthouse Industries, Chicago, IL
Contracting Activity: General Services Administration, Philadelphia, PA

NSN(s)—Product Name(s):
7530–01–600–7616—Monthly Desk Planner, Dated 2018, Wire Bound, Non-refillable, Black Cover
7530–01–600–7593—Weekly Desk Planner, Dated 2018, Wire Bound, Non-refillable, Black Cover
7530–01–600–7583—Daily Desk Planner, Dated 2018, Wire bound, Non-refillable, Black Cover
7530–01–600–7605—Weekly Planner Book, Dated 2018, 5″ x 8″, Black
7510–01–600–7568—Monthly Wall Calendar, Dated 2018, Jan–Dec, 8½″ x 11″
7510–01–600–7629—Wall Calendar, Dated 2018, Wire Bound w/Hanger, 12″ x 17″
7510–01–600–7563—Wall Calendar, Dated 2018, Wire Bound w/hanger, 15½″ x 22″
Mandatory Source of Supply: Chicago Lighthouse Industries, Chicago, IL
Contracting Activity: General Services Administration, New York, NY

Service

Service Type: Microfiche/Microfilm Reproduction Service
Mandatory for: Great Plains Area: Department of Housing and Urban Development (HUD), Chicago, IL
Mandatory Source of Supply: Lester and Rosalie ANIXTER CENTER, Chicago, IL
Contracting Activity: Dept. of Housing and Urban Development

Amy Jensen,

Director, Business Operations.

[FR Doc. 2018–12903 Filed 6–14–18; 8:45 am]

BILLING CODE 6353–01–P

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Procurement List; Addition and Deletions

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

ACTION: Addition to and Deletions from the Procurement List.

SUMMARY: This action adds a service to the Procurement List that will be provided by a nonprofit agency employing persons who are blind or have other severe disabilities, and deletes products from the Procurement List previously furnished by such agencies.

DATES: *Date added to and deleted from the Procurement List:* July 15, 2018.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, 1401 S Clark Street, Suite 715, Arlington, Virginia 22202–4149.

FOR FURTHER INFORMATION CONTACT: Amy B. Jensen, Telephone: (703) 603–7740, Fax: (703) 603–0655, or email *CMTEFedReg@AbilityOne.gov.*

SUPPLEMENTARY INFORMATION:

Addition

On 5/11/2018 (83 FR 92), the Committee for Purchase From People Who Are Blind or Severely Disabled published notice of proposed addition to the Procurement List.

After consideration of the material presented to it concerning capability of a qualified nonprofit agency to provide the service and impact of the addition on the current or most recent contractor, the Committee has determined that the service listed below is suitable for procurement by the Federal Government under 41 U.S.C. 8501–8506 and 41 CFR 51–2.4.

Regulatory Flexibility Act Certification

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organization that will provide the service to the Government.

2. The action will result in authorizing a small entity to provide the service to the Government.

3. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 8501–8506) in connection with the service proposed for addition to the Procurement List.

End of Certification

Accordingly, the following service is added to the Procurement List:

Service

Service Type: Warehouse and Distribution Service.
Mandatory for: National Institutes of Health, Information Resource Center, 6001 Executive Boulevard, Rockville, MD.
Mandatory Source of Supply: The ARC of the District of Columbia, Inc., Washington, DC.
Contracting Activity: National Institutes of Health.

Deletions

On 5/11/2018 (83 FR 92), the Committee for Purchase From People Who Are Blind or Severely Disabled published notice of proposed deletions from the Procurement List.

After consideration of the relevant matter presented, the Committee has

determined that the products listed below are no longer suitable for procurement by the Federal Government under 41 U.S.C. 8501–8506 and 41 CFR 51–2.4.

Regulatory Flexibility Act Certification

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in additional reporting, recordkeeping or other compliance requirements for small entities.

2. The action may result in authorizing small entities to furnish the products to the Government.

3. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 8501–8506) in connection with the products deleted from the Procurement List.

End of Certification

Accordingly, the following products are deleted from the Procurement List:

Products

NSN(s)—Product Name(s): MR 568—Scrubber, 3-pk.
Mandatory Source(s) of Supply: Beacon Lighthouse, Inc., Wichita Falls, TX.
Contracting Activity: Defense Commissary Agency.
NSN(s)—Product Name(s): 7920–01–621–9146—Towel, Cleaning, Non-woven Microfiber, Disposable, 16″ × 16″.
Mandatory Source of Supply: Bestwork Industries for the Blind, Inc., Cherry Hill, NJ.
Contracting Activity: General Services Administration, Fort Worth, TX.

Amy Jensen,

Director, Business Operations.

[FR Doc. 2018–12904 Filed 6–14–18; 8:45 am]

BILLING CODE 6353–01–P

BUREAU OF CONSUMER FINANCIAL PROTECTION

[Docket No. CFPB–2018–0018]

Agency Information Collection Activities: Comment Request; Correction

AGENCY: Bureau of Consumer Financial Protection.

ACTION: Notice and request for comment.

SUMMARY: The Bureau of Consumer Financial Protection published a notice in the **Federal Register** on May 14, 2018 concerning a request for comments on the proposed revision of a currently approved collection of an Office of Management and Budget (OMB) control number. The information collection title in the notice was incorrect.

FOR FURTHER INFORMATION CONTACT: The Bureau of Consumer Financial Protection, (Attention: PRA Office), 1700 G Street NW, Washington, DC 20552, (202) 435–9575, or email: *CFPB_PRA@cfpb.gov.* If you require this document in an alternative electronic format, please contact *CFPB_Accessibility@cfpb.gov.*

Correction

In the **Federal Register** of May 14, 2018 in FR Doc. 2018–10221 on page 22254, in the third column, and on page 22255, in the first column, correct ''Compliant'' to read: ''Complaint.''

Dated: June 12, 2018.

Darrin A. King,

Paperwork Reduction Act Officer, Bureau of Consumer Financial Protection.

[FR Doc. 2018–12908 Filed 6–14–18; 8:45 am]

BILLING CODE 4810–AM–P

DEPARTMENT OF DEFENSE

Office of the Secretary

Defense Intelligence Agency National Intelligence University Board of Visitors; Notice of Federal Advisory Committee Meeting

AGENCY: National Intelligence University, Defense Intelligence Agency, Department of Defense.

ACTION: Notice of closed meeting.

SUMMARY: The Department of Defense is publishing this notice to announce that the following Federal Advisory Committee meeting of the National Intelligence University Board of Visitors has been scheduled. The meeting is closed to the public.

DATES: Tuesday, June 19, 2018 (7:30 a.m. to 5:15 p.m.) and Wednesday, June 20, 2018 (7:30 a.m. to 1:00 p.m.).

ADDRESSES: Defense Intelligence Agency 7400 Pentagon, ATTN: NIU, Washington, DC 20301–7400.

FOR FURTHER INFORMATION CONTACT: Dr. J. Scott Cameron, President, Defense Intelligence Agency National Intelligence University, Washington, DC 20340–5100, Phone: (301) 243–2118.

SUPPLEMENTARY INFORMATION: Due to circumstances beyond the control of the Department of Defense (DoD) and the Designated Federal Officer, the National Intelligence University Board of Visitors was unable to provide public notification required by 41 CFR 102–3.150(a) concerning the meeting on June 19, 2018 through June 20, 2018, of the National Intelligence University Board of Visitors. Accordingly, the Advisory Committee Management Officer for the Department of Defense, pursuant to 41 CFR 102–3.150(b), waives the 15-calendar day notification requirement.

Purpose: The National Intelligence University Board of Visitors will discuss several current critical intelligence issues and advise the Director, Defense Intelligence Agency, as to the successful accomplishment of the mission assigned to the National Intelligence University.

Agenda: The following topics are listed on the National Intelligence University Board of Visitors meeting agenda: Welcome and opening remarks by the President and Board Chair; Accreditation Update; Follow-up on presentations made at June 2017 meeting; Legislative Update, Board Business and Executive Sessions; Working Lunch with Intelligence Community Senior Leaders.

The entire meeting is devoted to the discussion of classified information as defined in 5 U.S.C. 552b(c)(1) and therefore will be closed. Pursuant to 41 CFR 102–3.105(j) and 102–3.140, and section 10(a)(3) of the Federal Advisory Committee Act of 1972, the public or interested organizations may submit written statements to the National Intelligence University Board of Visitors about its mission and functions. Written statements may be submitted at any time or in response to the stated agenda of a planned meeting of the National Intelligence University Board of Visitors. All written statements shall be submitted to the Designated Federal Officer for the National Intelligence University Board of Visitors, and this individual will ensure that the written statements are provided to the membership for their consideration. Contact information for the Designated Federal Officer can be obtained from the GSA's FACA Database—*http://www.facadatabase.gov/.*

Dated: June 11, 2018.

Shelly E. Finke,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2018–12901 Filed 6–14–18; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of the Secretary

Charter Renewal of Department of Defense Federal Advisory Committees

AGENCY: Office of the Secretary, Department of Defense.

ACTION: Renewal of Federal Advisory Committee.

SUMMARY: The Department of Defense (DoD) is publishing this notice to announce that it is renewing the charter for the Chief of Engineers Environmental Advisory Board (''the Board'').

FOR FURTHER INFORMATION CONTACT: Jim Freeman, Advisory Committee Management Officer for the Department of Defense, 703–692–5952.

SUPPLEMENTARY INFORMATION: The Board's charter is being renewed in accordance with the Federal Advisory Committee Act (FACA) of 1972 (5 U.S.C., Appendix, as amended) and 41 CFR 102–3.50(d). The Board's charter and contact information for the Board's Designated Federal Officer (DFO) can be found at *http://www.facadatabase.gov/.*

The Board provides the Secretary of Defense and the Deputy Secretary of Defense, through the Secretary of the Army, the Assistant Secretary of the Army (Civil Works), and the Chief of Engineers, independent advice and recommendations on matters related to the two distinct component programs of the United States Corps of Engineers—the Military Program, which supports Army war fighters, and the Civil Works Program, which manages many of the water resources of the Nation.

The Board is composed of no more than 10 members who are eminent authorities in the fields of natural (*e.g.,* biology, ecology), social (*e.g.,* anthropology, community planning), and related sciences. All members of the Board are appointed to provide advice on behalf of the Government on the basis of their best judgment without representing any particular point of view and in a manner that is free from conflict of interest. Except for reimbursement of official Board-related travel and per diem, Board members serve without compensation.

The public or interested organizations may submit written statements to the Board membership about the Board's mission and functions. Written statements may be submitted at any time or in response to the stated agenda of planned meeting of the Board. All written statements shall be submitted to the DFO for the Board, and this individual will ensure that the written statements are provided to the membership for their consideration.

Dated: June 11, 2018.

Shelly E. Finke,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2018–12857 Filed 6–14–18; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Department of the Navy

Notice of Availability of Government-Owned Inventions; Available for Licensing

AGENCY: Department of the Navy, DoD.

ACTION: Notice.

SUMMARY: The Department of the Navy (DoN) announces the availability of the inventions listed below, assigned to the United States Government, as represented by the Secretary of the Navy, for domestic and foreign licensing by the Department of the Navy.

ADDRESSES: Requests for copies of the patents cited should be directed to Naval Surface Warfare Center, Crane Div, Code OOL, Bldg 2, 300 Highway 361, Crane, IN 47522–5001.

FOR FURTHER INFORMATION CONTACT: Mr. Christopher Monsey, Naval Surface Warfare Center, Crane Div, Code OOL, Bldg 2, 300 Highway 361, Crane, IN 47522–5001, Email *Christopher.Monsey@navy.mil,* 812–854–2777.

SUPPLEMENTARY INFORMATION: The following patents are available for licensing: Patent No. 9,958,544 (Navy Case No. 200113): VESSEL-TOWED MULTIPLE SENSOR SYSTEMS AND RELATED METHODS//and Patent No. 9,959,430 (Navy Case No. 103079): COUNTERFEIT MICROELECTRONICS DETECTION BASED ON CAPACITIVE AND INDUCTIVE SIGNATURES.

Authority: 35 U.S.C. 207, 37 CFR part 404.

Dated: June 7, 2018.

E.K. Baldini,

Lieutenant Commander, Judge Advocate General's Corps, U.S. Navy, Federal Register Liaison Officer.

[FR Doc. 2018–12834 Filed 6–14–18; 8:45 am]

BILLING CODE 3810–FF–P

DEPARTMENT OF DEFENSE

Department of the Navy

[Docket ID: USN–2018–HQ–0004]

Submission for OMB Review; Comment Request

AGENCY: Department of the Navy, DoD.

ACTION: 30-Day information collection notice.

SUMMARY: The Department of Defense has submitted to OMB for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act.

DATES: Consideration will be given to all comments received by July 16, 2018.

ADDRESSES: Comments and recommendations on the proposed information collection should be emailed to Ms. Jasmeet Seehra, DoD Desk Officer, at *oira_submission@omb.eop.gov.* Please identify the proposed information collection by DoD Desk Officer, Docket ID number, and title of the information collection.

FOR FURTHER INFORMATION CONTACT: Fred Licari, 571–372–0493, or *whs.mc-alex.esd.mbx.dd-dod-information-collections@mail.mil.*

SUPPLEMENTARY INFORMATION:

Title; Associated Form; and OMB Number: CATCH Program; DD–XXXX; OMB Control Number 0703–XXXX.

Type of Request: New collection.

Number of Respondents: 300.

Responses per Respondent: 1.

Annual Responses: 300.

Average Burden per Response: 30 minutes.

Annual Burden Hours: 150.

Needs and Uses: The information collection requirement is necessary to assist with the identification of serial sexual assault offenders within the military services.

Affected Public: Individuals or Households.

Frequency: On occasion.

Respondent's Obligation: Voluntary.

OMB Desk Officer: Ms. Jasmeet Seehra.

You may also submit comments and recommendations, identified by Docket ID number and title, by the following method:

• *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.

Instructions: All submissions received must include the agency name, Docket ID number, and title 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.

DOD Clearance Officer: Mr. Frederick Licari.

Requests for copies of the information collection proposal should be sent to Mr. Licari at *whs.mc-alex.esd.mbx.dd-dod-information-collections@mail.mil.*

Dated: June 11, 2018.

Shelly E. Finke,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2018–12850 Filed 6–14–18; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP18–492–000]

Pine Prairie Energy Center, LLC; Notice of Application

Take notice that on May 25, 2018, Pine Prairie Energy Center, LLC (Pine Prairie), 333 Clay Street, Suite 1500, Houston, Texas 77002, filed in Docket No. CP18–492–000, an application under section 7(c) of the Natural Gas Act seeking authorization to amend its certificate of public convenience and necessity issued in Docket No. CP11–1–000 to reallocate the previously certificated aggregate capacities of each of Cavern Nos. 1 through 7 at its Pine Prairie Energy Center natural gas storage facility located in Evangeline Parrish, Louisiana. Pine Prairie proposes to increase the certificated base gas capacity of each cavern with a corresponding decrease in the certificated working gas capacity in each cavern. The proposed capacity reallocation would not result in any change to the previously certificated total storage capacity of any individual cavern or to the aggregate certificated capacity of the Pine Prairie natural gas storage facility, all as more fully set forth in the application which is on file with the Commission and open to public inspection. This 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, please contact FERC at *FERCOnlineSupport@ferc.gov* or call toll-free, (886) 208–3676 or TYY, (202) 502–8659.

Any questions regarding this Application should be directed William E. Rice, King & Spaulding LLP, 1700 Pennsylvania Avenue NW, Suite 200, Washington, DC 20006, 202–626–9602 (phone), 202–626–3737 (fax), *wrice@kslaw.com;* or Eileen Wilson Kisluk, Pine Prairie Energy Center, LLC, 333 Clay Street, Suite 1500, Houston, Texas 77002, 713–993–5203 (phone), 713–652–3701 (fax), *ewkisluk@pnlgp.com.*

Pursuant to section 157.9 of the Commission's rules, 18 CFR 157.9, within 90 days of this Notice the Commission staff will either: complete its environmental assessment (EA) and place it into the Commission's public record (eLibrary) for this proceeding; or issue a Notice of Schedule for Environmental Review. If a Notice of Schedule for Environmental Review is issued, it will indicate, among other milestones, the anticipated date for the Commission staff's issuance of the final environmental impact statement (FEIS) or EA for this proposal. The filing of the EA in the Commission's public record for this proceeding or the issuance of a Notice of Schedule for Environmental Review will serve to notify federal and state agencies of the timing for the completion of all necessary reviews, and the subsequent need to complete all federal authorizations within 90 days of the date of issuance of the Commission staff's FEIS or EA.

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 7 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 commenter's will be placed on the Commission's environmental mailing list, will receive copies of the environmental documents, and will be notified of meetings associated with the Commission's environmental review process. Environmental commenter's will not be required to serve copies of filed documents on all other parties. However, the non-party commentary, will not receive copies of all documents filed by other parties or issued by the Commission (except for the mailing of environmental documents issued by the Commission) and will not have the right to seek court review of the Commission's final order.

The Commission strongly encourages electronic filings of comments, protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 5 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's website under the ''e-Filing'' link.

Comment Date: 5:00 p.m. Eastern Time on June 29, 2018.

Dated: June 8, 2018.

Kimberly D. Bose,

Secretary.

[FR Doc. 2018–12876 Filed 6–14–18; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 2883–009]

Notice of Application Tendered for Filing With the Commission and Soliciting Additional Study Requests and Establishing Procedural Schedule for Relicensing and a Deadline for Submission of Final Amendments: Aquenergy Systems, LLC

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection.

a. *Type of Application:* New Major License.

b. *Project No.:* 2883–009.

c. *Date Filed:* May 30, 2018.

d. *Applicant:* Aquenergy Systems, LLC.

e. *Name of Project:* Fries Hydroelectric Project.

f. *Location:* On the New River in the Town of Fries, Grayson County, Virginia. No federal lands are occupied by the project works or located within the project boundary.

g. *Filed Pursuant to:* Federal Power Act 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* Mr. Kevin Webb, Hydro Licensing Manager, Enel

Green Power North America, Inc., 100 Brickstone Square, Suite 300, Andover, MA 01810; (978) 935–6039.

i. *FERC Contact:* Nicholas Ettema, (202) 502–6565 or *nicholas.ettema@ferc.gov.*

j. *Cooperating agencies:* Federal, state, local, and tribal agencies with jurisdiction and/or special expertise with respect to environmental issues that wish to cooperate in the preparation of the environmental document should follow the instructions for filing such requests described in item l below. Cooperating agencies should note the Commission's policy that agencies that cooperate in the preparation of the environmental document cannot also intervene. See, 94 FERC ¶ 61,076 (2001).

k. Pursuant to section 4.32(b)(7) of 18 CFR of the Commission's regulations, if any resource agency, Indian Tribe, or person believes that an additional scientific study should be conducted in order to form an adequate factual basis for a complete analysis of the application on its merit, the resource agency, Indian Tribe, or person must file a request for a study with the Commission not later than 60 days from the date of filing of the application, and serve a copy of the request on the applicant.

l. *Deadline for filing additional study requests and requests for cooperating agency status:* July 29, 2018.

The Commission strongly encourages electronic filing. Please file additional study requests and requests for cooperating agency status using the Commission's eFiling system at *http://www.ferc.gov/docs-filing/efiling.asp.* For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov,* (866) 208–3676 (toll free), or (202) 502–8659 (TTY). In lieu of electronic filing, please send a paper copy to: Secretary, Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426. The first page of any filing should include docket number P–2883–009.

m. This application is not ready for environmental analysis at this time.

n. *The existing Fries Hydroelectric Project (Fries Project) consists of:* (1) A 41-foot-high, 610-foot-long rock masonry dam with a 500-foot-long spillway; (2) an 88-acre impoundment at the normal pool elevation (spillway crest elevation) of 2,188.27 feet National Geodetic Vertical Datum of 1929; (3) an approximately 750-foot-long, 110-foot-wide intake canal with four 15.5-foot-high, 6.5-foot-wide headgates; (4) a canal spillway consisting of 10 stoplog bays totaling 47 feet in length; (5) two 12.5-foot-high, 5.0-foot-wide canal gates; (6) a steel powerhouse that contains a single vertical Kaplan turbine with a capacity of 2.1 megawatts (MW) that discharges into a 180-foot-long, 75-foot-wide, 12-foot-deep tailrace; (7) a masonry powerhouse that contains one vertical and two horizontal Francis turbines with a total capacity of 3.0 MW that discharges into a 180-foot-long, 120-foot-wide, 12-foot-deep tailrace; (8) a 500-foot-long, 450-foot-wide bypassed reach that extends from the toe of the dam to the confluence with the tailraces; (9) a 567-foot-long, 13.2-kilovolt (kV) transmission line that runs from the steel powerhouse to the interconnection point with the grid; (10) a 130-foot-long transmission line that connects the masonry powerhouse to a 5,000 kilovolt-amp step-up transformer and an additional 323-foot-long, 13.2-kV transmission line leading from the transformer to the interconnection point; (11) and appurtenant facilities.

The Fries Project is operated in a run-of-river mode. For the period 2003 through 2016, the average annual generation at the Fries Project was 26,150 megawatt-hours.

o. A copy of the application is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's website at *http://www.ferc.gov* using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, contact FERC Online Support. A copy is also available for inspection and reproduction at the address in item h above.

You may also register online at *http://www.ferc.gov/docs-filing/esubscription.asp* to be notified via email of new filings and issuances related to this or other pending projects. For assistance, contact FERC Online Support.

p. *Procedural schedule and final amendments:* The application will be processed according to the following preliminary schedule. Revisions to the schedule will be made as appropriate.

Issue Deficiency Letter (if necessary)	August 2018
Request Additional Information	August 2018
Issue Acceptance Letter	October 2018
Issue Scoping Document 1 for comments	November 2018
Request Additional Information (if necessary)	January 2019
Issue Scoping Document 2	February 2019
Issue notice of ready for environmental analysis	February 2019
Commission issues EA	August 2019
Comments on EA	September 2019

q. Final amendments to the application must be filed with the Commission no later than 30 days from the issuance date of the notice of ready for environmental analysis.

Dated: June 8, 2018.

Kimberly D. Bose,

Secretary.

[FR Doc. 2018–12880 Filed 6–14–18; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 2503–167]

Notice of Application Accepted for Filing, Soliciting Comments, Motions To Intervene, and Protests: Duke Energy Carolinas, LLC

Take notice that the following hydroelectric application has been filed with the Federal Energy Regulatory Commission and is available for public inspection:

a. *Type of Application:* Non-project use of project lands and water.

b. *Project No.:* 2503–167.

c. *Date Filed:* February 1, 2018 and supplemented June 4, 2018.

d. *Applicant:* Duke Energy Carolinas, LLC (licensee).

e. *Name of Project:* Keowee-Toxaway Hydroelectric Project.

f. *Location:* Lake Keowee in Oconee County, South Carolina.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791a–825r.

h. *Applicant Contact:* Kelvin Reagan, Manager, Lake Services South, Duke Energy Carolinas, LLC, 526 South Church Street, ECQ12, Charlotte, North Carolina 28202; phone (704) 382–9386.

i. *FERC Contact:* Ms. Joy Kurtz at 202–502–6760, or *joy.kurtz@ferc.gov.*

j. Deadline for filing comments, motions to intervene, and protests is 30 days from the issuance of this notice by the Commission. The Commission strongly encourages electronic filing. Please file motions to intervene, protests, and comments using the Commission's eFiling system at *http://www.ferc.gov/docs-filing/efiling.asp.* Commenters can submit brief comments up to 6,000 characters, without prior registration, using the eComment system at *http://www.ferc.gov/docs-filing/ecomment.asp.* You must include your name and contact information at the end of your comments. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov,* (866) 208–3676 (toll free), or (202) 502–8659 (TTY). In lieu of electronic filing, please

send a paper copy to: Secretary, Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426. The first page of any filing should include docket number P–2503–167.

k. *Description of Request:* The licensee requests Commission approval to grant the City of Walhalla permission to use project lands and water within the project boundary to construct and operate a raw water intake on Lake Keowee in order to meet demands for public drinking water. Construction activities within the project boundary would include installation of an intake line outfitted with a dual tee screen system and air burst line, installation of a floating dock extending over the intake line, placement of rip rap along the stream bank and intake line, and installation of a stormwater outfall. The through-slot velocity at the intake screen will not exceed 0.5 feet per second. The raw water line would leave the project boundary and lead to a water treatment plant, which is not yet constructed. Once constructed, the facility would withdrawal up to 6.75 million gallons per day (mgd) from Lake Keowee.

l. *Locations of the Application:* A copy of the application is available for inspection and reproduction at the Commission's Public Reference Room, located at 888 First Street NE, Room 2A, Washington, DC 20426, or by calling 202–502–8371. This filing may also be viewed on the Commission's website 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. You may also register online at *http://www.ferc.gov/docs-filing/esubscription.asp* to be notified via email of new filings and issuances related to this or other pending projects. For assistance, call 866–208–3676 or email *FERCOnlineSupport@ferc.gov,* for TTY, call 202–502–8659. A copy is also available for inspection and reproduction at the address in item (h) above.

m. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

n. *Comments, Protests, or Motions to Intervene:* Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

o. *Filing and Service of Responsive Documents:* Any filing must (1) bear in all capital letters the title ''COMMENTS''; ''PROTEST'', or ''MOTION TO INTERVENE'' as applicable; (2) set forth in the heading the name of the applicant and the project number of the application to which the filing responds; (3) furnish the name, address, and telephone number of the person protesting or intervening; and (4) otherwise comply with the requirements of 18 CFR 385.2001 through 385.2005. All comments, motions to intervene, or protests must set forth their evidentiary basis and otherwise comply with the requirements of 18 CFR 4.34(b). All comments, motions to intervene, or protests should relate to the non-project use application. Agencies may obtain copies of the application directly from the applicant. A copy of any protest or motion to intervene must be served upon each representative of the applicant specified in the particular application. If an intervener files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency. A copy of all other filings in reference to this application must be accompanied by proof of service on all persons listed in the service list prepared by the Commission in this proceeding, in accordance with 18 CFR 4.34(b) and 385.2010.

Dated: June 8, 2018.

Kimberly D. Bose,

Secretary.

[FR Doc. 2018–12878 Filed 6–14–18; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP18–493–000]

Notice of Request Under Blanket Authorization: Saltville Gas Storage Company, LLC

Take notice that on May 31, 2018, Saltville Gas Storage Company, L.L.C. (Saltville), 5400 Westheimer Court, Houston, Texas 77056–5310, filed in Docket No. CP18–493–000 a prior notice request pursuant to sections 157.205, 157.208, 157.213 and 157.216 of the Commission's regulations under the Natural Gas Act notifying the Commission of Saltville's intent to drill two new injection and withdrawal (I/W) wells, to replace two previously abandon I/W wells and one existing I/W well, to maintain the deliverability of the Early Grove depleted reservoir facility, as well as to abandon one existing monitoring well at its Early Grove natural gas storage facility in Scott and Washington Counties, Virginia, all as more fully set forth in the application which is on file with the Commission and open to public inspection. The filing may also be viewed on the web at *http://www.ferc.gov* using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll free at (866) 208–3676, or TTY, contact (202) 502–8659.

Any questions concerning this application may be directed to Lisa A. Connolly, Director, Rates & Certificates, Saltville Gas Storage Company. L.L.C., P.O. Box 1642, Houston, Texas 77251–1642 at (713) 627–4102 or at *lisa.connolly@enbridge.com.*

Specifically, Saltville proposes to: (i) Drill new horizontal/high angle I/W wells; (ii) install connecting piping and other appurtenances facilities; (iii) plug and abandon one existing I/W well, EH–96, and one existing monitoring well, EH–95; and (iv) abandon by removal related connecting piping and appurtenance facilities. Saltville states that, the project will have no impact on the certificate parameters of the facility, including total inventory, reservoir pressure, reservoir and buffer boundaries, or certificated capacity, and there will be no abandonment or reduction in service to any customer of Saltville as a result of the project. The project cost will be approximately $20 million.

Pursuant to section 157.9 of the Commission's rules, 18 CFR 157.9, within 90 days of this Notice the Commission staff will either: Complete its environmental assessment (EA) and place it into the Commission's public record (eLibrary) for this proceeding; or issue a Notice of Schedule for Environmental Review. If a Notice of Schedule for Environmental Review is issued, it will indicate, among other milestones, the anticipated date for the Commission staff's issuance of the final environmental impact statement (FEIS) or EA for this proposal. The filing of the EA in the Commission's public record for this proceeding or the issuance of a

Notice of Schedule for Environmental Review will serve to notify federal and state agencies of the timing for the completion of all necessary reviews, and the subsequent need to complete all federal authorizations within 90 days of the date of issuance of the Commission staff's FEIS or EA.

Persons who wish to comment only on the environmental review of this project should submit an original and two copies of their comments to the Secretary of the Commission. Environmental 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 commenter will not receive copies of all documents filed by other parties or issued by the Commission (except for the mailing of environmental documents issued by the Commission) and will not have the right to seek court review of the Commission's final order.

The Commission strongly encourages electronic filings of comments, protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 5 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426.

Dated: June 8, 2018.

Kimberly D. Bose,

Secretary.

[FR Doc. 2018–12879 Filed 6–14–18; 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: EC18–98–000.

Applicants: Grays Harbor Energy LLC, Hardee Power Partners Limited, Invenergy Cannon Falls LLC, Invenergy Nelson LLC, Lackawanna Energy Center LLC, Spindle Hill Energy LLC.

Description: Application for Authorization Under Section 203 of the Federal Power Act and Request for Waivers and Expedited Action of Grays Harbor Energy LLC, *et al.*

Filed Date: 6/7/18.

Accession Number: 20180607–5150.

Comments Due: 5 p.m. ET 6/28/18.

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER18–1078–001.

Applicants: Southwest Power Pool, Inc.

Description: Tariff Amendment: Deficiency Response—Revisions to Require PMUs at New Interconnections to be effective 5/13/2018.

Filed Date: 6/7/18.

Accession Number: 20180607–5127.

Comments Due: 5 p.m. ET 6/28/18.

Docket Numbers: ER18–1762–000.

Applicants: PJM Interconnection, L.L.C.

Description: Tariff Cancellation: Notice of Cancellation of ISA SA No. 3525; Queue No. V3–015 to be effective 6/26/2018.

Filed Date: 6/7/18.

Accession Number: 20180607–5131.

Comments Due: 5 p.m. ET 6/28/18.

Docket Numbers: ER18–1763–000.

Applicants: PJM Interconnection, L.L.C.

Description: § 205(d) Rate Filing: Original WMPA, SA No. 5100; Queue No. AC1–212 to be effective 5/9/2018.

Filed Date: 6/8/18.

Accession Number: 20180608–5119.

Comments Due: 5 p.m. ET 6/29/18.

Docket Numbers: ER18–1764–000.

Applicants: Public Service Company of Colorado.

Description: § 205(d) Rate Filing: PSCo-TSGT–UP-PkwySS–CO-Agmt F174–479–0.0.0 to be effective 6/9/2018.

Filed Date: 6/8/18.

Accession Number: 20180608–5120.

Comments Due: 5 p.m. ET 6/29/18.

Take notice that the Commission received the following electric securities filings:

Docket Numbers: ES18–39–000.

Applicants: Consumers Energy Company.

Description: Application of Consumers Energy Company for Authority to Issue Securities.

Filed Date: 6/8/18.

Accession Number: 20180608–5083.

Comments Due: 5 p.m. ET 6/29/18.

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: June 8, 2018.

Kimberly D. Bose,

Secretary.

[FR Doc. 2018–12875 Filed 6–14–18; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Effectiveness of Exempt Wholesale Generator and Foreign Utility Company Status

Midway Wind, LLC	EG18–49–000
Victoria City Power LLC	EG18–50–000
Victoria Port Power LLC	EG18–51–000
Meadow Lake Wind Farm VI LLC	EG18–53–000
Prairie Queen Wind Farm LLC	EG18–54–000
Turtle Creek Wind Farm LLC	EG18–55–000
Kestrel Acquisition LLC	EG18–56–000
Imperial Valley Solar 2, LLC	EG18–57–000
Delta Solar Power I, LLC	EG18–58–000
Delta Solar Power II, LLC	EG18–59–000
Walleye Energy, LLC	EG18–60–000

Pinal Central Energy Center, LLC	EG18–61–000
Trishe Wind Ohio, LLC	EG18–62–000
NRG Cottonwood Tenant LLC	EG18–63–000
SP Sandhills Solar, LLC	EG18–64–000
SP Butler Solar, LLC	EG18–65–000
SP Pawpaw Solar, LLC	EG18–66–000
SP Decatur Parkway Solar, LLC	EG18–67–000
Camilla Solar Energy LLC	EG18–68–000
NC 102 Project LLC	EG18–69–000
64KT 8ME LLC	EG18–70–000
I Squared Capital	FC18–3–000
I Squared Capital	FC18–4–000

DATES: June 8, 2018.

Take notice that during the month of May 2018, the status of the above-captioned entities as Exempt Wholesale Generators or Foreign Utility Companies became effective by operation of the Commission's regulations. 18 CFR 366.7(a) (2017).

Dated: June 8, 2018.

Kimberly D. Bose,

Secretary.

[FR Doc. 2018–12877 Filed 6–14–18; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 14876–000]

Western Minnesota Municipal Power Authority; Notice of Preliminary Permit Application Accepted for Filing and Soliciting Comments, Motions To Intervene, and Competing Applications

On April 19, 2018, Western Minnesota Municipal Power Authority filed an application for a preliminary permit, pursuant to section 4(f) of the Federal Power Act (FPA), proposing to study the feasibility of the Gregory County Pumped Storage Project to be located on Lake Francis Case on the Missouri River, near the township of Lucas, in Gregory, Charles Mix, and Brule Counties, South Dakota. 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 new 1,200-acre earthen embankment levee (upper reservoir) having a total storage capacity of 50,000 acre-feet with an operating elevation level of between 2,045 feet mean sea level (msl) and 2,087 feet msl; (2) a new 550-foot-long by 120-foot-wide by 100-foot-high reinforced concrete powerhouse containing eight new 150-megawatt (MW) turbine units for a total plant rating of 1,200 MW; (3) thirty new 15-foot-wide by 20-foot-deep reinforced concrete trashracks with an open bar spacing of 3.75 inches; (4) two new 6,000-foot-long, 32-foot-diameter reinforced concrete penstocks; (5) two new 120-foot-high, 40-foot-diameter reinforced concrete surge tanks connected to each penstock; (6) the existing 102,000-acre Lake Francis Case (lower reservoir) with a storage capacity of 5,494,000 acre-feet at normal maximum operation elevation of 1,355 feet msl; (7) a new 6,000-foot-long, horse-shoe configured tailrace tunnel that daylights to a 350-foot-long tailrace channel (upstream of the trashrack) from the powerhouse to Lake Francis Case; (8) a new 200-foot by 360-foot substation on top of the powerhouse containing four step-up transformers; (9) a new 21-mile-long, 345-kilovolt (kV) transmission line extending from the project substation to the existing Lake Platte substation (the point of interconnection); and (10) appurtenant facilities. The estimated annual generation of the Gregory County Pumped Storage Project would be 3,500 gigawatt-hours.

Applicant Contact: Mr. Raymond J. Wahle, Missouri River Energy Services, 3724 W. Avera Drive, P.O. Box 88920, Sioux Falls, SD 57109; phone: (605) 330–6963.

FERC Contact: Tyrone Williams; phone: (202) 502–6331.

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.

The Commission strongly encourages electronic filing. Please file comments, motions to intervene, notices of intent, and competing applications using the Commission's eFiling system at *http://www.ferc.gov/docs-filing/efiling.asp.* Commenters can submit brief comments up to 6,000 characters, without prior registration, using the eComment system at *http://www.ferc.gov/docs-filing/ecomment.asp.* You must include your name and contact information at the end of your comments. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov,* (866) 208–3676 (toll free), or (202) 502–8659 (TTY). In lieu of electronic filing, please send a paper copy to: Secretary, Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426. The first page of any filing should include docket number P–14876–000.

More information about this project, including a copy of the application, can be viewed or printed on the ''eLibrary'' link of Commission's website at *http://www.ferc.gov/docs-filing/elibrary.asp.* Enter the docket number (P–14876) in the docket number field to access the document. For assistance, contact FERC Online Support.

Dated: June 8, 2018.

Kimberly D. Bose,

Secretary.

[FR Doc. 2018–12881 Filed 6–14–18; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OW–2011–0465; FRL–9979–51–OW]

Proposed Information Collection Request; Comment Request; Water Quality Standards Regulation (Renewal)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The Environmental Protection Agency is planning to submit an information collection request (ICR), ''Water Quality Standards Regulation (Renewal)'' (EPA ICR No. 0988.13, OMB Control No. 2040–0049) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act. Before doing so, the EPA is soliciting public comments on specific aspects of the proposed information collection as

described below. This ICR renews the Water Quality Standards Regulation ICR (most recently approved in 2016) and consolidates the burden and costs associated with activities previously reported in ICRs for two recent rules affecting the WQS program: The Water Quality Standards Regulatory Revisions (approved in 2015), and the Revised Interpretation of Clean Water Act Tribal Provision (approved in 2016). An Agency may not conduct or sponsor and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number.

DATES: Comments must be submitted on or before August 14, 2018.

ADDRESSES: Submit your comments, referencing Docket ID No. EPA–HQ–OW–2011–0465, online using *www.regulations.gov* (our preferred method), by email to *ow-docket@epa.gov,* or by mail to: EPA Docket Center, Environmental Protection Agency, Mail Code 28221T, 1200 Pennsylvania Ave. NW, Washington, DC 20460.

The EPA's policy is that all comments received will be included in the public docket without change including any personal information provided unless the comment includes profanity, threats, information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute.

FOR FURTHER INFORMATION CONTACT: Tanyan Bailey, Office of Water, Office of Science and Technology, Standards and Health Protection Division, (4305T), Environmental Protection Agency, 1200 Pennsylvania Ave. NW, Washington, DC 20460; telephone number: 202–564–3133; fax number: 202–566–0409; email address: *bailey.tanyan@epa.gov.*

SUPPLEMENTARY INFORMATION: Supporting documents which explain in detail the information that the EPA would be collecting are available in the public docket for this Information Collection Request (ICR) (Docket ID No. EPA–HQ–OW–2011–0465). The docket can be viewed online at *www.regulations.gov* or in person at the EPA Docket Center, WJC West, Room 3334, 1301 Constitution Ave., NW, Washington, DC. The telephone number for the Docket Center is 202–566–1744. For additional information about the EPA's public docket, visit *http://www.epa.gov/dockets.*

Pursuant to section 3506(c)(2)(A) of the Paperwork Reduction Act (PRA), the EPA is soliciting comments and information to enable it to: (i) 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; (ii) 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; (iii) enhance the quality, utility, and clarity of the information to be collected; and, (iv) 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. The EPA will consider the comments received and amend the proposed ICR as appropriate. The final ICR package will then be submitted to OMB for review and approval. At that time, the EPA will issue another **Federal Register** notice to announce the submission of the ICR to OMB and the opportunity to submit additional comments to OMB.

Abstract: Water quality standards (WQS) under the Clean Water Act (hereafter referred to as ''the Act'') are provisions of state,[1] tribal,[2] or federal law which consist of designated uses for waters of the United States, water quality criteria to protect those uses, and antidegradation requirements. WQS are established to protect public health or welfare, protect and enhance the quality of water, and serve the purposes of the Clean Water Act. Such standards serve the dual purposes of establishing the water quality goals for water bodies and serving as the regulatory basis for the establishment of water quality-based treatment controls and strategies beyond technology-based levels of treatment required by sections 301(b) and 306 of the Act. The WQS Regulation establishes the framework for states and authorized tribes to adopt standards, and for the EPA to review and approve or disapprove them. For the purposes of this ICR, the WQS Regulation consists of 40 CFR part 131 (Water Quality Standards), and portions of part 132 (Water Quality Guidance for the Great Lakes System) that are related to WQS.[3] This ICR is for information collections needed to implement the WQS Regulation and required to obtain or retain benefits (*e.g.,* relaxed regulatory requirements) under the WQS Regulation.

This ICR renews the WQS Regulation ICR, OMB control no. 2040–0049, expiration date 6/30/2019, and consolidates the burden and costs associated with activities previously reported in two related ICRs, which upon OMB approval will be discontinued as separate ICRs:

- The WQS Regulatory Revisions ICR, OMB control no. 2040–0286, expiration date 12/31/2018; and,
- The Revised Interpretation of Clean Water Act Tribal Provision ICR, OMB control no. 2040–0289, expiration date 7/31/2019.

This ICR renewal and consolidation describes the estimated burden for states, authorized tribes and certain Great Lakes dischargers associated with the information collections related to: Implementation of the requirements of 40 CFR part 131 (Water Quality Standards); implementation of the WQS portions of the 40 CFR part 132 (Water Quality Guidance for the Great Lakes System); tribal applications to be treated in a similar manner as a state (TAS); and, tribal requests for dispute resolution under CWA section 518(e). This ICR also covers periodic requests for voluntary WQS information from, or voluntary participation in workgroups by, state and tribes to ensure efficient and effective administration of the WQS program and further cooperative federalism.

Form Numbers: None.

Respondents/affected entities: Potential respondents to this ICR include: The 50 states, the District of Columbia, five territories, authorized tribes with EPA-approved Water Quality Standards (44 tribes as of May 2018), and a total of 18 additional tribal respondents over the three-year duration of the ICR (based on six additional tribal respondents expected to apply per year for TAS to administer the WQS program). In addition, an estimated total of 258 dischargers located in the Great Lakes watershed over the three-year duration of this ICR (based on an estimated 86 dischargers per year) could apply for certain forms of regulatory relief. The total number of potential respondents is thus 376. This corresponds to 2,693 responses per year (see draft Supporting Statement in the docket for this ICR).

Respondent's obligation to respond: Some collections in this ICR are mandatory; some are required to obtain or retain benefits (*e.g.,* relaxed regulatory requirements) pursuant to the

[1] ''States'' in the EPA's WQS Regulation and in this document includes the 50 states, the District of Columbia, Guam, the Commonwealth of Puerto Rico, the Virgin Islands, American Samoa, and the Commonwealth of the Northern Mariana Islands.

[2] ''Tribes'' in this document refers to federally recognized tribes and ''authorized tribes'' refers to those federally recognized Indian tribes with authority to administer a CWA WQS program.

[3] These portions include 40 CFR 132.3, appendices A, B, C, D, E, and Procedures 1 and 2 of appendix F.

WQS Regulation; and, some are voluntary.

Estimated number of respondents: 2,693.

Frequency of response: Variable depending on type of information collected (once every three years; annually; on occasion or as necessary; or, only once).

Total estimated burden: From 376,097 to 514,987 hours per year. Burden is defined at 5 CFR 1320.03(b).

Total estimated cost: From $17,103,064 to $23,173,945 of labor costs per year, and $263,520 of operations and maintenance costs per year. There are no annualized capital costs.

Changes in Estimates: There is a decrease of 226,040 hours in the total upper estimates of respondent burden compared with the combined burden of the three ICRs currently approved by OMB and consolidated in this ICR. This decrease reflects adjustments made to the EPA's burden estimates based on experience gained since the previous ICRs were approved.

Dated: June 6, 2018.

Deborah G. Nagle,

Acting Director, Office of Science and Technology.

[FR Doc. 2018–13027 Filed 6–14–18; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–OW–2018–0270; FRL–9979–53–OW]

Announcement of the Per- and Polyfluoroalkyl Substances (PFAS) New England Community Engagement

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of an event.

SUMMARY: The Environmental Protection Agency (EPA) will kick off the Per- and Polyfluoroalkyl Substances (PFAS) community engagements with a two-day event in Exeter, New Hampshire. The goal of the event is to allow the EPA to hear directly from New England communities to understand ways the Agency can best support the work that is being done at the state, local, and tribal level. For more information on the event, visit the EPA's PFAS website: *https://www.epa.gov/pfas/pfas-community-engagement.* During the recent PFAS National Leadership Summit, the EPA announced plans to visit communities to hear directly from those impacted by PFAS. This engagement is the next step in the EPA's commitment to address challenges with PFAS. The EPA anticipates that the community engagements will provide valuable insight for the agency's efforts moving forward. For more information, go to the **SUPPLEMENTARY INFORMATION** section of this notice.

DATES: The event will be held on June 25–26, 2018. On June 25, a listening session will be held at 4:30 p.m. to 10:00 p.m., eastern time. A working session will be held on June 26 from 8:00 a.m. to 3:00 p.m., eastern time.

ADDRESSES: The two-day event will be held at the Exeter High School, 1 Blue Hawk Drive, Exeter, New Hampshire 03833. If you are unable to attend the New England Community Engagement, you will be able to submit comments at *http://www.regulations.gov:* Enter Docket ID No. EPA–OW–2018–0270. Citizens are encouraged to send written statements to the public docket. Follow the online instructions for submitting comments. Once submitted, comments cannot be edited or withdrawn. 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.*

FOR FURTHER INFORMATION CONTACT: Doug Gutro, EPA New England Headquarters (Mail Code ORAO1–1), 5 Post Office Square, Suite 100, Boston, MA 02109–3912; telephone number: 617–918–1021; fax number: 617–918–0021; email address: *Gutro.Doug@epa.gov.*

SUPPLEMENTARY INFORMATION:

Details about Participating in the Event: The public is invited to speak during the June 25 listening session. Those interested in speaking can sign up for a 3-minute speaking slot on EPA's website at *https://www.epa.gov/pfas/pfas-community-engagement.* Please check this website for event materials as they become available, including a full agenda, leading up to the event.

The PFAS National Leadership Summit: On May 22–23, 2018, the EPA hosted the PFAS National Leadership Summit. During the summit, participants worked together to share information on ongoing efforts to characterize risks from PFAS, develop monitoring and treatment/cleanup techniques, identify specific near-term actions (beyond those already underway) that are needed to address challenges currently facing states and local communities, and develop risk communication strategies that will help communities to address public concerns regarding PFAS.

The EPA wants to ensure the public that their input is valuable and meaningful. Using information from the National Leadership Summit, public docket, and community engagements, the EPA plans to develop a PFAS Management Plan for release later this year. A summary of the New England Community Engagement will be made available to the public following the event on the EPA's PFAS Community Engagement website at: *https://www.epa.gov/pfas/pfas-community-engagement.*

Dated: June 11, 2018.

Eric Burneson,

Acting Director, Office of Ground Water and Drinking Water.

[FR Doc. 2018–12911 Filed 6–14–18; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[ER–FRL–9039–8]

Environmental Impact Statements; Notice of Availability

Responsible Agency: Office of Federal Activities, General Information (202) 564–7156 or *https://www2.epa.gov/nepa/.*

Weekly receipt of Environmental Impact Statements
Filed 06/04/2018 Through 06/08/2018
Pursuant to 40 CFR 1506.9.

Notice

Section 309(a) of the Clean Air Act requires that EPA make public its comments on EISs issued by other Federal agencies. EPA's comment letters on EISs are available at: *https://cdxnodengn.epa.gov/cdx-enepa-public/action/eis/search.*

EIS No. 20180129, Final, FTA, CA, Geary Corridor Bus Rapid Transit Project, Under 23 U.S.C. 139(n)(2), FTA has issued a single document that consists of a final environmental impact statement and record of

decision. Therefore, the 30-day wait/review period under NEPA does not apply to this action. Contact: Alex Smith 415–734–9472

EIS No. 20180130, Draft, USFS, MT, Gold Butterfly, Comment Period Ends: 07/30/2018, Contact: Tami Sabol 406–777–7410

EIS No. 20180131, Draft, FTA, OR, Southwest Corridor Light Rail Project Draft Environmental Impact Statement, Comment Period Ends: 07/30/2018, Contact: Mark Assam 206–220–7954

EIS No. 20180132, Final, NY, State Governor's Office of Storm Recovery, NY, Coastal and Social Resiliency Initiatives for Tottenville Shoreline, Review Period Ends: 07/16/2018, Contact: Daniel Greene 212–480–2321

Amended Notice

Revision to the **Federal Register** Notice published 05/04/2018, extend comment period from 06/18/2018 to 06/29/2018.

EIS No. 20180078, Draft, TxDOT, TX, Oakhill Parkway, Contact: Carlos Swonke 512–416–2734

Adoption

EPA has adopted EIS 20180075, Pure Water San Diego Program, North City Project, Final, BR, CA. EPA was a cooperating agency on this project; therefore, recirculation is not necessary under Section 1506.3(c) of the CEQ NEPA regulations. Contact: Danusha Chandy 202–566–2165.

Dated: June 12, 2018.

Robert Tomiak,

Director, Office of Federal Activities.

[FR Doc. 2018–12861 Filed 6–14–18; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OAR–2011–0928; FRL–9979–47–OAR]

Proposed Information Collection Request; Comment Request; Fuel Use Requirements for Great Lake Steamships (Renewal)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The Environmental Protection Agency is planning to submit an information collection request (ICR), ''Fuel Use Requirements for Great Lakes Steamships'' (EPA ICR No. 2458.03, OMB Control No. 2060–0679) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act. Before doing so, EPA is soliciting public comments on specific aspects of the proposed information collection as described below. This is a proposed extension of the ICR, which is currently approved through August 31, 2018. An Agency may not conduct or sponsor and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number.

DATES: Comments must be submitted on or before August 14, 2018.

ADDRESSES: Submit your comments, referencing Docket ID No. EPA–HQ–OAR–2011–0928, online using *www.regulations.gov* (our preferred method), or by mail to: EPA Docket Center, Environmental Protection Agency, Mail Code 28221T, 1200 Pennsylvania Ave. NW, Washington, DC 20460.

EPA's policy is that all comments received will be included in the public docket without change including any personal information provided, unless the comment includes profanity, threats, information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute.

FOR FURTHER INFORMATION CONTACT: Alan Stout, Office of Transportation and Air Quality, Environmental Protection Agency, 2565 Plymouth Road, Ann Arbor, MI 48105; 734–214–4805; *stout.alan@epa.gov.*

SUPPLEMENTARY INFORMATION:

Supporting documents explaining in detail the information that the EPA will be collecting are available in the public docket for this ICR. The docket can be viewed online at *www.regulations.gov* or in person at the EPA Docket Center, WJC West, Room 3334, 1301 Constitution Ave. NW, Washington, DC. The telephone number for the Docket Center is 202–566–1744. For additional information about EPA's public docket, visit *http://www.epa.gov/dockets.*

Pursuant to section 3506(c)(2)(A) of the PRA, EPA is soliciting comments and information to enable it to: (i) 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; (ii) 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; (iii) enhance the quality, utility, and clarity of the information to be collected; and (iv) 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. EPA will consider the comments received and amend the ICR as appropriate. The final ICR package will then be submitted to OMB for review and approval. At that time, EPA will issue another **Federal Register** notice to announce the submission of the ICR to OMB and the opportunity to submit additional comments to OMB.

Abstract: The U.S. Environmental Protection Agency (EPA) adopted requirements for marine vessels operating in and around U.S. territorial waters to use reduced-sulfur diesel fuel. This requirement does not apply for steamships, but it would apply for steamships that are converted to run on diesel engines. A regulatory provision allows vessel owners to qualify for a waiver from the fuel-use requirements for a defined period for such converted vessels.

One condition of the exemption from the fuel standard is that engines meet current emission standards. EPA uses the data to oversee compliance with regulatory requirements, including communicating with affected companies and answering questions from the public or other industry participants regarding the waiver in question. Since the IMO Tier III NO_X standards apply for Category 3 engines installed on U.S. vessels, we don't expect anyone to use the steamship exemption.

Form Numbers: None.

Respondents/affected entities: 0.

Respondent's obligation to respond: Required to obtain a benefit (40 CFR 1043.95).

Estimated number of respondents: 0.

Frequency of response: One time for a new notification.

Total estimated burden: 0 hours (per year). Burden is defined at 5 CFR 1320.03(b).

Total estimated cost: $0.

Changes in Estimates: The burden estimate decreases from the current estimate of 14 hours per year in the total estimated respondent burden currently approved by OMB. Since the IMO Tier III NO_X standards apply for Category 3 engines installed on U.S. vessels, we don't expect anyone to use the steamship exemption.

Dated: June 4, 2018.

William J. Charmley,

Director, Assessment and Standards Division.

[FR Doc. 2018–12912 Filed 6–14–18; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

[MB Docket No. 18–139; FCC 18–56]

Family Voice Communications, LLC, Application for Renewal of License of FM Radio Station KLSX(FM), Rozet, WY

AGENCY: Federal Communications Commission.

ACTION: Notice.

SUMMARY: This document commences a hearing to determine whether the application filed by Family Voice Communications, LLC to renew its license for radio station KLSX(FM), Rozet, Wyoming, should be granted. The application has been designated for hearing based on the station's extended periods of silence since its first day of claimed operation on November 8, 2010.

DATES: Persons desiring to participate as parties in the hearing shall file a petition for leave to intervene not later than July 16, 2018.

ADDRESSES: File documents with the Office of the Secretary, Federal Communications Commission, 445 12th Street SW, Washington, DC 20554, with a copy mailed to each party to the proceeding. Each document that is filed in this proceeding must display on the front page the docket number of this hearing, ''MB Docket No. 18–139.''

FOR FURTHER INFORMATION CONTACT: Albert Shuldiner, Media Bureau, (202) 418–2700.

SUPPLEMENTARY INFORMATION: This is a summary of the Hearing Designation Order (Order), MB Docket No. 18–139, FCC 18–56, adopted May 4, 2018, and released May 7, 2018. The full text of the Order is available for inspection and copying during normal business hours in the FCC's Reference Information Center at Portals II, CY–A257, 445 12th Street SW, Washington, DC 20554. The full text is also available online at *http://apps.fcc.gov/ecfs/.*

Summary of the Hearing Designation Order

1. The Order commences a hearing proceeding before the Commission to determine whether the application filed by Family Voice Communications, LLC (FVC) to renew the license for radio station KLSX(FM), Rozet, Wyoming (KLSX Renewal Application) should be granted pursuant to section 309(k)(1) of the Communications Act of 1934 (Act), 47 U.S.C. 309(k)(1). The KLSX Renewal Application is designated for hearing based on the station's record of extended periods of silence during and following its license term.

2. A broadcast licensee's authorization to use radio spectrum in the public interest carries with it the obligation that the station serve its community, providing programming responsive to local needs and interests. Broadcast licensees also are required to operate in compliance with the Act and the Commission's rules (Rules). These requirements include the obligation to transmit potentially lifesaving national level Emergency Alert System (EAS) messages in times of emergency and to engage in periodic tests to ensure that their stations are equipped to do so.

3. The basic duty of broadcast licensees to serve their communities is reflected in the license renewal provisions of the Act. In 1996, Congress revised the Commission's license renewal process and the renewal standards for broadcast stations by adopting section 309(k) of the Act, 47 U.S.C. 309(k). Section 309(k)(1) of the Act, 47 U.S.C. 309(k)(1), provides that the Commission shall grant a license renewal application if it finds, with respect to the applying station, that during the preceding license term: (a) The station has served the public interest, convenience, and necessity; (b) there have been no serious violations by the licensee of the Act or the Rules; and (c) there have been no other violations by the licensee of the Act or the Rules which, taken together, would constitute a pattern of abuse. Section 309(k)(2) of the Act, 47 U.S.C. 309(k)(2), provides that if a station fails to meet the foregoing standard, the Commission may deny the renewal application pursuant to Section 309(k)(3), 47 U.S.C. 309(k)(3), or grant the application on appropriate terms and conditions, including a short-term renewal. Section 309(k)(3) of the Act, 47 U.S.C. 309(k)(3), provides that if the Commission determines, after notice and opportunity for hearing, that the licensee has failed to meet the standard of section 309(k)(1), 47 U.S.C. 309(k)(1), and that no mitigating factors justify the imposition of lesser sanctions, the Commission shall issue an order denying the license renewal application for the station.

4. KLSX(FM) (Station) was licensed as a commercial Class C3 FM station serving Rozet, Wyoming on November 8, 2010. However, the Station went silent after only one day of claimed operation. Filings submitted by FVC allege the following operational history by the Station since November 8, 2010: (a) Silent for 1037 days and operational for 23 days during the remaining license term from November 9, 2010 to October 1, 2013; and (b) silent for 1306 days and operating for 373 days from October 2, 2013 to the date of release of the Order on May 7, 2018.

10. Section 309(k)(3) of the Act, 47 U.S.C. 309(k)(3), requires ''notice and opportunity for a hearing as provided in subsection (e).'' Section 309(e), 47 U.S.C. 309(e), requires a ''full hearing in which the applicant and all other parties in interest shall be permitted to participate.'' The Commission and courts have held that the hearing need not be a trial-type evidentiary hearing meeting the standards of sections 554 and 556 of the Administrative Procedure Act, 5 U.S.C. 554, 556. The Commission has repeatedly observed that trial-type hearings impose significant burdens and delays, both on applicants and the agency. We have found no substantial issues of material fact or any credibility issues regarding these renewal applications. We thus believe cases such as this one can be appropriately resolved with a ''paper'' hearing.

11. We have identified no substantial and material questions of fact with respect to the KLSX Renewal Application, which presents only a narrow range of issues for Commission consideration. Thus, many Subpart B rules are facially irrelevant to this proceeding. In these circumstances, we find that the use of summary procedures would expedite the resolution of this hearing while affording FVC the full hearing required by section 309, 47 U.S.C. 309, and not placing unnecessary burdens on the licensee. Accordingly, we find that the following rules are either inapplicable to or would serve no useful purpose in this proceeding: 47 CFR 1.221(c)–(h); 1.241–1.253; 1.255–1.279; 1.282(a) and (b)(2); 1.297–1.340; and 1.352–1.364.

12. Anyone seeking status as a party in interest in this proceeding must file a petition to intervene in accordance with 47 CFR 1.223(a). Anyone else seeking to participate in the hearing as a party may file a petition for leave to intervene in accordance with 47 CFR 1.223(b). Any filing in this docket must be served in accordance with 47 CFR 1.211 on all other parties, including each person or entity that has filed a petition to intervene or petition for leave to intervene, pending a ruling on each such petition.

13. FVC shall have the right to seek reconsideration of any interlocutory action in this proceeding. Accordingly, we waive the 47 CFR 1.106(a) restriction limiting the filing of a petition for reconsideration by FVC of this hearing designation order.

14. FVC shall file in this docket, within 30 days of publication of notice of the Order in the **Federal Register**,

complete copies of the following records for the Station (as such records exist as of the release date of the Order): (a) All station logs for the relevant license term; (b) all quarterly issues and programs lists for the relevant license term; and (c) to the extent not included in the station logs, all EAS participant records for the relevant license term. FVC may not destroy or remove any of such records prior to such filing, or redact or modify any information in such records as they exist as of the release date of the Order. In the event that, on or after the release date of the Order, FVC creates or modifies any documents that it so provides, each such document should be prominently marked with the date that it was created or revised (identifying the revision(s)) and FVC should include in the sponsoring affidavit or declaration an explanation of who created or revised the document and when he or she did so. We otherwise will conduct the hearing without discovery, although the Commission or its staff may make inquiries or conduct investigations pursuant to Part 73 of the Rules and any reports filed in this docket as a result of such inquiries or investigations will become part of the record in this hearing.

15. We will take official notice of all publicly-available Commission records for the Station as part of the record in this docket. FVC has the burden of proceeding with evidence and the burden of proof in this hearing. Within 60 days of publication of notice of the Order in the **Federal Register**, FVC will file a written direct case on the designated issues, no longer than 25 pages, and supported by an affidavit or unsworn declaration pursuant to 47 CFR 1.16. Within 30 days of FVC's filing, any other person granted party status may file a responsive submission, no longer than 25 pages and supported by an affidavit or unsworn declaration. Within 10 days of the deadline for filing such responses, FVC may file a rebuttal submission addressing all responses, no longer than 10 pages and supported by an affidavit or unsworn declaration.

16. *Accordingly, it is ordered,* pursuant to sections 309(e) and (k)(3) and 312(g) of the Communications Act of 1934, as amended, 47 U.S.C. 309(e), 309(k)(3) and 312(g), the captioned application for renewal of license for Station KLSX(FM) *is designated for a hearing* upon the following issues: (a) To determine whether, during the preceding license term, (i) the station has served the public interest, convenience, and necessity, (ii) there have been any serious violations by the licensee of the Communications Act of 1934, as amended, or the rules and regulations of the Commission, and (iii) there have been any other violations of the Communications Act of 1934, as amended, or the rules and regulations of the Commission which, taken together, would constitute a pattern of abuse; (b) In light of the evidence adduced pursuant to issue (a) above, whether the captioned application for renewal of the license for Station KLSX(FM) should be granted on such terms and conditions as are appropriate, including renewal for a term less than the maximum otherwise permitted, or denied due to failure to satisfy the requirements of section 309(k)(1) of the Communications Act of 1934, as amended, 47 U.S.C. 309(k)(1).

17. *It is further ordered,* pursuant to section 309(e) of the Communications Act of 1934, as amended, 47 U.S.C. 309(e), and section 1.254 of the Commission's rules, 47 CFR 1.254, that the burden of proceeding with the introduction of evidence and the burden of proof with respect to the issues specified in Paragraph 18 of the Order shall be on the applicant, Family Voice Communications, LLC.

18. *It is further ordered* that Family Voice Communications, LLC *is made a party* to this proceeding.

19. *It is further ordered* that, to avail itself of the opportunity to be heard and the right to present evidence at a hearing in these proceedings, Family Voice Communications, LLC shall file complete and correct copies of the documents described in Paragraph 16 of the Order, on or before the date specified. If Family Voice Communications, LLC fails to file such documents for KLSX(FM) within the time specified, or a petition to accept, for good cause shown, such filing beyond the expiration of such period, its captioned license renewal application for the station shall be dismissed with prejudice for failure to prosecute and the license of the station shall be terminated.

20. *It is further ordered* that Family Voice Communications, LLC shall, pursuant to section 311(a)(2) of the Communications Act of 1934, as amended, 47 U.S.C. 311(a)(2), and 47 CFR 73.3594, give notice of the hearing within the time and in the manner prescribed therein, and thereafter submit the statement described in 47 CFR 73.3594(g).

21. *It is further ordered* that a copy of this Order shall be sent by Certified Mail, Return Receipt Requested, and by regular first-class mail to Family Voice Communications, LLC, 9004 South 8th Drive, Phoenix, AZ 85041, with a copy to its counsel of record, Lee J. Peltzman, Esq., Shainis & Peltzman Chartered, 1850 M Street NW, Suite 240, Washington, DC 20036.

22. *It is further ordered* that the Secretary of the Commission shall cause to have this Order or a summary thereof published in the **Federal Register**.

Federal Communications Commission.

Katura Jackson,

Federal Register Liaison Officer, Office of the Secretary.

[FR Doc. 2018–12835 Filed 6–14–18; 8:45 am]

BILLING CODE 6712–01–P

GENERAL SERVICES ADMINISTRATION

[Notice–QP–2018–03; Docket No. 2018–0002; Sequence No. 12]

Request for Information From Platform Providers of Commercial e-Commerce Portals

AGENCY: Office of Enterprise Strategy Management, General Services Administration (GSA).

ACTION: Request for information.

SUMMARY: The General Services Administration (GSA) is soliciting information from the *providers* of commercial e-Commerce Portals in order to complete Phase II of the requirements enacted in Section 846 of the National Defense Authorization Act (NDAA) for Fiscal Year 2018, Procurement through Commercial e-Commerce Portals. Note: A separate RFI is posted for suppliers who sell products through commercial e-commerce portal. Throughout the design of this program, GSA and the Office of Management and Budget (OMB) have emphasized open and ongoing engagement. The questions in this RFI are intended to continue the dialogue and to allow GSA and OMB both to draft the Phase II report (due to Congress in March 2019) and to move towards phased implementation later in 2019.

DATES: Interested parties may submit written comments to *www.regulations.gov* by July 20, 2018. GSA is also hosting its second modified town-hall style public meeting. This meeting is in furtherance of Phase II on June 21, 2018, at 8:30 a.m. Eastern Standard Time. Further Information for the public meeting may be found on the Commercial Platform Interact group page on *https://interact.gsa.gov/group/commercial-platform-initiative* and in the **Federal Register** notice (83 FR 25004) published on May 31, 2018.

ADDRESSES: Submit comments identified by ''Request for information from Platform Providers of Commercial

e-Commerce Portals'', by any of the following methods:

• *Regulations.gov: http://www.regulations.gov.*

Submit comments by searching for ''Request for information from Platform Providers of Commercial e-Commerce Portals''. Select the link ''Comment Now'' and follow the instructions provided at the ''You are commenting on'' screen. Please include your name, company name (if any), and ''Request for information from Platform Providers of Commercial e-Commerce Portals'', on your attached document.

• *Mail:* General Services Administration, Regulatory Secretariat Division (MVCB), 1800 F Street NW, 2nd Floor, ATTN: Ms. Mandell, Washington, DC 20405–0001.

Instructions: Please submit comments only and cite ''Request for information from Platform Providers of Commercial e-Commerce Portals'' in all correspondence related to this case. All comments received will be posted without change to *http://www.regulations.gov,* including any personal and/or business confidential information provided.

FOR FURTHER INFORMATION CONTACT: Jasmine Schaaphok at *jasmine.schaaphok@gsa.gov,* or 571–330–3941, for clarification of content and submission of comment. For information pertaining to status or publication schedules, contact the Regulatory Secretariat at 202–501–4755. Please cite ''Request for information from Platform Providers of Commercial e-Commerce Portals''.

SUPPLEMENTARY INFORMATION:

I. Background

The General Services Administration's (GSA) mission is to deliver value and savings in real estate, acquisition, technology, and other mission-support services across Government. For decades, GSA has provided access to commercial products through a number of channels including GSA Advantage!, GSA eBuy, GSA Global Supply, and the Federal Supply Schedules.

GSA has long been focused on improving the acquisition of commercial items. Throughout its history, GSA has sought to leverage the best available technology to help agencies shorten the time to delivery, reduce administrative cost, make compliance easier, be a strategic thought leader and supplier of choice across the Federal Government, and be a good partner to industry. Today, the best available technology includes commercial e-commerce portals.

The National Defense Authorization Act (NDAA) for Fiscal Year 2018, Section 846 Procurement Through Commercial e-Commerce Portals, directs the Administrator of the GSA to establish a program to procure commercial products through commercial e-commerce portals. Section 846 language can be found at the following link—*https://interact.gsa.gov/group/commercial-platform-initiative.* Section 846 paragraph (c) instructs the ''Director of the Office of Management and Budget, in consultation with the GSA Administrator and the heads of other relevant departments and agencies,'' to carry out three implementation phases. OMB and GSA completed Phase I, an initial implementation plan, in March of 2018.

The plan, found at *https://interact.gsa.gov/document/gsa-and-omb-phase-i-deliverable-attached,* discusses government and industry stakeholder goals and concerns, the different types of portal provider models currently prevalent in the commercial market, and areas where legislative change or clarification are required to enable flexibility in the full and effective use of commercial e-commerce portals in accordance with the goals of section 846. The plan also outlines deliverables anticipated to be completed in FYs 18, 19, and 20.

GSA is currently working on Phase II with the intent of delivering a proof of concept near the end of FY19. Phase II of the legislation requires (excerpt below):

(2) *PHASE II:* MARKET ANALYSIS AND CONSULTATION.—Not later than one year after the date of the submission of the implementation plan and schedule required under paragraph (1), recommendations for any changes to, or exemptions from, laws necessary for effective implementation of this section, and information on the results of the following actions:

(A) Market analysis and initial communications with potential commercial e-commerce portal providers on technical considerations of how the portals function (including the use of standard terms and conditions of the portals by the Government), the degree of customization that can occur without creating a Government-unique portal, the measures necessary to address the considerations for supplier and product screening specified in subsection (e), security of data, considerations pertaining to nontraditional Government contractors, and potential fees, if any, to be charged by the Administrator, the portal provider, or the suppliers for participation in the program established pursuant to subsection (a).

(B) Consultation with affected departments and agencies about their unique procurement needs, such as supply chain risks for health care products, information technology, software, or any other category determined necessary by the Administrator.

(C) An assessment of the products or product categories that are suitable for purchase on the commercial e-commerce portals.

(D) An assessment of the precautions necessary to safeguard any information pertaining to the Federal Government, especially precautions necessary to protect against national security or cybersecurity threats.

(E) A review of standard terms and conditions of commercial e-commerce portals in the context of Government requirements.

(F) An assessment of the impact on existing programs, including schedules, set-asides for small business concerns, and other preference programs.

II. Written Comments

To assist in meeting the requirements associated with Phase II of the implementation, GSA and OMB are inviting portal providers to submit written comments. (A separate RFI has been issued for suppliers interested in selling through portals.) GSA is requesting those comments be submitted by July 20, 2018, which will allow the Government to take them into account as we are drafting our Phase II deliverable.

To facilitate comment submission, GSA and OMB have developed a number of questions grouped around five focus areas—spending trends, data standards, user experience, cybersecurity, and terms and conditions. These five areas are central to the analysis required for Phase II, *e.g.* the terms and conditions questions will further the analysis required in paragraph (E). A sixth focus area is intended to give respondents an opportunity to provide feedback that, in addition to the five areas described above, will help to inform GSA about the general scope, shape, and types of products that should be considered for a proof of concept. In accordance with the Phase I implementation plan, the proof of concept is planned for launch in FY 2019.

Each question is intended to provide respondents with a general framework for commenting. These questions are not intended to be all-inclusive; other comments and observations are encouraged.

1. Spending Trends Questions

a. *Spend Data:* Over the past few months, GSA has participated in demos provided by portal providers, many of whom have expressed a willingness to share data on Government spend conducted through their platforms, *i.e.* purchases using government-issued purchase cards. Government spend data can be identified by looking at the first four digits of the government-issued purchase card. These four digits are:

5565 and 5568 (Mastercard); and 4486, 4614, and 4716 (Visa).

Would you be willing to share this spend data with GSA? Additionally, are you willing to share reports or dashboards demonstrating your analytics capabilities? (If yes, GSA will reach out separately to coordinate these requests.)

For those portal providers willing to share such information, the following categories of aggregated Government spend data from civilian agency and DoD buyers, over the last 3 years, would be particularly useful:

i. Spend by agency:

1. Total spend broken out by agency
2. Number of transactions by agency
3. Average order size by agency
4. Seasonality of purchasing (*i.e.* only at the end of an FY or are they spread out evenly throughout the year?)

ii. Spend by product category:

1. Categories/subcategories comprising 80% of the annual spend through your portal
2. Dollar value, count of transactions, count of suppliers, proportion of small and large supplier (count and dollars) for each category/subcategory
3. Agencies comprising 80% of the dollar value for each category/subcategory

iii. Spend outside the Contiguous US (OCONUS) vs spend within the Contiguous US (CONUS)

iv. Spend by socioeconomic/small business designations.

b. Additional considerations:

i. What taxonomy or taxonomies are used to sort products into suitable categories and subcategories, *e.g.* product service codes (PSCs) or North American Industry Classification System (NAICS) code? Please identify if the classification system is proprietary.

ii. What level and types of transactional data are made available to buyers?

iii. What functionalities and/or capabilities are available to buyers to analyze transactional data? Do you offer your commercial buyers the opportunity to develop customized data analytics capabilities?

iv. How do the pricing algorithms respond to sudden increases in demand?

v. The Government seeks to increase small business participation through this initiative. How might your platform aid in increasing small business participation? What capabilities does your system have (or what would you need from GSA or other agencies) to track agency spending from the various socio-economic categories of small business (small disadvantaged business, women-owned small business, service-disabled veteran-owned small business, HUBZone small business) so that Government agencies can receive credit toward their agency socio-economic goals when they buy through your portal? Please explain.

vi. The Government seeks to promote compliance with mandatory sources (*e.g.* AbilityOne Program, Federal Prison Industries). What capabilities does your system have to track agency spending from these sources and limit ''leakage'' where purchases are made from non-mandatory sources?

vii. How are you shipping items to base locations/overseas? What are your labelling requirements/standards that you follow?

2. Data Standards

a. How do you use third party supplier data?

b. What are your data protection/security practices for safeguarding both user and third-party supplier data?

c. What are your standard terms and conditions with third-party suppliers and buyers regarding your use and their use of spend data?

d. Is your platform capable of integrating information from the System for Award Management (*www.sam.gov*) to identify if a seller is a small business in accordance with FAR 19.303? If not, explain why. Would you be interested in testing capabilities with beta *sam.gov?*

3. User Experience and Program Design

a. GSA seeks to ensure that the government purchase card buyers have a simple and clear user experience when selecting products across multiple providers. How would you suggest we accomplish this? For example, how could GSA get to a single log-on across portals? Are there commercial analogs that achieve this purpose? If so, what, if any, drawbacks or obstacles do those models present?

b. How are your supplier relationships structured? What fees are charged? What do the onboarding and offboarding processes look like?

c. As a portal providers, do you have the capability to participate in a 'punchout' type of ecommerce experience? Please explain.

d. Implementation and operationalization of this program will entail the involvement of GSA, ordering agencies, portal providers, and third-party suppliers. GSA envisions its role primarily focusing on the following:

i. Negotiating the contracts with the portal providers;

ii. working with stakeholders to shape the scope of product offerings, based on suitability, potential challenges in managing supply chain risk, and other considerations;

iii. working with agencies on effective use of protocols and safeguards to refine access to product offerings;

iv. collecting, vetting and sharing data; and,

v. developing guidance in consultation with OMB and training federal agencies in proper competitive procedures through the portal; and,

vi. potentially validating the suppliers as responsible business partners.

Do you agree with this description of roles and responsibilities for GSA in optimizing the user experience and the overall success of the program? Are there key items missing?

e. The section 846 language stated both that all existing procurement laws applied and that GSA should strive to be consistent with commercial practice. To reconcile these objectives, in Phase I, GSA only proposed legislative changes necessary to reach program implementation, primarily around the nature of competition. For purposes of Phase II, what additional legislative changes GSA should consider proposing?

4. Cyber-Security Questions

GSA welcomes any insights that can be shared regarding how your platform addresses the following cybersecurity topics:

a. Financial data theft/fraud
b. Intellectual property theft/damage
c. Distributed Denial of Service
d. Man in the Middle Attacks
e. Compliance with Information Security Standards
f. Data storage
g. Vulnerability assessments/monitoring
h. Encryption
i. Disaster Recovery
j. Network monitoring

5. Standard Terms and Conditions

a. General Roles and Responsibilities

i. For products sold by third parties on your portal, what, if any, responsibilities do you assume with respect to a sale?

ii. For what, if any, purposes do you consider the third party supplier selling on your portal to be your ''subcontractor''?

iii. What, if any, of the value-added portal services and functionalities (*e.g.,* order tracking, payment processing) have been outsourced? Do you consider them subcontractors? If not, why not?

iv. Other than the suppliers selling on the portal and those providing value-

added portal services and functionalities, are there entities that are considered subcontractors of your business? If yes, what functions do these entities perform for your business?

b. Order Tracking, Delivery and Issue Resolution

i. Describe how orders and delivery are tracked.

ii. Describe how issues are resolved (*e.g.,* if the product doesn't arrive in a timely manner or needs to be returned). Identify who is responsible for resolving these issues when the sale involves a third party seller. Include information on customer/ordering official management throughout the process.

c. Payment

i. When a buyer makes a payment for a purchase on the portal, who processes the payment?

ii. What are the payment procedures?

iii. Are payments by Electronic Funds Transfer allowed?

d. To Assist GSA in Determining the Applicability of the Service Contract Act to a Portal Contract Under the Section 846 Program, Please Advise of the Type of Work Your Employees Would Perform Under Such a Contract.

e. Suitability of FAR Commercial Service Requirements

i. Please address the extent you believe the following clauses/provisions are consistent with and/or are relevant to current, standard commercial practice for operating commercial e-commerce portals. If they are not consistent and/or relevant, please indicate what obstacles they would present if applied to the section 846 program. Conversely, if there are public policy reasons why any of these should be retained, please explain.

1. *52.212–4(a),* Inspection and acceptance
2. *52.212–4(b),* Assignment of claims
3. *52.212–4(g),* Invoice
4. *52.212–4(k),* Taxes
5. *52.212–4(n),* Title
6. *52.212–4(q),* Other compliances
7. *52.204–10,* Reporting Executive Compensation and First-Tier Subcontract Awards
8. *52.219–3,* Notice of HUBZone Set-Aside or Sole-Source Award
9. *52.219–4,* Notice of Price Evaluation Preference for HUBZone Small Business Concerns
10. *52.219–27,* Notice of Service-Disabled Veteran-Owned Small Business Set-Aside
11. *52.222–3,* Convict Labor
12. *52.222–17,* Nondisplacement of Qualified Workers
13. *52.222–35,* Equal Opportunity for Veterans
14. *52.222–37,* Employment Reports on Veterans
15. *52.223–18,* Encouraging Contractor Policies to Ban Text Messaging While Driving
16. *52.232–29,* Terms for Financing of Purchases of Commercial Items
17. *52.232–30,* Installment Payments for Commercial Items
18. *52.242–5,* Payments to Small Business Subcontractors
19. *52.212–3(t),* Public Disclosure of Greenhouse Gas Emissions and Reduction Goals
20. *52–212–4(f),* Excusable Delays
21. *52.212–4(h),* Patent Indemnity
22. *52.212–4(i)(4),* Discount
23. *52.212–4(s),* Order of precedence
24. *52.232–40,* Providing Accelerated Payments to Small Business Subcontractors
25. *52.223–9,* Estimate of Percentage of Recovered Material Content for EPA–Designated Items

f. Additional Considerations:

i. Are there different terms and conditions based on the country being served by a given commercial e-commerce portal?

ii. If you are not registered on *www.sam.gov* would you be willing to register? Why or why not?

iii. For your other commercial customers, do you offer ways to limit access to products on your platform for B2B customers who may not want access to your full catalog?

g. Copies of standard terms and conditions:

i. Please provide GSA with copies of your standard terms and conditions that apply to your suppliers?

ii. Please provide GSA with copies of your standard terms and conditions that apply to users (*i.e.* buyers)?

6. Proof of concept

As explained in the Phase I implementation plan, GSA intends to proceed with a proof of concept in FY 2019. What is your recommended vision for a proof of concept that would be both manageable and meaningful, including types of products offered?

Dated: June 11, 2018.

Laura J. Stanton,

Assistant Commissioner, Office of Enterprise Strategy Management, Federal Acquisition Service, General Services Administration.

[FR Doc. 2018–12891 Filed 6–14–18; 8:45 am]

BILLING CODE 6820–89–P

GENERAL SERVICES ADMINISTRATION

[Notice-Qp–2018–02; Docket No. 2018–0002; Sequence No. 11]

Request for Information From Suppliers Selling on Commercial E-Commerce Portals

AGENCY: Office of Enterprise Strategy Management, General Services Administration (GSA).

ACTION: Request for information.

SUMMARY: The General Services Administration (GSA) is soliciting information from the *suppliers* selling product through commercial e-Commerce Portals in order to complete Phase II of the requirements enacted in Section 846 of the National Defense Authorization Act (NDAA) for Fiscal Year 2018, Procurement through Commercial e-Commerce Portals. Note: A separate RFI is posted for those companies who are providers of commercial e-commerce platforms. Throughout the design of this program, GSA and the Office of Management and Budget (OMB) have emphasized open and ongoing engagement. The questions in the RFI are intended to continue the dialogue and to allow GSA and OMB both to draft the Phase II report (due to Congress in March 2019) and to move towards phased implementation later in 2019.

DATES: Interested parties may submit written comments to *www.regulations.gov* by July 20, 2018. GSA is also hosting its second modified town-hall style public meeting. This meeting is in furtherance of Phase II on June 21, 2018, at 8:30 a.m., Eastern Standard Time (EST). Further Information for the public meeting may be found on the Commercial Platform Interact group page on *https://interact.gsa.gov/group/commercial-platform-initiative* and in the **Federal Register** (83 FR 25004), published on May 31, 2018.

ADDRESSES: Submit comments identified by ''Request for information from Suppliers Selling on Commercial e-Commerce Portals'', by any of the following methods:

- *Regulations.gov: http://www.regulations.gov.* Submit comments by searching for ''Request for information from Suppliers Selling on Commercial e-Commerce Portals''. Select the link ''Comment Now'' and follow the instructions provided at the ''You are commenting on'' screen. Please include your name, company name (if any), and ''Request for information from Suppliers Selling on

Commercial e-Commerce Portals'', on your attached document.

• *Mail:* General Services Administration, Regulatory Secretariat Division (MVCB), 1800 F Street NW, 2nd Floor, ATTN: Ms. Mandell, Washington, DC 20405–0001.

Instructions: Please submit comments only and cite ''Request for information from Suppliers Selling on Commercial e-Commerce Portals'' in all correspondence related to this case. All comments received will be posted without change to *http://www.regulations.gov,* including any personal and/or business confidential information provided.

FOR FURTHER INFORMATION CONTACT: Jasmine Schaaphok at *jasmine.schaaphok@gsa.gov,* or 571–330–3941, for clarification of content, public meeting information, and submission of comment. For information pertaining to status or publication schedules, contact the Regulatory Secretariat at 202–501–4755. Please cite ''Request for information from Suppliers Selling on Commercial e-Commerce Portals.''

SUPPLEMENTARY INFORMATION:

I. Background

The General Services Administration's (GSA) mission is to deliver value and savings in real estate, acquisition, technology, and other mission-support services across Government. For decades, GSA has provided access to commercial products through a number of channels including GSA Advantage!, GSA eBuy, GSA Global Supply, and the Federal Supply Schedules.

GSA has long been focused on improving the acquisition of commercial items. Throughout its history, GSA has sought to leverage the best available technology to help agencies shorten the time to delivery, reduce administrative cost, make compliance easier, be a strategic thought leader and supplier of choice across the Federal Government, and be a good partner to industry. Today, the best available technology includes commercial e-commerce portals.

The National Defense Authorization Act (NDAA) for Fiscal Year 2018, Section 846 ''Procurement Through Commercial e-Commerce Portals'', directs the Administrator of the GSA to establish a program to procure commercial products through commercial e-commerce portals. Section 846 language can be found at the following link—*https://interact.gsa.gov/group/commercial-platform-initiative.* Section 846 paragraph (c) instructs the ''Director of the Office of Management and Budget, in consultation with the GSA Administrator and the heads of other relevant departments and agencies,'' to carry out three implementation Phases: 1. Implementation Plan; 2. Market Analysis and Consultation; and 3. Program Implementation Guidance. OMB and GSA completed Phase I, an initial implementation plan, in March of 2018. The plan, found at *https://interact.gsa.gov/document/gsa-and-omb-phase-i-deliverable-attached,* discusses government and industry stakeholder goals and concerns, the different types of portal provider models currently prevalent in the commercial market, and areas where legislative change or clarification are required to enable flexibility in the full and effective use of commercial e-commerce portals in accordance with the goals of section 846. The plan also outlines deliverables anticipated to be completed in FYs 18, 19, and 20.

GSA is currently working on Phase II with the intent of delivering a proof of concept near the end of FY19. Phase II of the legislation requires (excerpt below):

(2) PHASE II: MARKET ANALYSIS AND CONSULTATION.—Not later than one year after the date of the submission of the implementation plan and schedule required under paragraph (1), recommendations for any changes to, or exemptions from, laws necessary for effective implementation of this section, and information on the results of the following actions:

(A) Market analysis and initial communications with potential commercial e-commerce portal providers on technical considerations of how the portals function (including the use of standard terms and conditions of the portals by the Government), the degree of customization that can occur without creating a Government-unique portal, the measures necessary to address the considerations for supplier and product screening specified in subsection (e), security of data, considerations pertaining to nontraditional Government contractors, and potential fees, if any, to be charged by the Administrator, the portal provider, or the suppliers for participation in the program established pursuant to subsection (a).

(B) Consultation with affected departments and agencies about their unique procurement needs, such as supply chain risks for health care products, information technology, software, or any other category determined necessary by the Administrator.

(C) An assessment of the products or product categories that are suitable for purchase on the commercial e-commerce portals.

(D) An assessment of the precautions necessary to safeguard any information pertaining to the Federal Government, especially precautions necessary to protect against national security or cybersecurity threats.

(E) A review of standard terms and conditions of commercial e-commerce portals in the context of Government requirements.

(F) An assessment of the impact on existing programs, including schedules, set-asides for small business concerns, and other preference programs.

II. Written Comments

To assist GSA in meeting the requirements associated with Phase II of the implementation, GSA and OMB are inviting suppliers selling product through commercial e-commerce platforms to submit written comments. Comments should be submitted by July 20, 2018, which will enable the Government to take them into account as we are drafting our Phase II deliverable. (A separate RFI has been issued focused on e-commerce platform operators.)

GSA and OMB have developed a number of questions grouped around three focus areas: Product categories, terms and conditions, and program design. These three areas are central to the analysis required in paragraphs (A), (C), and (E) above. This information will also be used to help inform GSA about the general scope, shape, and types of products that should be considered for a proof of concept. In accordance with the Phase I implementation plan, the proof of concept is planned for launch in FY 2019. Each question is intended to provide respondents with a general framework for commenting. These questions are not intended to be all-inclusive; other comments and observations are encouraged.

1. Product Categories

a. Identify which product types/categories/subcategories should be considered in scope for inclusion in the program. Describe the classification system used, if not product service codes or North American Industry Classification System (NAICS) codes. For each category/subcategory identified, include as many of the following as possible:

i. Rationale for inclusion;

ii. Assessment of supply chain risk, including the extent to which you believe counterfeit products are a significant problem,and mitigation strategies;

iii. List existing e-commerce commercial portals on which you currently sell these products;

iv. Level of visibility into country of origin, including compliance with the Buy American Act (BAA), other domestic sourcing restrictions, and existing trade agreements; including how these are verified; and

v. If multiple categories/subcategories are identified, provide a suggested ranking.

b. Identify which categories/subcategories should be excluded from the scope of this effort and the rationale.

2. Terms and Conditions (Ts&Cs)

a. General

i. To the extent you sell products as a third party through a commercial e-commerce portal, what Ts&Cs do you have with them?

ii. What terms are unacceptable? What terms are absolute must-haves?

iii. Are there unique terms and conditions when looking at serving the Contiguous United States (CONUS) vs. Outside the Contiguous United States (OCONUS)? What are some that we might need to consider?

iv. What should GSA be thinking about with respect to BAA and existing trade agreements (and implementing regulations)? How do you currently track/monitor country of origin for products, if at all?

v. How is security of data addressed in your standard Ts&Cs?

vi. If you currently sell through a portal, how are fees/fee structures addressed in the terms and conditions?

b. Suitability of FAR Commercially Available Off-the-Shelf (COTS) Item Requirements: Please address the extent you believe the following clauses/provisions are consistent with and/or relevant to current, standard commercial practice when selling through a commercial e-commerce portal. If they are not consistent and/or relevant, please indicate what obstacles they would present if applied to the section 846 program. Conversely, if there are public policy reasons why any of these should be retained, please explain.

1. *52.212–1(a),* NAICS/business size
2. *52.212–1(b),* Submission of offers
3. *52.212–1(c),* Period for acceptance of offers
4. *52.212–1(d),* Product samples
5. *52.212–1(e),* Multiple offers
6. *52.212–1(f),* Late submissions, modifications, revisions, etc.
7. *52.212–1(g),* Contract award
8. *52.212–1(h),* Multiple awards
9. *52.212–1(i),* Availability of requirements documents
10. *52.212–1(j),* Unique entity identifier
11. *52.212–3(p),* Ownership or Control of Offeror
12. *52.212–3(r),* Predecessor of Offeror
13. *52.212–4(f),* Excusable delays
14. *52.212–4(l),* Termination for Government's convenience
15. *52.212–4(o),* Warranty
16. *52.212–4(q),* Other compliance
17. *52.204–10,* Reporting Executive Compensation and First-Tier Subcontract Awards
18. *52.219–3,* Notice of HUBZone Set-Aside or Sole-Source Award
19. *52.219–4,* Notice of Price Evaluation Preference for HUBZone Small Business Concerns
20. *52.219–8,* Utilization of Small Business Concerns
21. *52.219–27,* Notice of Service-Disabled Veteran-Owned Small Business Set-Aside
22. *52.222–3,* Convict Labor
23. *52.232–40,* Providing Accelerated Payments to Small Business Subcontractors
24. *52.212–1(l),* Debriefing
25. *52.212–3(i),* Certification Regarding Knowledge of Child Labor for Listed End Products
26. *52.212–3(t),* Public Disclosure of Greenhouse Gas Emissions and Reduction Goals
27. *52.212–4(a),* Inspection and acceptance
28. *52.212–4(b),* Assignment of claims
29. *52.212–4(c),* Changes
30. *52.212–4(d),* Disputes
31. *52.212–4(g),* Invoice
32. *52.212–4(i)(1),* Items accepted
33. *52.212–4(i)(3),* Electronic Funds Transfer
34. *52.212–4(i)(4),* Discount
35. *52.212–4(j),* Risk of loss
36. *52.212–4(k),* Taxes
37. *52.212–4(s),* Order of precedence

3. Program Design

a. Competition is a core goal of the program. Towards that end, the user needs to be able to see/compare products across multiple portals and/or suppliers. What is the best way to get to a single sign-on across portals?

b. If you are not registered in the System for Award Management, would you be willing to register. Why or why not?

c. The section 846 language stated both that all existing procurement laws applied and that GSA should strive to be consistent with commercial practice. To reconcile these objectives, in Phase I, GSA only proposed legislative changes necessary to reach program implementation, primarily around the nature of competition. For purposes of Phase II, what additional legislative changes GSA should consider proposing?

d. In GSA's view, the nature of buying through an e-commerce portal brings a significant new level of competition into the micro-purchase world. GSA proposed raising the micro-purchase threshold to $25,000. What benefits and disadvantages do you see in a higher threshold? Would you recommend a higher threshold and, if so, what should it be?

e. In the first phase of implementation, should this program be limited to orders within the contiguous United States? If so, why? If not, why not and what issues should be considered?

f. How do the pricing algorithms respond to sudden increases in demand?

g. As a supplier, do you have the capability to participate in either a public or private (or curated) 'punchout' type of experience? Please explain.

h. Implementation and operationalization of this program will entail the involvement of GSA, ordering agencies, portal providers, and third-party suppliers. GSA envisions its role primarily focusing on the following:

i. Negotiating the contracts with the portal providers;

ii. working with stakeholders to shape the scope of product offerings, based on suitability, potential challenges in managing supply chain risk, and other considerations;

iii. working with agencies on effective use of protocols and safeguards to refine access to product offerings;

iv. collecting, vetting and sharing data; and,

v. developing guidance in consultation with OMB and training federal agencies in proper competitive procedures through the porta; and,

vi. potentially validating the suppliers as responsible business partners. Do you agree with this description of roles and responsibilities for GSA in optimizing the user experience and the overall success of the program? Are there key items missing?

i. What opportunities do you see for your existing Government business (and potential future new business)? How can we best design a program to promote small business utilization and new entrants into the federal marketplace?

j. *Proof of concept:* As explained in the Phase I implementation plan, GSA intends to proceed with a proof of concept in FY 2019. What is your recommended vision for a proof of concept that would be both manageable and meaningful, including types of products offered?

Dated: June 12, 2018.

Laura J. Stanton,

Assistant Commissioner, Office of Enterprise Strategy Management, Federal Acquisition Service, General Services Administration.

[FR Doc. 2018–12893 Filed 6–14–18; 8:45 am]

BILLING CODE 6820–89–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[CDC–2018–0007; Docket Number NIOSH–307]

Final National Occupational Research Agenda for Agriculture, Forestry, and Fishing

AGENCY: National Institute for Occupational Safety and Health (NIOSH) of the Centers for Disease Control and Prevention (CDC), Department of Health and Human Services (HHS).

ACTION: Notice of availability.

SUMMARY: NIOSH announces the availability of the final *National Occupational Research Agenda for Agriculture, Forestry, and Fishing.*

DATES: The final document was published on June 8, 2018.

ADDRESSES: The document may be obtained at the following link: *https://www.cdc.gov/niosh/nora/councils/agff/research.html.*

FOR FURTHER INFORMATION CONTACT: Emily Novicki, M.A., M.P.H, (*NORACoordinator@cdc.gov*), National Institute for Occupational Safety and Health, Centers for Disease Control and Prevention, Mailstop E–20, 1600 Clifton Road NE, Atlanta, GA 30329, phone (404) 498–2581 (not a toll free number).

SUPPLEMENTARY INFORMATION: On January 17, 2018, NIOSH published a request for public review in the **Federal Register** [83 FR 2447] of the draft version of the *National Occupational Research Agenda for Agriculture, Forestry, and Fishing.* The comment received expressed support for the Agenda.

Dated: June 11, 2018.

Frank J. Hearl,

Chief of Staff, National Institute for Occupational Safety and Health, Centers for Disease Control and Prevention.

[FR Doc. 2018–12821 Filed 6–14–18; 8:45 am]

BILLING CODE 4163–19–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare and Medicaid Services

[CMS–3360–PN]

Medicare and Medicaid Programs: Application From the Community Health Accreditation Partner for Continued CMS Approval of Its Hospice Accreditation Program

AGENCY: Centers for Medicare and Medicaid Services, HHS.

ACTION: Proposed notice.

SUMMARY: This proposed notice acknowledges the receipt of an application from the Community Health Accreditation Partner (CHAP) for continued recognition as a national accrediting organization for hospices that wish to participate in the Medicare or Medicaid programs.

DATES: To be assured consideration, comments must be received at one of the addresses provided below, no later than 5 p.m. on July 16, 2018.

ADDRESSES: In commenting, please refer to file code CMS–3360–PN. Because of staff and resource limitations, we cannot accept comments by facsimile (FAX) transmission.

Comments, including mass comment submissions, must be submitted in one of the following three ways (please choose only one of the ways listed):

1. *Electronically.* You may submit electronic comments on this regulation 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–3360–PN, P.O. Box 8010, Baltimore, MD 21244–8010.

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–3360–PN, Mail Stop C4–26–05, 7500 Security Boulevard, Baltimore, MD 21244–1850.

For information on viewing public comments, see the beginning of the **SUPPLEMENTARY INFORMATION** section.

FOR FURTHER INFORMATION CONTACT: Lillian Williams, (410) 786–8636, Monda Shaver, (410) 786–3410, or Marie Vasbinder, (410) 786–8665.

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 website as soon as possible after they have been received: *http://www.regulations.gov.* Follow the search instructions on that website to view public comments.

I. Background

Under the Medicare program, eligible beneficiaries may receive covered services in a hospice provided certain requirements are met by the hospice. Sections 1861(dd) of the Social Security Act (the Act) establishes distinct criteria for facilities seeking designation as a hospice. Regulations concerning provider agreements are at 42 CFR part 489 and those pertaining to activities relating to the survey and certification of facilities are at 42 CFR part 488. The regulations at 42 CFR part 418, specify the conditions that a hospice must meet in order to participate in the Medicare program, the scope of covered services and the conditions for Medicare payment for hospices.

Generally, to enter into an agreement, a hospice must first be certified by a State survey agency as complying with the conditions or requirements set forth in part 418. Thereafter, the hospice is subject to regular surveys by a State survey agency to determine whether it continues to meet these requirements.

However, there is an alternative to surveys by state agencies. Section 1865(a)(1) of the Act provides that, if a provider entity demonstrates through accreditation by an approved national accrediting organization that all applicable Medicare conditions are met or exceeded, we will deem those provider entities as having met the requirements. Accreditation by an accrediting organization is voluntary and is not required for Medicare participation.

If an accrediting organization is recognized by the Secretary of the Department of Health and Human Services as having standards for accreditation that meet or exceed Medicare requirements, any provider entity accredited by the national accrediting body's approved program would be deemed to meet the Medicare conditions. A national accrediting organization applying for deeming authority under part 488, subpart A, must provide the Centers for Medicare & Medicaid Services (CMS) with reasonable assurance that the

accrediting organization requires the accredited provider entities to meet requirements that are at least as stringent as the Medicare conditions. Our regulations concerning the reapproval of accrediting organizations are set forth at § 488.5. The regulations at § 488.5(e)(2)(i) require accrediting organizations to reapply for continued deeming authority every 6 years or sooner as we determine.

The Community Health Accreditation Partner's (CHAP's) term of approval for its hospice accreditation program expires November 20, 2018.

II. Approval of Deeming Organizations

Section 1865(a)(2) of the Act and our regulations at § 488.5 require that our findings concerning review and approval of a national accrediting organization's requirements consider, among other factors, the applying accrediting organization's requirements for accreditation; survey procedures; resources for conducting required surveys; capacity to furnish information for use in enforcement activities; monitoring procedures for provider entities found not in compliance with the conditions or requirements; and ability to provide CMS with the necessary data for validation.

Section 1865(a)(3)(A) of the Act further requires that we publish within 60 days of receipt of an organization's complete application, a notice identifying the national accrediting body making the request, describing the nature of the request, and providing at least a 30-day public comment period. We have 210 days from the receipt of a complete application to publish notice of approval or denial of the application.

The purpose of this proposed notice is to inform the public of CHAP's request for continued CMS approval of its hospice accreditation program. This notice also solicits public comment on whether CHAP's requirements meet or exceed the Medicare conditions for participation for hospices.

III. Evaluation of Deeming Authority Request

CHAP submitted all the necessary materials to enable us to make a determination concerning its request for continued approval of its hospice accreditation program. This application was determined to be complete on April 24, 2018. Under section 1865(a)(2) of the Act and our regulations at § 488.5 (Application and re-application procedures for national organizations), our review and evaluation of CHAP will be conducted in accordance with, but not necessarily limited to, the following factors:

- The equivalency of CHAP's standards for hospices as compared with CMS' hospice conditions of participation.
- CHAP's survey process to determine the following:

++ CHAP's composition of the survey team, surveyor qualifications, and the ability of the organization to provide continuing surveyor training.

++ CHAP's processes compared to those of State agencies, including survey frequency, and the ability to investigate and respond appropriately to complaints against accredited facilities.

++ CHAP's processes and procedures for monitoring a hospice found out of compliance with CHAP's program requirements. These monitoring procedures are used only when CHAP identifies noncompliance. If noncompliance is identified through validation reviews, the State survey agency monitors corrections as specified at § 488.9(c).

++ CHAP's capacity to report deficiencies to the surveyed facilities and respond to the facility's plan of correction in a timely manner.

++ CHAP's capacity to provide CMS with electronic data, and reports necessary for effective validation and assessment of the organization's survey process.

++ CHAP's staff adequacy and other resources, and its financial viability.

++ CHAP's capacity to adequately fund required surveys.

++ CHAP's policies with respect to whether surveys are announced or unannounced, to assure that surveys are unannounced.

++ CHAP's agreement to provide CMS with a copy of the most current accreditation survey together with any other information related to the survey as we may require (including corrective action plans).

Upon completion of our evaluation, including evaluation of comments received as a result of this proposed notice, we will publish a final notice in the **Federal Register** announcing the result of our evaluation.

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: May 29, 2018.

Seema Verma,

Administrator, Centers for Medicare & Medicaid Services.

[FR Doc. 2018–12840 Filed 6–14–18; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

[CMS–3363–N]

Medicare Program; Meeting of the Medicare Evidence Development and Coverage Advisory Committee—August 22, 2018

AGENCY: Centers for Medicare & Medicaid Services (CMS), HHS.

ACTION: Notice of meeting.

SUMMARY: This notice announces that a public meeting of the Medicare Evidence Development & Coverage Advisory Committee (MEDCAC) (''Committee'') will be held on Wednesday, August 22, 2018. This meeting will focus on the state of evidence on Chimeric Antigen Receptor (CAR) T-cell therapies that are approved by the Food and Drug Administration (FDA). We are seeking the MEDCAC's recommendations regarding collection of patient reported outcomes (PRO) in cancer clinical studies. The MEDCAC will specifically focus on appraisal of evidence-based PRO assessments to provide information that impacts patients, their providers, and caregivers after a CAR T-cell therapy intervention for the patient's cancer. This meeting is open to the public in accordance with the Federal Advisory Committee Act.

DATES:

Meeting Date: The public meeting will be held on Wednesday, August 22, 2018 from 7:30 a.m. until 4:30 p.m., Eastern Daylight Time (EDT).

Deadline for Submission of Written Comments: Written comments must be received at the address specified in the **ADDRESSES** section of this notice by 5:00 p.m., EDT, Monday, July 16, 2018. Once submitted, all comments are final.

Deadlines for Speaker Registration and Presentation Materials: The

deadline to register to be a speaker and to submit PowerPoint presentation materials and writings that will be used in support of an oral presentation is 5:00 p.m., EDT on Monday, July 16, 2018. Speakers may register by phone or via email by contacting the person listed in the **FOR FURTHER INFORMATION CONTACT** section of this notice. Presentation materials must be received at the address specified in the **ADDRESSES** section of this notice.

Deadline for All Other Attendees Registration: Individuals may register online at *http://www.cms.gov/apps/events/upcomingevents.asp?strOrderBy=1&type=3* or by phone by contacting the person listed in the **FOR FURTHER INFORMATION CONTACT** section of this notice by 5:00 p.m. EDT, Wednesday, August 15, 2018.

We will be broadcasting the meeting live via Webcast at *http://www.cms.gov/live/.*

Deadline for Submitting a Request for Special Accommodations: Persons attending the meeting who are hearing or visually impaired, or have a condition that requires special assistance or accommodations, are asked to contact the Executive Secretary as specified in the **FOR FURTHER INFORMATION CONTACT** section of this notice no later than 5:00 p.m., EDT Friday, August 3, 2018.

ADDRESSES:

Meeting Location: The meeting will be held in the main auditorium of the Centers for Medicare & Medicaid Services, 7500 Security Boulevard, Baltimore, MD 21244.

Submission of Presentations and Comments: Presentation materials and written comments that will be presented at the meeting must be submitted via email to *MedCACpresentations@cms.hhs.gov* or by regular mail to the contact listed in the **FOR FURTHER INFORMATION CONTACT** section of this notice by the date specified in the **DATES** section of this notice.

FOR FURTHER INFORMATION CONTACT: Maria Ellis, Executive Secretary for MEDCAC, Centers for Medicare & Medicaid Services, Center for Clinical Standards and Quality, Coverage and Analysis Group, S3–02–01, 7500 Security Boulevard, Baltimore, MD 21244 or contact Ms. Ellis by phone (410–786–0309) or via email at *Maria.Ellis@cms.hhs.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

MEDCAC, formerly known as the Medicare Coverage Advisory Committee (MCAC), is advisory in nature, with all final coverage decisions resting with CMS. MEDCAC is used to supplement CMS' internal expertise. Accordingly, the advice rendered by the MEDCAC is most useful when it results from a process of full scientific inquiry and thoughtful discussion, in an open forum, with careful framing of recommendations and clear identification of the basis of those recommendations. MEDCAC members are valued for their background, education, and expertise in a wide variety of scientific, clinical, and other related fields. (For more information on MCAC, see the MEDCAC Charter (*http://www.cms.gov/Regulations-and-Guidance/Guidance/FACA/Downloads/medcaccharter.pdf*) and the CMS Guidance Document, *Factors CMS Considers in Referring Topics to the MEDCAC* (*http://www.cms.gov/medicare-coverage-database/details/medicare-coverage-document-details.aspx?MCDId=10*)).

II. Meeting Topic and Format

This notice announces the Wednesday, August 22, 2018, public meeting of the Committee. This meeting will focus on the state of evidence on CAR–T cell therapies that are approved by the FDA. We are seeking the MEDCAC's recommendations regarding collection of PRO in cancer clinical studies. The MEDCAC will specifically focus on appraisal of evidence-based PRO assessments to provide information that impacts patients, their providers, and caregivers after a CAR T-cell therapy intervention for the patient's cancer. Background information about this topic, including panel materials, is available at *http://www.cms.gov/medicare-coverage-database/indexes/medcac-meetings-index.aspx?bc=BAAAAAAAAAAA&.* We will no longer be providing paper copies of the handouts for the meeting. Electronic copies of all the meeting materials will be on the CMS website no later than 2 business days before the meeting. We encourage the participation of organizations with expertise in the appraisal of the state of evidence for patient reported outcomes, development of patient reported health outcome measures, and use of patient reported health outcome assessments in cancer clinical trials. This meeting is open to the public. The Committee will hear oral presentations from the public for approximately 45 minutes. Time allotted for each presentation may be limited. If the number of registrants requesting to speak is greater than can be reasonably accommodated during the scheduled open public hearing session, we may conduct a lottery to determine the speakers for the scheduled open public hearing session. The contact person will notify interested persons regarding their request to speak by July 23, 2018. Your comments should focus on issues specific to the list of topics that we have proposed to the Committee. The list of research topics to be discussed at the meeting will be available on the following website prior to the meeting: *http://www.cms.gov/medicare-coverage-database/indexes/medcac-meetings-index.aspx?bc=BAAAAAAAAAAA&.* We require that you declare at the meeting whether you have any financial involvement with manufacturers (or their competitors) of any items or services being discussed. Speakers presenting at the MEDCAC meeting should include a full disclosure slide as their second slide in their presentation for financial interests (for example, type of financial association—consultant, research support, advisory board, and an indication of level, such as minor association <$10,000 or major association >$10,000) as well as intellectual conflicts of interest (for example, involvement in a federal or nonfederal advisory committee that has discussed the issue) that may pertain in any way to the subject of this meeting. If you are representing an organization, we require that you also disclose conflict of interest information for that organization. If you do not have a PowerPoint presentation, you will need to present the full disclosure information requested previously at the beginning of your statement to the Committee.

The Committee will deliberate openly on the topics under consideration. Interested persons may observe the deliberations, but the Committee will not hear further comments during this time except at the request of the chairperson. The Committee will also allow a 15-minute unscheduled open public session for any attendee to address issues specific to the topics under consideration. At the conclusion of the day, the members will vote and the Committee will make its recommendation(s) to CMS.

III. Registration Instructions

CMS' Coverage and Analysis Group is coordinating meeting registration. While there is no registration fee, individuals must register to attend. You may register online at *http://www.cms.gov/apps/events/upcomingevents.asp?strOrderBy=1&type=3* or by phone by contacting the person listed in the **FOR FURTHER INFORMATION CONTACT** section of this notice by the deadline listed in the **DATES** section of this notice. Please provide your full name (as it appears on your state-issued driver's

license), address, organization, telephone number(s), fax number, and email address. You will receive a registration confirmation with instructions for your arrival at the CMS complex or you will be notified that the seating capacity has been reached.

IV. Security, Building, and Parking Guidelines

This meeting will be held in a federal government building; therefore, federal security measures are applicable. The Real ID Act, enacted in 2005, establishes minimum standards for the issuance of state-issued driver's licenses and identification (ID) cards. It prohibits Federal agencies from accepting an official driver's license or ID card from a state unless the Department of Homeland Security determines that the state meets these standards. Beginning October 2015, photo IDs (such as a valid driver's license) issued by a state or territory not in compliance with the Real ID Act will not be accepted as identification to enter Federal buildings. Visitors from these states/territories will need to provide alternative proof of identification (such as a valid passport) to gain entrance into CMS buildings. The current list of states from which a Federal agency may accept driver's licenses for an official purpose is found at *http://www.dhs.gov/real-id-enforcement-brief.* We recommend that confirmed registrants arrive reasonably early, but no earlier than 45 minutes prior to the start of the meeting, to allow additional time to clear security. Security measures include the following:

- Presentation of government-issued photographic identification to the Federal Protective Service or Guard Service personnel.
- Inspection of vehicle's interior and exterior (this includes engine and trunk inspection) at the entrance to the grounds. Parking permits and instructions will be issued after the vehicle inspection.
- Inspection, via metal detector or other applicable means, of all persons entering the building. We note that all items brought into CMS, whether personal or for the purpose of presentation or to support a presentation, are subject to inspection. We cannot assume responsibility for coordinating the receipt, transfer, transport, storage, set-up, safety, or timely arrival of any personal belongings or items used for presentation or to support a presentation.

Note: Individuals who are not registered in advance will not be permitted to enter the building and will be unable to attend the meeting. The public may not enter the building earlier than 45 minutes prior to the convening of the meeting.

All visitors must be escorted in areas other than the lower and first floor levels in the Central Building.

V. Collection of Information

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. Chapter 35).

Authority: 5 U.S.C. App. 2, section 10(a).

Dated: June 4, 2018.

Kate Goodrich,

Director, Center for Clinical Standards and Quality, Chief Medical Officer, Centers for Medicare & Medicaid Services.

[FR Doc. 2018–12831 Filed 6–14–18; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Community Living

Agency Information Collection Activities; Submission for OMB Review; Public Comment Request; State Councils on Developmental Disabilities—Annual Program Performance Report (PPR) (OMB Control Number—0985–0033)

AGENCY: Administration on Intellectual and Developmental Disabilities (AIDD), Administration for Community Living (ACL), U.S. Department of Health and Human Services (HHS).

ACTION: Notice.

SUMMARY: The Administration for Community Living is announcing that the proposed collection of information listed above has been submitted to the Office of Management and Budget (OMB) for review and clearance as required under section 506(c)(2)(A) of the Paperwork Reduction Act of 1995. This 30-day notice collects comments on the information collection requirements related to the State Councils on Developmental Disabilities—Annual Program Performance Report (PPR) [Proposed Extension with Changes of a Currently Approved Collection (ICR Rev)].

DATES: Submit written comments on the collection of information by July 16, 2018.

ADDRESSES: Submit written comments on the collection of information by:

(a) Email to: *OIRA_submission@omb.eop.gov,* Attn: OMB Desk Officer for ACL;

(b) fax to 202.395.5806, Attn: OMB Desk Officer for ACL; or

(c) by mail to the Office of Information and Regulatory Affairs, OMB, New Executive Office Bldg., 725 17th St. NW, Rm. 10235, Washington, DC 20503, Attn: OMB Desk Officer for ACL.

FOR FURTHER INFORMATION CONTACT: Sara Newell-Perez at (202) 795–7413 or *Sara.Newell-Perez@acl.hhs.gov.*

SUPPLEMENTARY INFORMATION: In compliance with 44 U.S.C. 3507, ACL has submitted the following proposed collection of information to OMB for review and clearance. The proposed data collection represents a revision of a currently approved information collection (ICR-Rev). This collection is necessary for the proper performance and function of the agency. On an annual basis, Councils are required to submit a Program Performance Report (PPR) to describe the extent to which annual progress is being achieved on the 5-year State plan goals. The PPR will be used by (1) the Council as a planning document to track progress made in meeting state plan goals; (2) the citizenry of the State as a mechanism for monitoring progress and activities on the plans of the Council; and (3) the Department as a stewardship tool for ensuring compliance with the Developmental Disabilities Assistance and Bill of Rights Act of 2000 and for monitoring and providing technical assistance (*e.g.,* during site visits), and support for management decision making.

Comments in Response to the 60-Day Federal Register Notice

A notice was published in the **Federal Register** on October 4, 2017 (Vol. 82, Number 191; pp. 46246–46247). Two comments were received. The first was a comment about ACL and policies around deinstitutionalization. The second comment requested that Councils have more transparency and make their PPRs available to the public via their websites. ACL appreciates and understands these comments. Although ACL recognizes that these comments might provide useful information for the program, it is not required to meet the statutory requirements for this program. No change is proposed.

The proposed template may be found on the ACL website at *https://www.acl.gov/about-acl/public-input.*

Estimated Program Burden

ACL estimates the burden of this collection of information as follows: The

total estimated hour burden per respondent for the proposed DD Council PPR will increase from the 138 hours estimated in 2015 to 172 burden hours per response. The number of hours is multiplied by 56 State Council programs, resulting in a total estimated hour aggregate burden of 9,632.

Respondent/data collection activity	Number of respondents	Responses per respondent	Hours per response	Annual burden hours
State Councils on Developmental Disabilities/Program Performance Report	56	1	172	9632
Total	56	1	172	9632

Dated: June 7, 2018.

Lance Robertson,

Administrator and Assistant Secretary for Aging.

[FR Doc. 2018–12826 Filed 6–14–18; 8:45 am]

BILLING CODE 4154–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Community Living

Notice of Intent To Award a Single-Source Supplement

ACTION: Intent To Award a Single-Source Supplement for the Amputee Coalition of America, Inc. for the National Limb Loss Resource Center Cooperative Agreement.

The Administration for Community Living (ACL) announces the intent to award a single-source supplement to the current cooperative agreement held by the Amputee Coalition of America, Inc. for the National Limb Loss Resource Center (NLLRC). The purpose of this project is to expand on current grant activities, such as increasing activities and programs that promote health, wellness, and the adoption of healthy behaviors with the objective of preventing and/or reducing chronic conditions associated with limb loss and increase partnerships and collaborations with ACL programs that will benefit all people living with limb loss or limb differences. The administrative supplement for FY 2018 will be in the amount of $669,905, bringing the total award for FY 2018 to $3,697,142.

The additional funding will not be used to begin new projects. The funding will be used to enhance and expand existing programs that can serve an increased number of veterans and people living with limb loss and limb differences by providing increased technical assistance activities; promoting health and wellness programs; promoting the adoption of healthy behaviors with the objective of preventing and/or reducing chronic conditions associated with limb loss; increasing partnerships and collaborations with ACL programs that will benefit all people living with limb loss or limb differences; enhancing and expanding the evaluation activities currently under way; and enhancing website capacities for improved information dissemination.

Program Name: National Limb Loss Resource Center.

Recipient: The Amputee Coalition of America, Inc.

Period of Performance: The supplement award will be issued for the third year of the three-year project period of April 1, 2016, through March 29, 2019.

Total Award Amount: $669,905 in FY 2018.

Award Type: Cooperative Agreement Supplement.

Statutory Authority: This program is authorized under Section 317 of the Public Health Service Act (42 U.S.C. 247(b–4)); Consolidated and Further Continuing Appropriations Act, 2015, Public Law 113–235 (Dec. 16, 2014).

Basis for Award: The Amputee Coalition of America, Inc. is currently funded to carry out the objectives of this program, entitled The *National Limb Loss Resource Center* for the period of April 1, 2016, through March 29, 2019. Since the program transferred from CDC to ACL in late 2015, the grantee has accomplished a great deal. The supplement will enable the grantee to carry their work even further, serving more people living with limb loss and/or limb differences and providing even more comprehensive training and technical assistance in the development of LTSS supportive services. The additional funding will not be used to begin new projects or activities. The NLLRC will enhance and expand currently funded activities such as conducting national outreach for the development and dissemination of patient education materials, programs, and services; providing technical support and assistance to community based limb loss support groups; and raising awareness about the limb loss and limb differences communities.

Establishing an entirely new grant project at this time would be potentially disruptive to the current work already well under way. More importantly, the people living with limb loss and limb differences currently being served by this program could be negatively impacted by a service disruption, thus posing the risk of not being able to find the right resources that could negatively impact on health and wellbeing. If this supplement were not provided, the project would be less able to address the significant unmet needs of additional limb loss survivors. Similarly, the project would be unable to expand its current technical assistance and training efforts in NLLRC concepts and approaches, let alone reach beyond traditional providers of services to this population to train more ''mainstream'' providers of disability services.

For More Information Contact: For further information or comments regarding this program supplement, contact Elizabeth Leef, U.S. Department of Health and Human Services, Administration for Community Living, Administration on Disabilities, Independent Living Administration: telephone (202) 475–2486; email *Elizabeth.leef@acl.hhs.gov*.

Dated: June 6, 2018.

Lance Robertson,

Administrator and Assistant Secretary for Aging.

[FR Doc. 2018–12978 Filed 6–14–18; 8:45 am]

BILLING CODE 4154–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2018–D–1788]

Intravascular Catheters, Wires, and Delivery Systems With Lubricious Coatings—Labeling Considerations; Draft Guidance for Industry and Food and Drug Administration Staff; 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 the draft guidance entitled ''Intravascular Catheters, Wires, and Delivery Systems with Lubricious Coatings—Labeling Considerations.'' This draft guidance addresses labeling considerations for devices containing lubricious coatings that are used in the vasculature. The purpose of this draft guidance is to provide recommendations for information to be included in device labeling, as submitted in premarket applications (PMAs) or premarket notification submissions (510(k)s) for class III and class II devices, to enhance the consistency of information across these product areas as well as to promote the safe use of these devices in clinical settings. This draft guidance is not final nor is it in effect at this time.

DATES: Submit either electronic or written comments on the draft guidance by August 14, 2018 to ensure that the Agency considers your comment on this draft guidance before it begins work on the final version of the guidance.

ADDRESSES: You may submit comments on any guidance at any time as follows:

Electronic Submissions

Submit electronic comments in the following way:

- *Federal eRulemaking Portal*: *https://www.regulations.gov*. Follow the instructions for submitting comments. Comments submitted electronically, including attachments, to *https://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 *https://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): Dockets Management Staff (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.
- For written/paper comments submitted to the Dockets Management Staff, 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–2018–D–1788 for ''Intravascular Catheters, Wires, and Delivery Systems with Lubricious Coatings—Labeling Considerations.'' Received comments will be placed in the docket and, except for those submitted as ''Confidential Submissions,'' publicly viewable at *https://www.regulations.gov* or at the Dockets Management Staff 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 *https://www.regulations.gov*. Submit both copies to the Dockets Management Staff. 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: *https://www.gpo.gov/fdsys/pkg/FR-2015-09-18/pdf/2015-23389.pdf*.

Docket: For access to the docket to read background documents or the electronic and written/paper comments received, go to *https://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 Dockets Management Staff, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

You may submit comments on any guidance at any time (see 21 CFR 10.115(g)(5)).

An electronic copy of the draft guidance document is available for download from the internet. See the **SUPPLEMENTARY INFORMATION** section for information on electronic access to the guidance. Submit written requests for a single hard copy of the draft guidance document entitled ''Intravascular Catheters, Wires, and Delivery Systems with Lubricious Coatings—Labeling Considerations'' to the Office of the Center Director, Guidance and Policy Development, Center for Devices and Radiological Health, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 66, Rm. 5431, Silver Spring, MD 20993–0002. Send one self-addressed adhesive label to assist that office in processing your request.

FOR FURTHER INFORMATION CONTACT: Leigh Anderson, Center for Devices and Radiological Health, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 66, Rm. 2656, Silver Spring, MD 20993–0002, 301–796–5613.

SUPPLEMENTARY INFORMATION:

I. Background

Hydrophilic- and/or hydrophobic-coated devices have been used for more than 20 years in minimally invasive diagnostic and therapeutic cerebrovascular, cardiovascular, and peripheral vascular procedures. Although these devices may offer patient benefits, evidence indicates that the coating may separate from intravascular devices in some circumstances. FDA has received and analyzed information concerning serious adverse events associated with hydrophilic and/or hydrophobic coatings separating (*e.g.,* peeling, flaking, shedding, delaminating, or sloughing off) from intravascular medical devices.

FDA has not concluded that any specific manufacturer or brand of these devices is associated with higher risks than others. The cause of coating separation is multifactorial, and can be associated with factors including device design, manufacturing, and use. Current FDA analysis suggests that use-related issues may be mitigated through proper device selection, preparation, and other labeling considerations that are addressed within this draft guidance.

This draft guidance addresses labeling considerations for devices containing lubricious coatings used in the vasculature. The purpose of this draft

guidance is to provide recommendations for information to be included in device labeling, as submitted in PMAs or 510(k)s for class III and class II devices, to enhance the consistency of coating information across these product areas as well as to promote the safe use of these devices in clinical settings.

II. Significance of Guidance

This 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 ''Intravascular Catheters, Wires, and Delivery Systems with Lubricious Coatings—Labeling Considerations.'' 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. This guidance is not subject to Executive Order 12866.

III. Electronic Access

Persons interested in obtaining a copy of the draft guidance may do so by downloading an electronic copy from the internet. A search capability for all Center for Devices and Radiological Health guidance documents is available at *https://www.fda.gov/MedicalDevices/DeviceRegulationandGuidance/GuidanceDocuments/default.htm.* This draft guidance document is also available at *https://www.regulations.gov.* Persons unable to download an electronic copy of ''Intravascular Catheters, Wires, and Delivery Systems with Lubricious Coatings—Labeling Considerations'' may send an email request to *CDRH-Guidance@fda.hhs.gov* to receive an electronic copy of the document. Please use the document number 16016 to identify the guidance you are requesting.

IV. 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 21 CFR part 807, subpart E have been approved under OMB control number 0910–0120; the collections of information in 21 CFR part 814, subparts A through E have been approved under OMB control number 0910–0231; and the collections of information in 21 CFR part 801 have been approved under OMB control number 0910–0485.

Dated: June 8, 2018.

Leslie Kux,

Associate Commissioner for Policy.

[FR Doc. 2018–12824 Filed 6–14–18; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2018–D–1775]

Coronary, Peripheral, and Neurovascular Guidewires—Performance Tests and Recommended Labeling; Draft Guidance for Industry and Food and Drug Administration Staff; 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 the draft guidance entitled ''Coronary, Peripheral, and Neurovascular Guidewires—Performance Tests and Recommended Labeling.'' This draft guidance provides recommendations for the information and testing that should be included in premarket submissions for guidewires intended for use in the coronary, peripheral, and neurovasculature. This draft guidance is not final nor is it in effect at this time.

DATES: Submit either electronic or written comments on the draft guidance by August 14, 2018 to ensure that the Agency considers your comment on this draft guidance before it begins work on the final version of the guidance.

ADDRESSES: You may submit comments on any guidance at any time as follows:

Electronic Submissions

Submit electronic comments in the following way:

- *Federal eRulemaking Portal: https://www.regulations.gov.* Follow the instructions for submitting comments. Comments submitted electronically, including attachments, to *https://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 *https://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): Dockets Management Staff (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.
- For written/paper comments submitted to the Dockets Management Staff, 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–2018–D–1775 for ''Coronary, Peripheral, and Neurovascular Guidewires—Performance Tests and Recommended Labeling.'' Received comments will be placed in the docket and, except for those submitted as ''Confidential Submissions,'' publicly viewable at *https://www.regulations.gov* or at the Dockets Management Staff 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 *https://www.regulations.gov.* Submit both copies to the Dockets Management Staff. 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: *https://www.gpo.gov/fdsys/pkg/FR-2015-09-18/pdf/2015-23389.pdf.*

Docket: For access to the docket to read background documents or the electronic and written/paper comments received, go to *https://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 Dockets Management Staff, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

You may submit comments on any guidance at any time (see 21 CFR 10.115(g)(5)).

An electronic copy of the guidance document is available for download from the internet. See the **SUPPLEMENTARY INFORMATION** section for information on electronic access to the guidance. Submit written requests for a single hard copy of the draft guidance entitled ''Coronary, Peripheral, and Neurovascular Guidewires—Performance Tests and Recommended Labeling'' to the Office of the Center Director, Guidance and Policy Development, Center for Devices and Radiological Health, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 66, Rm. 5431, Silver Spring, MD 20993–0002. Send one self-addressed adhesive label to assist that office in processing your request.

FOR FURTHER INFORMATION CONTACT: Jismi Johnson, Center for Devices and Radiological Health, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 66, Rm. 1524, Silver Spring, MD 20993–0002, 301–796–6424.

SUPPLEMENTARY INFORMATION:

I. Background

FDA is announcing the availability of a draft guidance for industry and FDA staff entitled ''Coronary, Peripheral, and Neurovascular Guidewires—Performance Tests and Recommended Labeling.'' This draft guidance updates and clarifies performance testing and labeling recommendations to support a premarket notification (510(k) submission) for guidewires intended for use in the coronary, peripheral, and neurovasculature. This draft guidance is intended to assist industry in designing and executing appropriate performance testing to support a premarket notification and provides recommendations for content and labeling to include in the submission. When final, this guidance will replace ''Coronary and Cerebrovascular Guidewire Guidance'' (*https://www.fda.gov/downloads/MedicalDevices/DeviceRegulationandGuidance/GuidanceDocuments/UCM080789.pdf*) dated January 1995.

II. Significance of Guidance

This 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 ''Coronary, Peripheral and Neurovascular Guidewires—Performance Tests and Recommended Labeling.'' 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. This guidance is not subject to Executive Order 12866.

III. Electronic Access

Persons interested in obtaining a copy of the draft guidance may do so by downloading an electronic copy from the internet. A search capability for all Center for Devices and Radiological Health guidance documents is available at *https://www.fda.gov/MedicalDevices/DeviceRegulationandGuidance/GuidanceDocuments/default.htm.* This draft guidance is also available at *https://www.regulations.gov.* Persons unable to download an electronic copy of ''Coronary, Peripheral, and Neurovascular Guidewires—Performance Tests and Recommended Labeling'' may send an email request to *CDRH-Guidance@fda.hhs.gov* to receive an electronic copy of the document. Please use the document number 16007 to identify the guidance you are requesting.

IV. Paperwork Reduction Act of 1995

This draft guidance refers to previously approved collections of information found in FDA regulations and guidance. These collections of information are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520). The collections of information in 21 CFR part 807, subpart E have been approved under OMB control number 0910–0120; the collections of information in 21 CFR part 820 have been approved under OMB control number 0910–0073; the collections of information in 21 CFR part 812 have been approved under OMB control number 0910–0078; the collections of information in 21 CFR part 801 have been approved under OMB control number 0910–0485; and the collections of information in the guidance document ''Requests for Feedback on Medical Device Submissions: The Pre-Submission Program and Meetings with Food and Drug Administration Staff'' have been approved under OMB control number 0910–0756.

Dated: June 8, 2018.

Leslie Kux,

Associate Commissioner for Policy.

[FR Doc. 2018–12825 Filed 6–14–18; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2018–D–1861]

Hazard Analysis and Risk-Based Preventive Controls for Food for Animals: Supply-Chain Program; Draft Guidance for Industry; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice of availability.

SUMMARY: The Food and Drug Administration (FDA, we, or Agency) is announcing the availability of a draft guidance for industry #246 entitled ''Hazard Analysis and Risk-Based Preventive Controls for Food for Animals: Supply-Chain Program.'' This draft guidance document, when finalized, will help animal food facilities comply with the requirements for the supply-chain program under our regulation ''Current Good Manufacturing Practice, Hazard Analysis, and Risk-Based Preventive Controls for Food for Animals.''

DATES: Submit either electronic or written comments on the draft guidance by December 12, 2018 to ensure that the Agency considers your comment on this draft guidance before it begins work on the final version of the guidance.

ADDRESSES: You may submit comments on any guidance at any time as follows:

Electronic Submissions

Submit electronic comments in the following way:

- *Federal eRulemaking Portal: https://www.regulations.gov.* Follow the instructions for submitting comments. Comments submitted electronically, including attachments, to *https://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 *https://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):* Dockets Management Staff (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

• For written/paper comments submitted to the Dockets Management Staff, 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–2018–D–1861 for ''Hazard Analysis and Risk-Based Preventive Controls for Food for Animals: Supply-Chain Program.'' Received comments will be placed in the docket and, except for those submitted as ''Confidential Submissions,'' publicly viewable at *https://www.regulations.gov* or at the Dockets Management Staff 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 *https://www.regulations.gov.* Submit both copies to the Dockets Management Staff. 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: *https://www.gpo.gov/fdsys/pkg/FR-2015-09-18/pdf/2015-23389.pdf.*

Docket: For access to the docket to read background documents or the electronic and written/paper comments received, go to *https://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 Dockets Management Staff, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

You may submit comments on any guidance at any time (see 21 CFR 10.115(g)(5)).

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, 7500 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: Jenny Murphy, Center for Veterinary Medicine (HFV–200), Food and Drug Administration, 7519 Standish Pl., Rockville, MD 20855, 240–402–6246, *jenny.murphy@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

The FDA Food Safety Modernization Act (FSMA) (Pub. L. 111–353) enables FDA to better protect public (human and animal) health by helping to ensure the safety and security of the food supply. FSMA enables FDA to focus more on preventing animal food safety problems rather than relying primarily on reacting to problems after they occur.

Section 103 of FSMA amended the Federal Food, Drug, and Cosmetic Act (FD&C Act), by adding section 418 (21 U.S.C. 350g) with requirements for hazard analysis and risk-based preventive controls for establishments that are required to register as food facilities under our regulations in 21 CFR part 1, subpart H, in accordance with section 415 of the FD&C Act (21 U.S.C. 350d). We have established regulations to implement the hazard analysis and risk-based preventive controls requirements within part 507 (21 CFR part 507).

We are announcing the availability of a draft guidance for industry #246 entitled ''Hazard Analysis and Risk-Based Preventive Controls for Food for Animals: Supply-Chain Program.'' This draft guidance for industry is intended to explain how to comply with the requirements for the supply-chain program of the hazard analysis and risk-based preventive controls for food for animals under part 507. In the **Federal Register** of January 23, 2018 (83 FR 3163), we announced the availability of a related multichapter draft guidance for industry, #245 entitled ''Hazard Analysis and Risk-Based Preventive Controls for Food for Animals.'' In the **Federal Register** of February 5, 2018 (83 FR 5106), we announced a correction to the docket number for that draft guidance.

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 how to comply with the supply-chain program requirements for the regulation ''Current Good Manufacturing Practice, Hazard Analysis, and Risk-Based Preventive Controls for Food for Animals.'' 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. This guidance is not subject to Executive Order 12866.

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 part 507 have been approved under OMB control number 0910–0789.

IV. Electronic Access

Persons with access to the internet may obtain the draft guidance at either *https://www.fda.gov/AnimalVeterinary/GuidanceComplianceEnforcement/GuidanceforIndustry/default.htm* or *https://www.regulations.gov.* Use the FDA website listed in the previous sentence to find the most current version of the guidance.

Dated: June 8, 2018.

Leslie Kux,

Associate Commissioner for Policy.

[FR Doc. 2018–12894 Filed 6–14–18; 8:45 am]

BILLING CODE 4164–01–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, 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; Fellowships: Musculoskeletal and Oral Sciences, Imaging, Surgery and Informatics.

Date: July 10–11, 2018.

Time: 8:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Residence Inn Bethesda, 7335 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Anshumali Chaudhari, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4124, MSC 7802, Bethesda, MD 20892, (301) 435–1210, *chaudhaa@csr.nih.gov*.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Platforms to Evaluate Adverse Biological Consequences of Cell Genome Editing.

Date: July 10, 2018.

Time: 11:00 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 (Virtual Meeting).

Contact Person: Methode Bacanamwo, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 2200, Bethesda, MD 20892, 301–827–7088, *methode.bacanamwo@nih.gov*.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Member Conflict: Neuropharmacology.

Date:.July 11, 2018.

Time: 1:00 p.m. to 5:00 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: Peter B. Guthrie, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4142, MSC 7850, Bethesda, MD 20892, (301) 435–1239, *guthriep@csr.nih.gov*.

(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: June 11, 2018.

Sylvia L. Neal,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2018–12836 Filed 6–14–18; 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 Conflict: Neurodevelopment and Psychiatric Disorders.

Date: June 27–28, 2018.

Time: 8:00 a.m. to 8:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Samuel C. Edwards, Ph.D., Chief, Brain Disorders and Clinical Neuroscience, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5210, MSC 7846, Bethesda, MD 20892, (301) 435–1246, *edwardss@csr.nih.gov*.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Infectious Diseases and Microbiology AREA Review.

Date: July 13, 2018.

Time: 8:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Edgewater Hotel, 2411 Alaskan Way, Pier 67, Seattle, WA 98121.

Contact Person: Liangbiao Zheng, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3202, MSC 7808, Bethesda, MD 20892, 301–996–5819, *zhengli@csr.nih.gov*.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Member Conflict: Psychopathology, Aging, and Cognition.

Date: July 13, 2018.

Time: 1:30 p.m. to 4:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6705 Rockledge Drive, Bethesda, MD 20817 (Telephone Conference Call).

Contact Person: Maribeth Champoux, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3170, MSC 7848, Bethesda, MD 20892, 301–594–3163, *champoum@csr.nih.gov*.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Member Conflict: Topics in Drug Resistance, Drug Discovery and Clinical and Field Research.

Date: July 16–17, 2018.

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: Tera Bounds, DVM, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3214, MSC 7808, Bethesda, MD 20892, 301–435–2306, *boundst@csr.nih.gov*.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Topics in Bacterial Pathogenesis.

Date: July 16, 2018.

Time: 8:00 a.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Hotel Zoe Fisherman's Wharf, 425 North Point, San Francisco, CA 94133.

Contact Person: Richard G. Kostriken, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3192, MSC 7808, Bethesda, MD 20892, 240–519–7808, *kostrikr@csr.nih.gov*.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Member Conflict: Gastrointestinal and Pancreatic Physiopathology.

Date: July 16, 2018.

Time: 1:00 p.m. to 4:00 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: Martha Garcia, Ph.D., Scientific Reviewer Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 2186, MSC 7818, Bethesda, MD 20892, 301–435–1243, *garciamc@nih.gov*.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Member

Conflict: Healthcare Delivery and Methodologies.

Date: July 16, 2018.

Time: 2:00 p.m. to 5:00 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: Karin F. Helmers, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3166, MSC 7770, Bethesda, MD 20892, 301–254–9975, *helmersk@csr.nih.gov*.

(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: June 8, 2018.

Sylvia L. Neal,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2018–12839 Filed 6–14–18; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Prospective Grant of Exclusive Patent Commercialization License: Streptococcus Pneumonia PSAA Peptide for Treatment of Sepsis and Infection

AGENCY: National Institutes of Health, Centers for Disease Control and Prevention, Department of Health and Human Services.

ACTION: Notice.

SUMMARY: The National Institute of Allergy and Infectious Diseases, an institute of the National Institutes of Health, Department of Health and Human Services, on behalf of the Centers for Disease Control and Prevention, Department of Health and Human Services, is contemplating the grant of an exclusive patent commercialization license to The University of Liverpool, located in Liverpool, UK, to practice the inventions embodied in the patent applications listed in the Supplementary Information section of this notice.

DATES: Only written comments and/or applications for a license which are received by the Technology Transfer and Intellectual Property Office, National Institute of Allergy and Infectious Diseases on or before July 2, 2018 will be considered.

ADDRESSES: Requests for copies of the patent applications, inquiries, and comments relating to the contemplated exclusive patent commercialization license should be directed to: Karen Surabian, Licensing and Patenting Manager, Technology Transfer and Intellectual Property Office, National Institute of Allergy and Infectious Diseases, 5601 Fishers Lane, Suite 6D, MSC9804, Rockville, MD 20852–9804, phone number 301–496–2644, or *karen.surabian@nih.gov.*

SUPPLEMENTARY INFORMATION: The following represents the intellectual property to be licensed under the prospective agreement: United States Provisional Patent Application Number 61/085,208, filed 07/31/2008, entitled ''Methods of Enhancing Opsonophagocytosis in Response to a Pathogen'' (HHS Reference No. E–329–2013/0–US–01); PCT Patent Application Number PCT/US2009/052384, filed 07/31/2009, entitled ''Methods of Enhancing Opsonophagocytosis in Response to a Pathogen'' (HHS Reference No. E–329–2013/0–PCT–02); China Patent Number 200980137625.X, issued 11/26/2014, entitled ''Methods of Enhancing Opsonophagocytosis in Response to a Pathogen'' (HHS Reference No. E–329–2013/0–CN–03); European Patent Number 2323684, issued 05/21/2014, entitled ''Use of a Pneumococcal P4 Peptide for Enhancing Opsonophagocytosis in Response to a Pathogen'' (HHS Reference No. E–329–2013/0–EP–04), and validated in Germany, Spain, France, the United Kingdom, and Ireland; Hong Kong Patent Number 1160391, issued 07/31/2015, entitled ''Methods of Enhancing Opsonophagocytosis in Response to a Pathogen'' (HHS Reference No. E–329–2013/0–HK–05); United States Patent Number 8,431,134, issued 04/30/2013, entitled ''Use of a Pneumococcal P4 Peptide for Enhancing Opsonophagocytosis in Response to a Pathogen'' (HHS Reference No. E–329–2013/0–US–06); United States Patent Number 9,101,582, issued 08/11/2015, entitled ''Use of a Pneumococcal P4 Peptide for Enhancing Opsonophagocytosis in Response to a Pathogen'' (HHS Reference No. E–329–2013/0–US–07); United States Provisional Patent Application Number 60/682,495, filed 05/19/2005, entitled ''Functional Epitopes of Streptococcus Pneumonia PSAA Antigen and Uses Thereof'' (HHS Reference No. E–338–2013/0–US–01); PCT Patent Application Number PCT/US2005/027290, filed 07/29/2005, entitled ''Functional Epitopes of Streptococcus Pneumonia PSAA Antigen and Uses Thereof'' (HHS Reference No. E–338–2013/0–PCT–02); Australia Patent Number 2005332058, issued 03/15/2012, entitled ''Functional Epitopes of Streptococcus Pneumonia PSAA Antigen and Uses Thereof'' (HHS Reference No. E–338–2013/0–AU–03); European Patent Number 1931700, issued 07/17/2003, entitled ''Functional Epitopes of Streptococcus Pneumonia PSAA Antigen and Uses Thereof'' (HHS Reference No. E–338–2013/0–EP–04), and validated in: Germany, Spain, France, the United Kingdom, and Ireland; Hong Kong Patent Number 1115144, issued 02/14/2014, entitled ''Functional Epitopes of Streptococcus Pneumonia PSAA Antigen and Uses Thereof'' (HHS Reference No. E–338–2013/0–HK–05); United States Patent Number 7,919,104, issued 04/05/2011, entitled ''Functional Epitopes of Streptococcus Pneumonia PSAA Antigen and Uses Thereof'' (HHS Reference No. E–338–2013/0–US–06); Canada Patent Application Number 2,631,556, filed 09/15/2014, entitled ''Functional Epitopes of Streptococcus Pneumonia PSAA Antigen and Uses Thereof'' (HHS Reference No. E–338–2013/0–CA–07); Australia Patent Number 2012201107, issued 06/06/2013, entitled ''Functional Epitopes of Streptococcus Pneumonia PSAA Antigen and Uses Thereof'' (HHS Reference No. E–338–2013/0–AU–08); Hong Kong Patent Number HK1163113, issued 06/05/2015, entitled ''Functional Epitopes of Streptococcus Pneumonia PSAA Antigen and Uses Thereof'' (HHS Reference No. E–338–2013/0–HK–09); European Patent Number 2371843, issued 09/17/2014, entitled ''Functional Epitopes of Streptococcus Pneumonia PSAA Antigen and Uses Thereof'' (HHS Reference No. E–338–2013/0–EP–10), and validated in: Germany, France, and the United Kingdom.

All rights in these inventions have been assigned to the Government of the United States of America.

The prospective exclusive patent commercialization license territory may be worldwide and the field of use may be limited to: ''Development, manufacture, and sale of a P4 peptide therapeutic for the treatment of infection and sepsis.''

These inventions, developed within the National Center for Immunization and Respiratory Diseases (NCIRD), at the Centers for Disease Control and Prevention (CDC), describe methods to bolster the human body's own mechanisms to fight infection by enhancing an innate immune response, opsonophagocytosis. The specific 24 amino acid peptide sequence (P4) acts as a polymorphonuclear cell activator. P4 can be administered in vivo along with disease-specific antibodies to enhance systemic bacterial clearance,

thus leading to prolonged survival. This technology enhances the body's response to a variety of bacterial infections, including S. pneumoniae and S. aureus.

This notice is made in accordance with 35 U.S.C. 209 and 37 CFR part 404. The prospective exclusive patent commercialization license will be royalty bearing and may be granted unless within fifteen (15) days from the date of this published notice, the National Institute of Allergy and Infectious Diseases receives written evidence and argument that establishes that the grant of the license would not be consistent with the requirements of 35 U.S.C. 209 and 37 CFR part 404.

Complete applications for a license in the prospective field of use that are timely filed in response to this notice will be treated as objections to the grant of the contemplated exclusive patent commercialization license. In response to this Notice, the public may file comments or objections. Comments and objections, other than those in the form of a license application, will not be treated confidentially, and may be made publicly available. License applications submitted in response to this Notice will be presumed to contain business confidential information, and any release of information in these license applications will be made only as required and upon a request under the *Freedom of Information Act,* 5 U.S.C. 552.

Dated: June 11, 2018.

Suzanne M. Frisbie,

Deputy Director, Technology Transfer and Intellectual Property Office, National Institute of Allergy and Infectious Diseases.

[FR Doc. 2018–12838 Filed 6–14–18; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institute; Amended Notice of Meeting

Notice is hereby given of a change in the meeting of the joint meeting of the National Cancer Advisory Board and NCI Board of Scientific Advisors, June 26, 2018, 8:30 a.m. to June 27, 2018, 12:00 p.m., National Cancer Institute Shady Grove, 9609 Medical Center Drive, Conference Room TE 406/408, Rockville, MD 20850 which was published in the **Federal Register** on June 05, 2018, 83 FR 26069.

This meeting notice is being amended to update the meeting locations for the National Cancer Advisory Board *Ad Hoc* Subcommittee meetings. The National Cancer Advisory Board *Ad Hoc* Subcommittee Population Science, Epidemiology and Disparities meeting on June 25, 2018, 5:30 p.m. to 7:30 p.m., will be held at the Gaithersburg Marriott Washingtonian Center in Salons A and B. The National Cancer Advisory Board *Ad Hoc* Subcommittee on Global Cancer Research meeting on June 25, 2018, 7:30 p.m. to 9:00 p.m., will be held at the Gaithersburg Marriott Washingtonian Center in Salon C.

Dated: June 11, 2018.

Melanie J. Pantoja,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2018–12837 Filed 6–14–18; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration

Agency Information Collection Activities: Submission for OMB Review; Comment Request

Periodically, the Substance Abuse and Mental Health Services Administration (SAMHSA) will publish a summary of information collection requests under OMB review, in compliance with the Paperwork Reduction Act (44 U.S.C. chapter 35). To request a copy of these documents, call the SAMHSA Reports Clearance Officer on (240) 276–1243.

Project: Survey of State Underage Drinking Prevention Policies and Practices—(OMB No. 0930–0316)—Revision

The *Sober Truth on Preventing Underage Drinking Act* (the ''STOP Act'') (Pub. L. 109–422, reauthorized in 2016 by Pub. L. 114–255) states that the ''Secretary [of Health and Human Services] shall . . . annually issue a report on each state's performance in enacting, enforcing, and creating laws, regulations, and programs to prevent or reduce underage drinking.'' The Secretary has delegated responsibility for this report to SAMHSA. Therefore, SAMHSA has developed a *Survey of State Underage Drinking Prevention Policies and Practices* (the ''*State Survey*'') to provide input for the state-by-state report on prevention and enforcement activities related to underage drinking component of the *Annual Report to Congress on the Prevention and Reduction of Underage Drinking* (''*Report to Congress*'').

The STOP Act also requires the Secretary to develop ''a set of measures to be used in preparing the report on best practices'' and to consider categories including but not limited to the following:

Category #1: Sixteen specific underage drinking laws/regulations enacted at the state level (*e.g.,* laws prohibiting sales to minors; laws related to minors in possession of alcohol). Note that ten additional policies have been added to the Report to Congress pursuant to Congressional appropriations language or the Secretary's authority granted by the STOP Act;

Category #2: Enforcement and educational programs to promote compliance with these laws/regulations;

Category #3: Programs targeted to youths, parents, and caregivers to deter underage drinking and the number of individuals served by these programs;

Category #4: The amount that each state invests, per youth capita, on the prevention of underage drinking broken into five categories: (a) Compliance check programs in retail outlets; (b) Checkpoints and saturation patrols that include the goal of reducing and deterring underage drinking; (c) Community-based, school-based, and higher-education-based programs to prevent underage drinking; (d) Underage drinking prevention programs that target youth within the juvenile justice and child welfare systems; and (e) Any other state efforts or programs that target underage drinking.

Congress' purpose in mandating the collection of data on state policies and programs through the *State Survey* is to provide policymakers and the public with otherwise unavailable but much needed information regarding state underage drinking prevention policies and programs. SAMHSA and other Federal agencies that have underage drinking prevention as part of their mandate use the results of the *State Survey* to inform federal programmatic priorities, as do other stakeholders, including community organizations. The information gathered by the *State Survey* has established a resource for state agencies and the general public for assessing policies and programs in their own state and for becoming familiar with the programs, policies, and funding priorities of other states.

Because of the broad scope of data required by the STOP Act, SAMHSA relies on existing data sources where possible to minimize the survey burden on the states. SAMHSA uses data on state underage drinking policies from the National Institute of Alcohol Abuse and Alcoholism's Alcohol Policy Information System (APIS), an authoritative compendium of state

alcohol-related laws. The APIS data is augmented by SAMHSA with original legal research on state laws and policies addressing underage drinking to include all of the STOP Act's requested laws and regulations (Category #1 of the four categories included in the STOP Act, as described above, page 2).

The STOP Act mandates that the *State Survey* assess ''best practices'' and emphasize the importance of building collaborations with federally recognized tribal governments (''tribal governments''). It also emphasizes the importance at the federal level of promoting interagency collaboration and to that end established the Interagency Coordinating Committee on the Prevention of Underage Drinking (ICCPUD). SAMHSA has determined that to fulfill the Congressional intent, it is critical that the *State Survey* gather information from the states regarding the best practices standards that they apply to their underage drinking programs, collaborations between states and tribal governments, and the development of state-level interagency collaborations similar to ICCPUD.

SAMHSA has determined that data on Categories #2, #3, and #4 mandated in the STOP Act (as listed on page 2) (enforcement and educational programs; programs targeting youth, parents, and caregivers; and state expenditures) as well as states' best practices standards, collaborations with tribal governments, and state-level interagency collaborations *are not available from secondary sources* and therefore must be collected from the states themselves. The *State Survey* is therefore necessary to fulfill the Congressional mandate found in the STOP Act. Furthermore, the uniform collection of these data from the states over the last seven years has created a valuable longitudinal dataset, and the *State Survey's* renewal is vital to maintaining this resource.

The *State Survey* is a single document that is divided into four sections, as follows:

(1) Enforcement programs to promote compliance with underage drinking laws and regulations (as described in Category #2 above, page 2);

(2) Programs and media campaigns targeted to youth, parents, and caregivers to deter underage drinking (as described in Category #3 above, page 2);

(3) State interagency collaboration to implement prevention programs and media campaigns, state best-practice standards, and collaborations with tribal governments (as described above, page 4);

(4) The amount that each state invests on the prevention of underage drinking in the categories specified in the STOP Act (see description of Category #4, above, page 2) and descriptions of any dedicated fees, taxes, or fines used to raise these funds.

The number of questions in each section is as follows:

Section 1: 38 questions
Section 2A: 15 questions
Section 2B: 12 questions
Section 2C: 10 questions
Section 2D: 10 questions
Total: 85 questions

Note that the number of questions in Section 2A is an estimate. This section asks states to identify up to 10 programs that are specific to underage drinking prevention. For each program identified there are three follow-up questions. Based on the average number of programs per state reported in the Survey's seven year history, it is anticipated that states will report an average of five programs for a total of 15 questions.

It is anticipated that most respondents will actually respond to only a subset of this total. The *Survey* is designed with ''skip logic,'' which means that many questions will only be directed to a subset of respondents who report the existence of particular programs or activities.

This latest version of the *Survey* has been revised as follows:

1. Part 2, Section A: Programs

a. A question about underage drinking prevention programs has been eliminated. Previously, states were asked to define each program by whether it was aimed at the ''general population'' or a ''specific countable population (*e.g.,* at-risk high school students).'' This question was not misinterpreted by some respondents, leading to inconsistent data. It was not uncommon for states to provide specific population numbers for a program they had previously defined as being aimed at the general population. For this reason, it is being eliminated.

b. Questions about the specific number of different populations (youth, parents, and caregivers) served by each prevention program have been reformatted as follows:

i. Definitions of each population category have been deleted from the introduction to Part 2, Section A and have been incorporated into the subsequent questions about each program, making it easier for respondents to answer these questions without referring back to the introduction.

ii. For the sake of efficiency, three separate questions about type of population served by each program have been collapsed into one question.

c. References to ''media campaigns'' have been added to the introduction of this section to encourage respondents to include these among the prevention programs listed in their responses. As noted in the following description to changes in Part 2, Section B, the survey is being amended to evaluate awareness of, and participation in the national media campaign mandated by the STOP Act.

2. Part 2. Section B: Collaborations and Best Practices

a. New questions about the national media campaign to reduce underage drinking aimed at adults (as mandated by the STOP Act) have been added. The questions are intended to:

i. Evaluate awareness of and participation in the national media campaign, ''Talk. They Hear You.'' (TTHY), including questions about the commitment of state resources and funding to this effort. The STOP Act requires evaluation of the national media campaign, which is largely conducted by other survey instruments. However, adding a question on the campaign here is an efficient way to gather state-level data for the analysis.

ii. Determine whether the states participate in other media campaigns intended to reduce underage drinking.

iii. Expand the scope of the *Survey* to include social marketing or counter-advertising efforts in the effort to reduce underage drinking. Currently, the *Survey* includes a question about whether states have programs to measure or reduce youth exposure to alcohol advertising and marketing. This question will remain, but the new questions will capture proactive efforts to counter this advertising and marketing.

No additional time burden should be placed on the respondents, as the added questions are balanced by the deletion of others, with a small net reduction in the total number of questions. All questions continue to ask only for readily available data.

To ensure that the *State Survey* obtains the necessary data while minimizing the burden on the states, SAMHSA has conducted a lengthy and comprehensive planning process. It sought advice from key stakeholders (as mandated by the STOP Act) including hosting multiple stakeholders meetings, conducting two field tests with state officials likely to be responsible for completing the *State Survey,* and investigating and testing various *State Survey* formats, online delivery systems, and data collection methodologies.

Based on these investigations, SAMHSA collects the required data

using an online survey data collection platform (SurveyMonkey). Links to the four sections of the survey are distributed to states via email. The *State Survey* is sent to each state governor's office and the Office of the Mayor of the District of Columbia. Based on the experience from the last seven years of administering the *State Survey,* it is anticipated that the state governors will designate staff from state agencies that have access to the requested data (typically state Alcohol Beverage Control [ABC] agencies and state Substance Abuse Program agencies). SAMHSA provides both telephone and electronic technical support to state agency staff and emphasizes that the states are only expected to provide data that is readily available and are not required to provide data that has not already been collected. The burden estimate below takes into account these assumptions.

The estimated annual response burden to collect this information is as follows:

Instrument	Number of respondents	Responses/ respondent	Burden/ response (hrs)	Annual burden (hrs)
State Questionnaire	51	1	17.7	902.7

Written comments and recommendations concerning the proposed information collection should be sent by July 16, 2018 to the SAMHSA Desk Officer at the Office of Information and Regulatory Affairs, Office of Management and Budget (OMB). To ensure timely receipt of comments, and to avoid potential delays in OMB's receipt and processing of mail sent through the U.S. Postal Service, commenters are encouraged to submit their comments to OMB via email to: *OIRA_Submission@omb.eop.gov*. Although commenters are encouraged to send their comments via email, commenters may also fax their comments to: 202–395–7285. Commenters may also mail them to: Office of Management and Budget, Office of Information and Regulatory Affairs, New Executive Office Building, Room 10102, Washington, DC 20503.

Summer King,

Statistician.

[FR Doc. 2018–12865 Filed 6–14–18; 8:45 am]

BILLING CODE 4162–20–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration

Agency Information Collection Activities: Submission for OMB Review; Comment Request

Periodically, the Substance Abuse and Mental Health Services Administration (SAMHSA) will publish a summary of information collection requests under OMB review, in compliance with the Paperwork Reduction Act (44 U.S.C. Chapter 35). To request a copy of these documents, call the SAMHSA Reports Clearance Officer on (240) 276–1243.

Project: ''Talk. They Hear You.'' Campaign Evaluation: National Survey—NEW

SAMHSA's Center for Substance Abuse Prevention (CSAP) is requesting approval from the Office of Management and Budget (OMB) for a new data collection, ''*Talk. They Hear You.*'' *Campaign Evaluation: National Survey*. This collection includes two instruments:

1. Screener
2. Survey Tool

The national survey is part of a larger effort to evaluate the impact of the ''*Talk. They Hear You.*'' *campaign.* These evaluations will help determine the extent to which the campaign has been successful in educating parents and caregivers nationwide about effective methods for reducing underage drinking (UAD). The campaign is designed to educate and empower parents and caregivers to talk with children about alcohol. To prevent initiation of underage drinking, the campaign targets parents and caregivers of children aged 9–15, with the specific aims of:

1. Increasing parent or caregiver awareness of and receptivity to campaign messages (knowledge);
2. Increasing parent or caregiver awareness of underage drinking prevalence (knowledge);
3. Increasing parent or caregiver disapproval of underage drinking (attitudes);
4. Increasing parent or caregiver knowledge, skills, and confidence in how to talk to their children about, and prevent, UAD (attitudes); and
5. Increasing parent or caregiver actions to prevent underage drinking by talking to their children about UAD (behaviors).

The national survey will target parents in the base year in 2018, and then annually in the 4 option years following that, making this a repeat cross-sectional research study. The survey will be based on the survey originally approved for use in the 2016 impact evaluation, which was designed to quantify parent and caregiver awareness of the campaign and retention of campaign messages, and to determine whether parents and caregivers have used the campaign materials in talking to their children. SAMHSA will seek to conduct this research nationwide through online surveys. The survey will be accessible via an access link that will be disseminated to respondents via email. Respondents will be recruited to participate in this online survey from a Qualtrics© panel (which hosts more than 6 million active panelists), as was done for the survey pilot conducted in 2016. Researchers will conduct a quota-based sampling approach to maximize the representativeness of the sample and will be oversampling the Hispanic population. This will allow us to achieve a representative sample of parents of middle-school-aged children in the United States across notable socioeconomic and demographic variables of interest to the study. This approach will also allow us to oversample minority populations, such as Hispanics, as necessary in order to achieve the diversity needed to yield a comprehensive set of opinions, experiences, and feedback of the ''Talk. They Hear You.'' campaign materials and products.

TABLE 1—ESTIMATED BURDEN FOR RESPONDENTS

Category of respondent	Number of respondents	Responses per respondent	Total number of responses	Hours per response (hours)	Total hour burden
Individuals (Screened)	5,555	1	5,555	.05	277.75
Individuals (Complete survey)	5,000	1	5,000	.17	850
Totals	5,555		10,555		1,127.75

Written comments and recommendations concerning the proposed information collection should be sent by July 16, 2018 to the SAMHSA Desk Officer at the Office of Information and Regulatory Affairs, Office of Management and Budget (OMB). To ensure timely receipt of comments, and to avoid potential delays in OMB's receipt and processing of mail sent through the U.S. Postal Service, commenters are encouraged to submit their comments to OMB via email to: *OIRA_Submission@omb.eop.gov*. Although commenters are encouraged to send their comments via email, commenters may also fax their comments to: 202–395–7285. Commenters may also mail them to: Office of Management and Budget, Office of Information and Regulatory Affairs, New Executive Office Building, Room 10102, Washington, DC 20503.

Summer King,

Statistician.

[FR Doc. 2018–12864 Filed 6–14–18; 8:45 am]

BILLING CODE 4162–20–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration

Center for Substance Abuse Treatment; Notice of Meeting

Pursuant to Public Law 92–463, notice is hereby given that the Substance Abuse and Mental Health Services Administration's (SAMHSA) Center for Substance Abuse Treatment (CSAT) National Advisory Council (NAC) will meet on August 1, 2018, 9:00 a.m.–5:00 p.m. (EDT).

The meeting is open and will include consideration of minutes from the SAMHSA CSAT NAC meeting of February 14, 2018, the Director's Report, a budget update, discussion on substance use disorder spending estimates, discussions with SAMHSA leadership, and discussions on the opioid epidemic.

The meeting will be held at SAMHSA, 5600 Fishers Lane, 5E49, Rockville, MD 20857. Attendance by the public will be limited to space available and will be limited to the open sessions of the meeting. Interested persons may present data, information, or views, orally or in writing, on issues pending before the Council. Written submissions should be forwarded to the contact person on or before July 13, 2018. Oral presentations from the public will be scheduled at the conclusion of the meeting. Individuals interested in making oral presentations are encouraged to notify the contact person on or before July 13, 2018. Five minutes will be allotted for each presentation.

The open meeting session may be accessed via telephone. To attend on site, obtain the call-in number and access code, submit written or brief oral comments, or request special accommodations for persons with disabilities. Please register on-line at *http://nac.samhsa.gov/Registration/meetingsRegistration.aspx,* or communicate with the CSAT National Advisory Council Designated Federal Officer; Tracy Goss (see contact information below).

Meeting information and a roster of Council members may be obtained by accessing the SAMHSA Committee website at *http://www.samhsa.gov/about-us/advisory-councils/csat-national-advisory-council* or by contacting the CSAT National Advisory Council Designated Federal Officer; Tracy Goss (see contact information below).

Council Name: SAMHSA's Center for Substance Abuse Treatment National Advisory Council.

Date/Time/Type: August 1, 2018, 9:00 a.m.–5:00 p.m. EDT, Open.

Place: SAMHSA, 5600 Fishers Lane, Rockville, Maryland 20857.

Contact: Tracy Goss, Designated Federal Officer, CSAT National Advisory Council, 5600 Fishers Lane, Rockville, Maryland 20857 (mail), Telephone: (240) 276–0759, Fax: (240) 276–2252, Email: *tracy.goss@samhsa.hhs.gov.*

Carlos Castillo,

Committee Management Officer, SAMHSA.

[FR Doc. 2018–12897 Filed 6–14–18; 8:45 am]

BILLING CODE 4162–20–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Docket ID: FEMA–2018–0003; OMB No. 1660–0138]

Agency Information Collection Activities: Submission for OMB Review; Comment Request; Direct Housing Program Forms

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice and request for comments.

SUMMARY: The Federal Emergency Management Agency (FEMA) will submit the information collection abstracted below to the Office of Management and Budget for review and clearance in accordance with the requirements of the Paperwork Reduction Act of 1995. The submission will describe the nature of the information collection, the categories of respondents, the estimated burden (*i.e.,* the time, effort and resources used by respondents to respond) and cost, and the actual data collection instruments FEMA will use.

DATES: Comments must be submitted on or before July 16, 2018.

ADDRESSES: Submit written comments on the proposed information collection to the Office of Information and Regulatory Affairs, Office of Management and Budget. Comments should be addressed to the Desk Officer for the Department of Homeland Security, Federal Emergency Management Agency, and sent via electronic mail to *dhsdeskofficer@omb.eop.gov.*

FOR FURTHER INFORMATION CONTACT: Requests for additional information or

copies of the information collection should be made to Director, Information Management Division, 500 C Street SW, Washington, DC 20472, email address *FEMA-Information-Collections-Management@fema.dhs.gov* or Elizabeth McDowell, Supervisory Program Specialist, FEMA, Recovery Directorate, at (540) 686–3630.

SUPPLEMENTARY INFORMATION: This proposed information collection previously published in the **Federal Register** on March 27, 2018 at 83 FR 13140 with a 60-day public comment period. We received one comment that was unrelated to the information collection. The purpose of this notice is to notify the public that FEMA will submit the information collection abstracted below to the Office of Management and Budget for review and clearance.

Collection of Information

Title: Direct Housing Program Forms.

Type of Information Collection: Revision of a currently approved information collection.

OMB Number: 1660–0138.

Form Titles and Numbers: FEMA Form 009–0–129, Ready for Occupancy Status; FEMA Form 009–0–131, Sales Calculation Worksheet; FEMA Form 009–0–134, Disaster Assistance Recertification Worksheet; FEMA Form 009–0–135, Temporary Housing Agreement; FEMA Form 009–0–137, Unit Pad Requirements—Information Checklist.

Abstract: The Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5174) authorizes the President to provide temporary housing units to include manufactured housing units, recreational vehicles and other readily fabricated dwellings to eligible applicants who require temporary housing as a result of a major disaster. The information collected is necessary to determine the feasibility of a potential site for placement of a Transportable Temporary Housing Unit (TTHU), to ensure the TTHU is ready for applicant occupancy, and to confirm applicant understanding of the requirements of occupancy of the TTHUs.

Affected Public: Individuals or households, Business or other for-profits.

Estimated Number of Respondents: 25,000.

Estimated Number of Responses: 25,000.

Estimated Total Annual Burden Hours: 7,917.

Estimated Total Annual Respondent Cost: $320,453.28.

Estimated Respondents' Operation and Maintenance Costs: $0.

Estimated Respondents' Capital and Start-Up Costs: $0.

Estimated Total Annual Cost to the Federal Government: $2,997,510.

Comments

Comments may be submitted as indicated in the **ADDRESSES** caption above. Comments are solicited to (a) evaluate whether the proposed data collection is necessary for the proper performance of the agency, including whether the information shall have practical utility; (b) 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; (c) enhance the quality, utility, and clarity of the information to be collected; and (d) minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

Dated: June 11, 2018.

Rachel Frier,

Records Management Branch Chief, Office of the Chief Administrative Officer, Mission Support, Federal Emergency Management Agency, Department of Homeland Security.

[FR Doc. 2018–12888 Filed 6–14–18; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Docket ID: FEMA–2018–0022; OMB No. 1660–0059]

Agency Information Collection Activities: Proposed Collection; Comment Request; National Flood Insurance Program Call Center and Agent Referral Enrollment Form

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice and request for comments.

SUMMARY: The Federal Emergency Management Agency, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public to take this opportunity to comment on an extension, without change, of a currently approved information collection. In accordance with the Paperwork Reduction Act of 1995, this notice seeks comments concerning National Flood Insurance Program Call Center and Agent Referral Enrollment Form.

DATES: Comments must be submitted on or before August 14, 2018.

ADDRESSES: To avoid duplicate submissions to the docket, please use only one of the following means to submit comments:

(1) *Online.* Submit comments at *www.regulations.gov* under Docket ID FEMA–2018–0022. Follow the instructions for submitting comments.

(2) *Mail.* Submit written comments to Docket Manager, Office of Chief Counsel, DHS/FEMA, 500 C Street SW, 8NE, Washington, DC 20472–3100.

All submissions received must include the agency name and Docket ID. Regardless of the method used for submitting comments or material, all submissions will be posted, without change, to the Federal eRulemaking Portal at *http://www.regulations.gov,* and will include any personal information you provide. Therefore, submitting this information makes it public. You may wish to read the Privacy Act notice that is available via the link in the footer of *www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Susan Bernstein, FloodSmart Program Manager, FEMA, Federal Insurance and Mitigation Administration at (202) 701–3595. You may contact the Information Management Division for copies of the proposed collection of information at email address: *FEMA-Information-Collections-Management@fema.dhs.gov.*

SUPPLEMENTARY INFORMATION: Under Flood Disaster Protection Act of 1973, Section 2(a)(6), 42 U.S.C. 4002(a)(6), Congress finds it is in the public interest for persons already living in flood prone areas to have an opportunity to purchase flood insurance and access to more adequate limits of coverage to be indemnified for their losses in the event of future flood disasters. To this end, FEMA established and carries out a National Flood Insurance Program (NFIP), which enables interested persons to purchase insurance against loss resulting from physical damage to or loss of real or personal property arising from any flood occurring in the United States. 42 U.S.C. 4011. In carrying out the NFIP, FEMA operates a call center in conjunction with the FloodSmart website (*www.FloodSmart.gov*). Together these methods of marketing and outreach provide the mechanism for current and potential policyholders to learn more about floods and flood insurance, contact an agent, or assess their risk.

The information collected from callers/visitors is used to fulfill requests for published materials, email alerts, policy rates, and agent contact information.

Additionally, FEMA and the NFIP offer *Agents.FloodSmart.gov* as a resource for agents. Upon website registration, agents can enroll in the Agent Referral Program to receive free leads through the consumer site or the call center as outlined above. This information collection seeks approval to continue collecting name, address and telephone number information from: (1) Business and residential property owners and renters who voluntarily call to request flood insurance information and possibly an insurance agent referral and, (2) insurance agents interested in enrolling in the agent referral service.

Collection of Information

Title: National Flood Insurance Program Call Center and Agent Referral Enrollment Form.

Type of Information Collection: Extension, without change, of a currently approved information collection.

OMB Number: 1660–0059.

FEMA Forms: FEMA Form 517–0–1, National Flood Insurance Program Agent Site Registration; FEMA Form 512–0–1, National Flood Insurance Program Agent Referral Questionnaire.

Abstract: Consumer names, addresses, and telephone numbers collected through the Call Center or FloodSmart website will be used exclusively for providing information on flood insurance and/or facilitate the purchase of a flood insurance policy through referrals or direct transfers to insurance agents in the agent referral service. Agent names, addresses, telephone numbers, and business information is retained for dissemination to interested consumers who would like to talk to an agent about purchasing a flood insurance policy as part of the agent referral program.

Affected Public: Individuals or households; businesses or other for-profit.

Estimated Number of Respondents: 59,194.

Estimated Number of Responses: 59,194.

Estimated Total Annual Burden Hours: 2,819 hours.

Estimated Total Annual Respondent Cost: The estimated annual cost to respondents for the hour burden is $103,335.52.

Estimated Respondents' Operation and Maintenance Costs: There are no annual costs to respondents' operations and maintenance costs for technical services.

Estimated Respondents' Capital and Start-Up Costs: There are no annual start-up or capital costs.

Estimated Total Annual Cost to the Federal Government: The cost to the Federal Government is $406,941.

Comments

Comments may be submitted as indicated in the **ADDRESSES** caption above. Comments are solicited to (a) evaluate whether the proposed data collection is necessary for the proper performance of the agency, including whether the information shall have practical utility; (b) 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; (c) enhance the quality, utility, and clarity of the information to be collected; and (d) minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

Dated: June 11, 2018.

Rachel Frier,

Records Management Branch Chief, Office of the Chief Administrative Officer, Mission Support, Federal Emergency Management Agency, Department of Homeland Security.

[FR Doc. 2018–12890 Filed 6–14–18; 8:45 am]

BILLING CODE 9111–52–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS–R1–ES–2018–N017]; [FXES11140100000–189–FF01E00000]

Request for Renewal of the Incidental Take Permit and Short-Term Habitat Conservation Plan for Operation and Maintenance of Existing and Limited Future Facilities Associated With the Kauai Island Utility Cooperative on Kauai, Hawaii

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of availability; request for comments.

SUMMARY: The Kauai Island Utility Cooperative (KIUC, or applicant) has submitted an application to the U.S. Fish and Wildlife Service (Service) for renewal of their incidental take permit (permit) under the Endangered Species Act of 1973, as amended. The permit is associated with KIUC's Short-Term Habitat Conservation Plan (Short-Term HCP) that addresses incidental take of three listed bird species caused by the operation and maintenance of KIUC's existing and anticipated electrical utility facilities on Kauai, Hawaii. The applicant is requesting renewal of the permit for an indefinite period until the Service renders a decision on a Long-Term HCP and permit application currently under development by KIUC. We are making the permit renewal application available for public review and comment.

DATES: All comments from interested parties must be received on or before July 16, 2018.

ADDRESSES: To request further information or submit written comments, please use one of the following methods:

- *U.S. Mail:* Field Supervisor, U.S. Fish and Wildlife Service, Pacific Islands Fish and Wildlife Office, 300 Ala Moana Boulevard, Room 3–122, Honolulu, Hawaii 96850. Include ''KIUC Short-Term HCP'' in the subject line of your request or comment.
- *Email: KIUCShort-Termhcp@fws.gov.* Include ''KIUC Short-Term HCP'' in the subject line of the message.
- *Fax:* 808–792–9580, Attn: Field Supervisor. Include ''KIUC Short-Term HCP'' in the subject line of the message.
- *Internet:* You may obtain copies of this notice on the internet at *https://www.fws.gov/pacificislands/,* or from the Service's Pacific Islands Fish and Wildlife Office in Honolulu, Hawaii (see **FOR FURTHER INFORMATION CONTACT** section).

We request that you send comments by only one of the methods described above. See the Public Availability of Comments section below for more information.

FOR FURTHER INFORMATION CONTACT: Leila Nagatani, U.S. Fish and Wildlife Service (see **ADDRESSES** above), telephone (808) 792–9400. Hearing or speech impaired individuals may call the Federal Relay Service at 800–877–8339 for TTY assistance.

SUPPLEMENTARY INFORMATION: The Kauai Island Utility Cooperative (KIUC, or applicant) has submitted an application to the U.S. Fish and Wildlife Service (Service) for renewal of their incidental take permit (permit) under the Endangered Species Act of 1973, as amended (ESA; 16 U.S.C. 1531 *et seq.*). The permit is associated with KIUC's Short-Term Habitat Conservation Plan (Short-Term HCP) that addresses incidental take of three listed species caused by the operation and maintenance of KIUC's existing and anticipated electrical utility facilities on Kauai, Hawaii. The applicant is

requesting renewal of the permit to authorize incidental take of the federally endangered Hawaiian petrel, the federally endangered band-rumped storm-petrel, and the federally threatened Newell's (Townsends) shearwater (collectively referred to as ''Covered Species'') for an indefinite period until the Service renders a decision on a Long-Term HCP and permit application currently under development by KIUC. We are making the permit renewal application available for public review and comment.

Background

Section 9 of the ESA prohibits ''take'' of fish and wildlife species listed as endangered under section 4 (16 U.S.C. 1538 and 16 U.S.C. 1533). The ESA implementing regulations extend, under certain circumstances, the prohibition of take to threatened species (50 CFR 17.31). Under section 3 of the ESA, the term ''take'' means to ''harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or attempt to engage in any such conduct'' (16 U.S.C. 1532(19)). The term ''harm'' is defined by regulation as ''an act which actually kills or injures wildlife. Such act may include significant habitat modification or degradation where it actually kills or injures wildlife by significantly impairing essential behavioral patterns, including breeding, feeding, or sheltering'' (50 CFR 17.3). The term ''harass'' is defined in the regulations as ''an intentional or negligent act or omission which creates the likelihood of injury to wildlife by annoying it to such an extent as to significantly disrupt normal behavioral patterns which include, but are not limited to, breeding, feeding, or sheltering'' (50 CFR 17.3).

Under section 10(a) of the ESA, the Service may issue permits to authorize incidental take of listed fish and wildlife species. ''Incidental take'' is defined by the ESA as take that is incidental to, and not the purpose of, carrying out an otherwise lawful activity. Section 10(a)(1)(B) of the ESA contains provisions for issuing incidental take permits to non-Federal entities for the take of endangered and threatened species, provided the following criteria are met:

- The taking will be incidental;
- The applicant will, to the maximum extent practicable, minimize and mitigate the impact of such taking;
- The applicant will develop a proposed HCP and ensure that adequate funding for the plan will be provided;
- The taking will not appreciably reduce the likelihood of the survival and recovery of the species in the wild; and
- The applicant will carry out any other measures that the Service may require as being necessary or appropriate for the purposes of the HCP.

Regulations governing permits for endangered and threatened species are at 50 CFR 17.22 and 17.32.

A permittee may submit an application for renewal of their permit if they certify that all information in the original application remains current and correct, unless previously changed or corrected. If such information is no longer current or correct, they must provide corrected information; see 50 CFR 13.22(a). The Service shall issue a renewal of a permit if the issuance criteria set forth in 50 CFR 13.21(b) are met and the applicant for renewal is not disqualified. The Service may deny renewal of a permit to an applicant who fails to meet the issuance criteria set forth in § 13.21 or the parts or sections specifically governing the activity for which renewal is requested (discussed above); see 50 CFR 13.22(d). Under certain conditions, an entity holding a valid, renewable permit may continue the activities authorized by the expired permit until the Service acts on the application for renewal; see 50 CFR 13.22(c).

Covered Species

The federally endangered Hawaiian petrel (*Pterodroma sandwichensis*), the federally endangered Hawaii population (distinct population segment (DPS)) of the band-rumped storm petrel (*Oceanodroma castro*), and the federally threatened Newell's Townsend's shearwater (*Puffinus auricularis newelli*) or Newell's shearwater (as a subspecies of the Townsend's shearwater), are seabirds that breed on Kauai and feed in the open ocean. Each of these species spends a large part of the year at sea. Adults generally return to their colonial nesting grounds in the interior mountains of Kauai beginning in March and April, and depart beginning in September. Juvenile seabirds travel from the nesting colony to the sea in the fall. Both adults and juveniles are known to collide with tall buildings, towers, power lines, and other structures while flying at night between their nesting colonies and at-sea foraging areas. These birds, and particularly juveniles, are also attracted to bright lights. Disoriented birds are commonly observed circling repeatedly around exterior light sources until they fall to the ground or collide with structures.

KIUC Short-Term HCP

KIUC is a not-for-profit, tax-exempt cooperative association owned by its ratepayer/customers and governed by a publicly-elected Board of Directors. It generates and distributes electricity to the entire island of Kauai, Hawaii. KIUC's existing facilities include over 1,400 miles of electrical transmission and distribution lines, two fossil fuel-fired generating stations, two hydroelectric stations, two 12-megawatt solar energy parks, 14 substations, and approximately 3,500 streetlights. KIUC developed a Short-Term HCP that addresses incidental take of the three Covered Species caused by the operation and maintenance of KIUC's existing and anticipated facilities over a period of up to 5 years from 2011 to 2016.

In 2011, the KIUC Short-Term HCP was approved by the Service, and KIUC received a permit for incidental take of the Covered Species. The Short-Term HCP covers activities within all areas on Kauai where KIUC's facilities (*e.g.,* generating stations, power lines, utility poles, lights) are located. These activities include the continuing operation, maintenance, and repair of all existing facilities, and the construction, operation, maintenance, and repair of certain new facilities, during the term of the permit. The Short-Term HCP describes the impacts of take incidental to those activities on the Covered Species, and provides certain measures to minimize and mitigate the impacts of such take on each of the Covered Species.

The Covered Species are subject to injury or mortality as a result of colliding with KIUC-owned power lines and utility infrastructure, and injury or mortality as a result of attraction to nighttime lighting from KIUC-owned and operated streetlights and facilities. The Short-Term HCP permit authorized an annual take amount of 162 Newell's shearwaters, 2 Hawaiian petrels, and 2 band-rumped storm petrels over a 5-year period, as a result of attraction to, or collision with, KIUC facilities. In total, the permit authorized a combined take amount of 830 sub-adults or adults of the Covered Species.

Current estimates of the Newell's shearwater population on Kauai, where 90 percent of the total population nests, range from 16,400 to 33,400, based on at-sea population estimates from 1998 through 2011 (Joyce 2013). Analyses of radar data (a proxy for the breeding population) suggest that the Newell's shearwater population on Kauai declined 94 percent between 1993 and 2013 (an average annual rate of 13 percent) (Raine et al. 2017a).

The Hawaiian petrel population nests on several of the southeastern Hawaiian Islands, including Hawaii, Kauai, Lanai, and Maui, and the total population is

estimated at 19,000 individuals (Spear et al. 1995). While the majority of the breeding population nests on Maui within Haleakalā National Park (over 2,500 nests; HAVO 2015), all extant populations of Hawaiian petrels across the Hawaiian Islands are biologically valuable toward ensuring the survival and recovery of the species. The Kauai population of Hawaiian petrels decreased by 78 percent (an average of 6 percent per year) between 1993 and 2013, according to trends in radar data over the 20 year period (Raine et al. 2017a).

The band-rumped storm-petrel occurs in Japan, Hawaii, Galapagos Islands, and subtropical areas of the Atlantic. The Hawaii DPS of the band-rumped storm-petrel is found on the islands of Hawaii, Maui, Kauai, and Lehua. The band-rumped storm-petrel is known to nest in remote areas on vegetated to sparsely vegetated cliff faces or steeply sloping areas on Kauai and Lehua Islet (VanderWerf et al. 2007; Raine et al. 2017b). It has also been known to occur in sparsely vegetated areas, high-elevation lava fields on Hawaii Island (Banko et al. 1991; Banko 2015 in litt.), and possibly Haleakalā Crater on Maui, where several birds were heard calling (Wood et al. 2002). An estimate of the number of band-rumped storm-petrels within the Hawaiian Islands is not available at this time.

Seabird colony monitoring data reflect significant threats from feral pig, cat, barn owl, and rat predation, as well as habitat degradation from invasive plants. Combined with the take caused by power line collisions and light attraction, the above threats have resulted in the dramatic decline of several breeding colonies on Kauai, including Kalaheo and Kaluahonu, to the point of near extirpation (Raine et al. 2017a).

The 2011 Short-Term HCP established a comprehensive monitoring and research program designed to further evaluate the impact of the power line system on seabird populations and to provide key biological data to more adequately inform a longer term HCP and take authorization. To this end, KIUC provides funding to the Kauai Endangered Seabird Recovery Project (KESRP), a project of the University of Hawaii's Pacific Cooperative Studies Unit, to monitor seabird colonies and develop approaches to assess seabird-power line collisions. Due to the remote location of many power lines on Kauai and the nocturnal behavior of seabirds, in 2012, KESRP developed an acoustic song-meter monitoring system to detect seabird collisions. This acoustic system became the foundation for KIUC's Underline Monitoring Program (UMP) and has been accepted and is funded by KIUC.

During the course of implementation of the KIUC Short-Term HCP, KESRP observed a total of 43 seabird power line collisions using night vision equipment. Of the 43 seabird power line collisions observed, four of these collision events definitively resulted in an immediate grounded bird within the observer's field of view. Additionally, about 25 deceased Newell's shearwaters have been opportunistically found from 2011 through 2015, associated with KIUC power lines or lights. The acoustic system, which is able to monitor the power lines for seabird collisions more extensively than human observers can, has detected a minimum in excess of 1,000 seabird collision events annually in 2014, 2015, and 2016 (KIUC Short-Term HCP 2014, 2015, and 2016 UMP Reports). Despite the above strike monitoring data, the applicant has only requested take authorization at the original permit level of 166 listed seabirds per year in its permit renewal application. KIUC's request for extension without an amendment means its actual take would likely continue to exceed the authorized level should the permit be renewed.

Since 2012, KESRP, in collaboration with KIUC, has identified all high and medium risk power line spans that pose a threat to the Covered Species. These high and medium risk lines are continually monitored every year, and those data are used to plan and test for effective minimization measures, including reconfiguring lines or installing bird diverters. While the acoustic system has been successful in detecting seabird power line collisions, only a subset of the power line system can be monitored and therefore collisions outside of the monitored areas must be estimated. Moreover, while a minimum of over 1,000 seabird collision events have been detected in 2016, the fate of the birds that collided with these lines is unknown. Based on KESRP field observations, it is certain that some portion of these collisions results in immediate grounding or mortality, and that some additional proportion results in harm or injury, or potential mortality sometime after the collision event. Previous scientific studies based on waterfowl and their interactions with power lines have estimated that this subsequent mortality after the collision event could range from 20 percent to 74 percent of total detected collisions (Bevanger 1995; Bevanger 1999; Beaulaurier 1981; and Shaw et al. 2010).

The Short-Term HCP has been successful in guiding measures that KIUC has implemented to partially mitigate the impacts of the taking of the Covered Species caused by its existing facilities, increasing knowledge related to the impact of KIUC's power line system on seabird populations, providing key biological data concerning the Covered Species, and improving our understanding of the effectiveness of conservation measures to more adequately inform a longer term habitat conservation plan and take authorization.

Since 2011, under the Short-Term HCP, KIUC spent approximately $7.7 million to implement seabird colony management (*i.e.,* predator control and seabird monitoring) and the retrieval and rehabilitation of seabirds on Kauai. KIUC has undergrounded or reconfigured 25 percent of their identified high collision-risk power lines since 2011 and installed bird deterrent devices to minimize impacts from high collision-risk power lines. Although KIUC's current mitigation and minimization programs are meaningful, these efforts are likely not commensurate with the actual level of take occurring.

The Short-Term HCP permit expiration date was in May 2016. On April 12, 2016, one month before permit expiration, we received an application for renewal of that permit pending preparation of a Long-Term HCP.

Request for Information

We specifically request information from the public on whether the application meets the statutory and regulatory requirements and criteria for renewal of a permit. We are also soliciting information regarding the adequacy of a potentially renewed Short-Term HCP and permit to minimize, mitigate, and monitor the impacts of the taking of the Covered Species caused by KIUC's covered activities, and to provide for adaptive management for an indefinite period until the Service renders a decision on a Long-Term HCP and permit application currently under development by KIUC, as evaluated against our permit issuance criteria found in section 10(a) of the ESA, 16 U.S.C. 1539(a), and 50 CFR 13.21, 17.22, and 17.32.

Public Availability of Comments

You may submit your comments and materials by one of the methods listed above in the **ADDRESSES** section. Before including your address, phone number, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal

identifying information—might 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. Comments and materials we receive will be available for public inspection by appointment, during normal business hours, at the Service's Pacific Islands Fish and Wildlife Office (see **FOR FURTHER INFORMATION CONTACT** section).

Authority

We provide this notice in accordance with the requirements of section 10 of the ESA (16 U.S.C. 1531 *et seq.*).

Theresa E. Rabot,

Deputy Regional Director, Pacific Region, U.S. Fish and Wildlife Service.

[FR Doc. 2018–12889 Filed 6–14–18; 8:45 am]

BILLING CODE 4333–15–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 701–TA–581 (Final)]

Citric Acid and Certain Citrate Salts From Thailand; Termination of Investigation

AGENCY: United States International Trade Commission.

ACTION: Notice.

SUMMARY: On June 5, 2018, the Department of Commerce published notice in the **Federal Register** of a negative final determination of subsidies in connection with the subject investigation concerning citric acid and certain citrate salts from Thailand (83 FR 26004). Accordingly, the countervailing duty investigation concerning citric acid and certain citrate salts from Thailand (Investigation No. 701–TA–581 (Final)) is terminated.

DATES: June 5, 2018.

FOR FURTHER INFORMATION CONTACT: Amelia Shister (202–205–2047), Office of Investigations, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436. Hearing-impaired individuals are advised that information on this matter can be obtained 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 (*https://www.usitc.gov*).

Authority: This investigation is being terminated under authority of title VII of the Tariff Act of 1930 and pursuant to section 207.40(a) of the Commission's Rules of Practice and Procedure (19 CFR 207.40(a)). This notice is published pursuant to section 201.10 of the Commission's rules (19 CFR 201.10).

By order of the Commission.

Issued: June 12, 2018.

Lisa Barton,

Secretary to the Commission.

[FR Doc. 2018–12905 Filed 6–14–18; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[USITC SE–18–028]

Government in the Sunshine Act Meeting Notice

AGENCY HOLDING THE MEETING: United States International Trade Commission.

TIME AND DATE: June 22, 2018 at 11:00 a.m.

PLACE: Room 101, 500 E Street SW, Washington, DC 20436, Telephone: (202) 205–2000.

STATUS: Open to the public.

MATTERS TO BE CONSIDERED:

1. Agendas for future meetings: None.
2. Minutes.
3. Ratification List.
4. Vote on Inv. Nos. 701–TA–588 and 731–TA–1392–1393 (Final) (Polytetrafluoroethylene (''PTFE'') Resin from China and India). The Commission is currently scheduled to complete and file its determinations and views of the Commission by July 6, 2018.
5. Outstanding action jackets: None.

In accordance with Commission policy, subject matter listed above, not disposed of at the scheduled meeting, may be carried over to the agenda of the following meeting.

By order of the Commission.

Issued: June 12, 2018.

William Bishop,

Supervisory Hearings and Information Officer.

[FR Doc. 2018–12973 Filed 6–13–18; 11:15 am]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

[Docket No. DEA–392]

Importer of Controlled Substances Registration

ACTION: Notice of registration.

SUMMARY: Registrants listed below have applied for and been granted registration by-the Drug Enforcement Administration (DEA) as importers of various classes of schedule I or II controlled substances.

SUPPLEMENTARY INFORMATION: The companies listed below applied to be registered as importers of various basic classes of controlled substances. Information on previously published notices is listed in the table below. No comments or objections were submitted and no requests for hearing were submitted for these notices.

Company	FR citation	Published
Sharp Clinical Services, Inc	83 FR 13521	March 29, 2018.
Fisher Clinical Services, Inc	83 FR 13519	March 29, 2018.
Wildlife Laboratories Inc	83 FR 14505	April 4, 2018.
Catalent Pharma Solutions, LLC	83 FR 14504	April 4, 2018.
Lipomed	83 FR 15627	April 11, 2018.
Almac Clinical Services Incorp	(ACSI) 83 FR 15634	April 11, 2018.
Clinical Supplies Management Holdings, Inc	83 FR 16901	April 17, 2018.

The DEA has considered the factors in 21 U.S.C. 823, 952(a) and 958(a) and determined that the registration of the listed registrants to import the applicable basic classes of schedule I or II controlled substances is consistent with the public interest and with United States obligations under international treaties, conventions, or protocols in effect on May 1, 1971. The DEA investigated each company's maintenance of effective controls against diversion by inspecting and testing each company's physical security systems, verifying each company's compliance with state and local laws, and reviewing each company's background and history.

Therefore, pursuant to 21 U.S.C. 952(a) and 958(a), and in accordance with 21 CFR 1301.34, the DEA has granted a registration as an importer for schedule I or II controlled substances to the above listed companies.

Dated: June 6, 2018.

John J. Martin,

Assistant Administrator.

[FR Doc. 2018–12884 Filed 6–14–18; 8:45 am]

BILLING CODE 4410–09–P

DEPARTMENT OF JUSTICE

Notice of Lodging of Proposed Consent Decree Under the Clean Air Act

On June 6, 2018, the Department of Justice filed a Complaint and concurrently lodged a proposed Consent Decree to resolve claims by the United States and the State of West Virginia against Defendant Felman Production, LLC for violations of the Clean Air Act, specifically the National Emission Standards for Hazardous Air Pollutants for Ferroalloys Production as codified at 40 CFR part 63, subpart XXX, effective May 20, 1999, as amended on March 22, 2001, as well as West Virginia's State Implementation Plan and Defendant's Title V Permit. The Complaint alleges that Defendant failed to comply with opacity standards, performance testing and monitoring requirements, and good air pollution control practices at its silicomanganese facility in Letart, West Virginia. The proposed Consent Decree addresses the alleged violations by requiring Defendant to install pollution-control measures, conduct additional monitoring for pollution, and pay a $200,000 civil penalty, equal shares of which are allocated between the United States and the State of West Virginia.

The publication of this notice opens a period for public comment on the Consent Decree. Comments should be addressed to the Acting Assistant Attorney General, Environment and Natural Resources Division, and should refer to *United States* v. *Felman Production, LLC,* Civil Action No. 3:18–cv–01003 (S.D. W. Va.), DOJ number 90–5–2–1–10991. All comments must be submitted no later than 30 days after the publication date of this notice. Comments may be submitted either by email or by mail:

To submit comments:	*Send them to:*
By email	*pubcomment-ees.enrd@usdoj.gov.*
By mail	Assistant Attorney General, U.S. DOJ—ENRD, P.O. Box 7611, Washington, DC 20044–7611.

During the public comment period, the Consent Decree may be examined and downloaded at this Justice Department website: *https://www.justice.gov/enrd/consent-decrees.* We will provide a paper copy of the Consent Decree upon written request and payment of reproduction costs. Please mail your request and payment to: Consent Decree Library, US DOJ—ENRD, P.O. Box 7611, Washington, DC 20044–7611.

Please enclose a check or money order for $21.00 (25 cents per page reproduction cost) payable to the United States Treasury. For a paper copy without the exhibits and signature pages, the cost is $18.50.

Robert Brook,

Assistant Section Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 2018–12862 Filed 6–14–18; 8:45 am]

BILLING CODE 4410–15–P

OFFICE OF MANAGEMENT AND BUDGET

Cumulative Report of Rescissions Proposals Pursuant to the Congressional Budget and Impoundment Control Act of 1974

AGENCY: Executive Office of the President, Office of Management and Budget.

ACTION: Notice of monthly cumulative report pursuant to the Congressional Budget and Impoundment Control Act of 1974.

SUMMARY: Pursuant to the Congressional Budget and Impoundment Control Act of 1974, OMB is issuing a cumulative report from the Director detailing the status of rescission proposals that were previously transmitted to the Congress on May 8, 2018, and amended by the supplementary message transmitted on June 5, 2018.

DATES: *Release Date: June 8, 2018.*

ADDRESSES: The cumulative report is available on-line on the OMB website at: *https://www.whitehouse.gov/omb/budget-rescissions-deferrals/.*

FOR FURTHER INFORMATION CONTACT: Jessica Andreasen, 6001 New Executive Office Building, Washington, DC 20503, Email address: *jandreasen@omb.eop.gov,* telephone number: (202) 395–3645. Because of delays in the receipt of regular mail related to security screening, respondents are encouraged to use electronic communications.

John Mulvaney,

Director.

[FR Doc. 2018–12909 Filed 6–14–18; 8:45 am]

BILLING CODE 3110–01–P

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

Institute of Museum and Library Services

Submission for OMB Review, Comment Request, Proposed Collection: IMLS Inspire! Grants for Small Museums (IGSM) Notice of Funding Opportunity

AGENCY: Institute of Museum and Library Services, National Foundation on the Arts and the Humanities.

ACTION: Submission for OMB review, comment request.

SUMMARY: The Institute of Museum and Library Services announces the following information collection has been submitted to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act. 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. This notice proposes the clearance of the instructions for the IMLS Inspire! Grants for Small Museums (IGSM) Notice of Funding Opportunity. A copy of the proposed information collection request can be obtained by contacting the individual listed below in the **ADDRESSES** section of this notice.

DATES: Comments must be submitted to the office listed in the **CONTACT** section below on or before July 16, 2018.

ADDRESSES: Comments should be sent to Office of Information and Regulatory Affairs, *Attn.:* OMB Desk Officer for Education, Office of Management and Budget, Room 10235, Washington, DC 20503, (202) 395–7316.

FOR FURTHER INFORMATION CONTACT: Dr. Sandra Webb, Director of Grant Policy and Management, Institute of Museum and Library Services, 955 L'Enfant Plaza North SW, Suite 4000, Washington, DC 20024–2135. Dr. Webb can be reached

by Telephone: 202–653–4718 Fax: 202–653–4608, or by email at *swebb@imls.gov,* or by teletype (TTY/TDD) for persons with hearing difficulty at 202–653–4614.

SUPPLEMENTARY INFORMATION: The Institute of Museum and Library Services is the primary source of federal support for the nation's libraries and museums. We advance, support, and empower America's museums, libraries, and related organizations through grant making, research, and policy development. Our vision is a nation where museums and libraries work together to transform the lives of individuals and communities. To learn more, visit *www.imls.gov.*

OMB is particularly interested in comments that help the agency to:

- 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).

Current Actions: The goal of IMLS Inspire! Grants for Small Museums (IGSM) is to support projects that strengthen the ability of small museums to serve their community. This new initiative will specifically support small museums by funding relevant activities that are clearly linked to an individual institution's organizational priorities and broader community needs. IMLS Inspire! Grants for Small Museums is being offered as a special initiative with funding from the Museums for America Program. This action is to create the forms and instructions for the Notice of Funding Opportunity for the next three years.

Agency: Institute of Museum and Library Services.

Title: 2019–2021 IMLS Inspire! Grants for Small Museums Notice of Funding Opportunity.

OMB Number: 3137–TBD.

Frequency: Once per year.

Affected Public: Museum organization applicants.

Number of Respondents: 125.

Estimated Average Burden per Response: 35 hours.

Estimated Total Annual Burden: 4,375 hours.

Total Annualized capital/startup costs: n/a.

Total Annual costs: $99,356.

Dated: June 12, 2018.

Kim Miller,

Grants Management Specialist, Office of Grants Policy and Management.

[FR Doc. 2018–12866 Filed 6–14–18; 8:45 am]

BILLING CODE 7036–01–P

NATIONAL TRANSPORTATION SAFETY BOARD

Investigative Hearing

Two recent Amtrak (National Railroad Passenger Corporation) accidents have motivated this investigative hearing: First, an Amtrak overspeed derailment in a 30 mph curve that occurred in DuPont, Washington, and, second, an Amtrak head-on collision with a standing freight train in Cayce, South Carolina.

The first accident occurred on December 18, 2017, at 7:33 a.m., Pacific standard time, and involved southbound Amtrak passenger train 501, consisting of a leading and trailing locomotive, a power car, 10 passenger railcars, and a luggage car. Train 501 was traveling at 78 mph when it derailed from a highway overpass near DuPont, Washington. The train was on its first regular passenger service trip on a single main track (Lakewood subdivision) at milepost (MP) 19.86. The lead locomotive, the power car, and two passenger railcars derailed onto Interstate 5. Fourteen highway vehicles came into contact with the derailed equipment. At the time of the accident, 77 passengers, 5 Amtrak employees, and a Talgo Incorporated technician were on the train.[1] Of these individuals, 3 passengers were killed and 62 passengers and crewmembers were injured. Eight individuals in highway vehicles were also injured. The damage is estimated to be more than $40 million. At the time of the accident, the temperature was 48 °F, the wind was from the south at 9 mph, and the visibility was 10 miles in light rain.

The second accident occurred on February 4, 2018, about 2:27 a.m. eastern standard time, and involved southbound Amtrak train 91, operating on a track warrant. Train 91 was diverted from the main track through a hand-thrown switch into a siding and collided head-on with stationary CSX Transportation (CSX) local freight train F777 03.[2] The accident occurred on the CSX Columbia subdivision in Cayce, South Carolina. The engineer and conductor of the Amtrak train died in the collision, and at least 92 passengers and crewmembers on the Amtrak train were transported to medical facilities. The engineer of the stopped CSX train had exited the lead locomotive before the Amtrak train entered the siding, ran to safety, and was not injured. The conductor of the CSX lead locomotive saw the Amtrak train approaching in the siding and ran to the back of locomotive.

The investigative hearing will discuss the following issue areas:

- Amtrak Operations on Host Railroads.
- Addressing Safety in Preparation for the Point Defiance Bypass.
- Managing Safety on Passenger Railroads.
- International Approach to Passenger Train Operations on Shared Use and Safety Management Principles From Other Industries.

Parties to hearing are the Federal Railroad Administration (FRA); Amtrak; CSX; Sound Transit; Brotherhood of Locomotive Engineers and Trainmen; Brotherhood of Railroad Signalmen; International Association of Sheet Metal, Air, Rail and Transportation Workers; Washington State Utilities and Transportation Commission; and the Washington State Department of Transportation.

Order of Proceedings

1. Opening Statement by the Chairman of the Board of Inquiry
2. Introduction of the Board of Inquiry and Technical Panel
3. Introduction of the Parties to the Hearing
4. Introduction of Exhibits by Hearing Officer
5. Overview of the incident and the investigation by Investigator-In-Charge
6. Calling of Witnesses by Hearing Officer
7. Closing Statement by the Chairman of the Board of Inquiry

The investigative hearing will be held in the NTSB Board Room and Conference Center, located at 429 L'Enfant Plaza SW, Washington, DC on

[1] Talgo Incorporated, which was the original manufacturer of the passenger railcars, has the service and maintenance contract.

[2] *Track warrant* is a method of authorizing movements or protecting employees or on-track equipment in signaled or nonsignaled territory on controlled track within specified signals. These movements are under the jurisdiction of the train dispatcher.

Tuesday, July 10, 2018, and Wednesday, July 11, 2018, beginning at 8:30 a.m. Media planning to cover the investigative hearing are asked to contact the NTSB's chief of media relations, Chris O'Neil at 202–314–6133 or *christopher.oneil@ntsb.gov.*

The investigative hearing will be transmitted live via the NTSB's website at *http://www.capitolconnection.net/capcon/ntsb/ntsb.htm.* A link for webcast will be available shortly before the start of the hearing. An archival video of the hearing will be available via the website for 30 days after the hearing.

Individuals requiring reasonable accommodation and/or wheelchair access directions should contact Ms. Rochelle McCallister at (202) 314–6305 or by email at *rochelle.mccallister@ntsb.gov.*

NTSB Investigative Hearing Officer: Mr. Robert ''Joe'' Gordon—*robert.gordon@ntsb.gov*.

Candi R. Bing,

Federal Register Liaison Officer.

[FR Doc. 2018–12846 Filed 6–14–18; 8:45 am]

BILLING CODE 7533–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 70–1151; NRC–2015–0039]

Westinghouse Electric Company, LLC; Columbia Fuel Fabrication Facility

AGENCY: Nuclear Regulatory Commission.

ACTION: Environmental assessment and finding of no significant impact; issuance.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) is considering the renewal of Special Nuclear Materials (SNM) License No. SNM–1107 to allow Westinghouse Electric Company, LLC (WEC) to continue to operate its Columbia Fuel Fabrication Facility (CFFF) for an additional 40 years. The NRC has prepared a final environmental assessment (EA) and finding of no significant impact (FONSI) for this licensing action.

DATES: The final EA referenced in this document was made available on June 8, 2018.

ADDRESSES: Please refer to Docket ID NRC–2015–0039 when contacting the NRC about the availability of information regarding this document. You may obtain publicly-available information related to this document using any of the following methods:

- *Federal Rulemaking Website:* Go to *http://www.regulations.gov* and search for Docket ID NRC–2015–0039. Address questions about NRC dockets to Jennifer Borges; telephone: 301–287–9127; email: *Jennifer.Borges@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 (if it is available in ADAMS) is provided the first time that it is mentioned in this document.
- *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: Jessie Muir Quintero, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; telephone: 301–415–7476, email: *Jessie.Quintero@nrc.gov*.

SUPPLEMENTARY INFORMATION:

I. Introduction

The NRC is considering renewing License SNM–1107 to allow WEC to continue to operate its CFFF for an additional 40 years. The license renewal period of 40 years would begin once the NRC approves the renewal. As required by part 51 of title 10 of the *Code of Federal Regulations* (10 CFR), ''Environmental Protection Regulation for Domestic Licensing and Related Regulatory Functions,'' the NRC prepared an EA (ADAMS Accession No. ML18120A318). Based on the results of the final EA, described as follows, the NRC has determined not to prepare an environmental impact statement (EIS) for the license renewal, and is issuing a FONSI.

II. Environmental Assessment

Description of the Proposed Action

WEC submitted a license renewal application in 2014 (ADAMS Accession No. ML14352A111), which was updated in March 2018 (ADAMS Accession No. ML18087A400) to operate CFFF for an additional 40 years. The 40-year timeframe would begin upon NRC's approval of the license renewal application.

Need for the Proposed Action

The proposed action would allow CFFF to continue to be a source of nuclear fuel for commercial nuclear power plants.

Environmental Impacts of the Proposed Action

The NRC assessed the potential environmental impacts from the renewal of License SNM–1107 for an additional 40 years and determined there would be noticeable but not significant impacts to the quality of the human environment. WEC is not proposing any new construction or land disturbance activities. Although there is existing ground-water contamination on site, it has not migrated offsite or into the deeper aquifers and there is currently no pathway for human exposure. WEC's environmental monitoring program will continue to provide information on existing ground-water contamination and help identify future unintended releases to the environment. If needed, WEC will implement corrective actions to address contamination in the surface water and ground water. NRC expects that WEC will continue to meet all local, State, and Federal requirements, including its National Pollutant Discharge Elimination System permit and its obligations with the South Carolina Department of Health and Environmental Control (SCDHEC) under its voluntary cleanup contract related to ground-water contamination.

Environmental Impacts of the Alternatives to the Proposed Action

As an alternative to the proposed action, the NRC staff considered denial of the proposed action (*i.e.,* the ''no-action'' alternative). The no-action alternative would mean that the NRC would not approve the license renewal. The CFFF would continue to operate under its current license until it expires on September 30, 2027. The NRC staff previously evaluated the environmental impacts of WEC continuing to operate the CFFF until September 2027 when it approved WEC's license renewal in 2007. The NRC staff concluded in the 2007 EA that the continued operation of the CFFF site would not result in a significant impact to the environment (ADAMS Accession No. ML070510647).

The impacts of the no-action alternative would be similar to those of the Proposed Action except the impacts of the no-action alternative would occur only until 2027, when the current license expires, and decommissioning

including any site remediation would occur sooner.

Agencies and Persons Consulted

On March 27, 2017, the NRC staff sent a copy of the draft EA to the SCDHEC for their review and comment (ADAMS Accession No. ML18088A415). The SCDHEC responded on April 27, 2018, with no additional comments on the draft EA (ADAMS Accession No. ML18117A130).

The NRC consulted with the U.S. Fish and Wildlife Service (FWS) on listed protected species at the CFFF. The FWS concurred with the NRC's determination that the proposed activity may affect but is not likely to adversely affect the six federally listed species (ADAMS Accession No. ML15161A543). In August 2017, the NRC submitted a Biological Evaluation to the National Marine Fisheries Service (NMFS) with the determination that the license renewal may affect but is not likely to adversely affect the shortnose sturgeon (ADAMS Accession No. ML17227A378). On April 12, 2018, the NMFS concurred with the NRC's determination (ADAMS Accession No. ML18103A020).

III. Finding of No Significant Impact

Based on its review of the proposed action, and in accordance with the requirements in 10 CFR part 51, the NRC staff has determined that renewing License No. SNM–1107 for an additional 40 years would not significantly affect the environment. The NRC will require, by license condition, that WEC take corrective action if ground-water contamination exceeds State or Federal levels. The NRC staff has determined that pursuant to section 10 CFR 51.31, preparation of an EIS is not required for the proposed action and, pursuant to section 10 CFR 51.32, a FONSI is appropriate.

On the basis of the final EA, the NRC concludes that the proposed action will not have a significant effect on the quality of the human environment. Accordingly, the NRC has determined not to prepare an EIS for the proposed action.

Dated at Rockville, Maryland, this 11th day of June 2018.

For the Nuclear Regulatory Commission.

Craig G. Erlanger,

Director, Division of Fuel Cycle Safety, Safeguards and Environmental Review, Office of Nuclear Material Safety and Safeguards.

[FR Doc. 2018–12841 Filed 6–14–18; 8:45 am]

BILLING CODE 7590–01–P

POSTAL REGULATORY COMMISSION

[Docket Nos. CP2016–138; MC2018–162 and CP2018–233; MC2018–163 and CP2018–234; MC2018–164 and CP2018–235; MC2018–165 and CP2018–236; CP2018–237; MC2018–166 and CP2018–238]

New Postal Products

AGENCY: Postal Regulatory Commission.

ACTION: Notice.

SUMMARY: The Commission is noticing a recent Postal Service filing for the Commission's consideration concerning negotiated service agreements. This notice informs the public of the filing, invites public comment, and takes other administrative steps.

DATES: *Comments are due:* June 18, 2018 and June 19, 2018.

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: The June 18, 2018 comment due date applies to Docket Nos. CP2016–138; MC2018–162 and CP2018–233; MC2018–163 and CP2018–234; MC2018–164 and CP2018–235; MC2018–165 and CP2018–236.

The June 19, 2018 comment due date applies to Docket Nos. CP2018–237; MC2018–166 and CP2018–238.

Table of Contents

I. Introduction

The Commission gives notice that the Postal Service filed request(s) for the Commission to consider matters related to negotiated service agreement(s). The request(s) may propose the addition or removal of a negotiated service agreement from the market dominant or the competitive product list, or the modification of an existing product currently appearing on the market dominant or the competitive product list.

Section II identifies the docket number(s) associated with each Postal Service request, the title of each Postal Service request, the request's acceptance date, and the authority cited by the Postal Service for each request. For each request, the Commission appoints an officer of the Commission to represent the interests of the general public in the proceeding, pursuant to 39 U.S.C. 505 (Public Representative). Section II also establishes comment deadline(s) pertaining to each request.

The public portions of the Postal Service's request(s) can be accessed via the Commission's website (*http://www.prc.gov*). Non-public portions of the Postal Service's request(s), if any, can be accessed through compliance with the requirements of 39 CFR 3007.40.

The Commission invites comments on whether the Postal Service's request(s) in the captioned docket(s) are consistent with the policies of title 39. For request(s) that the Postal Service states concern market dominant product(s), applicable statutory and regulatory requirements include 39 U.S.C. 3622, 39 U.S.C. 3642, 39 CFR part 3010, and 39 CFR part 3020, subpart B. For request(s) that the Postal Service states concern competitive product(s), applicable statutory and regulatory requirements include 39 U.S.C. 3632, 39 U.S.C. 3633, 39 U.S.C. 3642, 39 CFR part 3015, and 39 CFR part 3020, subpart B. Comment deadline(s) for each request appear in section II.

II. Docketed Proceeding(s)

1. *Docket No(s).:* CP2016–138; *Filing Title:* USPS Notice of Amendment to Priority Mail Contract 203, Filed Under Seal; *Filing Acceptance Date:* June 8, 2018; *Filing Authority:* 39 CFR 3015.5; *Public Representative:* Christopher C. Mohr; *Comments Due:* June 18, 2018.

2. *Docket No(s).:* MC2018–162 and CP2018–233; *Filing Title:* USPS Request to Add Priority Mail Contract 439 to Competitive Product List and Notice of Filing Materials Under Seal; *Filing Acceptance Date:* June 8, 2018; *Filing Authority:* 39 U.S.C. 3642 and 39 CFR 3020.30 *et seq.; Public Representative:* Christopher C. Mohr; *Comments Due:* June 18, 2018.

3. *Docket No(s).:* MC2018–163 and CP2018–234; *Filing Title:* USPS Request to Add Priority Mail Contract 440 to Competitive Product List and Notice of Filing Materials Under Seal; *Filing Acceptance Date:* June 8, 2018; *Filing Authority:* 39 U.S.C. 3642 and 39 CFR 3020.30 *et seq.; Public Representative:* Kenneth R. Moeller; *Comments Due:* June 18, 2018.

4. *Docket No(s).:* MC2018–164 and CP2018–235; *Filing Title:* USPS Request to Add Priority Mail Contract 441 to Competitive Product List and Notice of Filing Materials Under Seal; *Filing Acceptance Date:* June 18, 2018; *Filing Authority:* 39 U.S.C. 3642 and 39 CFR 3020.30 *et seq.; Public Representative:*

Kenneth R. Moeller; *Comments Due:* June 18, 2018.

5. *Docket No(s).:* MC2018–165 and CP2018–236; *Filing Title:* USPS Request to Add Priority Mail Express & Priority Mail Contract 66 to Competitive Product List and Notice of Filing Materials Under Seal; *Filing Acceptance Date:* June 8, 2018; *Filing Authority:* 39 U.S.C. 3642 and 39 CFR 3020.30 *et seq.; Public Representative:* Gregory Stanton; *Comments Due:* June 18, 2018.

6. *Docket No(s).:* CP2018–237; *Filing Title:* Notice of United States Postal Service of Filing a Functionally Equivalent Global Expedited Package Services 7 Negotiated Service Agreement and Application for Non-Public Treatment of Materials Filed Under Seal; *Filing Acceptance Date:* June 8, 2018; *Filing Authority:* 39 CFR 3015.5*; Public Representative:* Gregory Stanton; *Comments Due:* June 19, 2018.

7. *Docket No(s).:* MC2018–166 and CP2018–238; *Filing Title:* USPS Request to Add Priority Mail Contract 442 to Competitive Product List and Notice of Filing Materials Under Seal; *Filing Acceptance Date:* June 8, 2018; *Filing Authority:* 39 U.S.C. 3642 and 39 CFR 3020.30 *et seq.; Public Representative:* Lawrence Fenster; *Comments Due:* June 19, 2018.

This notice will be published in the **Federal Register**.

Stacy L. Ruble,

Secretary.

[FR Doc. 2018–12828 Filed 6–14–18; 8:45 am]

BILLING CODE 7710–FW–P

POSTAL REGULATORY COMMISSION

[Docket No. CP2018–232; Order No. 4640]

Inbound Parcel Post (at UPU Rates)

AGENCY: Postal Regulatory Commission.

ACTION: Notice.

SUMMARY: The Commission is noticing a recently filed Postal Service notice of intention to change prices not of general applicability to be effective July 1, 2018. This notice informs the public of the filing, invites public comment, and takes other administrative steps.

DATES: *Comments are due:* June 18, 2018.

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

On June 8, 2018, the Postal Service filed notice announcing its intention to change prices not of general applicability for Inbound Parcel Post (at Universal Postal Union (UPU) Rates) effective July 1, 2018.[1]

II. Contents of Filing

To accompany its Notice, the Postal Service filed: A redacted copy of the UPU International Bureau (IB) Circular that contains the new prices; a copy of the certification required under 39 CFR 3015.5(c)(2); redacted Postal Service data used to justify any bonus payments; and redacted copies of Governors' Decisions 14–04 and 11–6. *Id.* at 2–3; *see id.* Attachments 2–6. The Postal Service also filed redacted financial workpapers. Notice at 4.

Additionally, the Postal Service filed unredacted copies of Governors' Decisions 14–04 and 11–6, an unredacted copy of the new prices, and related financial information under seal. *See* Notice at 4. The Postal Service filed an application for non-public treatment of materials filed under seal. *Id.* Attachment 1.

The Postal Service states that it has provided supporting documentation as required by Order Nos. 2102 and 2310.[2] In addition, the Postal Service states that it provided citations and copies of relevant UPU IB Circulars and updates to inflation-linked adjustments as required by Order No. 3716.[3]

III. Commission Action

The Commission establishes Docket No. CP2018–232 for consideration of matters raised by the Notice.

The Commission invites comments on whether the Postal Service's filing is consistent with 39 U.S.C. 3632, 3633, and 39 CFR part 3015. Comments are due no later than June 18, 2018. The public portions of the filing can be accessed via the Commission's website (*http://www.prc.gov*).

The Commission appoints Katalin K. Clendenin to serve as Public Representative in this docket.

IV. Ordering Paragraphs

It is ordered:

1. The Commission establishes Docket No. CP2018–232 for consideration of the matters raised by the Postal Service's Notice.

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 this proceeding (Public Representative).

3. Comments are due no later than June 18, 2018.

4. The Secretary shall arrange for publication of this order in the **Federal Register**.

By the Commission.

Stacy L. Ruble,

Secretary.

[FR Doc. 2018–12844 Filed 6–14–18; 8:45 am]

BILLING CODE 7710–FW–P

[1] Notice of the United States Postal Service of Filing Changes in Rates Not of General Applicability for Inbound Parcel Post (at UPU Rates), and Application for Non-Public Treatment, June 8, 2018, at 1–2 (Notice).

[2] Notice at 4–5. *See* Docket No. CP2014–52, Order Accepting Price Changes for Inbound Air Parcel Post (at UPU Rates), June 26, 2014, at 6 (Order No. 2102); Docket No. CP2015–24, Order Accepting Changes in Rates for Inbound Parcel Post (at UPU Rates), December 29, 2014, at 4 (Order No. 2310).

[3] Notice at 5–6. *See* Docket Nos. MC2017–58 and CP2017–86, Order Acknowledging Changes in Rates for Inbound Parcel Post (at UPU Rates), December 30, 2016, at 5 (Order No. 3716).

SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 33120; 812–14880]

Aptus Capital Advisors, LLC and ETF Series Solutions

June 12, 2018.

AGENCY: Securities and Exchange Commission (''Commission'').

ACTION: Notice.

Notice of an application for an order under section 6(c) of the Investment Company Act of 1940 (the ''Act'') for an exemption from sections 2(a)(32), 5(a)(1), 22(d), and 22(e) of the Act and rule 22c–1 under the Act, under sections 6(c) and 17(b) of the Act for an exemption from sections 17(a)(1) and 17(a)(2) of the Act, and under section 12(d)(1)(J) of the Act for an exemption from sections 12(d)(1)(A) and 12(d)(1)(B) of the Act. The requested order would permit (a) actively-managed series of certain open-end management investment companies (''Funds'') to issue shares redeemable in large aggregations only (''Creation Units''); (b) secondary market transactions in Fund shares to occur at negotiated market prices rather than at net asset value (''NAV''); (c) certain Funds to pay redemption proceeds,

under certain circumstances, more than seven days after the tender of shares for redemption; (d) certain affiliated persons of a Fund to deposit securities into, and receive securities from, the Fund in connection with the purchase and redemption of Creation Units; (e) certain registered management investment companies and unit investment trusts outside of the same group of investment companies as the Funds (''Funds of Funds'') to acquire shares of the Funds; and (f) certain Funds (''Feeder Funds'') to create and redeem Creation Units in-kind in a master-feeder structure.

Applicants: Aptus Capital Advisors, LLC (the ''Initial Adviser''), an Alabama limited liability company registered as an investment adviser under the Investment Advisers Act of 1940, and ETF Series Solutions (the ''Trust''), a Delaware statutory trust registered under the Act as an open-end management investment company with multiple series.

Filing Dates: The application was filed on February 26, 2018.

Hearing or Notification of Hearing: An order granting the requested relief will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Commission's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the Commission by 5:30 p.m. on July 9, 2018, and should be accompanied by proof of service on applicants, in the form of an affidavit, or for lawyers, a certificate of service. Pursuant to rule 0–5 under the Act, hearing requests should state the nature of the writer's interest, any facts bearing upon the desirability of a hearing on the matter, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the Commission's Secretary.

ADDRESSES: Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090; Applicants: Aptus Capital Advisors, LLC, 407 Johnson Ave., Fairhope, Alabama 36532 and ETF Series Solutions, 615 East Michigan Street, 4th Floor, Milwaukee, Wisconsin 53202.

FOR FURTHER INFORMATION CONTACT: Jill Ehrlich, Senior Counsel, at (202) 551–6819, or Andrea Ottomanelli Magovern, Branch Chief, at (202) 551–6821 (Division of Investment Management, Chief Counsel's Office).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained via the Commission's website by searching for the file number, or for an applicant using the Company name box, at *http://www.sec.gov/search/search.htm* or by calling (202) 551–8090.

Summary of the Application

1. Applicants request an order that would allow Funds to operate as actively-managed exchange traded funds (''ETFs'').[1] Fund shares will be purchased and redeemed at their NAV in Creation Units only. All orders to purchase Creation Units and all redemption requests will be placed by or through an ''Authorized Participant'' which will have signed a participant agreement with the Distributor. Shares will be listed and traded individually on a national securities exchange, where share prices will be based on the current bid/offer market. Certain Funds may operate as Feeder Funds in a master-feeder structure. Any order granting the requested relief would be subject to the terms and conditions stated in the application.

2. Each Fund will consist of a portfolio of securities and other assets and investment positions (''Portfolio Instruments''). Each Fund will disclose on its website the identities and quantities of the Portfolio Instruments that will form the basis for the Fund's calculation of NAV at the end of the day.

3. Shares will be purchased and redeemed in Creation Units only and generally on an in-kind basis. Except where the purchase or redemption will include cash under the limited circumstances specified in the application, purchasers will be required to purchase Creation Units by depositing specified instruments (''Deposit Instruments''), and shareholders redeeming their shares will receive specified instruments (''Redemption Instruments''). The Deposit Instruments and the Redemption Instruments will each correspond pro rata to the positions in the Fund's portfolio (including cash positions) except as specified in the application.

4. Because shares will not be individually redeemable, applicants request an exemption from section 5(a)(1) and section 2(a)(32) of the Act that would permit the Funds to register as open-end management investment companies and issue shares that are redeemable in Creation Units only.

5. Applicants also request an exemption from section 22(d) of the Act and rule 22c–1 under the Act as secondary market trading in shares will take place at negotiated prices, not at a current offering price described in a Fund's prospectus, and not at a price based on NAV. Applicants state that (a) secondary market trading in shares does not involve a Fund as a party and will not result in dilution of an investment in shares, and (b) to the extent different prices exist during a given trading day, or from day to day, such variances occur as a result of third-party market forces, such as supply and demand. Therefore, applicants assert that secondary market transactions in shares will not lead to discrimination or preferential treatment among purchasers. Finally, applicants represent that share market prices will be disciplined by arbitrage opportunities, which should prevent shares from trading at a material discount or premium from NAV.

6. With respect to Funds that hold non-U.S. Portfolio Instruments and that effect creations and redemptions of Creation Units in kind, applicants request relief from the requirement imposed by section 22(e) in order to allow such Funds to pay redemption proceeds within fifteen calendar days following the tender of Creation Units for redemption. Applicants assert that the requested relief would not be inconsistent with the spirit and intent of section 22(e) to prevent unreasonable, undisclosed or unforeseen delays in the actual payment of redemption proceeds.

7. Applicants request an exemption to permit Funds of Funds to acquire Fund shares beyond the limits of section 12(d)(1)(A) of the Act; and the Funds, and any principal underwriter for the Funds, and/or any broker or dealer registered under the Exchange Act, to sell shares to Funds of Funds beyond the limits of section 12(d)(1)(B) of the Act. The application's terms and conditions are designed to, among other things, help prevent any potential (i) undue influence over a Fund through control or voting power, or in connection with certain services, transactions, and underwritings, (ii) excessive layering of fees, and (iii) overly complex fund structures, which are the concerns underlying the limits

[1] Applicants request that the order apply to the new series of the Trust as well as to additional series of the Trust and any other open-end management investment company or series thereof that currently exist or that may be created in the future (each, included in the term ''Fund''), each of which will operate as an actively-managed ETF. Any Fund will (a) be advised by the Initial Adviser or an entity controlling, controlled by, or under common control with the Initial Adviser (each such entity and any successor thereto is included in the term ''Adviser'') and (b) comply with the terms and conditions of the application. For purposes of the requested order, the term ''successor'' is limited to an entity that results from a reorganization into another jurisdiction or a change in the type of business organization.

in sections 12(d)(1)(A) and (B) of the Act.

8. Applicants request an exemption from sections 17(a)(1) and 17(a)(2) of the Act to permit persons that are affiliated persons, or second-tier affiliates, of the Funds, solely by virtue of certain ownership interests, to effectuate purchases and redemptions in-kind. The deposit procedures for in-kind purchases of Creation Units and the redemption procedures for in-kind redemptions of Creation Units will be the same for all purchases and redemptions and Deposit Instruments and Redemption Instruments will be valued in the same manner as those Portfolio Instruments currently held by the Funds. Applicants also seek relief from the prohibitions on affiliated transactions in section 17(a) to permit a Fund to sell its shares to and redeem its shares from a Fund of Funds, and to engage in the accompanying in-kind transactions with the Fund of Funds.[2] The purchase of Creation Units by a Fund of Funds directly from a Fund will be accomplished in accordance with the policies of the Fund of Funds and will be based on the NAVs of the Funds.

9. Applicants also request relief to permit a Feeder Fund to acquire shares of another registered investment company managed by the Adviser having substantially the same investment objectives as the Feeder Fund (''Master Fund'') beyond the limitations in section 12(d)(1)(A) and permit the Master Fund, and any principal underwriter for the Master Fund, to sell shares of the Master Fund to the Feeder Fund beyond the limitations in section 12(d)(1)(B).

10. Section 6(c) of the Act permits the Commission to exempt any persons or transactions from any provision of the Act if such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act. Section 12(d)(1)(J) of the Act provides that the Commission may exempt any person, security, or transaction, or any class or classes of persons, securities, or transactions, from any provision of section 12(d)(1) if the exemption is consistent with the public interest and the protection of investors. Section 17(b) of the Act authorizes the Commission to grant an order permitting a transaction otherwise prohibited by section 17(a) if it finds that (a) the terms of the proposed transaction are fair and reasonable and do not involve overreaching on the part of any person concerned; (b) the proposed transaction is consistent with the policies of each registered investment company involved; and (c) the proposed transaction is consistent with the general purposes of the Act.

For the Commission, by the Division of Investment Management, under delegated authority.

Eduardo A. Aleman,

Assistant Secretary.

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[2] The requested relief would apply to direct sales of shares in Creation Units by a Fund to a Fund of Funds and redemptions of those shares. Applicants, moreover, are not seeking relief from section 17(a) for, and the requested relief will not apply to, transactions where a Fund could be deemed an Affiliated Person, or a Second-Tier Affiliate, of a Fund of Funds because an Adviser or an entity controlling, controlled by or under common control with an Adviser provides investment advisory services to that Fund of Funds.

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–83406; File No. SR–OCC–2018–008]

Self-Regulatory Organizations; The Options Clearing Corporation; Notice of Filing of Proposed Rule Change, as Modified by Amendment No. 1, Related to The Options Clearing Corporation's Stress Testing and Clearing Fund Methodology

June 11, 2018.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Exchange Act'' or ''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on May 30, 2018, The Options Clearing Corporation (''OCC'') 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 OCC. On June 7, 2018, OCC filed Amendment No. 1 to the proposed rule change.[3] The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Clearing Agency's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change by OCC concerns proposed changes to OCC's By-Laws and Rules, the formalization of a substantially new Clearing Fund Methodology Policy (''Policy''), and the adoption of a document describing OCC's new Clearing Fund and stress testing methodology (''Methodology Description''). The proposed changes are primarily designed to enhance OCC's overall resiliency, particularly with respect to the level of OCC's pre-funded financial resources. Specifically, the proposed changes would:

(1) Reorganize, restate, and consolidate the provisions of OCC's By-Laws and Rules relating to the Clearing Fund into a newly revised Chapter X of OCC's Rules;

(2) modify the coverage level of OCC's Clearing Fund sizing requirement to protect OCC against losses stemming from the default of the two Clearing Member Groups that would potentially cause the largest aggregate credit exposure for OCC in extreme but plausible market conditions (*i.e.,* adopt a ''Cover 2 Standard'' for sizing the Clearing Fund);

(3) adopt a new risk tolerance for OCC to cover a 1-in-50 year hypothetical market event at a 99.5% confidence level over a two-year look-back period;

(4) adopt a new Clearing Fund and stress testing methodology, which would be underpinned by a new scenario-based one-factor risk model stress testing approach, as detailed in the newly proposed Policy and Methodology Description;

(5) document governance, monitoring, and review processes related to Clearing Fund and stress testing;

(6) provide for certain anti-procyclical limitations on the reduction in Clearing Fund size from month to month;

(7) increase the minimum Clearing Fund contribution requirement for Clearing Members to $500,000;

(8) modify OCC's allocation weighting methodology for Clearing Fund contributions;

(9) reduce from five to two business days the timeframe within which Clearing Members are required to fund Clearing Fund deficits due to monthly or intra-month resizing or due to Rule amendments;

(10) provide additional clarity in OCC's Rules regarding certain anti-procyclicality measures in OCC's margin model; and

(11) make a number of other non-substantive clarifying, conforming, and organizational changes to OCC's By-Laws, Rules, Collateral Risk Management Policy, Default Management Policy, and filed procedures, including retiring OCC's existing Clearing Fund Intra-Month Resizing Procedure, Financial Resources Monitoring and Call Procedure (''FRMC Procedure''), and Monthly Clearing Fund Sizing Procedure, as these procedures would no longer be relevant to OCC's proposed Clearing Fund and

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] In Amendment No. 1, OCC corrected formatting errors in Exhibits 5A and 5B without changing the substance of the proposed rule change.

stress testing methodology and would be replaced by the proposed Rules, Policy, and Methodology Description described herein.

The proposed amendments to OCC's By-Laws and Rules can be found in Exhibits 5A and 5B, respectively. Material proposed to be added to OCC's By-Laws and Rules as currently in effect is marked by underlining, and material proposed to be deleted is marked in strikethrough text.[4] As proposed, existing Chapter X would be deleted and replaced with new Chapter X in its entirety, as set forth in Exhibit 5B.

The proposed Policy and Methodology Description have been submitted in Exhibits 5C and 5D, respectively, and have been submitted without marking to facilitate review and readability of the documents as they are being submitted in their entirety as new rule text.[5]

The Clearing Fund Intra-Month Resizing Procedure, FRMC Procedure, and Monthly Clearing Fund Sizing Procedure can be found in Exhibits 5E, 5F and 5G, respectively, with the deletion (or retirement) of these procedures indicated by strikethrough text.

The proposed changes to OCC's Collateral Risk Management Policy and Default Management Policy can be found in Exhibits 5H and 5I, respectively. Material proposed to be added to the policies as currently in effect is marked by underlining, and material proposed to be deleted is marked in strikethrough text.

All terms with initial capitalization not defined herein have the same meaning as set forth in OCC's By-Laws and Rules.[6]

II. Clearing Agency's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, OCC 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. OCC has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of these statements.

(A) Clearing Agency's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

(1) Purpose

Overview of OCC's Existing Clearing Fund Methodology

OCC currently sizes its Clearing Fund at an amount sufficient to protect OCC against losses under simulated default scenarios that include (1) an idiosyncratic default scenario that includes the default of the single Clearing Member Group whose default would be likely to result in the largest draw against the Clearing Fund at a 99% confidence level and (2) a minor systemic event default scenario involving the near-simultaneous default of two randomly-selected Clearing Member Groups calculated at a 99.9% confidence level (''Cover 1 Standard'').[7] OCC then uses the daily peak of such draw estimates to determine the monthly size of the Clearing Fund, which is established at the greater of (i) a ''base amount'' equal to the peak five-day rolling average of the Clearing Fund Draws[8] observed over the preceding three calendar months, plus a prudential margin of safety equal to $1.8 billion, or (ii) 110% of OCC's committed credit facilities. Upon each monthly determination of the Clearing Fund's size, each Clearing Member is required to contribute an amount equal to the sum of: (i) The $150,000 minimum membership requirement, and (ii) an amount equal to the weighted average of the Clearing Member's proportionate share of open interest, volume, and total risk charges.[9] Any deficits resulting from a difference between a Clearing Member's required Clearing Fund contribution and the amount that such member currently has on deposit are due within five business days of the resizing.[10]

Supplemental to the monthly Clearing Fund sizing process, OCC's Financial Risk Management department (''FRM'') assesses on a daily basis the sufficiency of the Clearing Fund by monitoring Clearing Fund Draw estimates in order to identify exposures that may require collection of additional margin from a Clearing Member Group or an intra-month resizing of the Clearing Fund in accordance with OCC's FRMC Procedure.[11] In instances where an estimate of a particular Clearing Member Group's Clearing Fund Draw (referred to herein as an ''idiosyncratic'' estimate) exceeds 75% of the amount currently in the Clearing Fund (*i.e.,* the current Clearing Fund requirement less any deficits), OCC issues a margin call against the Clearing Member Group(s) generating such draw(s) for an amount equal to the difference between such estimated draw amount and the base amount of the Clearing Fund.[12] The margin call per-Clearing Member may be limited to an amount equal to the lesser of $500 million or 100% of such Clearing Member's net capital, subject to OCC management discretion. All margin calls issued must be satisfied by each applicable Clearing Member within one hour of having been notified and remain in place until deficits associated with the next monthly Clearing Fund sizing are collected.[13]

In more extreme circumstances, where OCC observes an idiosyncratic Clearing Fund Draw estimate (after factoring in margin calls issued) exceeding 90% of the Clearing Fund, OCC increases the size of the Clearing Fund by a minimum amount equal to the greater of (i) $1 billion, or (ii) 125% of the difference between the projected draw (reduced by margin calls issued) and the Clearing Fund in effect. Each Clearing Member not subject to OCC's minimum $150,000 Clearing Fund requirement (*e.g.,* a Futures-Only Affiliated Clearing Member) receives a proportionate share of the Clearing Fund increase equal to its proportionate share of the variable portion of the Clearing Fund for the current month (*i.e.,* the Clearing Member's proportionate share of the Clearing Fund amount as determined pursuant to current Rule 1001(b)(y)). Any deficits

[4] OCC recently proposed changes to Article VIII of its By-Laws in connection with advance notice and proposed rule change filings related to enhanced and new tools for recovery scenarios. *See* Securities Exchange Act Release No. 82351 (December 19, 2017), 82 FR 61107 (December 26, 2017) (SR–OCC–2017–020) and Securities Exchange Act Release No. 82513 (January 17, 2018). 83 FR 3244 (January 23, 2018) (SR–OCC–2017–809). The proposed changes currently pending Commission review in SR–OCC–2017–020 and SR–OCC–2017–809 are indicated in Exhibit 5B with double underlined and double strikethrough text.

[5] *Id.* Proposed changes currently pending Commission review in SR–OCC–2017–020 and SR–OCC–2017–809 are indicated in Exhibit 5C with double underlined and double strikethrough text.

[6] OCC's By-Laws and Rules can be found on OCC's public website: *http://optionsclearing.com/about/publications/bylaws.jsp.*

[7] *See* Rule 1001(a).

[8] The term ''Clearing Fund Draw'' refers to an estimated stress loss exposure in excess of margin requirements.

[9] *See* Rule 1001(b).

[10] *See* Rule 1003.

[11] *See* Securities Exchange Act Release No. 74980 (May 15, 2015), 80 FR 29364 (May 21, 2015) (SR–OCC–2015–009). *See also* Securities Exchange Act Release No. 74981 (May 15, 2015), 80 FR 29367 (May 21, 2015) (SR–OCC–2014–811).

[12] In the case where an estimated draw is associated with multiple Clearing Members within a single Clearing Member Group, the margin call is allocated among the individual Clearing Members in the Clearing Member Group based on each Clearing Member's proportionate share of the ''total risk'' for such Clearing Member Group, as that term is defined in current Rule 1001(b). *See* Rule 1001(b). Accordingly, the term ''total risk'' in this context means the margin requirement with respect to all accounts of the Clearing Member Group exclusive of the net asset value of the positions in such accounts aggregated across all such accounts.

[13] *See supra* note 10.

associated with the increase to the Clearing Fund must be satisfied within five business days of the resizing.

OCC has identified a number of limitations to its current methodology, which is unable to incorporate historical stress test scenarios and which can result in disproportionate changes to the Clearing Fund size in response to even transitory changes in volatility. As a result, OCC is proposing to replace its current Clearing Fund sizing methodology with a new methodology that would allow OCC to size and assess the sufficiency of its Clearing Fund with a wider range of historical and hypothetical scenarios.

Proposed Changes to OCC's Clearing Fund and Stress Testing Rules and Methodology

OCC is proposing a number of enhancements intended to strengthen its overall resiliency, particularly with respect to OCC's Pre-Funded Financial Resources,[14] including, but not limited to, the following:

(1) Reorganize, restate, and consolidate the provisions of OCC's By-Laws and Rules relating to the Clearing Fund into a newly revised Chapter X of OCC's Rules;

(2) modify the coverage level of OCC's Clearing Fund sizing requirement to ensure that the size of the Clearing Fund is sufficient to protect OCC against losses stemming from the default of the two Clearing Member Groups that would potentially cause the largest aggregate credit exposure for OCC in extreme but plausible market conditions (*i.e.,* adopt a ''Cover 2 Standard'' for sizing the Clearing Fund);

(3) adopt a new risk tolerance for OCC to cover a 1-in-50 year hypothetical market event at a 99.5% confidence level over a two-year look-back period;

(4) adopt a new Clearing Fund and stress testing methodology, which would be underpinned by a new scenario-based one-factor risk model stress testing approach, as detailed in the newly proposed Policy and Methodology Description; [15]

(5) document governance, monitoring, and review processes related to Clearing Fund and stress testing;

(6) provide for certain anti-procyclical [16] limitations on the reduction in Clearing Fund size from month to month;

(7) increase the minimum Clearing Fund contribution requirement for Clearing Members to $500,000;

(8) modify OCC's allocation weighting methodology for Clearing Fund contributions;

(9) reduce from five to two business days the timeframe within which Clearing Members are required to fund Clearing Fund deficits due to monthly or intra-month resizing or due to Rule amendments;

(10) provide additional clarity in OCC's Rules regarding certain anti-procyclicality measures in OCC's margin model; and

(11) make a number of other non-substantive clarifying, conforming, and organizational changes to OCC's By-Laws, Rules, and filed procedures.

1. Reorganization and Consolidation of Clearing Fund By-Laws and Rules

The primary provisions that address OCC's Clearing Fund are currently located in Article VIII of the By-Laws and Chapter X of the Rules. Because the proposed changes to the Clearing Fund would substantially amend the relevant By-Law and Rule provisions, OCC believes that this is an appropriate opportunity to consolidate the primary provisions that address the Clearing Fund into Chapter X of the Rules. As a result, the content of Article VIII of the By-Laws would be consolidated into Chapter X of the Rules, subject to the proposed amendments described herein.[17] In place of this, Article VIII of the By-Laws would contain a general statement that OCC shall maintain a Clearing Fund, as provided in and subject to the terms of Chapter X of the Rules, and the size of the Clearing Fund shall at all times be subject to minimum sizing requirements and generally be calculated on a monthly basis by OCC; however, the size of the Clearing Fund may be adjusted more frequently than monthly under certain conditions specified in proposed Rule 1001. OCC believes that consolidating all of the Clearing Fund-related provisions of its By-Laws and Rules into one place would provide more clarity around, and enhance the readability of, OCC's Clearing Fund requirements.

OCC notes that, while the content of Article VIII is being moved out of the By-Laws and into the Rules, subject to the proposed changes described herein, OCC is not proposing to change the existing governance requirements with respect to amending the provisions currently contained in Article VIII. Article XI, Section 2 of the By-Laws provides that the Board of Directors may amend the Rules by a majority vote, while Article XI, Section 1 of the By-Laws provides that amendments to the By-Laws require an affirmative vote of two-thirds of the directors then in office, but not less than a majority of the number of directors fixed by the By-Laws. To ensure that the latter, heightened governance standard continues to apply to the Clearing Fund provisions that will be moved from Article VIII of the By-Laws to Chapter X of the Rules, OCC is proposing to amend Article XI, Section 2 of the By-Laws to apply the heightened approval requirements to the provisions of Chapter X of the Rules that would be carried over from the By-Laws. Specifically, OCC would amend Article XI of the By-Laws to stipulate that while the Rules may be amended at any time by the Board of Directors, any amendment of the introduction to newly proposed Chapter X of the Rules, Rule 1002, Rule 1006, Rule 1009 and Rule 1010 (the substance of which is primarily derived from Article VIII of the By-Laws) shall require the affirmative vote of two-thirds of the directors then in office (but not less than a majority of the number of directors fixed by the By-Laws). Moreover, Article XI of the By-Laws would be amended to provide that the first sentence of proposed Rule 1006(e) may not be amended by action of the Board of Directors without the approval of the holders of all of the outstanding Common Stock of the OCC entitled to vote thereon. Proposed Rule 1006(e) is derived from existing Article VIII, Section 5(d) of the By-Laws, which is currently subject to this stockholder consent requirement under Article XI, Section 1 of the By-Laws. A detailed discussion of other organizational changes can be found in Section 10 below.

As noted above, and further described below, OCC also proposes to adopt a

[14] The proposed Policy would define OCC's ''Pre-Funded Financial Resources'' to mean margin of the defaulted Clearing Member and the required Clearing Fund less any deficits, exclusive of OCC's assessment powers.

[15] OCC has separately submitted to the Commission its Comprehensive Stress Testing and Clearing Fund Methodology document and Dynamic VIX Calibration Process paper, which are included in this filing as Exhibits 3A and 3B, and for which OCC has requested confidential treatment. These Exhibits are being provided as supplemental information to the filing and would not constitute part of OCC's rules, which have been provided in Exhibit 5.

[16] A quality that is positively correlated with the overall state of the market is deemed to be ''procyclical.'' For example, procyclicality may be evidenced by increasing margin or Clearing Fund requirements in times of stressed market conditions and low margin or Clearing Fund requirements when markets are calm. Hence, anti-procyclical features in a model are measures intended to prevent risk-base models from fluctuating too drastically in response to changing market conditions.

[17] While Article VIII of the By-Laws would effectively be reserved for future use, a statement would be added to indicate that OCC maintains the Clearing Fund as provided in and subject to the Rules provided in Chapter X.

new Policy and Methodology Description to supplement its proposed Rules and provide further details around OCC's Clearing Fund and stress testing methodology and the related governance framework.

2. Adoption of a Cover 2 Standard for OCC's Clearing Fund

Under existing Rule 1001(a) and consistent with applicable Exchange Act requirements,[18] OCC currently maintains a Cover 1 Standard with respect to the size of its Clearing Fund. The current methodology uses a sizing approach whereby OCC estimates draws against the Clearing Fund under a simulated idiosyncratic default scenario (representing simulated losses of a single Clearing Member Group) and a minor systemic default scenario (representing all pairings of two Clearing Member Groups, with each pair of distinct Clearing Member Groups being deemed equally likely).

OCC is proposing to amend its Rules and adopt a new Policy and Methodology Description to implement a Cover 2 Standard with respect to sizing the Clearing Fund. As a result, new Rule 1001(a), which replaces existing Rule 1001(a), would provide, in part, that the size of the Clearing Fund shall be established on a monthly basis at an amount determined by OCC to be sufficient to protect it against losses stemming from the default of the two Clearing Member Groups that would potentially cause the largest aggregate credit exposure for OCC under stress test scenarios that represent extreme but plausible market conditions (subject to certain minimum sizing requirements) (such stress tests being ''Sizing Stress Tests'').[19] The proposed Sizing Stress Tests would be supplemented by additional historical or hypothetical stress test scenarios (''Sufficiency Stress Tests'') and, in the event Sufficiency Stress Tests call for a larger Clearing Fund size, the Clearing Fund shall be re-sized based on such Sufficiency Stress Tests (as described in more detail in Section 4.e below).

The adoption of a Cover 2 Standard for the Clearing Fund would continue to satisfy OCC's existing obligations under the Securities Exchange Act of 1934 (''Exchange Act'' or ''Act''),[20] and also would be consistent with international standards and best practices for central counterparties (''CCPs'').[21] OCC believes that moving to an industry best practice Cover 2 Standard would increase OCC's resiliency and enable it to better withstand the default of multiple Clearing Members. OCC's proposed approach of adopting a Cover 2 Standard is reiterated in the proposed Policy and Methodology Description, and the stress tests referred to in new Rule 1001(a) are described in more detail in Section 4 below.[22]

3. New Risk Tolerance for OCC's Pre-Funded Financial Resources

OCC proposes to adopt a new risk tolerance with respect to credit risk that its Clearing Fund, along with OCC's other Pre-Funded Financial Resources,[23] should be sufficient to cover a wide range of foreseeable stress scenarios that include, but are not limited to, the default of the two Clearing Member Groups that would potentially cause the largest aggregate credit exposure in extreme but plausible market conditions. In developing a risk tolerance with regard to the sizing of the Clearing Fund, OCC believes that a 1-in-50 year hypothetical market event [24] represents the outer range of extreme but plausible scenarios for OCC's cleared products. Accordingly, OCC proposes to adopt a new risk tolerance with respect to sizing its Pre-Funded Financial Resources that would cover a 1-in-50 year hypothetical market event on a Cover 2 Standard at a 99.5% confidence level over a two-year look-back period. The hypothetical scenarios used to establish the proposed risk tolerance would be based on the statistical fit of the historical returns for the ''risk drivers'' of equity products (or ''risk factors'') for a 1-in-50 year decline and rally in the Standard & Poor's S&P 500 Index (''SPX'').[25] OCC would then set the size of its Clearing Fund on a monthly basis at an amount sufficient to cover this risk tolerance, as described in more detail in Section 4.d below.

4. Adoption of New Clearing Fund and Stress Testing Methodology

OCC proposes to adopt a new methodology for sizing and monitoring its Clearing Fund and overall Pre-Funded Financial Resources, which primarily would be detailed in the proposed Policy and the Methodology Description. OCC believes that its proposed methodology would enable it to measure its credit exposure and to size its Pre-Funded Financial Resources at a level sufficient to cover potential losses under extreme but plausible market conditions.

Under the requirements of the proposed Policy, OCC would base its determination of the Clearing Fund size on the results of stress tests conducted daily using standard predetermined parameters and assumptions. These daily stress tests would consider a range of relevant stress scenarios and possible price changes in liquidation periods, including but not limited to: (1) Relevant peak historic price volatilities; (2) shifts in other market factors including, as appropriate, price determinants and yield curves; and (3) the default of one or multiple Clearing Members. OCC also would conduct reverse stress tests for informational purposes aimed at identifying extreme default scenarios and extreme market conditions for which the OCC's financial resources would be insufficient.

As further described in the proposed Methodology Description, the stress scenarios used in the proposed methodology would consist of two types of scenarios: ''Historical Scenarios'' and ''Hypothetical Scenarios.'' Historical Scenarios would replicate historical events in current market conditions, which include the set of currently existing securities, their prices and volatility levels. These scenarios provide OCC with information regarding

[18] *See* 17 CFR 240.17Ad–22(b)(3) and (e)(4)(iii).

[19] The calculated size of the Clearing Fund may also be determined more frequently than monthly under certain conditions, as specified within proposed Rule 1001(c).

[20] 15 U.S.C. 78a *et seq. See supra* note 17.

[21] *See* Committee on Payment and Settlement Systems and Technical Committee of the International Organization of Securities Commissions, Principles for financial market infrastructures (Apr. 16, 2012), available at *http://www.bis.org/publ/cpss101a.pdf*.

[22] Under the proposed Clearing Fund methodology, OCC would no longer maintain the prudential margin of safety, as currently provided for in existing Rule 1001(a). As described further herein, OCC's proposed risk tolerance would be set at a 1-in-50 year market event; however, OCC would size its Clearing Fund to cover a more conservative 1-in-80 year event, creating a buffer beyond its risk tolerance. As a result, OCC believes the prudential margin of safety would no longer be necessary.

[23] Under the proposed Policy, ''Pre-Funded Financial Resources'' would be defined as the margin of the defaulted Clearing Member and the required Clearing Fund less any deficits. OCC would not include assessment powers as a Pre-Funded Financial Resource.

[24] OCC notes that a 1-in-50 year hypothetical market event corresponds to a 99.9921% confidence interval under OCC's chosen distribution of 2-day logarithmic S&P 500 index returns. The construction of Hypothetical stress test scenarios, including the 1-in-50 year market event used for OCC's risk tolerance, is discussed in Section 4 below.

[25] ''Risk factors'' refer broadly to all of the individual underlying securities (such as Google, IBM and Standard & Poor's Depositary Receipts (''SPDR''), S&P 500 Exchange Traded Funds (''SPY''), etc.) listed on a market. The ''risk drivers'' are a selected set of securities or market indices (*e.g.,* the SPX or the Cboe Volatility Index (''VIX'')) that are used to represent the main sources or drivers for the price changes of the risk factors. The use and application of risk factors and risk drivers in OCC's proposed methodology are discussed further in Section 4 below.

pre-defined reference points determined to be relevant benchmarks for assessing OCC's exposure to Clearing Members and the adequacy of its financial resources. Hypothetical Scenarios would represent events in which market conditions change in ways that have not yet been observed. The Hypothetical Scenarios would be derived using statistical methods (*e.g.,* draws from estimated multivariate distributions) or created based on expert judgment (*e.g.,* a 15% decline in market prices and 50% in volatility). These scenarios would give OCC the ability to change the distribution and level of stress in ways necessary to produce an effective forward-looking stress testing methodology. OCC would use these pre-determined stress scenarios in stress tests, conducted on a daily basis, to determine OCC's risk exposure to each Clearing Member Group by simulating the profits and losses of the positions in their respective account portfolios under each such stress scenario.

The proposed Methodology Description would also describe OCC's proposed approach for constructing stress test portfolios. For purposes of the proposed methodology, OCC would construct portfolios based on ''liquidation positions,'' which are designed to more closely reflect how positions would be internalized (or netted) as part of OCC's default management process. The liquidation position set is created through an internalization process where long and short positions in the same contract series are closed out within an account type at the Clearing Member level. This replicates the process OCC would perform in the case of a Clearing Member default when offsetting positions are internalized before liquidating the remainder of the defaulter's portfolio. For simplicity purposes, OCC developed its current set of liquidation positions by internalizing within an account type at the Clearing Member level but does not incorporate potential internalization that can occur across account types. As a result, liquidation positions only reflect a portion of the potential exposure-reducing benefits associated with internalization and may lead to more conservative estimates of exposure.

As described further below, the proposed Policy and Methodology Description would include stress tests designed to: (1) Determine the size of the Clearing Fund (*i.e.,* Sizing Stress Tests run using OCC's inventory of ''Sizing Scenarios''), (2) assess OCC's Clearing Fund size with respect to its risk tolerance and any other scenarios determined by the Risk Committee (*i.e.,* Adequacy Stress Tests run using OCC's inventory of ''Adequacy Scenarios''), (3) measure the exposure of the Clearing Fund to the portfolios of individual Clearing Member Groups and determine whether any such exposure is sufficiently large as to necessitate OCC calling for additional margin resources from that individual Clearing Member Group (or Groups) or from Clearing Members generally through an intra-month resizing of the Clearing Fund (*i.e.,* Sufficiency Stress Tests run using OCC's inventory of ''Sufficiency Scenarios''), and (4) monitor and assess OCC's total financial resources under a variety of market conditions (*i.e.,* Informational Stress Tests run using OCC's inventory of ''Informational Scenarios'').

OCC's proposed stress testing model, the construction of Hypothetical and Historical Scenarios, and the variety of stress tests thereunder are described in more detail below.

a. Proposed Stress Testing Model

(i). Risk Drivers and Stress Scenarios

As detailed in the proposed Methodology Description, the proposed stress testing methodology is a scenario-based risk factor model with the following principal elements. First, a set of risk drivers are selected based on the portfolio exposures of all Clearing Member Groups in the aggregate. Second, each individual underlying security contained in the portfolio of a Clearing Member Group (each a ''risk factor'') is mapped to a risk driver, and the sensitivity or ''beta'' of the security with respect to the corresponding risk driver is estimated (*i.e.,* the sensitivity of the price of the security relative to the price of the risk driver). Third, a set of stress scenarios is generated by assigning a stress shock to each of the risk drivers, with the shocks of an individual underlying security or risk factor determined by the shock of its risk driver and its sensitivity (or beta) to the risk driver. Fourth, for each of the stress scenarios, the risk exposure or shortfall of each portfolio of a Clearing Member is calculated and aggregated at the Clearing Member Group level.

Under the proposed stress testing methodology, each individual underlying security in the Clearing Members' portfolios is represented by a risk factor (such as Google, IBM, Standard & Poor's Depositary Receipts (''SPDR''), S&P 500 Exchange Traded Funds (''SPY''), etc.). The number of risk factors is typically in the thousands. Because the vast amount of OCC's products are equity based, the risk drivers comprise a small set of underlying securities or market indices (*e.g.,* Cboe S&P 500 Index (''SPX''), or the VIX) that are used to represent the main sources or drivers for the price changes of the risk factors. Other relevant risk drivers are included to cover U.S. and Canadian Government Security collateral positions, as well as commodity based exchange-traded funds (''ETFs'') and futures products. The risk drivers are selected based on the characteristics of the risk factors in the Clearing Members' portfolios.

After the risk drivers are selected, each risk factor would be mapped to one risk driver. This mapping allows OCC to simulate movements for a large number of risk factors by the movements of a smaller number of risk drivers. In general, the mapping depends on the type of risk factor. For example, equity price risk factors generally are mapped to SPX and volatility risk factors to VIX. Government bond risk factors generally would be mapped to either U.S. Dollar (''USD'') Treasury yields or Canadian Dollar (''CAD'') government bond yields depending on the currency. The Treasury ETFs generally would be mapped to one of the Treasury bond ETFs. The commodity products generally would be mapped to one of the representative ETFs of the corresponding commodity class. All other risk factors initially would be mapped by default to SPX.

Under the proposed Methodology Description, risk drivers and the corresponding shocks would be reviewed regularly by OCC's Stress Testing Working Group (''STWG''), a cross-departmental team including senior officers from FRM, Quantitative Risk Management (''QRM''), Model Validation Group (''MVG''), and Enterprise Risk Management. The addition of a new risk driver or change in an existing risk driver would most likely be driven by a change in OCC's product exposure or by other changes in the market. Changes to risk drivers would be reviewed and approved by the STWG. QRM would recalibrate scenario shocks at least annually. In addition, on a quarterly basis (or more frequently if QRM or STWG determines that updates are necessary to capture significant market events in a timely fashion), QRM would recalibrate the risk driver shocks and report those results to the STWG who would review and approve any updates to the risk driver shocks.

To simulate a stressed market scenario, OCC would construct two kinds of scenarios, namely Hypothetical Scenarios (including statistically derived scenarios) and Historical Scenarios. Hypothetical Scenarios constructed using statistical methods

would be based on various quantiles of the fitted distribution of the log returns of the main risk driver (*e.g.,* SPX). Historical Scenarios on the other hand would be created using historic price moves for the risk factors on a given date where the scenario is defined. Additional details on the proposed stress testing model by asset class are discussed below.

(i). Equity Risk Drivers and Shocks

Under the proposed methodology, price shocks used for equity instruments in the statistically-derived Hypothetical Scenarios would be based on the quantiles of fitted statistical distributions of the 2-day returns of the risk driver (*e.g.,* a 1-in-80 year event SPX down shock). For example, as noted above, OCC uses the SPX as a risk driver for equity price moves. OCC would construct the majority of its Hypothetical Scenarios by fitting an appropriate statistical distribution to SPX returns. OCC would construct a historical dataset of SPX 2-day log returns dating back to 1957,[26] to characterize its fat-tailed [27] and asymmetric distribution. In order to reduce pro-cyclicality in Clearing Fund sizing and also to represent betas in a stressed market, OCC would shock risk factors using (1) a historical beta and (2) a beta equal to 1. The portfolio level profit and loss would be calculated with both betas separately for each Hypothetical Scenario, and OCC would use the calculation yielding the worst of the two outcomes in the subsequent Clearing Fund sizing.

The proposed Methodology Description would describe in detail OCC's proposed methodology for calculating price shocks for equity instruments, including leveraged products and any underlying baskets.

(ii). Volatility Shock Model

As noted above, under the proposed methodology, OCC would use the VIX as the key risk driver for volatility shocks in its proposed stress testing model. The VIX is a measure of the one-month implied volatility [28] of the SPX, which represents the market's expectation of stock market volatility over the next 30-day period. For risk factors with SPX as their risk driver, implied volatility shocks would be modeled from SPX implied volatility shocks and the price beta of the risk factor.[29] For non-SPX driven risk factors, the implied volatility shock would be based on historical volatility beta regressed directly against the VIX. Accordingly, the proposed Methodology Description would describe in detail OCC's proposed methodology for calibrating VIX shocks, including those risk factors with SPX as the key risk driver, those risk factors with a non-SPX risk driver, and implied volatilities of any underlying baskets.

(iii). Price Shock Models for Other Instruments

OCC's proposed Methodology Description also would describe OCC's proposed approach to modeling price shocks for fixed income instruments and futures products. Specifically, the Methodology Description would discuss OCC's proposed approach for modeling foreign exchange currency shocks and yield curve shocks, which are used to shock U.S. Treasury bonds and Canadian government bonds held as collateral. The Methodology Description would also cover price and volatility shocks for commodity/energy products. The price shock model for commodity/energy products is the same as that for equity class drivers and the volatility shock model used for options on commodities is the same as that for non-SPX driven risk factors.

b. Stress Testing Scenario Construction

OCC proposes to construct Hypothetical and Historical scenarios using two different methodologies: a statistical methodology and a historical/defined shock methodology. Each of these approaches is discussed in further detail below.

(i). Hypothetical Scenarios

Under the proposed methodology, price shocks determined in the statistically-derived Hypothetical Scenarios would be based on the quantiles of fitted statistical distributions of the 2-day log returns of the risk driver. For example, Adequacy Scenarios would be based on the generated statistical down and up shocks for the SPX from a 1-in-50 year market event. On the other hand, Sizing Scenarios would be based on the generated statistical down and up shocks for the SPX from a 1-in-80 year market event. Specifically, OCC would use four Hypothetical Scenarios to guide the sizing of the Clearing Fund: (1) A 1-in-80 year market rally using a historical beta; (2) a 1-in-80 year market rally using a beta equal to 1; (3) a 1-in-80 year market decline using a historical beta; and (4) a 1-in-80 year market decline using a beta equal to 1.

Not all Statistical Scenarios would be generated using fitted distributions, however. For example, the Statistical Scenarios for interest rates are based on the ''Principal Component Analysis'' methods (a commonly used statistical method to analyze the movements of yield curves of Treasury bonds), while the Statistical Scenarios for commodity ETFs would be based on the empirical price changes.

The proposed Methodology Description would describe how OCC would calibrate price and volatility shocks for equities, fixed income products, and commodity/energy products in its Hypothetical Scenarios.

(ii). Historical Scenarios

OCC would construct Historical Scenarios using historically accurate price moves for risk factors on a given date, provided the underlying securities were available on the date for which the scenario is defined. Historical Scenarios, which are based on significant market events, would allow OCC to analyze how current portfolios would perform if a historical event were to occur again. Because not all of the securities or risk factors in current portfolios existed on past scenario dates, OCC has developed methodologies to approximate the past price and volatility movements of such risk

[26] OCC would extend this dataset from March 1957 to the present if OCC determines that price shocks need to be re-calibrated. As a general matter, OCC has established this look-back period primarily on the basis of the quality of available data. The SPX, in its current form, dates back to 1957, and OCC therefore uses all of the index's data since that date. Furthermore, based on OCC's analysis of various observation windows dating back to the Great Depression, OCC has observed that the price shocks vary with the different periods used in the calibration. OCC's decision to use the entire history of the SPX is based on its desire to minimize the effects associated with a pre-defined observation window, and to avoid the subjective determination of higher or lower periods of volatility or the sudden exclusion of dates that fall outside of a fixed look back period. As noted above, QRM would recalibrate the risk driver shocks on a quarterly basis and report those results to the STWG who would review and approve any updates to the risk driver shocks.

[27] A data set with a ''fat tail'' is one in which extreme price returns have a higher probability of occurrence than would be the case in a normal distribution.

[28] Generally speaking, the implied volatility of an option is a measure of the expected future volatility of the value of the option's annualized standard deviation of the price of the underlying security, index, or future at exercise, which is reflected in the current option premium in the market. Using the Black-Scholes options pricing model, the implied volatility is the standard deviation of the underlying asset price necessary to arrive at the market price of an option of a given strike, time to maturity, underlying asset price and given the current risk-free rate. In effect, the implied volatility is responsible for that portion of the premium that cannot be explained by the then-current intrinsic value (*i.e.,* the difference between the price of the underlying and the exercise price of the option) of the option, discounted to reflect its time value.

[29] For defined Historical Scenarios, the implied volatility shock leverages a beta based on the ratio of the risk factor price shock to the SPX price shock.

factors. Under the proposed methodology, a technique known as ''Survival Method Pricing'' would be used to backfill missing historical shocks. In the backfill technique, the observable 2-day returns of all risk factors would be averaged by industry sectors, and these sector averages would then be used to backfill the missing price returns of the securities (for example, Facebook stock would use the technology sector average under a 2008 Historical Scenario).[30]

c. Clearing Fund Sizing and Stress Testing

Under the proposed methodology, OCC would perform daily stress testing using a wide range of scenarios, both Hypothetical and Historical, designed to serve multiple purposes. Specifically, OCC's proposed stress testing inventory would contain scenarios designed to: (1) Determine whether the financial resources collected from all Clearing Members collectively are adequate to cover OCC's risk tolerance; (2) establish the monthly size of the Clearing Fund; (3) measure the exposure of the Clearing Fund to the portfolios of individual Clearing Member Groups, and determine whether any such exposure is sufficiently large as to necessitate OCC calling for additional resources so that OCC continues to maintain sufficient financial resources to guard against potential losses under a wide range of stress scenarios, including extreme but plausible market conditions; and (4) monitor and assess the size of OCC's Pre-Funded Financial Resources against a wide range of stress scenarios that may include extreme but implausible and reverse stress testing scenarios. Each of these categories of stress tests is discussed in further detail below.

(i). Adequacy Stress Tests

Under the proposed Policy and Methodology Description, on a daily basis, OCC would perform a set of Adequacy Stress Tests designed to determine whether the financial resources collected from all Clearing Members collectively are adequate to cover OCC's risk tolerance (and other specified scenarios as may be approved by the Risk Committee) (*i.e.,* Adequacy Scenarios). The performance of these Adequacy Stress Tests would allow OCC to assess the size of its Clearing Fund against its risk tolerance; however, Adequacy Stress Tests would not drive calls for additional financial resources. Adequacy Scenarios would include, at a minimum, scenarios reflecting OCC's proposed risk tolerance, which corresponds to a Clearing Fund size that would cover a 1-in-50 year market event on a Cover 2 Standard. Adequacy Stress Tests should demonstrate that OCC maintains sufficient Pre-Funded Financial resources to cover all Adequacy Scenarios at a 99.5% coverage level over a two-year look back period.

(ii). Sizing Stress Tests

Under the proposed Policy and Methodology Description, FRM would determine the monthly Clearing Fund size based on the results of Sizing Stress Tests conducted daily using standard predetermined parameters and assumptions. Specifically, OCC would use Sizing Stress Tests to project the Clearing Fund size necessary for OCC to maintain sufficient Pre-Funded Financial Resources to cover losses arising from the default of the two Clearing Member Groups that would potentially cause the largest aggregate credit exposure to OCC as a result of a 1-in-80 year hypothetical market event, which OCC believes would provide sufficient coverage of OCC's 1-in-50 year event risk tolerance (and any other Adequacy Scenarios as may be approved by the Risk Committee) and to guard against intra-month scenario volatility and procyclicality.[31]

Under existing Rule 1001(a), OCC's Clearing Fund size determination is based on the peak five-day rolling average of its Clearing Fund sizing calculations observed over the preceding three calendar months plus a prudential margin of safety. As described in the proposed Policy and Methodology Description, OCC would continue to determine the Clearing Fund size for a given month by using a peak five-day rolling average of the Sizing Stress Test results over the prior three months but, as noted above, would no longer require a prudential margin of safety.[32] OCC believes that sizing the Clearing Fund at a more conservative 1-in-80 year market event scenario (over the proposed 1-in-50 year risk tolerance) would help to reduce volatility in its Clearing Fund sizing methodology and ensure that OCC continues to maintain sufficient resources in the event of large peaks and volatile markets, thereby providing a similar anti-procyclical buffer to the current prudential margin of safety.

In addition, under the proposed Policy, the minimum size of the Clearing Fund would continue to be set in accordance with OCC's minimum liquidity resources to equal 110% of OCC's committed liquidity facilities plus OCC's Cash Clearing Fund Requirement. However, if a temporary increase to the Cash Clearing Fund Requirement is made pursuant to OCC's Rules, the Executive Chairman, Chief Administrative Officer, or Chief Operating Officer would be authorized to determine whether such an increase should result in an increase in the minimum size of the Clearing Fund (which is tied to, in part, OCC's Cash Clearing Fund Requirement).

OCC also proposes to introduce some anti-procyclical measures for its monthly sizing process, which are discussed in Section 6 below.

(iii). Sufficiency Stress Tests

On a daily basis, OCC would run a set of Sufficiency Stress Tests to measure the exposure of the Clearing Fund to the portfolios of individual Clearing Member Groups and determine whether any such exposure is sufficiently large as to necessitate OCC calling for additional resources (1) from that individual Clearing Member Group (or Groups) in the form of margin or (2) from Clearing Members generally through an intra-month resizing of the Clearing Fund. OCC initially expects to implement a set of historically-based Sufficiency Scenarios that would include, among others, the worst two-day price moves, up and down, during the 2008 financial crisis, which constitute the two most extreme two-day price moves observed in the entire history of SPX with the exception of the 1987 market crash, to be covered on a Cover 2 basis. OCC also would include as a Sufficiency Scenario a historical October 1987 market crash event to be covered on a Cover 1 basis.

Under the proposed Sufficiency Stress Tests, the largest Clearing Fund Draw from each Sufficiency Scenario shall be compared against the Clearing Fund size on a daily basis to assess whether OCC maintains sufficient financial resources to cover the stress scenario. If a Sufficiency Stress Test indicates that a Clearing Fund Draw would breach certain established thresholds, OCC would initiate (depending on the threshold breached) the process of (1) conducting additional monitoring, (2)

[30] With respect to volatility risk driver shocks, the exact volatility scenarios for a historical event may often be overridden by VIX shocks generated using OCC's dynamic VIX calibration process because: (1) The historical volatility data is not available; and (2) even when the data is available, the sizes of the exact historical moves are too low to generate any realistic losses.

[31] In addition, OCC proposes conforming changes to delete Interpretation and Policy .02 of Rule 1001, which concerns the minimum confidence level used to size the Clearing Fund, as the confidence level used to size the Clearing Fund would now be addressed in the Policy and Methodology Description.

[32] *See supra* note 21.

collecting additional margin from the specific Clearing Member Group (or Groups) causing the breach, or (3) in extreme cases, resizing the Clearing Fund. Such thresholds have been designed to ensure that OCC's Pre-Funded Financial Resources would remain sufficient to cover losses that may be incurred by its largest one or two Clearing Member Groups, depending on the scenario in question. Each proposed threshold is set forth below, and included with each threshold are mitigating actions that OCC would take in the event of a breach of the threshold.

(1). Enhanced Monitoring

Under the proposed Policy, in the event that Sufficiency Stress Tests identify a Clearing Fund Draw for one or two Clearing Member Groups that causes the largest aggregate credit exposure to OCC to exceed 65% of the current Clearing Fund requirement less deficits, but that does not breach a Sufficiency Stress Test Threshold (as defined below), FRM would promptly conduct enhanced monitoring and notify the relevant Clearing Member Group (or Groups) that they are approaching a margin call threshold in accordance with internal OCC procedures.[33]

(2). Sufficiency Stress Test Threshold 1—Intra-Day Margin Calls

OCC proposes to amend Rule 609 to provide that, in addition to its existing authority to require intra-day margin deposits, OCC may require additional margin deposits if a Sufficiency Stress Test identifies a breach that exceeds 75% of the current Clearing Fund requirement less deficits (the ''75% threshold'' or ''Sufficiency Stress Test Threshold 1''). The proposed change is designed to ensure that OCC continues to maintain sufficient Pre-Funded Financial Resources to cover its largest one or two Clearing Member Group exposures under a wide range of stress scenarios, including extreme but plausible scenarios, where one of the proposed Sufficiency Stress Test scenarios identifies a potential breach in OCC's Clearing Fund size. In the event of a breach of the 75% threshold, OCC would initially collateralize this potential stress exposure by collecting margin from the Clearing Member Group(s) driving the breach.

Pursuant to the proposed Policy and Methodology Description, if a Sufficiency Stress Test identifies a Clearing Fund Draw for any one or two Clearing Member Groups that exceeds Sufficiency Stress Test Threshold 1, OCC would be authorized to issue a margin call against the Clearing Member Group(s) and/or Clearing Member(s) causing the breach in accordance with Rule 609. In the case of Cover 1 Sufficiency Scenarios (*e.g.,* the historical Cover 1 1987 scenario), the amount of the margin call for a Clearing Member Group would be equal to the excess of such Clearing Member Group's projected Clearing Fund Draw over the 75% threshold. In the case of Cover 2 Sufficiency Scenarios (*e.g.,* a historical Cover 2 2008 market event scenario) the total amount of the margin call shall be equal to the excess of the Cover 2 Clearing Fund Draw over the 75% threshold.[34] In the event a Clearing Member Group's Clearing Fund Draws exceed the 75% threshold in more than one Sufficiency Scenario, the Clearing Member Group would be subject to the largest margin call resulting from scenarios. Margin calls would be allocated to Clearing Members and related accounts within the Clearing Member Group in accordance with OCC procedures.[35]

All margin calls would be required to be approved by a Vice President (or higher) of FRM and would remain in effect until the collection of additional funds associated with the next monthly resizing of the Clearing Fund, after which the margin call would be (1) released or (2) recalculated based on the current Clearing Fund Draw.[36] If the margin call imposed on an individual Clearing Member exceeds $500 million, OCC's Stress Testing and Liquidity Risk Management group (''STLRM'') would provide written notification to the Executive Chairman and Chief Executive Officer, President and Chief Operating Officer, and Chief Administrative Officer (collectively referred to as the ''Office of the Chief Executive Officer'' or ''OCEO'').[37] If the margin call imposed on an individual Clearing Member would exceed 100% an individual Clearing Member's net capital, the issue would be escalated to the OCEO, and each of the Executive Chairman, Chief Administrative Officer, and Chief Operating Officer would have the authority to determine whether OCC should continue calling for additional margin in excess of this amount. OCC believes that this notification and escalation process would enable OCC to appropriately require those Clearing Members that bring elevated risk exposures to OCC to bear the costs of those risks in the form of margin charges while also allowing OCC to take into consideration a particular Clearing Member's ability to meet the call based on its financial condition, and the amount of collateral it has available to pledge when certain pre-identified thresholds have been exceeded.

(3). Sufficiency Stress Test Threshold 2—Intra-Month Clearing Fund Resizing

Under proposed Rule 1001(c) (and as described in the proposed Policy and Methodology Description), if a Sufficiency Stress Test were to identify a Clearing Fund Draw for any one or two Clearing Member Groups that exceed 90% of the current Clearing

[33] OCC notes that it performs a similar enhanced monitoring process under its current FRMC Procedure when Idiosyncratic Clearing Fund Draws exceed 65% of the Clearing Fund currently in effect.

[34] In the event only one Clearing Member Group's Clearing Fund Draw exceeds 50% of Sufficiency Stress Test Threshold 1, that Clearing Member Group would pay the entire call. In the event both Clearing Member Groups' Clearing Fund Draws exceed 50% of Sufficiency Stress Test Threshold 1, both Clearing Member Groups would pay an amount equal to the excess of their respective Clearing Fund Draw over 50% of the Sufficiency Stress Test threshold.

[35] OCC notes that under the current FRMC Procedure, in the event that FRM observes a scenario where the Idiosyncratic Clearing Fund Draw exceeds 75% of the Clearing Fund, an intra-day margin call would be issued against the Clearing Member or Clearing Member Group that caused such a draw, with the amount of the margin call being the difference between the projected draw and the ''base amount.'' *See supra* note 10 and accompanying text.

[36] OCC notes that, under the current FRMC Procedure, for the days prior to the collection of any Clearing Fund payments due that result from the re-sizing of the Clearing Fund on the first business day of the month, both the base Clearing Fund requirement and the Clearing Fund in effect are further reduced by any outstanding deficits. The proposed changes would clarify that upon the collection of funds to satisfy such deficits, any margin calls would be (1) released or (2) recalculated based on the current Clearing Fund Draw.

[37] OCC notes that, under its current FRMC Procedure, margin calls may be subject to a per-Clearing Member cap equal to the lesser of $500 million or 100% of such Clearing Member's net capital; however, OCC's management retains discretion under the FRMC Procedure to call for additional margin beyond those amounts with certain reporting requirements when these caps are exceeded. Under the proposed Policy, these thresholds would no longer be characterized as ''caps'' and there would no longer be a requirement for reporting to OCC's Management Committee and Risk Committee as the $500 million threshold would no longer function as a cap and the 100% of net capital threshold would now require escalation to the OCEO for approval of further margin calls. OCC believes the proposed changes to the reporting and approval process are appropriate given that (1) OCC management (typically an officer of OCEO) currently has discretion to waive any margin call caps, (2) under the proposal, these thresholds would no longer be characterized as caps and therefore there would be an assumption that OCC would call for margin in excess of these thresholds, (3) since the adoption of OCC's current FRMC Procedure, OCC has gained comfort in its Clearing Members' ability to meet and maintain margin calls in excess of these thresholds and (4) OCEO would retain the ability to notify or escalate an issue to the Risk Committee if they determine such actions are necessary.

Fund size (after subtracting any monies deposited as a result of a margin call in accordance with a breach of Sufficiency Stress Test Threshold 1), OCC would effect an intra-month resizing of the Clearing Fund to ensure that OCC continues to maintain sufficient Pre-Funded Financial Resources to cover its exposures under a wide range of stress scenarios, including extreme but plausible market conditions. The amount of such an increase would be the greater of: (1) $1 billion or (2) 125% of the difference between the projected draw under the Sufficiency Stress Test (less any monies deposited pursuant to a margin call resulting from a breach of Sufficiency Stress Test Threshold 1) and the current Clearing Fund size. Each Clearing Member's proportionate share of the increase would be based on its proportionate share of the Clearing Fund as determined pursuant to proposed Rule 1003(a), with the exception of those Clearing Members subject to the minimum contribution amount. OCC's Executive Chairman, Chief Administrative Officer or Chief Operating Officer would be responsible for reviewing and approving any intra-month increase to the size of the Clearing Fund based on a breach of Sufficiency Stress Test Threshold 2 prior to implementation, and any such intra-month increase due to a breach of Sufficiency Stress Test Threshold 2 would remain in effect for any sizing calculations performed during the three month period subsequent to the intra-month increase to ensure that OCC continues to maintain sufficient financial resources to cover its credit exposures during that time.

In addition to intra-month resizing based on Sufficiency Stress Testing, OCC proposes to include additional authority in proposed Rule 1001(d) to provide the Risk Committee, or each of the Executive Chairman, Chief Administrative Officer, or Chief Operating Officer, upon notice to the Risk Committee, with the authority to increase the size of the Clearing Fund at any time for the protection of OCC, Clearing Members or the general public. Any determination by the Executive Chairman, Chief Administrative Officer, or Chief Operating Officer to implement a temporary increase in Clearing Fund size would (1) be based upon then-existing facts and circumstances, (2) be in furtherance of the integrity of OCC and the stability of the financial system, and (3) take into consideration the legitimate interests of Clearing Members and market participants. Under the proposed Policy, any temporary increase in Clearing Fund size would be reviewed by the Risk Committee at its next regularly scheduled meeting, or as soon as otherwise practical, and, if such temporary increase is still in effect at the time of that meeting, the Risk Committee would determine whether (1) the increase in Clearing Fund size is no longer required or (2) the Clearing Fund sizing methodology should be modified to ensure that OCC continues to maintain sufficient Pre-Funded Financial Resources to cover its established risk tolerance.[38]

(iv). Informational Stress Tests

Under the proposed Policy and Methodology Description, OCC would run a variety of stress tests for informational purposes (*i.e.,* Informational Stress Tests) to monitor and assess the size of OCC's Pre-Funded Financial Resources against other stress scenarios. The Informational Stress Tests could be comprised of a number of Historical and Hypothetical scenarios, which may include extreme but implausible scenarios and reverse stress test scenarios (*i.e.,* ''Informational Scenarios''). Informational Scenarios would not directly drive the size of the Clearing Fund or calls for additional margin; however, they would be an important risk monitoring tool that OCC would use to evaluate the appropriateness of its Adequacy, Sizing, and Sufficiency Scenarios and perform risk escalations and evaluations.

OCC would continually evaluate its inventory of Informational Scenarios and could add additional Informational Scenarios, as needed, to ensure that it understands the limits of its Pre-Funded Financial Resources. Scenarios may later be reclassified as a different scenario type with the approval of OCC's Risk Committee. For instance, a new scenario would typically be introduced as an Informational Scenario, but later may be elevated to a Sizing or Sufficiency Scenario.

5. Clearing Fund and Stress Testing Governance, Monitoring and Review

The proposed Policy would establish governance, monitoring and review requirements for OCC's Clearing Fund and stress testing methodology. On a daily basis, STLRM would monitor the results of all of the Adequacy and Sufficiency Stress Tests, including whether the Adequacy Stress Test demonstrates that OCC maintains Pre-Funded Financial Resources above OCC's Adequacy Scenarios, in accordance with internal OCC procedures. Under the proposed Policy, STLRM or the Executive Vice President of FRM (''EVP–FRM'') would immediately escalate any material issues identified with respect to the adequacy of OCC's financial resources to the STWG (provided that STWG review is practical under the circumstances) and the Management Committee to determine if it would be appropriate to recommend a change to the Hypothetical Scenarios used to size the Clearing Fund in accordance with applicable OCC procedures.

Under the proposed Policy, on a monthly basis, STLRM would prepare reports that provide details and trend analysis of daily stress tests with respect to the Clearing Fund, including the results of daily Adequacy Stress Tests, Sizing Stress Tests and Sufficiency Stress Tests and review the adequacy of OCC's financial resources in accordance with internal procedures. On a monthly basis, STWG would perform a comprehensive analysis of these stress testing results, as well as information related to the scenarios, models, parameters, and assumptions impacting the sizing of the Clearing Fund. Pursuant to this review, STWG would consider, and may recommend at its discretion, modifications to OCC's stress test scenario inventory and models for financial resources (including the creation and/or retirement of stress test scenarios, the reclassification of stress test scenarios, and/or modifications to the stress test scenarios' underlying parameters and assumptions), as well as related Policies and Procedures, to ensure their appropriateness for determining OCC's required level of financial resources in light of current and evolving market conditions, and as pursuant to the related Procedures established for this purpose. The reviews would be conducted more frequently than monthly when the products cleared or markets served display high volatility or become less liquid; the size or concentration of positions held by OCC's participants increases significantly; or as otherwise appropriate. The Policy would require that OCC maintain procedures for determining whether, and in what circumstances, such intra-month reviews shall be conducted, and would indicate the persons responsible for making the determination.

Pursuant to the proposed Policy, STLRM would report the results of stress tests and its monthly analysis to

[38] In the event that the Risk Committee would determine to permanently increase or change the methodology used to size the Clearing Fund, OCC would initiate any regulatory approval process required to effect such a change in Clearing Fund size. However, OCC would not decrease the size of its Clearing Fund while the regulatory approvals for such permanent increase are being obtained to ensure that OCC continues to maintain sufficient financial resources during that time.

OCC's Management Committee and Risk Committee on at least a monthly basis and would maintain procedures for determining whether, and in what circumstances, the results of stress tests must be reported to the Management Committee or the Risk Committee more frequently than monthly, and would indicate the persons responsible for making the determination. In the performance of monthly review of stress testing results and analysis and considering whether escalation is appropriate, due consideration would be given to the intended purpose of the proposed Policy to: (1) Assess the adequacy of, and adjust as necessary, OCC's total amount of financial resources; (2) support compliance with the minimum financial resources requirements under applicable regulations; and (3) evaluate the adequacy of, and recommend adjustments to OCC's margin methodology, margin parameters, models used to generate margin or guaranty fund requirements, and any other relevant aspects of OCC's credit risk management.

Under the proposed Policy, OCC's Model Validation Group would be required to perform a model validation of OCC's Clearing Fund model on an annual basis, and the Risk Committee would be responsible for reviewing the model validation report. The Risk Committee would also be required to review and approve the Policy on an annual basis.

Under the proposed Policy, stress test inventories would be maintained by STLRM, and the STWG would be required to review and approve or recommend changes to stress test inventories recommended by STLRM staff in accordance with STWG procedures. The STWG would meet at least monthly and approve or recommend approval of changes to the inventory in accordance with the stress test procedures. The approval authority for such changes would be as follows:

- Informational Stress Tests—The STWG may approve the creation or retirement of Informational Stress Tests; and
- Sizing, Sufficiency, and Adequacy Stress Tests—The STWG may recommend approval to the Management Committee (however, if timing considerations make such recommendation to the Management Committee impracticable, then STWG would make its recommendation to the OCEO) and the Risk Committee the creation or retirement of Adequacy, Sizing, or Sufficiency Stress Tests.

Pursuant to the proposed Policy, any request for an exception to the Policy must be made in writing to a member of the OCEO, who would then be responsible for reviewing the exception request and providing a decision in writing to the person requesting the exception. All requests for exceptions and their dispositions would be reported to the Board or Risk Committee no later than its next regularly scheduled meeting, in a format approved by the Chair of the Board or Risk Committee. Finally, the Policy would require that violations of the Policy be reported to the Policy owner and OCC's Chief Compliance Officer.

6. Limitations on Reduction in Monthly Clearing Fund Size

OCC also proposes to adopt rules imposing certain anti-procyclical measures for its monthly Clearing Fund sizing process. Under proposed Rule 1001(a), the size of the Clearing Fund would not be permitted to decrease more than 5% from month-to-month to avoid pro-cyclicality. This limitation, which is also reflected in the proposed Policy and Methodology Description, is designed to promote stability and to prevent the Clearing Fund from decreasing rapidly when a previous peak falls out of the look-back period.

In addition, if the results of a daily Sufficiency Stress Test over the final five business days preceding the monthly Clearing Fund sizing exceed 90% of the projected Clearing Fund size for the upcoming month, the Clearing Fund size must be set such that the peak Sufficiency Stress Test draw is no greater than 90% of the Clearing Fund size. The proposed change is designed to reduce the likelihood that the Clearing Fund would be set at a size such that a Clearing Member Group with stress test exposures that are trending upward at the end of the sizing period would exceed the threshold for an intra-month resize immediately following the decline.

7. Clearing Fund Contribution Allocations

a. Proposed Changes to Initial Contributions

Pursuant to existing Article VIII, Section 2 of the By-Laws, the minimum initial Clearing Fund contribution of each newly admitted Clearing Member is set at an amount equal to at least $150,000, which is also equal to OCC's minimum ''fixed'' contribution amount (discussed in detail below). Under proposed Rule 1002(d), which is based on existing Article VIII, Section 2(a), OCC would increase the initial Clearing Fund contribution amount to $500,000. OCC's existing minimum contribution requirements have been in place since June 5, 2000,[39] and as a result, OCC undertook an analysis to determine the appropriateness of this amount given the passage of time. As part of this analysis, OCC considered a number of factors such as the potential impact on Clearing Members that are at the minimum or otherwise below or just over the newly proposed $500,000 requirement, the impact to those members in dollar and percentage terms as well as compared to their net capital, evolving market conditions, evolution in the size of the Clearing Fund, minimum contribution requirements of other CCPs, and heightened regulatory obligations on OCC given its status as a systemically important financial market utility. For example, OCC notes that the minimum initial (and fixed) contribution requirement has remained static over time while the Clearing Fund has grown from approximately $2 billion in 2000 to several multiples of that, both currently and under the proposed changes described herein. Additionally, OCC reviewed the contribution requirements of other CCPs and noted that they were well in excess of OCC's current minimum contribution requirement (and in several cases, would be in excess of the newly proposed minimum amount).[40] OCC also performed an analysis of Clearing Members that had a Clearing Fund contribution requirement larger than the current minimum requirement of $150,000 but less than or equal to the proposed requirement of $500,000.[41] OCC also reviewed the impact of this change and discussed it with potentially impacted Clearing Members firm, the majority of which did not express concerns over the proposed increase. As a result of this analysis, OCC

[39] On June 5, 2000, the Commission approved a proposed rule change by OCC to merge the equity and non-equity elements of its Clearing Fund into a combined Clearing Fund with a minimum contribution requirement of $150,000. *See* Securities Exchange Act Release No. 42897 (June 5, 2000), 65 FR 36750 (June 9, 2000) (SR–OCC–99–9). OCC notes that, as a practical matter, the $150,000 minimum contribution amount dates back prior to June 2000 for the majority of its Clearing Members as most members already contributed to both the equity and non-equity elements of the Clearing Fund and were subject to a $75,000 minimum contribution for each element prior to the June 2000 rule change.

[40] For example, at the time of OCC's analysis, ICE Clear US had a minimum contribution requirement of $2,000,000 and CME had minimum contribution requirements of $500,000 for exchange listed futures and options and $2.5 million for OTC products covered in its Base Guaranty Fund.

[41] Based on this analysis, OCC determined that there are currently eleven Clearing Members either subject to the minimum Clearing Fund contribution requirement of $150,000 or below the proposed $500,000 requirement that would be impacted by the proposal.

determined $500,000 would be the appropriate initial and minimum Clearing Fund contribution amount required to maintain membership at OCC. Consistent with existing authority, OCC's Risk Committee would also be able to fix a different initial contribution amount with regard to any new Clearing Member at the time its application is approved. In either case, the initial contribution amount would remain in effect for not more than three months after the admission of the relevant Clearing Member. After that time, or at an earlier time as may be determined by the Risk Committee, the Clearing Member's contribution amount would instead be determined using the allocated contribution method in proposed Rule 1003. OCC also proposes to clarify in new Rule 1002(d) that initial contribution requirements would at all times remain subject to the minimum ''fixed amount'' of $500,000 under proposed Rule 1003 and to adjustments by OCC under Rule 1004.

b. Proposed Changes to Contribution Allocation Methodology

Current Rule 1001(b) provides, in part, that each Clearing Member's monthly contribution requirement is based on a sum of $150,000 (which is a fixed amount, equal to the current initial contribution amount) plus such Clearing Member's proportionate share of the amount necessary for OCC to maintain the total Clearing Fund size required under Rule 1001(a) (which is a variable amount). OCC proposes to adopt new Rule 1003(a), which would increase the minimum ''fixed'' contribution amount to $500,000, consistent with the proposed increase in the minimum initial contribution described above. Specifically, proposed Rule 1003(a) would provide that each Clearing Member's contribution to the Clearing Fund shall equal the sum of (x) $500,000 (a higher ''fixed amount,'' equal to the proposed initial contribution amount described above) and (y) such Clearing Member's proportionate share of an amount sufficient to cause the amount of the Clearing Fund (after taking into account each Clearing Member's fixed amount) to be equal to the Clearing Fund size determined pursuant to proposed Rule 1001(a) (the ''variable amount''). The proposed change was determined under the same analysis and justification discussed above regarding the proposed change in the minimum initial contribution amount (*i.e.,* OCC analyzed the potential impact on Clearing Members that are at the minimum fixed contribution amount or otherwise below or just over the newly proposed $500,000 requirement, the impact to those members in dollar and percentage terms as well as compared to their net capital, evolving market conditions, evolution in the size of the Clearing Fund, minimum contribution requirements of other CCPs, and heightened regulatory expectations on OCC given its status as a systemically important financial market utility). Collectively, proposed Rules 1002(d) and Rule 1003(a) would effectively provide for a new minimum Clearing Fund contribution amount of $500,000 per Clearing Member.[42]

OCC also proposes to clarify in proposed Rule 1004, in line with its current operational practice, that OCC may adjust an individual Clearing Member's Clearing Fund contributions due to mergers, consolidations, position transfers, business expansions, membership approval, or other similar events in order to ensure that Clearing Fund allocations are appropriately aligned with the change in risks associated with such events (*e.g.,* the increased risk a Clearing Member may present after taking on positions of another Clearing Member through a merger or position transfer).

8. Allocation Weighting Methodology

Under existing Rule 1001(b), Clearing Fund contributions are allocated among Clearing Members based on a weighted average of each Clearing Member's proportionate share of total risk,[43] open interest, and volume in all accounts (including paired X–M accounts) according to the following weighting allocation methodology: 35% total risk, 50% open interest, and 15% volume. OCC proposes to modify its allocation methodology in new Rule 1003 to more closely align Clearing Members' Clearing Fund contribution requirements with the level of risk they bring to OCC. Specifically, OCC proposes that Clearing Fund contribution requirements would be based on an allocation methodology of 70% total risk, 15% volume and 15% open interest.[44] OCC also proposes to modify the volume component of the weighting allocation methodology to provide that OCC would use cleared volume, as opposed to executed volume, to base the allocation on where the position is ultimately cleared.[45]

In addition, OCC proposes to adopt new Interpretation and Policy .02 of Rule 1003, which would be based without material amendment on the clauses in paragraphs (d) and (e) of current Rule 1001 that address how OTC options are included within the fraction used to compute a Clearing Member's proportionate share of open interest and volume, respectively. The numerator and denominator in each case would continue to include OTC option contracts within the number of open cleared contracts of a Clearing Member, with that number of OTC option contracts being adjusted to ensure that it is approximately equal to the number of options contracts, other than OTC option contracts, that would cover the same notional value or units of the same underlying interest. OCC believes that placing this aspect of the computation in an Interpretation and Policy would enhance the readability of Rule 1003(b).

OCC's contribution allocation and associated weighting methodology also would be generally described in the proposed Policy and Methodology Description documents.

9. Reduction in Time To Fund Deficits

OCC proposes to adopt new Rule 1005(a), which would address the time within which a Clearing Member would generally be required to satisfy a deficit in its required Clearing Fund contribution to reduce the timeframe during which OCC potentially would be operating with less than its required amount of Pre-Funded Financial Resources. As a general rule, whenever a report made available by OCC as described in proposed Rule 1007 shows a deficit, the applicable Clearing Member(s) would be required to satisfy the deficit in a form approved by OCC no later than one hour after being notified by OCC of such deficit. Examples of deficits that would need to be satisfied by this deadline include

[42] OCC notes that the current exception for Futures-Only Affiliated Clearing Members in By-Law Article VIII, Section 2 and Rule 1001(f) would be retained under proposed Rules 1002(d) and 1002(f).

[43] As noted above, ''total risk'' in this context means the margin requirement with respect to all accounts of the Clearing Member Group exclusive of the net asset value of the positions in such accounts aggregated across all such accounts.

[44] Under the proposed Policy, this new allocation approach would be phased in over a three month period following implementation of the proposed changes herein by gradually shifting 35% of the weighting to total risk from open interest by 10% in the first month, 10% in the second month, and 15% in the third month. Accordingly, OCC proposes conforming changes to delete Interpretation and Policy .03 of Rule 1001, which concerns the phase-in of the former allocation methodology, and would no longer be required.

[45] For both volume and open interest, OCC would adjust stock loan shares by a factor of 100 to normalize them with the size of a standard option contract. Interpretation and Policy .04 of existing Rule 1001, which concerns the calculation used to determine cleared contract equivalent units for stock loan and borrow positions, would be relocated to Interpretation and Policy .01 of proposed Rule 1003 without change.

those caused by a decrease in the value of a Clearing Member's contribution or by an adjusted contribution pursuant to proposed Rule 1004. The one-hour deadline would be subject to the application of alternative timing requirements specified in Chapter X, such as in the case of deficits arising due to regular monthly sizing or an intra-month resizing (as addressed in proposed Rule 1005(b)), and deficits arising due to amendments of OCC's Rules (as addressed in proposed Rule 1002(e)). Proposed Rule 1004 would also provide OCC with discretion to agree to alternative written terms regarding the satisfaction of a deficit that would otherwise be governed by the requirements described above.

Proposed Rule 1005(b), which is based on existing Rule 1003 with certain modifications, would address deficits arising due to regular monthly sizing of the Clearing Fund under proposed Rule 1001(a), as well as due to intra-month sizing adjustments under proposed Rule 1001(c). The proposed provision would reduce the amount of time within which a Clearing Member must satisfy a deficit shown on a report made available by OCC under Rule 1007 from five business days of the date on which the report is made available to two business days of such date. OCC believes that this change is appropriate because it would expedite adjustment of Clearing Fund contributions to the appropriate size as determined by OCC and allow OCC to respond more quickly in rapidly changing or emergency market conditions.

Proposed Rule 1002(e) would address the circumstance in which a Clearing Member's contribution is increased as a result of an amendment of OCC's Rules. The proposed provision is based on existing By-Law Article VIII, Section 2(b), modified, however, to require that such an increased contribution be satisfied within two business days of the Clearing Member receiving notice of the amendment, rather than within five business days of such notice (as is required under current By-Law Article VII, Section 2(b)). For the reasons noted above, OCC believes that this change is appropriate because it would expedite both the effectiveness of the increased contribution requirement (and, indirectly, the size of the Clearing Fund) and the actual funding of Clearing Member contributions related thereto. Consistent with OCC's current requirement, a Clearing Member would not be obligated to make such an increased contribution, however, if, before the effective date of the relevant amendment, it notifies OCC in writing that it is terminating its status as a Clearing Member and closes out or transfers all of its open long and short positions. In addition, newly proposed Interpretation and Policy .02 of Rule 1002 would clarify that the authority of a Clearing Member to terminate its status as such under Rule 1006(h) regarding assessments by OCC is separate and distinct from the analogous authority under Rule 1002(e) concerning membership terminations in connection with an increase in Clearing Fund contributions due to a change in OCC's Rules.

In addition, and consistent with existing operational practice, new Rule 1005(c) would establish that, upon the failure of a Clearing Member for any reason to timely satisfy a deficit regarding its required Clearing Fund contribution, OCC would be authorized to withdraw an amount equal to such deficit from the Clearing Member's bank account maintained in respect of an OCC firm account. The proposed rule change is designed to ensure that OCC is able to obtain funds owed from its Clearing Members to satisfy a Clearing Fund deficit in a timely fashion so that OCC can continue to meet its overall financial resource requirements as stipulated under its rules and by applicable regulatory requirements. Any such withdrawn amount would thereafter be treated as a cash contribution to the Clearing Fund. The provision would also clarify that, if OCC is unable to withdraw an amount equal to the deficit, the Clearing Member's failure to satisfy such deficit in accordance with OCC's Rules may subject such Clearing Member to disciplinary action or suspension, including under Chapters XI and XII of OCC's Rules.

OCC also proposes to specify in proposed Rules 1005(b) and 1002(e) that Clearing Members shall have until 9:00 a.m. Central Time on the second business day after the issuance of the Clearing Fund Status Report to meet their required Clearing Fund contribution if such contribution increases as a result of monthly Clearing Fund sizing or an intra-month resizing of the Clearing Fund. The proposed change would more closely align with the settlement time for the collection of other deficits (*e.g.,* the required time for making good any deficiency generally under existing Article VIII, Section 6 of the By-Laws or for satisfying any margin deficits under Rule 605). The proposed change would also be reflected in the proposed Policy.

Finally, OCC proposes to relocate the substance of current Rule 1002 (regarding Clearing Fund reports) to proposed Rule 1007, with modifications that allow OCC to provide more real-time transparency to Clearing Members by mandating more frequent reporting, as well as certain modifications to address the intra-month resizing of the Clearing Fund. Current Rule 1002 provides that OCC must make available to each Clearing Member, within ten days after the close of each calendar month, a report that lists the current amount and form of such Clearing Member's contribution, the amount of the contribution required of such Clearing Member for the current calendar month, and any surplus over and above the amount required for the current calendar month. Under proposed Rule 1007, OCC would make available each business day certain reports listing the current amount and form of each Clearing Member's contribution to the Clearing Fund, the current amount of the contribution required of such Clearing Member (including the Clearing Member's required cash contribution to the Clearing Fund, as discussed in more detail in Section 10 below) and any deficit in the Clearing Member's contribution or surplus over and above the required amount, as applicable. OCC would also issue a report whenever the calculated size of the Clearing Fund has changed, whether as the result of regular monthly sizing of the Clearing Fund or otherwise.

10. Anti-Procyclicality Measures in OCC's Margin Methodology

OCC proposes to amend current Rule 601(c), regarding margin requirements for accounts other than customers' accounts and firm non-lien accounts, to clarify in OCC's Rules that OCC's existing methodology for calculating margin requirements incorporates measures designed to ensure that margin requirements are not lower than those that would be calculated using volatility estimated over a historical look-back period of at least ten years. The proposed change reflects an existing practice in OCC's margin methodology and is intended only to provide more clarity and transparency regarding this anti-procyclicality measure in OCC's Rules.

11. Other Clarifying, Conforming, and Organizational Changes

OCC also proposes a number of other clarifying, conforming, and organizational changes to its By-Laws, Rules, Collateral Risk Management Policy, Default Management Policy, and Clearing Fund-related procedures in connection with the proposed enhancements to its Pre-Funded Financial Resources and the relocation

of OCC's Clearing Fund-related By-Laws into Chapter X of the Rules. Specifically, proposed Rules 1006(a)–(c) would address both the purpose of the Clearing Fund and the seven conditions under which the Clearing Fund generally may be used by OCC to make good certain losses that it suffers. The proposed Rule is based on a consolidation of existing Article VIII, Section 1(a) (concerning the maintenance and purpose of the Clearing Fund) and Section 5(a)–(c) (concerning the application of the Clearing Fund) with minor modifications. Accordingly, under proposed Rule 1006, and consistent with existing authority, OCC would maintain, and be permitted to use, the Clearing Fund to make good losses relating to: (1) The failure of a Clearing Member to discharge an obligation on or arising from any confirmed trade accepted by OCC; (2) the failure of any Clearing Member or the Canadian Depository for Securities to perform its obligations under or arising from any exercised or assigned option contract or matured future or any other contract or obligation issued, undertaken, or guaranteed by OCC or in respect of which OCC is otherwise liable;[46] (3) the failure of any Clearing Member in respect of its stock loan or borrow positions to perform its obligations to OCC; (4) any liquidation of a Clearing Member's open positions; (5) any protective transactions effected for OCC's own account under Chapter XI of the Rules regarding the suspension of a Clearing Member; (6) the failure of any Clearing Member to make any required payment or render any required performance; or (7) the failure of any bank or securities or commodities clearing organization to perform obligations to OCC under certain conditions as set forth in proposed Rule 1006(c).[47]

Proposed Rule 1006(g) would address payments to and from Cross-Guaranty Parties[48] in respect of Common Members.[49] This provision is based on current Article VIII, Sections 5(f) and 5(g) of OCC's By-Laws, which would be transferred to Rule 1006(g) without material changes. OCC would, therefore, continue to use a suspended Clearing Member's Clearing Fund contribution, after appropriately applying other funds in the accounts of the Clearing Member, to make a required payment to a Cross-Guaranty Party pursuant to a Limited Cross-Guaranty Agreement in respect of such Clearing Member. Proposed Rule 1006(g) would clarify, however, that OCC would credit funds to the Clearing Fund that it receives in respect of a suspended Clearing Member from a Cross-Guaranty Party pursuant to a Limited Cross-Guaranty Agreement, where OCC must still make a charge on a proportionate basis against other Clearing Members' required contributions to the Clearing Fund even after application of such funds, or where OCC has already made a charge on a proportionate basis against other Clearing Members' required contributions to the Clearing Fund.

Proposed Interpretation and Policy .02–.04 to Rule 1006 would also address certain aspects of payments to and from Cross-Guaranty Parties in respect of Common Members. All of these proposed provisions are based without material amendment on existing Interpretations and Policies to Article VIII, Section 5 of OCC's By-Laws, as described below.

Proposed Interpretation and Policy .02 to Rule 1006 is based without material amendment on existing Interpretation and Policy .03 to Article VIII, Section 5 of OCC's By-Laws. Under the proposed Interpretation and Policy, if OCC has a deficiency after it applies all the available funds of a suspended Common Member but cannot determine whether, when, or in what amount it will be entitled under a Limited Cross-Guaranty Agreement to receive funds from a Cross-Guaranty Party, OCC may make a charge against other Clearing Members' contributions for the deficiency in accordance with Rule 1006(b). If OCC receives funds from a Cross-Guaranty Party after making such a charge, OCC would credit the funds to the Clearing Fund in accordance with Rule 1006(g).

Proposed Interpretation and Policy .03 to Rule 1006 is based without material amendment on existing Interpretation and Policy .04 to Article VIII, Section 5 of OCC's By-Laws. Under the proposed Interpretation and Policy, if OCC has a deficiency after it applies all the available funds of a suspended Common Member and OCC determines that it is likely to receive funds from a Cross-Guaranty Party under a Limited Cross-Guaranty Agreement, OCC may, in anticipation of receipt of such funds, forego making a charge, or make a reduced charge in accordance with proposed Rule 1006(b), against other Clearing Members' Clearing Fund contributions. If OCC does not subsequently receive the funds or receives a smaller amount than anticipated, OCC may make a charge or additional charges against contributions in accordance with proposed Rule 1006(b).

Proposed Interpretation and Policy .04 to Rule 1006 is based without material amendment on existing Interpretation and Policy .05 to Article VIII, Section 5 of OCC's By-Laws. Under the proposed Interpretation and Policy, if, under a Limited Cross-Guaranty Agreement, OCC receives funds from a Cross-Guaranty Party in respect of a suspended Common Member but is subsequently required to return such funds for any reason, OCC may make itself whole by making a charge or additional charges, as the case may be, against the contributions of Clearing Members, other than the suspended Common Member.

Existing Article VIII, Section 1(b) of OCC's By-Laws, which concerns the general lien on all cash, Government securities, and other property of the Clearing Member contributed to the Clearing Fund, would be moved without material change to new Rule 1006(i). Additionally, existing Interpretation and Policy .02 of Article VIII, Section 3 of OCC's By-Laws, which concerns the treatment of securities deposited in an account of OCC at an approved custodian, would be relocated to new Rule 1006(j) without change.

OCC also proposes to relocate existing Article VIII, Sections 5(c), and (e) of OCC's By-Laws, which concern notice of any charges against the Clearing Fund, the use of current and retained earnings to address losses, and the use of the Clearing Fund to effect borrowings, to new Rules 1006(d), (e), and (f),[50] respectively, without material

[46] OCC notes that proposed Rule 1006(a) would contain a minor modification to clarify that matured futures contracts are included within the scope of other contracts or obligations issued, undertaken, or guaranteed by OCC or in respect of which OCC is otherwise liable.

[47] Existing Interpretation and Policy .01 and .02 of Article VIII, Section 5 concerning the share of any deficiency to be borne by each Clearing Member as a result of a charge against the Clearing Fund would be consolidated and relocated to new Interpretation and Policy .01 of Rule 1006 with only minor, non-substantive conforming changes and cross-references to new Interpretation and Policy .01 of Rule 1006 would be added to proposed Rules 1006(b) and (c) to provide additional clarity in OCC's rules.

[48] A Cross-Guaranty Party is a party, other than OCC, to a Limited Cross Guaranty Agreement, which is an agreement between OCC and one or more other clearing corporations and/or clearing organizations relating to the cross-guaranty by OCC and the other party or parties of certain obligations of a suspended Common Member to the parties to the agreement. *See* Article I, Section 1.C.(35) of the By-Laws (defining Cross-Guaranty Party) and Section 1.L.(4) (defining Limited Cross-Guaranty Agreement).

[49] A Common Member is ''a Clearing Member that is concurrently a member or participant of a Cross-Guaranty Party.'' *See* Article I, Section 1.C.(27) of the By-Laws.

[50] Under clause (i) of new Rule 1006(f), OCC would also be permitted to take possession of

amendment.[51] OCC would also relocate existing Article VIII, Section 6 of OCC's By-Laws, which concerns the making good of any charges against the Clearing Fund (*i.e.,* Clearing Fund replenishment and assessments) to new Rule 1006(h) without material changes.[52] The proposed Policy and Methodology Description would also contain a discussion of OCC's Clearing Fund replenishment and assessment powers generally intended to reflect this existing authority in the By-Laws. In addition, the proposed Policy would (1) provide the Executive Chairman, Chief Administrative Officer, or Chief Operating Officer with the authority to approve proportionate charges against the Clearing Fund and (2) require that OCC's Accounting department maintain procedures for the allocation of losses due to a Clearing Member default and to replenish the Clearing Fund in the event a deficiency in the Clearing Fund results from events other than those specified in proposed Rule 1006.

Additionally, OCC proposes to amend the definition of ''Clearing Fund'' in Article I and Article V, Section 3 of the By-Laws to reflect the fact that OCC's Clearing Fund-related provisions would now be contained in Chapter X of the Rules. In addition, OCC proposes to change references to ''Chapter 11'' of the Rules in Article VI, Section 27 of OCC's By-Laws to ''Chapter XI'' To conform the references to OCC's Rules. OCC proposes conforming changes to Rule 1106 to reflect the reorganization of Article VIII of the By-Laws into Chapter X of the Rules. OCC also proposes to amend Rule 609 to change the term ''securities'' to ''contracts'' to clarify that its authority to call for intra-day margin also applies to non-securities products cleared by OCC.

OCC also proposes conforming changes to delete existing Interpretations and Policies .02 and .03 of Rule 1001, which deal with the minimum confidence level used to size the Clearing Fund and the phase-in of the former weighting allocation methodology, respectively. Under the proposed change, the confidence level used to size the Clearing Fund and the phase-in of the proposed weighting allocation methodology would be addressed in the Policy and Methodology Description (as described above). As a result, these Interpretations and Policies would no longer be needed.

In addition, consistent with its effort to aggregate all Clearing Fund-related provisions to Chapter X of the Rules, OCC proposes to relocate Article VIII, Sections 7 (Contribution Refund) and 8 (Recovery of Loss) of the By-Laws to new Rules 1009, and 1010, respectively, without material amendment.

OCC also proposes to relocate certain By-Law provisions related to the form and method of Clearing Fund contributions into Chapter X of the Rules. Specifically, OCC proposes to relocate Article VIII, Section 3(a) and (c); Interpretation and Policy .04 to Article VIII, Section 3; and Article VIII, Section 4 to proposed Rule 1002 concerning Clearing Fund contributions. These By-Law provisions would be relocated to Chapter X of the Rules without material amendment. OCC also would relocate Interpretation and Policy .01 to Rule 1001 concerning minimum Clearing Fund size into new Rule 1001(b). The form and method of OCC's Clearing Fund contributions also would be generally described in the proposed Policy and Methodology Description documents. In addition, and consistent with current OCC practice, the proposed Policy would impose a requirement that the specific securities eligible to be used as Clearing Fund contributions be permitted to be pledged in exchange for cash through one of OCC's committed liquidity facilities so that OCC continues to maintain sufficient eligible securities to fully access such facilities.

As noted above, under proposed Rule 1007, OCC would make available on a daily basis certain reports listing the current amount and form of each Clearing Member's contribution to the Clearing Fund, the current amount of the contribution required of such Clearing Member, and any deficit in the Clearing Member's contribution or surplus over and above the required amount, as applicable. Proposed Rule 1007 would also include reporting on the Clearing Member's required cash contribution to the Clearing Fund.

OCC also proposes to relocate existing Rule 1004 (Withdrawals) to new Rule 1008 and would modify the proposed rule to reflect that Clearing Members may withdraw excess Clearing Fund deposits on the same day that OCC issues a report to the Clearing Member showing a surplus (as opposed to the following business day), which is consistent with current operational practices.

In addition, OCC proposes to update references to Article VIII of the By-Laws in its Collateral Risk Management Policy and Default Management Policy to reflect the relocation of OCC's Clearing Fund-related By-Laws into Chapter X of the Rules.

Finally, OCC currently maintains procedures regarding its processes for (i) the monthly resizing of its Clearing Fund (Monthly Clearing Fund Sizing Procedure), (ii) the addition of financial resources through intra-day margin calls and/or an intra-month increase of the Clearing Fund to ensure that it maintains adequate financial resources in the event of a default of a Clearing Member/Clearing Members Group presenting the largest exposure to OCC (FRMC Procedure), and the execution of any intra-month resizing of the Clearing Fund (Clearing Fund Intra-Month Re-sizing Procedure).[53] OCC proposes to retire its existing Clearing Fund Intra-Month Re-sizing Procedure, FRMC Procedure, and Monthly Clearing Fund Sizing Procedure as these procedures would no longer be relevant to OCC's proposed Clearing Fund and stress test methodology and would be replaced by the proposed Rules, Policy and Methodology Description described herein.

OCC's Monthly Clearing Fund Sizing Procedure provides that the Clearing Fund is resized on the first business day of each month by identifying the peak five-day rolling average of Clearing Fund Draws (using OCC's current Clearing Fund methodology) over the most recent three-month period. This peak five-day rolling average is supplemented with a prudential margin of safety of $1.8 billion. The Monthly Clearing Fund Sizing Procedure further describes the internal procedural and administrative steps taken by OCC staff in the monthly Clearing Fund sizing processes (*e.g.,* the internal reports and processes used to populate relevant data and calculate the monthly Clearing Fund size and the internal reporting and notifications made by OCC staff during the resizing process). Under the proposed Policy and Methodology Description, OCC would continue to

Government securities in anticipation of a potential default by or suspension of a Clearing Member, as is currently the case under existing Interpretation and Policy .06 to Article VIII, Section 5.

[51] OCC notes that it would make a number of non-substantive clarifying changes to the rule text in proposed Rule 1006 so that existing rule text referencing ''computed contributions to the Clearing Fund'' and ''as fixed at the time'' would be rephrased as ''required contributions to the Clearing Fund'' and ''as calculated at the time.'' The proposed change is designed to more accurately reflect that these rules are intended to refer to a Clearing Member's required Clearing Fund contribution amount as calculated under the proposed Rules, Policy and Methodology Description and eliminate any potential confusion with a Clearing Member's ''fixed amount'' as determined under Rule 1003(a).

[52] OCC notes that it would modify the rule text in question to clarify that a Clearing Member's obligation to make good the deficiency in its Clearing Fund contribution, resulting from a proportionate charge or otherwise, would be in relation to its currently ''required'' contribution amount and not the amount of the contribution on deposit as of the time of the charge.

[53] *See supra* note 10.

determine the Clearing Fund size for a given month by using a peak five-day rolling average of Clearing Fund Draws over the prior three months; however, these calculations would be done using the proposed Sizing Stress Test results and would no longer require a prudential margin of safety.[54] The remaining internal procedural and administrative steps taken by OCC staff in the monthly Clearing Fund sizing processes would no longer be ''rules'' of OCC as defined by the Exchange Act[55] as those aspects of the procedure: (1) Would no longer be relevant to OCC's proposed Clearing Fund and stress testing methodologies and processes, (2) would be reasonably and fairly implied by the proposed Rules, Policy, and Methodology Description, and/or (3) would otherwise not be deemed to be material aspects of OCC's Clearing Fund-related operations.[56]

OCC's FRMC Procedure outlines various responsibilities, deliverables and communications with respect to OCC's financial resource monitoring and resource call processes. While the FRMC Procedure describes material aspects of OCC's current financial resource monitoring and call-related operations, it also describes the non-material procedural and administrative steps taken by OCC staff in carrying out these processes. For example, the FRMC Procedure contains procedural steps for (1) comparing Clearing Fund Draws against the Clearing Fund size and determining whether applicable thresholds are breached, (2) internal notifications and reporting within OCC regarding the imposition of enhanced monitoring or recommendations for margin calls or intra-month resizing of the Clearing Fund,[57] (3) other external communications to Clearing Members[58] regarding margin calls, and (4) determining whether a cash draft is required to satisfy a deficit resulting from a margin call. Under the proposal, the proposed Policy would continue to describe the material aspects of OCC's Clearing Fund operations as they relate to the financial resource monitoring and resource call process under the new Clearing Fund and stress testing methodology, subject to a number of modifications describe above.[59] Any remaining procedural details would not be ''rules'' of OCC as OCC believes that those aspects of the procedures: (1) Would no longer be relevant to OCC's proposed Clearing Fund and stress testing methodologies and processes, (2) would be reasonably and fairly implied by the proposed Rules, Policy, and Methodology Description, and/or (3) would otherwise not be deemed to be material aspects of OCC's Clearing Fund-related operations.

OCC's Clearing Fund Intra-Month Resizing Procedure outlines the various internal responsibilities, deliverables and communications with respect to an intra-month re-sizing the Clearing Fund as determined under the FRMC Procedure. The procedure describes the procedural and administrative steps taken by OCC staff in the intra-month resizing process, including the procedural steps for (1) calculating increased contribution requirements based on various internal reports and processes, (2) preparing information memoranda announcing an intra-month resizing, (3) internal notifications and reporting within OCC regarding an intra-month resizing, (4) other external communications to Clearing Members[60] and OCC's regulators regarding an intra-month resizing of the Clearing Fund, and (5) determining whether a cash draft is required to satisfy a deficit resulting from an intra-month resizing of the Clearing Fund. Under the proposed changes described herein, these procedural details would not be ''rules'' of OCC as OCC believes that those aspects of the procedure: (1) Would no longer be relevant to OCC's proposed Clearing Fund and stress testing methodologies and processes, (2) would be reasonably and fairly implied by the proposed Rules, Policy, and Methodology Description, and/or (3) would otherwise not be deemed to be material aspects of OCC's Clearing Fund-related operations.

(2) Statutory Basis

Section 17A(b)(3)(F) of the Act[61] requires, among other things, that the rules of a clearing agency be designed to promote the prompt and accurate clearance and settlement of securities and derivatives transactions, to assure the safeguarding of securities and funds which are in its custody or control or for which it is responsible, and, in general, to protect investors and the public interest. OCC believes that the proposed changes, and in particular, the new Clearing Fund and stress testing methodology, would both enhance OCC's risk management capabilities as well as promote OCC's ability to more thoroughly size, monitor and test the sufficiency of its Pre-Funded Financial Resources under a wide range of hypothetical and historical stress scenarios. The proposed Clearing Fund and stress testing methodology is designed to improve OCC's ability to calibrate its Pre-Funded Financial Resources to withstand a broader range of extreme but plausible circumstances under which its one or two largest Clearing Members may default, thereby reducing the risk that such resources would be insufficient in an actual default. As a result, the proposed rule change is designed, in general, to enhance OCC's framework for measuring and managing its credit risks so that it can continue to provide prompt and accurate clearance and settlement of securities and derivatives transactions, assure the safeguarding of securities and funds which are in its custody or control or for which it is responsible, and, in general, protect investors and the public interest consistent with Section 17A(b)(3)(F) of the Act.[62]

As noted above, the proposed Clearing Fund and stress testing methodology would enhance OCC's framework for testing the sizing,

[54] *See supra* note 21.

[55] Section 19(b)(1) of the Exchange Act requires a self-regulatory organization (''SRO'') such as OCC to file with the Commission any proposed rule or any proposed change in, addition to, or deletion from the rules of such SRO. *See* 15 U.S.C. 78s(b)(1). Section 3(a)(27) of the Exchange Act defines ''rules of a clearing agency'' to mean its (1) constitution, (2) articles of incorporation, (3) bylaws, (4) rules, (5) instruments corresponding to the foregoing and (6) such ''stated policies, practices and interpretations'' (''SPPI'') as the Commission may determine by rule. *See* 15 U.S.C. 78c(a)(27). Exchange Act Rule 19b–4(a)(6) defines the term ''SPPI'' to mean, in addition to certain publicly facing statements, ''any material aspect of the operation of the facilities of the [SRO].'' *See* 17 CFR 240.19b–4(a)(6). Rule 19b–4(c) provides, however, that an SPPI may not be deemed to be a proposed rule change if it is: (i) Reasonably and fairly implied by an existing rule of the SRO or (ii) concerned solely with the administration of the SRO and is not an SPPI with respect to the meaning, administration, or enforcement of an existing rule the SRO.

[56] OCC notes that it would adopt new internal procedures to address the procedural and administrative steps associated with the monthly Clearing Fund sizing, Clearing Fund sufficiency monitoring, and intra-month resizing processes; however, these procedures would not be filed as ''rules'' of OCC under the Exchange Act. These procedures also would conform to the proposed changes described herein.

[57] OCC notes that the weekly reporting process currently described in the FRMC Procedure would no longer be codified in the ''rules'' of OCC; however, the proposed Policy would establish new governance, monitoring and review requirements for OCC's Clearing Fund and stress testing methodology, which are described in detail above.

[58] The proposed Policy would contain a general requirement that Clearing Members be notified of any intra-day margin calls under the policy but the procedural details of such notification would be contained in the Clearing Fund Sufficiency Monitoring Procedure.

[59] *See e.g., supra* notes 32–36 and associated text.

[60] The proposed Policy would contain a general requirement that Clearing Members, OCC's Risk Committee, and OCC's regulators be notified of any intra-month Clearing Fund resizing but the procedural details of such notification would be contained in the Clearing Fund Sizing Procedure.

[61] 15 U.S.C. 78q–1(b)(3)(F).

[62] *Id.*

adequacy, and sufficiency of its Pre-Funded Financial Resources by incorporating a wide range of extreme hypothetical and historical stress scenarios. Under the proposal, OCC would establish a new risk tolerance with respect to sizing OCC's Pre-Funded Financial Resources to cover a 1-in-50 year hypothetical market event at a 99.5% confidence level over a two-year look-back period. As noted above, OCC believes that a 1-in-50 year hypothetical market event represents the outer range of extreme but plausible scenarios for OCC's cleared products. As a result, OCC would size its Clearing Fund based on more conservative 1-in-80 year Hypothetical Scenarios, and would do so under a more conservative Cover 2 Standard, so that OCC sizes its Clearing Fund on a monthly basis at a level designed to cover its potential exposures under extreme but plausible market conditions. Moreover, OCC would utilize Sufficiency Stress Tests to evaluate the sufficiency of its Pre-Funded Financial Resources against potential credit exposures arising from range of scenarios to determine whether OCC should: (1) Implement the enhanced monitoring of Clearing Fund Draws, (2) require additional margin deposits, or (3) re-size the Clearing Fund on an intra-month basis so that OCC continues to maintain sufficient financial resources to cover a wide range of foreseeable stress scenarios that include, but are not limited to, the default of the two Clearing Member Groups that would potentially cause the largest aggregate credit exposure in extreme but plausible market conditions. Moreover, the proposed changes would introduce a number of Informational Stress Tests that would serve as valuable risk management tools for OCC to monitor and assess its Pre-Funded Financial Resources against a wide range of scenarios, including but not limited to extreme but implausible and reverse stress test scenarios.

The proposed changes also would introduce certain anti-procyclical measures into the monthly Clearing Fund sizing process designed to limit the potential decrease of the Clearing Fund's size from month to month and therefore reduce the likelihood that a market shock would require OCC to call for further resources from Clearing Members on an intra-month basis. The measures would prevent the Clearing Fund from decreasing rapidly when a previous peak falls out of the three month look-back period, and also reduce the likelihood that the Clearing Fund would be set at a size such that a Clearing Member Group with stress test exposures that are trending upward at the end of the sizing period would exceed the threshold for an intra-month resize immediately following monthly resizing of the Clearing Fund.

Taken together, OCC believes that the proposed changes to its Clearing Fund and stress testing methodology and Policy are designed to improve OCC's ability to calibrate its Pre-Funded Financial Resources, and when necessary, call for additional financial resources from its Clearing Members, so that it can withstand a wide range of stress scenarios under which its one or two largest Clearing Members may default, thereby reducing the risk that such resources would be insufficient in an actual default and enhancing OCC's ability to manage risks in its role as a systemically important financial market utility. As a result, OCC believes the proposed rule change is designed to enable OCC to manage its credit risks so that it can continue providing prompt and accurate clearance and settlement of securities and derivatives transactions, assuring the safeguarding of securities and funds which are in its custody or control or for which it is responsible, and, in general, protect investors and the public interest in a manner consistent with Section 17A(b)(3)(F) of the Act.[63]

OCC also proposes to increase its minimum initial and fixed Clearing Fund contribution amounts from $150,000 to $500,000. The proposed change would require a small subset of OCC's Clearing Members to contribute a relatively modest increase in their mutualized contribution to OCC's Clearing Fund (at most, a $350,000 increase). In proposing the new minimum contribution amounts, OCC analyzed, among other things, the potential impact on Clearing Members that are at the minimum or otherwise below or just over the newly proposed $500,000 requirement, the impact to those members in dollar and percentage terms as well as compared to their net capital, evolving market conditions, evolution in the size of the Clearing Fund, minimum contribution requirements of other CCPs, and heightened regulatory obligations on OCC given its status as a systemically important financial market utility. In particular, OCC notes that its existing initial and minimum fixed contribution requirements have been in place since June 5, 2000, while its Clearing Fund has grown from approximately $2 billion in 2000 to several multiples of that, both currently and under the proposal described herein.[64] OCC believes that the proposed increase is appropriate given the increase in OCC's overall Clearing Fund size and is in line with or lower than the minimum requirements of other CCPs.[65] OCC believes the proposed change to its minimum contribution amounts would require Clearing Members to contribute an appropriate amount of mutualized resources to OCC's default waterfall and is therefore designed to protect investors and the public interest in a manner consistent with Section 17A(b)(3)(F) of the Act.[66]

Additionally, OCC proposes to modify its allocation weighting methodology to more closely align Clearing Members' Clearing Fund contribution requirements with the level of risk they present to OCC. Specifically, under the proposed Policy, Clearing Fund contribution requirements would be based on an allocation methodology of 70% of total risk, 15% of volume and 15% of open interest (as opposed to the current weighting of 35% total risk, 50% open interest, and 15% volume). In addition, OCC proposes to modify the volume component of its Clearing Fund contribution allocation weighting methodology to provide that OCC would use cleared volume, as opposed to executed volume, to base the volume component of the allocation on where the position is ultimately cleared as opposed to where it was executed. OCC believes that these changes would better align incentives for each Clearing Member to reduce the risk it introduces to the Clearing Fund by determining each Clearing Member's proportionate share of the Clearing Fund based on the risk it presents to OCC. As a result, OCC believes the proposed rule change is designed, in general, to protect investors and the public interest consistent with Section 17A(b)(3)(F) of the Act.[67]

OCC also proposes a number of changes to its Rules to generally reduce the time for Clearing Members to fund Clearing Fund deficits. Specifically, new Rule 1005(a) would require that a Clearing Member satisfy any deficit in its required Clearing Fund contribution resulting from a decrease in the value of a Clearing Member's contribution or by an adjusted contribution pursuant to proposed Rule 1004 by no later than one hour after being notified by OCC of such deficit. In addition, OCC would reduce the amount of time within which a Clearing Member must satisfy a deficit from five business days of the date on

[63] *Id.*

[64] *See supra* note 38 and accompanying text.

[65] *See supra* note 39.

[66] 15 U.S.C. 78q–1(b)(3)(F).

[67] *Id.*

which the report is made available to two business days of such date for any deficit arising due to regular monthly sizing of the Clearing Fund, an intra-month resizing of the Clearing Fund, or in circumstance in which a Clearing Member's contribution is increased as a result of an amendment of OCC's Rules. Additionally, and consistent with existing operational practice, the proposed changes would specify that, upon the failure of a Clearing Member for any reason to timely satisfy a deficit regarding its required Clearing Fund contribution, OCC would be authorized to withdraw an amount equal to such deficit from the Clearing Member's bank account maintained in respect of an OCC firm account. OCC also proposes to specify that Clearing Members shall have until 9:00 a.m. Central Time on the second business day after the issuance of the Clearing Fund Status Report to meet their required Clearing Fund contribution if such contribution increases as a result of monthly Clearing Fund sizing or an intra-month resizing of the Clearing Fund to more closely align with the settlement time for the collection of other deficits (*e.g.,* the required time for making good any deficiency generally under existing Article VIII, Section 6 of the By-Laws or for satisfying any margin deficits under Rule 605). The proposed change is designed to ensure that OCC is able to obtain funds owed from its Clearing Members in a timely fashion so that OCC can continue to meet its overall financial resource requirements, thereby reducing the risk presented to OCC. As a result, OCC believes the proposed rule change is designed to enable OCC to manage its credit risks so that it can continue providing prompt and accurate clearance and settlement of securities and derivatives transitions, assuring the safeguarding of securities and funds which are in its custody or control or for which it is responsible, and, in general, protect investors and the public interest in a manner consistent with Section 17A(b)(3)(F) of the Act.[68]

OCC also proposes a number of non-material changes, such as relocating provisions of OCC's By-Laws concerning the Clearing Fund to its Rules, making other clarifying and conforming changes to its Rules, Collateral Risk Management Policy and Default Management Policy, and clarifying certain pro-cyclicality measures in its existing margin methodology, which are not expected to have any impact on OCC's risk management practices or the risk presented to OCC or its participants. OCC believes that making these clarifying and conforming changes to its rules would provide more clarity around, and enhance the readability of, OCC's Clearing Fund requirements and thereby provide OCC's members and the public a clearer understanding of OCC's rules. OCC believes, therefore, that its rules following incorporation of the proposed changes, would be designed to, in general, protect the investors and the public interest in a manner consistent with Section 17A(b)(3)(F) of the Act.[69]

Taken together, OCC believes the enhancements discussed in this proposed rule change would provide for a more comprehensive approach to managing OCC's credit risks and would allow OCC to more accurately measure its credit risk exposures, better test the sufficiency of its financial resources, and respond quickly when OCC believes additional financial resources are required. Accordingly, for the reasons set forth above, OCC believes that the proposed rule change would enhance OCC's ability to measure and manage its credit risks and is therefore designed to promote the promote and accurate clearance and settlement of securities and derivatives transactions, to assure the safeguarding of securities and funds in the custody or control of the clearing agency or for which it is responsible, and, in general, to protect investors and the public interest in accordance with Section 17A(b)(3)(F) of the Act.[70]

OCC further believes the proposed rule change is consistent with the Act and the rules thereunder for the reasons set forth below.

Clearing Fund Sizing and Sufficiency Changes

Rule 17Ad–22(b)(3)[71] requires a registered clearing agency that performs CCP services to establish, implement, maintain and enforce written policies and procedures reasonably designed to maintain sufficient financial resources to withstand, at a minimum, a default by the participant family to which it has the largest exposure in extreme but plausible market conditions. Rules 17Ad–22(e)(4)(iii) and (iv)[72] further require, in part, that a covered clearing agency establish, implement, maintain and enforce written policies and procedures reasonably designed to effectively identify, measure, monitor, and manage its credit exposures to participants and those arising from its payment, clearing, and settlement processes, including by maintaining additional financial resources (beyond those collected as margin or otherwise maintained to meet the requirements of Rule 17Ad–22(e)(4)(i)[73]) at the minimum to enable it to cover a wide range of foreseeable stress scenarios that include, but are not limited to, the default of the participant family that would potentially cause the largest aggregate credit exposure for the covered clearing agency in extreme but plausible market conditions and do so exclusive of assessments for additional guaranty fund contributions or other resources that are not prefunded.

OCC believes that the proposed changes to its By-Laws, Rules and Clearing Fund and stress testing methodology are reasonably designed to measure and manage OCC's credit exposures to participants by maintaining sufficient Pre-Funded Financial Resources to cover a wide range of foreseeable stress scenarios that include, but are not limited to, the default of the two Clearing Member Groups that would potentially cause the largest aggregate credit exposure in extreme but plausible market conditions. In order to achieve this, OCC proposes to establish a risk tolerance with regard to the sizing of the Clearing Fund equal to a 1-in-50 year hypothetical market event, which OCC believes represents the outer range of extreme but plausible scenarios for OCC's cleared products for purposes of Rule 17Ad–22(e)(4) under the Act.[74] In order to ensure sufficient coverage of this risk tolerance, which OCC believes represents the outer range of extreme but plausible market conditions for the purposes of Rule 17Ad–22(e)(4) under the Act,[75] and to guard against intra-month scenario volatility and procyclicality, OCC proposes to size its Clearing Fund based on a more conservative 1-in-80 year hypothetical market event (*i.e.,* the Sizing Stress Tests) on a Cover 2 Standard. The proposed changes are designed to size the Clearing Fund at a level that would be expected to cover OCC's potential exposures under extreme but plausible market conditions. In addition, OCC's Rules, Policy, and Methodology Description would provide for the collection of additional resources on an intra-month basis if certain Sufficiency Scenario thresholds are breached, as discussed in more detail above. These stress tests are designed, in total, to result in the collection of sufficient Pre-Funded Financial Resources (which by

[68] *Id.*

[69] *Id.*

[70] *Id.*

[71] 17 CFR 240.17Ad–22(b)(3).

[72] 17 CFR 240.17Ad–22(e)(4)(iii) and (iv).

[73] 17 CFR 240.17Ad–22(e)(4)(i).

[74] 17 CFR 240.17Ad–22(e)(4).

[75] *Id.*

definition in the Policy would exclude OCC's replenishment and assessment powers), and when necessary call for additional financial resources, to cover a wide range of stress scenarios, including extreme but plausible market conditions.

Additionally, the proposed changes to avoid pro-cyclicality in the Clearing Fund (*e.g.,* preventing the Clearing Fund from decreasing more than 5% from month-to-month and using a three-month look back period in sizing the Clearing Fund) are designed to promote stability and to prevent the Clearing Fund from decreasing rapidly when a previous peak falls out of the look-back period. OCC believes that this conservative approach to anti-procyclicality would help to ensure that OCC continues to maintain adequate Pre-Funded Financial Resources during periods where volatility decreases significantly, market conditions change rapidly, or Clearing Member business activity causes a significant decrease in stress test results.

OCC further believes that the proposed changes to its Rules to generally reduce the timeframe in which Clearing Members must meet deficits in their Clearing Fund contributions are appropriate because it would expedite the adjustment of Clearing Fund contributions to the appropriate size as determined by OCC's new Clearing Fund and stress test methodology, thereby allowing the Clearing Fund to respond more quickly in rapidly changing or emergency market conditions. Moreover, consistent with existing operational practice, new Rule 1005(c) would establish that, upon the failure of a Clearing Member for any reason to timely satisfy a deficit regarding its required Clearing Fund contribution, OCC would be authorized to withdraw an amount equal to such deficit from the Clearing Member's bank account maintained in respect of an OCC firm account. The proposed rule change is designed to ensure that OCC is able to obtain funds owed from its Clearing Members in a timely fashion so that OCC can continue to meet its overall financial resource requirements. OCC believes the proposed changes would help to ensure that OCC maintains sufficient resources to meet its financial resource requirements under Rule 17Ad–22.[76]

For these reasons, OCC believes the proposed changes are reasonably designed so that OCC can measure and manage its credit exposure to its participants through the maintenance of additional financial resources at a minimum to enable it to cover a wide range of foreseeable stress scenarios that include, but are not limited to, the default of the participant family that would potentially cause the largest aggregate credit exposure for OCC in extreme but plausible market conditions, and do so exclusive of assessments for additional Clearing Fund contributions or other resources that are not prefunded, in a manner consistent with Rule 17Ad–22(b)(3) and Rules 17Ad–22(e)(4)(iii) and (iv).[77]

Proposed Stress Testing and Clearing Fund Methodology

Rule 17Ad–22(e)(4)(vi)(A)[78] requires, in part, that a covered clearing agency establish, implement, maintain and enforce written policies and procedures reasonably designed to effectively identify, measure, monitor, and manage its credit exposures to participants and those arising from its payment, clearing, and settlement processes, including by testing the sufficiency of its total financial resources available to meet the minimum financial resource requirements under Rule 17Ad–22(e)(4)(iii)[79] by conducting stress testing of its total financial resources once each day using standard predetermined parameters and assumptions.

OCC proposes to adopt a new stress testing methodology, as described in the proposed Policy and Methodology Description, to enable OCC to conduct a variety of Sizing Stress Tests, Adequacy Stress Tests, Sufficiency Stress Tests and Informational Stress Tests, each of which play different but complementary roles in promoting OCC's ability to more robustly identify, measure, monitor and manage its credit risks to its participants. These stress tests would be run on a daily basis using standard predetermined parameters and assumptions and would allow OCC to test the sufficiency of its Pre-Funded Financial Resources under a wide range of Historical Scenarios, which take into account stresses on a number of factors such as price and volatility, as well as testing the adequacy of OCC's Pre-Funded Financial Resources with respect to its proposed risk tolerance. In turn, these stress tests would enable OCC to more effectively design margin and Clearing Fund requirements that are calibrated to cover Clearing Member defaults under such scenarios. The proposed Clearing Fund and stress testing methodology would also use Sufficiency Stress Tests to determine whether OCC should call for additional collateral to ensure that it consistently maintains sufficient financial resources. OCC believes that the proposed changes are therefore designed to allow OCC to effectively identify, measure, monitor, and manage its credit exposures to participants and those arising from its payment, clearing, and settlement processes, by testing the sufficiency of its Pre-Funded Financial Resources available to meet its minimum financial resource requirements under Rule 17Ad–22[80] in a manner consistent with Rule 17Ad–22(e)(4)(vi).[81]

Clearing Fund and Stress Testing Governance, Monitoring, and Review

Rule 17Ad–22(e)(4)(vi) and (vii)[82] require, in part, that a covered clearing agency establish, implement, maintain and enforce written policies and procedures reasonably designed to effectively identify, measure, monitor, and manage its credit exposures to participants and those arising from its payment, clearing, and settlement processes, including by (i) conducting a comprehensive analysis on at least a monthly basis of the existing stress testing scenarios, models, and underlying parameters and assumptions, and considering modifications to ensure they are appropriate for determining the covered clearing agency's required level of default protection in light of current and evolving market conditions; (ii) conducting a comprehensive analysis of stress testing scenarios, models, and underlying parameters and assumptions more frequently than monthly when the products cleared or markets served display high volatility or become less liquid, or when the size or concentration of positions held by the covered clearing agency's participants increases significantly; (iii) reporting the results of such analyses to appropriate decision makers at the covered clearing agency, including but not limited to, its risk management committee or board of directors, and using these results to evaluate the adequacy of and adjust its margin methodology, model parameters, models used to generate clearing or guaranty fund requirements, and any other relevant aspects of its credit risk management framework, in supporting compliance with the minimum financial resources requirements; and (iv) performing a model validation for its credit risk models not less than annually or more frequently as may be

[76] *Id.*

[77] 17 CFR 240.17Ad–22(b)(3) and (e)(4)(iii) and (iv).

[78] 17 CFR 240.17Ad–22(e)(4)(vi)(A).

[79] 17 CFR 240.17Ad–22(e)(4)(iii).

[80] 17 CFR 240.17Ad–22.

[81] 17 CFR 240.17Ad–22(e)(4)(vi).

[82] 17 CFR 240.17Ad–22(e)(4)(vi)(B)–(D) and (vii).

contemplated by the covered clearing agency's risk management framework.

The proposed Policy would set forth requirements for the daily and monthly monitoring, review, and reporting of stress test results. Specifically, under the Policy, STLRM would monitor the results of all of the Adequacy and Sufficiency Stress Tests on a daily basis and immediately escalate any material issues identified with respect to the adequacy of OCC's financial resources to the STWG and the Management Committee to determine if it would be appropriate to recommend a change to the stress test scenarios used to size the Clearing Fund. In addition, the Policy would require that STWG perform a comprehensive monthly analysis of OCC's stress testing results, as well as information related to the scenarios, models, parameters, and assumptions impacting the sizing of the Clearing Fund and evaluate their appropriateness for determining OCC's required level of financial resources in light of current and evolving market conditions. Moreover, the Policy would require that such review be conducted more frequently than monthly when the products cleared or markets served display high volatility or become less liquid; the size or concentration of positions held by OCC's participants increases significantly; or as otherwise appropriate.

Pursuant to the proposed Policy, STLRM would report the results of stress tests and its comprehensive monthly analysis to OCC's Management Committee and Risk Committee on at least a monthly basis and would maintain procedures for determining whether, and in what circumstances, the results of such stress tests should be reported to the Management Committee or the Risk Committee more frequently than monthly, and would indicate the persons responsible for making that determination. In the performance of the monthly review of stress testing results and analysis and considering whether escalation is appropriate, the Policy would require that due consideration be given to the intended purpose of the Policy to: (a) Assess the adequacy of, and adjust as necessary, OCC's total amount of financial resources; (b) support compliance with the minimum financial resources requirements under applicable regulations; and (c) evaluate the adequacy of, and recommend adjustments to OCC's margin methodology, margin parameters, models used to generate margin or guaranty fund requirements, and any other relevant aspects of OCC's credit risk management.

In addition, the proposed Policy would require that OCC's Model Validation Group perform a model validation of OCC's Clearing Fund model on an annual basis and that the Risk Committee would be responsible for reviewing the model validation report.

Based on the foregoing, OCC believes that the proposed Policy is reasonably designed to ensure that OCC: (i) Conducts a comprehensive analysis on at least a monthly basis of the existing stress testing scenarios, models, and underlying parameters and assumptions, and considers modifications to ensure they are appropriate for determining OCC's required level of default protection in light of current and evolving market conditions; (ii) conducts a comprehensive analysis of stress testing scenarios, models, and underlying parameters and assumptions more frequently than monthly when the products cleared or markets served display high volatility or become less liquid, or when the size or concentration of positions held by OCC's participants increases significantly; (iii) reports the results of such analyses to appropriate decision makers, including but not limited to, OCC's Management Committee and the Risk Committee of the Board, and uses these results to evaluate the adequacy of and adjust its margin methodology, model parameters, models used to generate Clearing Fund requirements, and any other relevant aspects of its credit risk management framework, in supporting compliance with the minimum financial resources requirements; and (iv) performs a model validation for its credit risk models not less than annually or more frequently as may be contemplated by OCC's risk management framework in accordance with Rules 17Ad–22(e)(4)(vi) and (vii).[83]

Proposed Changes to Minimum Contribution Amount and Allocation Methodology

Rule 17Ad–22(e)(4)[84] generally requires that a covered clearing agency establish, implement, maintain and enforce written policies and procedures reasonably designed to effectively identify, measure, monitor, and manage its credit exposures to participants and those arising from its payment, clearing, and settlement processes. With respect to the use of Clearing Funds and the requirements of Rule 17Ad–22(e)(4),[85] the Commission has noted that, to the extent that a clearing agency uses guaranty or clearing fund contributions to mutualize risk across participants, the clearing agency generally should value margin and guaranty fund contributions so that the contributions are commensurate to the risks posed by the participants' activity, and the clearing agency also generally should consider the appropriate balance of individualized and pooled elements within its default waterfall, with a careful consideration of whether the balance of those elements mitigates risk and to what extent an imbalance among those elements might encourage moral hazard, in that one participant may take more risks because the other participants bear the costs of those risks.[86]

OCC believes that the proposed changes to its initial and minimum Clearing Fund contribution amounts strike an appropriate balance between individualized and mutualized resources for new Clearing Members and those Clearing Members with minimal open interest. As noted above, OCC's existing initial and minimum fixed contribution requirements have been in place since June 5, 2000, while its Clearing Fund has grown from approximately $2 billion in 2000 to several multiples of that, both currently and under the proposal described herein.[87] As a result, OCC undertook an analysis to determine the appropriateness of this amount. As discussed in detail above, OCC considered a number of factors such as the potential impact on Clearing Members that are at the minimum or otherwise below or just over the newly proposed $500,000 requirement, the impact to those members in dollar and percentage terms as well as compared to their net capital, evolving market conditions, evolution in the size of the Clearing Fund, minimum contribution requirements of other CCPs, and heightened regulatory obligations on OCC given its status as a systemically important financial market utility. OCC believes that the proposed increase is appropriate given the increase in OCC's overall Clearing Fund size and is in line with or lower than the minimum requirements of other CCPs.[88] OCC therefore believes the proposed change is reasonably designed to ensure OCC is able to manage its credit exposures to participants and those arising from its

[83] *Id.*

[84] 17 CFR 240.17Ad–22(e)(4).

[85] *Id.*

[86] *See* Securities Exchange Act Release No. 78961 (September 28, 2016), 81 FR 70786 (October 13, 2016) (S7–03–14) (''Standards for Covered Clearing Agencies'') at 70813.

[87] *See supra* note 38 and accompanying text.

[88] *See supra* note 39.

payment, clearing, and settlement processes in a manner that considers an appropriate balance of individualized and pooled elements within its default waterfall.

Additionally, OCC proposes to modify its allocation weighting methodology to more closely align Clearing Members' Clearing Fund contribution requirements with the level of risk they bring to OCC. Specifically, the proposed Clearing Fund contribution requirements would be based on an allocation methodology of 70% of total risk, 15% of volume and 15% of open interest (as opposed to the current weighting of 35% total risk, 50% open interest, and 15% volume). OCC believes that this change would better align incentives for each Clearing Member to reduce the risk it introduces to the Clearing Fund by determining each Clearing Member's proportionate share of the Clearing Fund based on the risk it presents to OCC. OCC also proposes to modify the volume component of its Clearing Fund contribution allocation weighting methodology to provide that OCC would use cleared volume, as opposed to executed volume, to base the volume component of the allocation on where the position is ultimately cleared as opposed to where it was executed. OCC believes that the proposed change is designed to more appropriately allocate contribution requirements commensurate to the risks posed by its Clearing Members.

For these reasons, OCC believes that the proposed changes are designed to manage its credit exposures to participants and those arising from its payment, clearing, and settlement processes in a manner consistent with Rule 17Ad–22(e)(4).[89]

Other Clarifying, Conforming and Organizational Changes

Rule 17Ad–22(e)(1)[90] requires a covered clearing agency to establish, implement, maintain and enforce written policies and procedures reasonably designed to provide for a well-founded, clear, transparent, and enforceable legal basis for each aspect of its activities in all relevant jurisdictions. OCC believes that the proposed clarifying, conforming, and organizational changes to its By-Laws and Rules are designed to provide Clearing Members with enhanced transparency and clarity regarding their obligations associated with the Clearing Fund. As discussed above, the primary provisions that address OCC's Clearing Fund are currently split between Article VIII of the By-Laws and Chapter X of the Rules. Consolidating all of these provisions to Chapter X of the Rules would provide Clearing Members with a single location in which to find and understand the primary obligations that are associated with the Clearing Fund. In addition, OCC would make a number of non-substantive changes to its rules designed to provide additional clarity and transparency, including for example: (1) Consolidating existing Interpretation and Policy .01 and .02 of Article VIII, Section 5 concerning the share of any deficiency to be borne by each Clearing Member as a result of a charge against the Clearing Fund into new Interpretation and Policy .01 of Rule 1006 with conforming changes and cross-references to new Interpretation and Policy .01 of Rule 1006 being added to proposed Rules 1006(b) and (c) to provide additional clarity in OCC's rules; (2) making minor modifications to proposed Rule 1006(a) to clarify that matured futures contracts are included within the scope of other contracts or obligations issued, undertaken, or guaranteed by OCC or in respect of which OCC is otherwise liable; (3) clarifying in the proposed Policy that the Executive Chairman, Chief Administrative Officer, or Chief Operating Officer would have the authority to approve proportionate charges against the Clearing Fund; (4) clarifying in the proposed Policy that OCC's Accounting department is responsible for maintaining procedures for the allocation of losses due to a Clearing Member default and to replenish the Clearing Fund in the event a deficiency in the Clearing Fund results from events other than those specified in proposed Rule 1006; (5) revising Rule 609 to change the term ''securities'' to ''contracts'' to clarify that OCC's authority to call for intra-day margin also applies to non-securities products cleared by OCC; (6) codifying in the proposed Policy the existing OCC practice that the specific securities eligible to be used as Clearing Fund contributions be permitted to be pledged in exchange for cash through one of OCC's committed liquidity facilities so that OCC continues to maintain sufficient eligible securities to fully access such facilities; (7) clarifying in proposed Rule 1002 that the circumstances and terms for a Clearing Member terminating its clearing membership due to an increase in Clearing Fund contribution resulting from an amendment of the Rules is separate from the circumstances and terms for a Clearing Member terminating its status as a result of a proportionate charge against the Clearing Fund; (8) clarifying in the introduction to Chapter X of the Rules that the size of the Clearing Fund shall at all times be subject to minimum sizing requirements and generally be calculated on a monthly basis by OCC; however, the calculated size of the Clearing Fund may be determined more frequently than monthly under certain conditions specified in proposed Rule 1001; and (9) rephrasing current rule text referencing ''computed contributions to the Clearing Fund'' and ''as fixed at the time'' to be ''required contributions to the Clearing Fund'' and ''as calculated at the time'' to more accurately reflect that these rules are intended to refer to a Clearing Member's required Clearing Fund Contribution amount as calculated under the proposed Rules, Policy and Methodology Description and eliminate any potential confusion with a Clearing Member's ''fixed amount'' as determined under Rule 1003(a). OCC believes that this additional clarity, transparency and enhanced readability regarding the primary provisions pertaining to the Clearing Fund help to provide for a well-founded, clear, transparent and enforceable legal basis for the rights and obligations of Clearing Members and OCC regarding the Clearing Fund consistent with Rule 17Ad–22(e)(1).[91]

In addition, Section 19(b)(1) of the Exchange Act and Rule 19b–4 thereunder set forth the requirements for SRO proposed rule changes, including the regulatory filing requirements for SPPIs.[92] OCC proposes to retire its existing Clearing Fund Intra-Month Re-sizing Procedure, FRMC Procedure, and Monthly Clearing Fund Sizing Procedure, which were previously filed as ''rules'' with the Commission,[93] as these procedures would no longer be relevant to OCC's proposed Clearing Fund and stress testing methodology and processes. Under the proposal, the material aspects of OCC's Clearing Fund-related operations would be contained in the proposed Rules, Policy and Methodology Description described herein. Any applicable procedural details would not be ''rules'' of OCC as those aspects of the procedures: (1) Would no longer be relevant to OCC's proposed Clearing Fund and stress testing methodologies and processes, (2) would be reasonably and fairly implied by the proposed Rules, Policy, and Methodology Description, and/or (3)

[89] 17 CFR 240.17Ad–22(e)(4).

[90] 17 CFR 240. 17Ad–22(e)(1).

[91] *Id.*

[92] *See supra* note 54.

[93] *See supra* note 10.

would otherwise not be deemed to be material aspects of OCC's Clearing Fund-related operations. Accordingly, OCC believes the proposed changes would be consistent with the requirements of Rule 17Ad–22(e)(1).[94]

For the reasons set forth above, OCC believes the proposed rule change is designed to assure the safeguarding of securities and funds at OCC and, in general, protect investors and the public interest consistent with Section 17A(b)(3)(F) of the Act[95] and the rules promulgated thereunder.

(B) Clearing Agency's Statement on Burden on Competition

Section 17A(b)(3)(I) of the Act[96] requires that the rules of a clearing agency not impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. While certain aspects of the proposal would have an impact on certain Clearing Members, specifically in the form of higher Clearing Fund contribution requirements, OCC does not believe that the proposed rule change would impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. The potential impact on Clearing Members, and the appropriateness of those changes to further of the purposes of the Act, is described in detail below.

OCC is proposing a number of changes to its Clearing Fund and stress testing methodology (specifically, the implementation of a Cover 2 Standard for the Clearing Fund; newly proposed risk tolerance; newly proposed stress testing framework for developing and maintaining Sizing, Adequacy, Sufficiency and Informational Stress Tests; changes in timing for funding Clearing Fund deficits; and related governance, monitoring and review activities), which may have an impact on certain of its Clearing Members due to potential changes in the total amount of Pre-Funded Financial Resources OCC would be required to maintain on a monthly basis and the need for OCC call for additional resources from particular Clearing Members on an intra-month basis. For example, the proposed methodology changes could at times result in significant changes to OCC's overall Clearing Fund size relative to the current methodology (resulting in either larger or smaller relative Clearing Fund sizes). In addition, OCC would adopt new Sufficiency Stress Tests to determine whether OCC should call for additional resources from its Clearing Members on an intra-month basis, which may impact a wider subset of OCC's Clearing Members than those typically subject to margin calls under the current methodology and FRMC Procedure.[97] OCC does not believe the proposed changes to its Clearing Fund and stress testing methodology (including the introduction of new Sufficiency Scenarios) would unfairly inhibit access to OCC's services or disadvantage or favor any particular user in relationship to another user. The proposed changes are designed to improve OCC's ability to measure, monitor and manage its credit exposures to its participants consistent with its regulatory requirements under Rules 17Ad–22(b)(3) and (e)(4)[98] and thereby enhance OCC's ability to manage risks in its role as a systemically important financial market utility. As a result, OCC believes that any impact on competition or OCC's Clearing Members would be necessary and appropriate in furtherance of the protection of investors and the public interest under the Act.

OCC also proposes a number of changes to its Clearing Fund contribution allocation requirements, which would have an impact on OCC's Clearing Members. Under the proposed rule change, those Clearing Members currently contributing the minimum initial and fixed amounts (or amounts under or slightly higher than the proposed minimums) would primarily be impacted by the increase in the minimum Clearing Fund contribution requirement.[99] As discussed above, OCC's existing initial and minimum fixed contribution requirements have been in place since June 5, 2000,[100] and as a result, OCC undertook an analysis to determine the appropriateness of its current minimum requirements given the passage of time and the evolution of OCC's overall Clearing Fund size. As part of this analysis, OCC considered, among other things, the potential impact on Clearing Members that are at the minimum or otherwise close to the newly proposed $500,000 requirement, the impact to those members in dollar and percentage terms as well as compared to their net capital, evolving market conditions, evolution in the size of the Clearing Fund, minimum contribution requirements of other CCPs, and heightened regulatory obligations on OCC given its status as a systemically important financial market utility. In particular, OCC notes that its existing initial and minimum fixed contribution requirements have remained static since June 2000, while its Clearing Fund has grown from approximately $2 billion in 2000 to several multiples of that, both currently and under the proposal described herein. In addition, the proposed minimum contribution requirement of $500,000 is in line with or lower than the minimum requirements of other CCPs.[101] As a result of this analysis, OCC determined $500,000 would be an appropriate initial and minimum Clearing Fund contribution amount to maintain membership at OCC. OCC believes that the proposed minimum contribution requirement considers a proper balance of individualized and pooled elements within its default waterfall and would not unduly inhibit access to OCC's services or otherwise impose a burden competition. Moreover, OCC believes the proposed changes to its minimum contribution requirements are reasonably designed to ensure that OCC is able to manage its credit exposures to participants and those arising from its payment, clearing, and settlement processes and therefore any competitive impact would be necessary and appropriate in furtherance of the purposes of protecting investors and the public interest under the Act.

Additionally, OCC proposes to modify its allocation weighting methodology to more closely align Clearing Members' Clearing Fund contribution requirements with the level of risk they bring to OCC. Specifically, the proposed Clearing Fund contribution requirements would be based on an allocation methodology of 70% of total risk, 15% of volume and 15% of open interest (as opposed to the current weighting of 35% total risk, 50% open interest, and 15% volume). The

[94] *Id.*

[95] *Id.*

[96] 15 U.S.C. 78q–1(b)(3)(I).

[97] OCC notes that, under its current methodology, the Clearing Fund has ranged in size from $5.7 billion to $17.9 billion since January 2016, which can result in significant changes in Clearing Fund contribution requirements and the need for, and size of, intra-month margin calls or Clearing Fund resizing under its existing FRMC Procedure.

[98] 17 CFR 240.17Ad–22(b)(3) and (e)(4).

[99] OCC notes that there are currently eleven Clearing Members either subject to the minimum Clearing Fund contribution requirement of $150,000 or below the proposed $500,000 requirement. OCC also notes that other Clearing Members with generally smaller contribution requirements, and for which the contribution requirement consists mostly of the minimum fixed amount, would be more significantly impacted by the introduction of a higher minimum amount into the allocation formula. In addition, firms preparing to withdraw from membership by reducing open positions as they wind down their business or new Clearing Members coming online and slowly increasing their business could be impacted by the change in minimum fixed and initial contributions, respectively.

[100] *See supra* note 38.

[101] *See supra* note 39.

proposed change would result in potentially higher contribution requirements for Clearing Members with large shares of overall margin relative to open interest, which could be the result of a portfolio that contains directional exposures driving higher margin requirements or accounts that have significant exposures in futures subject to customer gross margining requirements. OCC believes that this change is prudent from a risk management perspective as it would better align each Clearing Member's contribution requirement with the risk it presents to OCC by requiring those members that bring elevated levels of risk to contribute more to the Clearing Fund and thereby incentivize those firms to reduce the risk of their exposures. As a result, OCC believes that any impact on competition would be necessary and appropriate in furtherance of the purposes of protecting investors and the public interest under the Act.

OCC also proposes to modify the volume component of its Clearing Fund contribution allocation weighting methodology to provide that OCC would use cleared volume, as opposed to executed volume, in allocating Clearing Fund contribution requirements. OCC believes that the proposed change also is designed to more appropriately allocate contribution requirements commensurate to the risks posed by its Clearing Members by basing the volume component of the allocation on where the position is ultimately cleared, and where the risk is ultimately maintained, as opposed to where it was executed. OCC notes that the Clearing Members most directly impacted by the proposed change are execution-only Clearing Members that directly give up trades through transfers to other Clearing Members and do not to clear or carry positions on a routine basis, and would therefore generally see reduced contribution requirements due to the change from executed volume to cleared volume. OCC believes the overall impact to non-execution-only Clearing Members due only to the change to cleared volume would be minimal. As a result, OCC does not believe the proposed change would have an impact or impose a burden on competition.

OCC also proposes a number of non-material changes, such as relocating provisions of OCC's By-Laws concerning the Clearing Fund to its Rules, making other clarifying and conforming changes to its Rules, Policy and procedures, and clarifying certain pro-cyclicality measures in its existing margin methodology, which are not expected to have any impact on competition.

(C) Clearing Agency's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

Written comments on the proposed rule change were not and are not intended to be solicited with respect to the proposed rule change and none have been 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 up to 90 days (i) as the Commission may designate if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve or disapprove the proposed rule change, or

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–OCC–2018–008 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–OCC–2018–008. 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 website (*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 website 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 OCC and on OCC's website at *https://www.theocc.com/components/docs/legal/rules_and_bylaws/sr_occ_18_008.pdf.*

All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly.

All submissions should refer to File Number SR–OCC–2018–008 and should be submitted on or before July 6, 2018.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[102]

Eduardo A. Aleman,

Assistant Secretary.

[FR Doc. 2018–12855 Filed 6–14–18; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–83405; File No. SR–NASDAQ–2018–040]

Self-Regulatory Organizations; The Nasdaq Stock Market LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend the Descriptions of Certain Data Feeds Within the Nasdaq Options Market

June 11, 2018.

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 May 30, 2018, The Nasdaq Stock Market LLC (''Nasdaq'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

[102] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend the descriptions of certain data feeds within the Nasdaq Options Market LLC (''NOM'') Chapter VI, Section 19, entitled ''Data Feeds and Trade Information.'' The Exchange also proposes to correct an error within the fee schedule.

The text of the proposed rule change is available on the Exchange's website 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 the Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend Chapter VI, Section 19, entitled ''Data Feeds and Trade Information'' to further detail the type of information available on Nasdaq ITCH to Trade Options (ITTO) or Best of Nasdaq Options (BONO) which describes symbol directory information with a more specific description of the options symbol directory that was recently utilized in ISE Rule 718(a).[3] The Exchange also proposes to correct an inadvertent omission within Chapter XV, Section 3 pertaining to an options port fee.

Chapter VI, Section 19

The Exchange desires to amend the description of ITTO which currently provides, ''ITTO is a data feed that provides quotation information for individual orders on the NOM book, last sale information for trades executed on NOM, and Order Imbalance Information as set forth in NOM Rules Chapter VI, Section 8.'' The Exchange proposes to amend this sentence to provide, ''ITTO is a data feed that provides *full order and quote depth* information for individual orders *and quotes* on the NOM book, last sale information for trades executed on NOM, and Order Imbalance Information as set forth in NOM Rules Chapter VI, Section 8.'' The Exchange proposes this language to make clear that this data feed has full order and quote information and not top of book information. The Exchange believes this proposed language will bring greater clarity to this description. The ITTO feed is not changing.

Also, today ITTO and BONO have an options symbol directory within those data feeds. The Exchange proposes to add a sentence to each of those data feeds to describe the data provided for each options series. The data includes the symbol (series and underlying security), put or call indicator, expiration date, the strike price of the series, and whether the option series is available for trading on NOM and identifies if the series is available for closing transactions only. The Exchange inadvertently excluded this information when it originally filed the description for these feeds. The Exchange believes that adding this language will bring greater clarity to each of these feeds.

The Exchange also proposes to replace the word ''Exchange'' with ''NOM'' in Section 19(a).

Chapter XV, Section 3

The Exchange filed a rule change to reorganize its port fees.[4] The Exchange added a new section 3(i) which included the order and quote protocols are available on NOM. The Exchange noted in that rule change that it was not amending any pricing related to the protocols, rather the Exchange relocated and reorganized certain fees including the OTTO Port Fee. The Exchange relocated the OTTO port fee to section 3(i) and noted the OTTO Port Fee was $750, per port, per month. The Exchange did not properly carry over the description of the OTTO Port Fee, which was $750, per port, per month, per mnemonic. The Exchange proposes to correct this error by adding ''per mnemonic'' back to this fee as it never intended to amend the manner in which an OTTO Port was billed.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Securities Exchange Act of 1934,[5] in general, and furthers the objectives of Section 6(b)(5) of the Act,[6] in particular, in that it is designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism for a free and open market and a national market system, and, in general, to protect investors and the public interest, by providing greater transparency to the data feed information offered on NOM. The Exchange's proposal to add more detail to both the ITTO and BONO data feeds will bring greater transparency to the Exchange's Rules. The Exchange believes that the proposed rule change is consistent with the protection of investors and the public interest as it provides information relating to the data available on the Exchange for the benefit of its Members within its Rules and adds greater transparency to these offerings. Finally, the amendments seek to add greater clarity to the data offerings and conform the text of the offerings across its Nasdaq affiliated markets.

The Exchange's proposal to correct an inadvertent error within Chapter XV, Section 3 will clarify the manner in which OTTO Ports are billed today on NOM. The Exchange did not properly carry over the description of the OTTO Port Fee, which was $750, per port, per month, per mnemonic. The Exchange proposes to correct this error by adding ''per mnemonic'' back to this fee as it never intended to amend the manner in which an OTTO Port was billed. The Exchange believes that this correct to the OTTO feed within Chapter XV, Section 3 is consistent with the Act and the protection of investors and the public interest because it will make clear how OTTO Ports are billed today.

B. Self-Regulatory Organization's Statement on Burden on Competition

In accordance with Section 6(b)(8) of the Act,[7] the Exchange does not believe that the proposed rule change will impose any burden on intermarket or intra-market competition that is not necessary or appropriate in furtherance of the purposes of the Act. The data feed offerings are available to any market participant. The Exchange's proposal to amend the description of the data offerings will bring greater transparency to the Rulebook. The amendments seek to add greater clarity to the data

[3] The data provided for each options series includes the symbols (series and underlying security), put or call indicator, expiration date, the strike price of the series, and whether the option series is available for trading on ISE and identifies if the series is available for closing transactions only.

[4] Securities and Exchange Act Release No. 83193 (May 9, 2018), 83 FR 22539 (May 15, 2018) (SR–NASDAQ–2018–036).

[5] 15 U.S.C. 78f(b).

[6] 15 U.S.C. 78f(b)(5).

[7] 15 U.S.C. 78f(b)(8).

offerings and conform the text of the offerings. The Exchange's proposal to correct an inadvertent error within Chapter XV, Section 3 will clarify the manner in which OTTO Ports are billed today on NOM. All OTTO Ports will continue to be billed in a uniform manner.

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

Because the proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act[8] and Rule 19b–4(f)(6) thereunder.[9]

A proposed rule change filed under Rule 19b–4(f)(6)[10] normally does not become operative for 30 days after the date of filing. However, pursuant to Rule 19b–4(f)(6)(iii),[11] the Commission may designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has asked the Commission to waive the 30-day operative delay so that the proposal may become operative upon filing. The Exchange states that such waiver will allow it to update its rules to provide more detail regarding its data offerings and properly reflect the manner in which an OTTO Port is currently billed. The Exchange believes this will further the protection of investors and the public interest because it will provide greater transparency as to the data offerings available to members and avoid confusion by correcting an error on its fee schedule. For this reason, the Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest and, therefore, the Commission designates the proposed rule change to be operative upon filing.[12]

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

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–2018–040 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to File Number SR–NASDAQ–2018–040. 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 website (*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 website 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. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NASDAQ–2018–040 and should be submitted on or before July 6, 2018.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[13]

Eduardo A. Aleman,

Assistant Secretary.

[FR Doc. 2018–12854 Filed 6–14–18; 8:45 am]

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[8] 15 U.S.C. 78s(b)(3)(A).

[9] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6)(iii) requires the Exchange to give the Commission written notice the Exchange's intent to file the proposed rule change, along with a brief description and text of the proposed rule change at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

[10] 17 CFR 240.19b–4(f)(6).

[11] 17 CFR 240.19b–4(f)(6)(iii).

[12] For purposes only of waiving the 30-day operative delay, the Commission has also considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[13] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–83402; File No. SR–NYSEAMER–2018–23]

Self-Regulatory Organizations; NYSE American LLC; Notice of Filing and Immediate Effectiveness of Proposed Change To Amend the NYSE American Equities Price List and the NYSE American Options Fee Schedule Related to Co-Location Services in Connection With the Re-Launch of Trading on NYSE National, Inc. and Proposed NYSE National Co-Location Services

June 11, 2018.

Pursuant to Section 19(b)(1)[1] of the Securities Exchange Act of 1934 (the ''Act'')[2] and Rule 19b–4 thereunder,[3] notice is hereby given that, on May 30, 2018, NYSE American LLC (the ''Exchange'' or ''NYSE American'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

[1] 15 U.S.C. 78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend the NYSE American Equities Price List (''Price List'') and the NYSE American Options Fee Schedule (''Fee Schedule'') related to co-location services in connection with the re-launch of trading on NYSE National, Inc. (''NYSE National'') and proposed NYSE National co-location services. The Exchange also proposes to make a non-substantive change to remove obsolete text from the Price List and Fee Schedule. The proposed change is available on the Exchange's website at *www.nyse.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend the Price List and Fee Schedule related to co-location [4] services in connection with the re-launch of trading on NYSE National and proposed NYSE National co-location services. Specifically, the Exchange proposes to make changes to General Note 1 and General Note 4 of the Price List and Fee Schedule to add references to NYSE National. The Exchange also proposes to make a non-substantive change to remove obsolete text from the Price List and Fee Schedule, with respect to the wireless connection to third party data provided by the Toronto Stock Exchange (''TSX'').

On January 31, 2017, Intercontinental Exchange, Inc. (''ICE''), the indirect parent of the Exchange, acquired all of the outstanding capital stock of NYSE National through its wholly-owned subsidiary NYSE Group.[5] As a result, NYSE National is an affiliate of the Exchange. On February 1, 2017, NYSE National ceased trading operations.[6]

NYSE National filed proposed rule changes to re-launch trading operations.[7] NYSE National has stated that it anticipates re-launching trading operations in the second quarter of 2018. In connection with the anticipated re-launch of NYSE National's trading operations, NYSE National has filed a proposed rule change to offer the same co-location services and fees offered by the Exchange, the New York Stock Exchange LLC (''NYSE LLC'') and NYSE Arca, Inc. (''NYSE Arca'' and, together with NYSE LLC, the ''Affiliate SROs''), which are its affiliates.[8]

The Exchange requests that the proposed rule change become both effective and operative immediately upon filing.[9]

General Note 1

General Note 1 of the Price List and Fee Schedule provides that a User [10] that incurs co-location fees for a particular co-location service shall not be subject to co-location fees for the same co-location service charged by the other Affiliate SROs.[11] The Exchange proposes to add NYSE National to General Note 1 to the Price List, as follows (additions underlined, deletions in brackets):

A User that incurs co-location fees for a particular co-location service pursuant to the NYSE American Equities Price List shall not be subject to co-location fees for the same co-location service charged pursuant to the NYSE American Options Fee Schedule or by the Exchange's affiliates New York Stock Exchange LLC (NYSE), [and] NYSE Arca, Inc. (NYSE Arca) *and NYSE National, Inc. (NYSE National).*

The Exchange proposes to add NYSE National to General Note 1 to the Fee Schedule, as follows (additions underlined, deletions in brackets):

A User that incurs co-location fees for a particular co-location service pursuant to this Fee Schedule shall not be subject to co-location fees for the same co-location service charged pursuant to the NYSE American Equities Price List or by the Exchange's affiliates New York Stock Exchange LLC (NYSE), [and] NYSE Arca, Inc. (NYSE Arca) *and NYSE National, Inc. (NYSE National).*

By including the proposed reference to NYSE National, General Note 1 would provide that the fees a User pays for co-location services would not depend on whether the User connects to none, one, some, or all of the Exchange, the Affiliate SROs, and NYSE National.

General Note 4

General Note 4 of the Price List and Fee Schedule provides that, when a User purchases access to the Liquidity Center Network (''LCN'') or the internet protocol (''IP'') network, the two local area networks available in the data center,[12] a User receives (a) the ability to access the trading and execution systems of the Exchange and Affiliate SROs, and (b) connectivity to any of the listed data products (''Included Data Products'') that it selects.

The Exchange proposes to add NYSE National to the list of trading and execution system providers in the first sentence of the first paragraph, thereby expanding the definition of ''Exchange Systems'' which Users may access to include NYSE National. It also proposes to add NYSE National to the lists of affiliated entities in the first, third and fourth sentences. The proposed changes are as follows (additions underlined, deletions in brackets):

When a User purchases access to the LCN or IP network, it receives the ability to access the trading and execution systems of the NYSE, NYSE American, [and] NYSE Arca *and NYSE National* (Exchange Systems), subject, in each case, to authorization by the NYSE, NYSE American, [or] NYSE Arca *or NYSE National,* as applicable. Such access includes access to the customer gateways that provide for order entry, order receipt (*i.e.* confirmation that an order has been received), receipt of drop copies and trade reporting (*i.e.* whether a trade is executed or

[4] The Exchange initially filed rule changes relating to its co-location services with the Commission in 2010. *See* Securities Exchange Act Release No. 62961 (September 21, 2010), 75 FR 59299 (September 27, 2010) (SR–NYSEAmex–2010–80). The Exchange operates a data center in Mahwah, New Jersey (the ''data center'') from which it provides co-location services to Users.

[5] *See* Securities Exchange Act Release No. 79902 (January 30, 2017), 82 FR 9258 (February 3, 2017) (SR–NSX–2016–16). Prior to its acquisition, NYSE National was named ''National Stock Exchange, Inc.''

[6] *See* Securities Exchange Act Release No. 80018 (February 10, 2017), 82 FR 10947 (February 16, 2017) (SR–NSX–2017–04).

[7] *See* Securities Exchange Act Release No. 83289 (May 17, 2018) (notice of filing of Amendment No. 1 and order granting accelerated approval of a proposed rule change, as amended by Amendment No. 1, to support the re-launch of NYSE National, Inc. on the Pillar Trading Platform) (''NYSE National Trading Rules Approval''). *See also* Securities Exchange Act Release No. 82819 (March 7, 2018), 83 FR 11098 (March 13, 2018) (SR–NYSENat–2018–02).

[8] *See* SR–NYSENat–2018–07 (May 18, 2018).

[9] *See* NYSE National Trading Rules Approval, *supra* note 7.

[10] For purposes of the Exchange's co-location services, a ''User'' means any market participant that requests to receive co-location services directly from the Exchange. *See* Securities Exchange Act Release No. 76009 (September 29, 2015), 80 FR 60213 (October 5, 2015) (SR–NYSEMKT–2015–67).

[11] *See* Securities Exchange Act Release No. 70176 (August 13, 2013), 78 FR 50471 (August 19, 2013) (SR–NYSEMKT–2013–67). Some Users do not connect to the Exchange or the Affiliate SROs, but rather provide services to other Users co-located at the data center. *Id.*

[12] *See* Securities Exchange Act Release No. 79728 (January 4, 2017), 82 FR 3035 (January 10, 2017) (SR–NYSEMKT–2016–126).

cancelled), as well as for sending information to shared data services for clearing and settlement. A User can change the access it receives at any time, subject to authorization by NYSE, NYSE American, [or] NYSE Arca, *or NYSE National.* NYSE, NYSE American, [and]NYSE Arca *and NYSE National* also offer access to Exchange Systems to their members, such that a User does not have to purchase access to the LCN or IP network to obtain access to Exchange Systems.

In addition, the Exchange proposes to add NYSE National to the table of Included Data Products set forth in General Note 4.

Toronto Stock Exchange

The Exchange offers Users the option to receive certain market data feeds from third party markets through a wireless connection. The description of the charge for the TSX wireless connection in the Price List and Fee Schedule states that ''[c]ustomers with an existing wireless connection to TSX at the time the Exchange makes the service available will not be subject to an initial charge or receive 30-day testing period.'' Because the wireless connection to the TSX has become effective, the statement is obsolete. Accordingly, the Exchange proposes to delete the statement from the Price List and Fee Schedule.

General

As is the case with all Exchange co-location arrangements, (i) neither a User nor any of the User's customers would be permitted to submit orders directly to the Exchange unless such User or customer is a member organization, a Sponsored Participant or an agent thereof (*e.g.,* a service bureau providing order entry services); (ii) use of the co-location services proposed herein would be completely voluntary and available to all Users on a non-discriminatory basis; [13] and (iii) a User would only incur one charge for the particular co-location service described herein, regardless of whether the User connects only to the Exchange or to the Exchange, one or both of its Affiliate SROs, or NYSE National.[14]

[13] As is currently the case, Users that receive co-location services from the Exchange will not receive any means of access to the Exchange's trading and execution systems that is separate from, or superior to, that of other Users. In this regard, all orders sent to the Exchange enter the Exchange's trading and execution systems through the same order gateway, regardless of whether the sender is co-located in the data center or not. In addition, co-located Users do not receive any market data or data service product that is not available to all Users, although Users that receive co-location services normally would expect reduced latencies in sending orders to, and receiving market data from, the Exchange.

[14] *See* 78 FR 50471, *supra* note 11, at 50471. The Affiliate SROs have also submitted substantially the same proposed rule change to propose the changes described herein. *See* SR–NYSE–2018–23 and SR–NYSEArca–2018–36.

The proposed change is not otherwise intended to address any other issues relating to co-location services and/or related fees, and the Exchange is not aware of any problems that Users would have in complying with the proposed change.

2. Statutory Basis

The Exchange believes that the proposal is consistent with Section 6(b) of the Act,[15] in general, and furthers the objectives of Section 6(b)(5) of the Act,[16] in particular, because it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to, and perfect the mechanisms of, a free and open market and a national market system and, in general, to protect investors and the public interest and because it is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

The Exchange believes that the proposed change would remove impediments to, and perfect the mechanisms of, a free and open market and a national market system and, in general, protect investors and the public interest because the amendments would update General Note 1 to reflect NYSE National's provision of co-location services. By including the proposed reference to NYSE National, General Note 1 would provide that the fees a User pays for co-location services would not depend on whether the User connects to none, one, some, or all of the Exchange, the Affiliate SROs, and NYSE National. For example, to charge one User three times for a cage because that User connects to the Exchange, NYSE National, and an Affiliate SRO, when another User that buys the same size cage and only connects to the Exchange only pays once, would not promote just and equitable principles of trade. The Exchange also believes that the proposed amendments to General Note 1 are not designed to permit unfair discrimination between customers, issuers, brokers, or dealers because charging a User for co-location services based on how many markets to which a User connects could result in the Exchange, NYSE National and the Affiliate SROs receiving the proceeds from multiple fees despite only providing a service once.

The Exchange believes that the proposed amendments would remove impediments to, and perfect the mechanisms of, a free and open market and a national market system and, in general, protect investors and the public interest because the amendments would update General Note 4 to reflect NYSE National's provision of co-location services. By expanding the definition of ''Exchange Systems'' to include the NYSE National trading and execution system, incorporating references to NYSE National, and adding NYSE National to the list of Included Data Products, the Exchange would provide market participants with clarity as to what access and connectivity a User receives when it purchases access to the LCN or IP network, thereby making the description more accessible and transparent.

Further, the Exchange believes that revising General Note 4 to provide a more detailed description of the access and connectivity to NYSE National that Users would receive with their purchase of access to the LCN or IP network would promote just and equitable principles of trade and remove impediments to, and perfect the mechanisms of, a free and open market and a national market system as it would make clear that all Users that voluntarily select to access the LCN or IP network would receive the same access to the NYSE National trading and execution systems and connectivity to NYSE National data and would not be subject to a charge above and beyond the fee paid for the relevant LCN or IP network access. In addition, a User would not be required to use any of its bandwidth to access the NYSE National trading and execution system or connect to NYSE National data unless it wishes to do so. A User only receives the access to Exchange Systems and connectivity to Included Data Products that it selects, and a User can change such access or connectivity it receives at any time, subject to authorization from the data provider or relevant Exchange or Affiliate SRO.

The Exchange believes that the non-substantive change to remove obsolete text with respect to the wireless connection to TSX data would remove impediments to, and perfect the mechanisms of, a free and open market and a national market system and, in general, protect investors and the public interest because the amendment would clarify Exchange rules and alleviate any possible market participant confusion caused by the obsolete reference.

[15] 15 U.S.C. 78f(b).

[16] 15 U.S.C. 78f(b)(5).

The Exchange also believes that the proposed fee change is consistent with Section 6(b)(4) of the Act,[17] in particular, because it provides for the equitable allocation of reasonable dues, fees, and other charges among its members, issuers and other persons using its facilities and does not unfairly discriminate between customers, issuers, brokers or dealers.

The Exchange believes that the proposed change provides for the equitable allocation of reasonable dues, fees, and other charges among its members, issuers and other persons using its facilities and does not unfairly discriminate between customers, issuers, brokers or dealers, because the change would result in the Exchange offering co-location services related to access and connectivity to NYSE National, an affiliate of the Exchange, on the same terms and in the same manner as it offers access and connectivity to the Exchange and the Affiliate SROs. By adding NYSE National to General Notes 1 and 4, the proposed change would ensure that the fees a User pays for co-location services would not depend on whether the User connects to none, one or more of the Exchange, the SRO Affiliates and NYSE National. For example, a User that connects to the Exchange, NYSE National, and an Affiliate SRO, and another User that only connects to the Exchange, would both receive the same services for the same fee, including the same access and connectivity with their purchase of access to the LCN or IP network.

The Exchange believes that the proposed non-substantive change to remove obsolete text with respect to the wireless connection to TSX data would be reasonable because the change would have no impact on pricing. Rather, the change would remove obsolete information from the description of the pricing for the service, alleviating possible market participant confusion.

For these reasons, the Exchange believes that the proposal is consistent with the Act.

B. Self-Regulatory Organization's Statement on Burden on Competition

In accordance with Section 6(b)(8) of the Act,[18] the Exchange believes that the proposed rule change will not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act because, in addition to the use of co-location services being completely voluntary, they are available to all Users on an equal basis (*i.e.,* the same range of products and services are available to all Users).

The Exchange believes that the proposed change would not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act because the change would result in the Exchange offering co-location services related to access and connectivity to NYSE National, an affiliate of the Exchange, on the same terms and in the same manner as it offers access and connectivity to the Exchange and the Affiliate SROs. By adding NYSE National to General Notes 1 and 4, the proposed change would ensure that the fees a User pays for co-location services would not depend on whether the User connects only to none, one or more of the Exchange, the SRO Affiliates and NYSE National. Further, the Exchange believes that revising General Note 4 to provide a more detailed description of the access and connectivity to NYSE National that Users would receive with their purchase of access to the LCN or IP network would make clear that all Users that voluntarily select to access the LCN or IP network would receive the same access to the NYSE National trading and execution systems and connectivity to NYSE National data and would not be subject to a charge above and beyond the fee paid for the relevant LCN or IP network access.

In addition, a User would not be required to use any of its bandwidth to access the NYSE National trading and execution system or connect to NYSE National data unless it wishes to do so.

The Exchange believes that the non-substantive change to remove obsolete text with respect to the wireless connection to TSX data would not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act because it would have no impact on pricing or existing services. Rather, the change would remove obsolete information from the description of the pricing for the service, alleviating possible market participant confusion.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The Exchange has filed the proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act[19] and Rule 19b–4(f)(6) thereunder.[20] Because the proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative prior to 30 days from the date on which it was filed, or such shorter time as the Commission may designate, if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act and Rule 19b–4(f)(6)(iii) thereunder.[21]

A proposed rule change filed under Rule 19b–4(f)(6)[22] normally does not become operative prior to 30 days after the date of the filing. However, pursuant to Rule 19b4(f)(6)(iii),[23] the Commission may designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange requests that the Commission waive the 30-day operative delay so that the proposed rule changes may become operative immediately upon filing. The Exchange believes that waiver of the operative delay is consistent with the protection of investors and the public interest because it would allow the Exchange to offer co-location services related to access and connectivity to NYSE National to coincide with the relaunch of the NYSE National and its proposed co-location services. The Exchange also notes that waiver would alleviate the possibility of confusion that could be caused by inconsistencies between the Exchange's Price List and NYSE National co-location services that are to be included in NYSE National's price list. The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest as it would allow the Exchange to offer co-locations services in the form of access and connectivity to NYSE National without undue delay. Accordingly, the Commission waives the 30-day operative delay and designates the proposed rule change operative upon filing.[24]

[17] 15 U.S.C. 78f(b)(4).

[18] 15 U.S.C. 78f(b)(8).

[19] 15 U.S.C. 78s(b)(3)(A)(iii).

[20] 17 CFR 240.19b–4(f)(6).

[21] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6) requires the Exchange to give the Commission written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

[22] 17 CFR 240.19b–4(f)(6).

[23] 17 CFR 240.19b–4(f)(6)(iii).

[24] For purposes only of waiving the 30-day operative delay, the Commission has considered the

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) [25] 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–NYSEAMER–2018–23 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–NYSEAMER–2018–23. 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 website (*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 website 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. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NYSEAMER–2018–23 and should be submitted on or before July 6, 2018.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[26]

Eduardo A. Aleman,

Assistant Secretary.

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proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[25] 15 U.S.C. 78s(b)(2)(B).

[26] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–83407; File No. SR–FINRA–2018–024]

Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend Security Futures Risk Disclosure Statement To Reflect the T+2 Settlement Cycle, Incorporate Prior Supplements, and Make Other Non-Substantive Changes

June 11, 2018.

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 June 7, 2018, 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, II, and III 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.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 17 CFR 240.19b–4(f)(6).

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

FINRA is proposing to update the 2002 security futures risk disclosure statement (''2002 Statement'' or ''Statement'') [4] that would incorporate prior supplements pertaining to Sections 5.2 (Settlement by Physical Delivery) and 8.1 (Corporate Events),[5] make a technical change to Section 5.2 to reflect that the normal clearance and settlement cycle for securities transaction is now two business days, amend Section 6.1 (Protections for Securities Accounts) to reflect the current address for the Securities Investor Protection Corporation (''SIPC''), and make other non-substantive and technical changes. FINRA is not proposing any textual changes to FINRA rules.

The proposed updated Statement is attached as Exhibit 3a. The proposed supplement pertaining to changes to the specified paragraphs under Sections 5.2 and 6.1, and the proposed non-substantive and technical changes to the other Sections as described herein are attached as Exhibit 3b.

The text [sic] of the proposed rule change is available on FINRA's website at *http://www.finra.org,* at the principal office of FINRA 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

Rule 2370(b)(11)(A) requires a member to deliver the current security futures risk disclosure statement to each customer at or prior to the time such customer's account is approved for

[4] *See infra* note 8.

[5] *See infra* notes 10 and 11. The Commission notes that the exhibits referenced are exhibits to the proposed rule change, not to this Notice.

trading security futures.[6] Thereafter, the member must distribute each new or revised security futures risk disclosure statement to each customer having an account approved for such trading or, in the alternative, not later than the time a confirmation of a transaction is delivered to each customer that enters into a security futures transaction. The rule requires FINRA to advise members when a new or revised security futures risk disclosure statement is available. To comply with the requirements of Rule 2370(b)(11)(A), a member may distribute the new or revised statement (*i.e.,* supplement) in various ways, including, but not limited to: (1) Conducting a mass mailing of the supplement to all of its customers approved to trade security futures who have already received the Statement; or (2) distributing the supplement to a customer who has already received the Statement not later than the time a confirmation of a transaction is delivered to each customer that enters into a security futures transaction.[7]

The Statement is a uniform statement that was jointly developed by FINRA, the American Stock Exchange, the Chicago Board Options Exchange (''Cboe''), the National Futures Association (''NFA''), Nasdaq Liffe Markets, the New York Stock Exchange, OneChicago, and the Options Clearing Corporation (''OCC''), and approved by the SEC in 2002.[8] Two supplements were added to the 2002 Statement in 2010 and 2014, and they are intended to be read in conjunction with Statement.[9] The 2010 supplement [10] revised the third paragraph under Section 8.1 of the Statement to accommodate changes by OneChicago, an exchange listing security futures products, to list a class of security futures for which adjustments are made for ordinary dividends. The 2010 supplemental paragraph reads as follows:

> Corporate issuers also occasionally issue special dividends. A special dividend is an announced cash dividend payment outside the normal and customary practice of a corporation. The terms of a security futures contract may be adjusted for special dividends. The adjustments, if any, will be based upon the rules of the exchange and clearing organization. In general, there will be no adjustments for ordinary dividends as they are a normal and customary practice of an issuer and are already accounted for in the pricing of security futures. However, adjustments for ordinary dividends may be made for a specified class of security futures contracts based on the rules of the exchange and the clearing organization.

The 2014 supplement [11] revised the first paragraph under Section 5.2 of the Statement to accommodate changes by OneChicago to list a product with a physical delivery settlement cycle shorter than three business days. The 2014 supplemental paragraph also indicates that the normal clearance and settlement cycle for securities transactions is three business days and reads as follows:

> Settlement by physical delivery is carried out by clearing brokers or their agents with National Securities Clearing Corporation (''NSCC''), an SEC-regulated securities clearing agency. Such settlements are made in much the same way as they are for purchases and sales of the underlying security. Promptly after the last day of trading, the regulated exchange's clearing organization will report a purchase and sale of the underlying stock at the previous day's settlement price (also referred to as the ''invoice price'') to NSCC. In general, if NSCC does not reject the transaction by a time specified in its rules, settlement is effected pursuant to the rules of the exchange and NSCC's Rules and Procedures within the normal clearance and settlement cycle for securities transactions, which currently is three business days. However, settlement may be effected on a shorter timeframe based on the rules of the exchange and subject to NSCC's Rules and Procedures.

FINRA is proposing to update the 2002 Statement in several ways. First, the proposed update to the Statement would incorporate the 2010 supplement pertaining to Section 8.1, with one corrective non-substantive change, into the main body of the Statement. The proposed non-substantive change would insert the words, ''recognized as,'' within the fifth sentence in the third paragraph under Section 8.1 as these words were inadvertently omitted from the 2010 supplement. The proposed insertion of the words, ''recognized as,'' would correct the sentence to read as follows: ''In general, there will be no adjustments for ordinary dividends as they are recognized as a normal and customary practice of an issuer and are already accounted for in the pricing of security futures.'' This proposed insertion of the words, ''recognized as,'' would make the sentence identical to the fifth sentence in the third paragraph under Section 8.1 of NFA's Statement.[12]

Second, the proposed updated Statement would incorporate the 2014 supplement pertaining to Section 5.2, with one technical change, into the main body of the Statement. The proposed technical change would indicate that the normal clearance and settlement cycle for securities transactions is now two business days by replacing the word ''three'' with the word ''two'' in the phrase ''three business days.'' [13]

Third, Section 6.1 of the Statement currently provides that a customer may check whether a firm is a SIPC member by accessing SIPC's website at *www.sipc.org,* calling the SIPC Membership Department at (202) 371–8300, or writing to the SIPC Membership Department at 805 Fifteenth Street NW, Suite 800, Washington, DC 20005–2215. FINRA is proposing to amend the second paragraph under Section 6.1 to reflect that SIPC's address is now 1667 K Street NW, Suite 1000, Washington, DC 20006–1620.[14] The website address and telephone number would remain unchanged.

Finally, FINRA is proposing to incorporate other non-substantive and technical changes into the proposed updated Statement.[15] FINRA is proposing to correct a cross-reference appearing within the last sentence in

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[6] In general, the security futures risk disclosure statement provides customers with disclosures regarding the characteristics and potential risks of investing in standardized security futures contracts traded on regulated U.S. exchanges.

[7] *See Information Notice,* September 7, 2010 (August 2010 Supplement to the Security Futures Risk Disclosure Statement); *see also Regulatory Notice* 14–24 (May 2014) (stating, a member may separately distribute new supplements to such customers and that a member is not required to redistribute the entire Statement or earlier supplements).

[8] *See* Securities Exchange Act Release No. 46862 (November 20, 2002), 67 FR 70993 (November 27, 2002) (Order Approving File No. SR–NASD–2002–129); *see also* Securities Exchange Act Release No. 46613 (October 7, 2002), 67 FR 64176 (October 17, 2002) (Notice of Filing and Effectiveness of File No. SR–NFA–2002–05).

[9] *See infra* notes 10 and 11.

[10] *See* Securities Exchange Act Release No. 62787 (August 27, 2010), 75 FR 53998 (September 2, 2010) (Notice of Filing and Immediate Effectiveness of File No. SR–FINRA–2010–045).

[11] *See* Securities Exchange Act Release No. 71981 (April 21, 2014), 79 FR 23034 (April 25, 2014) (Notice of Filing and Immediate Effectiveness of File No. SR–FINRA–2014–019).

[12] *See generally* Securities Exchange Act Release No. 62787 (August 27, 2010), 75 FR 53998 (September 2, 2010) (Notice of Filing and Immediate Effectiveness of File No. SR–FINRA–2010–045) and Securities Exchange Act Release No. 62624 (August 2, 2010), 75 FR 47666 (August 6, 2010) (Notice of Filing and Immediate Effectiveness of File No. SR–NFA–2010–02).

[13] *See* Securities Exchange Act Release No. 80295 (March 22, 2017), 82 FR 15564 (March 29, 2017) (Securities Transaction Settlement Cycle; Final Rule) (File No. S7–22–16); *see also* Securities Exchange Act Release No. 80004 (February 9, 2017), 82 FR 10835 (February 15, 2017) (Order Approving File No. SR–FINRA–2016–047) and Securities Exchange Act Release No. 80004A (March 6, 2017), 82 FR 13517 (March 13, 2017) (Correction to Order Approving File No. SR–FINRA–2016–047); and *Regulatory Notice* 17–19 (May 2017).

[14] *See* Securities Investor Protection Corporation, Contact Us, *https://www.sipc.org/contact-us* (last visited June 6, 2018).

[15] For example, FINRA is proposing to make one stylistic change that would spell ''broker/dealer'' as ''broker-dealer'' throughout the Statement. FINRA anticipates this conforming change to be made to NFA's Statement.

the second paragraph under Section 2.4 (How Security Futures Differ from the Underlying Security),[16] and to remove the extraneous word, ''apply,'' appearing within the first sentence in the second paragraph under Section 8.2 (Position Limits and Large Trader Reporting). FINRA expects conforming changes to be made to NFA's Statement.

Currently, the 2002 Statement, to which the 2010 and 2014 supplements are appended, is posted on FINRA's website,[17] and the 2010 and 2014 supplements are also posted on the website [18] as separate documents to facilitate a member's compliance with Rule 2370(b)(11)(A). In accordance with existing guidance, a member could meet its Rule 2370(b)(11)(A) obligations by redistributing the entire Statement to its security futures customers or separately distributing each new supplement to those customers who have already received the Statement.[19]

As noted above, the Statement is a uniform statement that was jointly developed by FINRA, the NFA, and several other securities and futures exchanges. The NFA's Statement currently includes the language from the 2010 and 2014 supplements in the main body, which is posted on NFA's website.[20] Other securities and futures exchanges, such as Cboe and OneChicago, also make publicly available the inclusive Statement on their respective websites.[21] In an effort to modernize the presentation of FINRA's Statement, FINRA is proposing to replace the 2002 Statement currently posted on FINRA's website with the proposed updated Statement that would incorporate all the supplemental paragraphs and the proposed non-substantive and technical changes described above into the main body.[22] This replacement would also align with the way in which other self-regulatory organizations present the Statement, inclusive of supplemental paragraphs, to the public.

To facilitate a member's compliance with Rule 2370(b)(11)(A), FINRA is proposing to encapsulate the various changes to the Statement done through the 2010 supplement, the 2014 supplement, and those proposed herein into a single, integrated supplement (''2018 supplement'') that would show the proposed updated paragraphs in Sections 2.4, 5.2, 6.1, 8.1, and 8.2. The proposed 2018 supplement would appear on FINRA's website as a separate document to continue to afford members with the flexibility to comply with the requirements of Rule 2370(b)(11)(A) by separately distributing the supplement to customers who have already received the 2002 Statement.[23]

FINRA has filed the proposed rule change for immediate effectiveness. FINRA will announce the implementation date of the proposed rule change in a *Regulatory Notice* to be published no later than 60 days following Commission notice of the filing of the proposed rule change for immediate effectiveness. The implementation date will be no later than 90 days after the date of the filing.

2. Statutory Basis

FINRA believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act,[24] 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 believes that updating the Statement to incorporate all supplements into the main body will help to accurately inform customers of the characteristics and risks of security futures. The proposed updated Statement would also disclose that the normal clearance and settlement cycle for securities transactions is currently two business days, and the current contact information for the SIPC.

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. While FINRA recognizes that there may be a burden associated with the distribution of the proposed updated Statement or supplement, FINRA believes that any such burden would be outweighed by the benefit to customers of accurately disclosing the characteristics and risks of security futures. FINRA also believes that any burden will be minimal because firms currently have an existing obligation to deliver each new (*i.e.,* updated) Statement or supplement to customers, and may electronically transmit documents that they are required to furnish to customers under FINRA rules, including the proposed updated Statement or supplement, provided firms adhere to the standards contained in the Commission's May 1996 and October 1995 releases on electronic delivery,[25] and as discussed in *Notice to Members* 98–3.[26] Firms also may transmit the proposed updated Statement or supplement to customers through the use of a hyperlink, provided that customers have consented to electronic delivery.[27] Moreover, Rule 2370(b)(11) provides flexibility on when each updated Statement or supplement must be delivered after a customer's account is approved for trading security futures. Instead of having to automatically and immediately distribute an updated Statement or supplement to every customer having an account approved for trading security futures, a firm may distribute an updated Statement or supplement no later than the time a confirmation of a transaction is delivered to each

[16] Currently, the last sentence in the second paragraph under Section 2.4 directs the reader to refer to Section 9 for further discussion of the impact of corporate events on a security futures contract. Section 8.1 is the appropriate cross-reference as Section 9 contains the Statement's glossary of terms.

[17] *See* Security Futures Risk Disclosure Statement (June 2016) brochure, *http://www.finra.org/sites/default/files/Security_Futures_Risk_Disclosure_Statement.pdf,* posted in its current design to the FINRA website on June 23, 2016, *http://www.finra.org* (enter ''security futures risk disclosure statement'' in the search bar).

[18] *See* FINRA's Security Futures Topic Page, *http://www.finra.org/industry/security-futures* (last visited June 6, 2018).

[19] *See supra* note 7 and accompanying text.

[20] *See* NFA's Risk Disclosure Statement for Security Futures Contracts, *https://www.nfa.futures.org/investors/investor-resources/files/security-futures-disclosure.pdf. See also* Securities Exchange Act Release No. 62624 (August 2, 2010), 75 FR 47666 (August 6, 2010) (Notice of Filing and Immediate Effectiveness of File No. SR–NFA–2010–02) and Securities Exchange Act Release No. 71980 (April 21, 2014), 79 FR 23027 (April 25, 2014) (Notice of Filing and Immediate Effectiveness of File No. SR–NFA–2014–02).

[21] *See* Cboe's Risk Disclosure Statement for Security Futures, *http://cfe.cboe.com/about-cfe/risk-disclosure-security-futures* (linking to NFA's Statement, *https://www.nfa.futures.org/investors/investor-resources/files/security-futures-disclosure.pdf*) and OneChicago's Risk Disclosure Statement for Security Futures Contracts (RDS), *https://www.onechicago.com/?page_id=91. See also* the OCC's Risk Disclosure Statement for Security Futures Contracts, *https://www.theocc.com/about/publications/kids.jsp* (Key Information Documents, linking to NFA's Statement, *https://www.nfa.futures.org/investors/investor-resources/files/security-futures-disclosure.pdf*).

[22] The Statement, in its original language approved by the SEC in 2002, would remain accessible on FINRA's website for those members whose customers may still refer to the original version of the Statement. The Statement, however, would bear a notation that an updated version of the Statement, which incorporates the paragraphs specified in the 2018 supplement, is available.

[23] The 2010 and 2014 supplements would remain accessible on FINRA's website with a notation that these paragraphs, as updated, appear in the 2018 supplement.

[24] 15 U.S.C. 78*o*–3(b)(6).

[25] *See* Securities Act Release No. 7288 (May 9, 1996), 61 FR 24644 (May 15, 1996) and Securities Act Release No. 7233 (October 6, 1995), 60 FR 53458 (October 13, 1995).

[26] *See Notice to Members* 98–3 (January 1998).

[27] *See Information Notice,* September 7, 2010 (August 2010 Supplement to the Security Futures Risk Disclosure Statement).

customer who enters into a security futures transaction. Accordingly, firms would not be required to distribute the proposed updated Statement or supplement to customers who have accounts approved for trading security futures but do not engage in any new security futures transactions.

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 Act [28] and Rule 19b–4(f)(6) thereunder.[29]

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–2018–024 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–2018–024. 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 website (*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 website 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. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–FINRA–2018–024 and should be submitted on or before July 6, 2018.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[30]

Eduardo A. Aleman,

Assistant Secretary.

[FR Doc. 2018–12856 Filed 6–14–18; 8:45 am]

BILLING CODE 8011–01–P

[28] 15 U.S.C. 78s(b)(3)(A).

[29] 17 CFR 240.19b–4(f)(6).

[30] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–83404; File No. SR–NYSE–2018–23]

Self-Regulatory Organizations; New York Stock Exchange LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend Its Price List Related to Co-Location Services in Connection With the Re-Launch of Trading on NYSE National, Inc. and Proposed NYSE National Co-Location Services

June 11, 2018.

Pursuant to Section 19(b)(1) [1] of the Securities Exchange Act of 1934 (the ''Act'') [2] and Rule 19b–4 thereunder,[3] notice is hereby given that, on May 30, 2018, New York Stock Exchange LLC (''NYSE'' or the ''Exchange'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend its Price List related to co-location services in connection with the re-launch of trading on NYSE National, Inc. (''NYSE National'') and proposed NYSE National co-location services. The Exchange also proposes to make a non-substantive change to remove obsolete text from the Price List. The proposed rule change is available on the Exchange's website 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.

[1] 15 U.S.C. 78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend its Price List related to co-location [4] services in connection with the re-launch of trading on NYSE National and proposed NYSE National co-location services. Specifically, the Exchange proposes to make changes to General Note 1 and General Note 4 of the Price List to add references to NYSE National. The Exchange also proposes to make a non-substantive change to remove obsolete text from the Price List, with respect to the wireless connection to third party data provided by the Toronto Stock Exchange (''TSX'').

On January 31, 2017, Intercontinental Exchange, Inc. (''ICE''), the indirect parent of the Exchange, acquired all of the outstanding capital stock of NYSE National through its wholly-owned subsidiary NYSE Group.[5] As a result, NYSE National is an affiliate of the Exchange. On February 1, 2017, NYSE National ceased trading operations.[6]

NYSE National filed proposed rule changes to re-launch trading operations.[7] NYSE National has stated that it anticipates re-launching trading operations in the second quarter of 2018. In connection with the anticipated re-launch of NYSE National's trading operations, NYSE National has filed a proposed rule change to offer the same co-location services and fees offered by the Exchange, NYSE Arca, Inc. (''NYSE Arca''), and NYSE American LLC (''NYSE American'' and, together with NYSE Arca, the ''Affiliate SROs''), which are its affiliates.[8]

The Exchange requests that the proposed rule change become both effective and operative immediately upon filing.[9]

General Note 1

General Note 1 of the Price List provides that a User [10] that incurs co-location fees for a particular co-location service shall not be subject to co-location fees for the same co-location service charged by the other Affiliate SROs.[11] The Exchange proposes to add NYSE National to General Note 1, as follows (additions underlined, deletions in brackets):

A User that incurs co-location fees for a particular co-location service pursuant to this Price List shall not be subject to co-location fees for the same co-location service charged by the Exchange's affiliates NYSE American LLC (NYSE American), [and] NYSE Arca, Inc. (NYSE Arca), and NYSE National, Inc. (NYSE National).

By including the proposed reference to NYSE National, General Note 1 would provide that the fees a User pays for co-location services would not depend on whether the User connects to none, one, some, or all of the Exchange, the Affiliate SROs, and NYSE National.

General Note 4

General Note 4 of the Price List provides that, when a User purchases access to the Liquidity Center Network (''LCN'') or the internet protocol (''IP'') network, the two local area networks available in the data center,[12] a User receives (a) the ability to access the trading and execution systems of the Exchange and Affiliate SROs, and (b) connectivity to any of the listed data products (''Included Data Products'') that it selects.

The Exchange proposes to add NYSE National to the list of trading and execution system providers in the first sentence of the first paragraph, thereby expanding the definition of ''Exchange Systems'' which Users may access to include NYSE National. It also proposes to add NYSE National to the lists of affiliated entities in the first, third and fourth sentences. The proposed changes are as follows (additions underlined, deletions in brackets):

[4] The Exchange initially filed rule changes relating to its co-location services with the Commission in 2010. *See* Securities Exchange Act Release No. 62960 (September 21, 2010), 75 FR 59310 (September 27, 2010) (SR–NYSE–2010–56). The Exchange operates a data center in Mahwah, New Jersey (the ''data center'') from which it provides co-location services to Users.

[5] *See* Securities Exchange Act Release No. 79902 (January 30, 2017), 82 FR 9258 (February 3, 2017) (SR–NSX–2016–16). Prior to its acquisition, NYSE National was named ''National Stock Exchange, Inc.''

[6] *See* Securities Exchange Act Release No. 80018 (February 10, 2017), 82 FR 10947 (February 16, 2017) (SR–NSX–2017–04).

[7] *See* Securities Exchange Act Release No. 83289 (May 17, 2018) (notice of filing of Amendment No. 1 and order granting accelerated approval of a proposed rule change, as amended by Amendment No. 1, to support the re-launch of NYSE National, Inc. on the Pillar Trading Platform) (''NYSE National Trading Rules Approval''). *See also* Securities Exchange Act Release No. 82819 (March 7, 2018), 83 FR 11098 (March 13, 2018) (SR–NYSENat–2018–02).

[8] *See* SR–NYSENat–2018–07 (May 18, 2018).

[9] *See* NYSE National Trading Rules Approval, *supra* note 7.

[10] For purposes of the Exchange's co-location services, a ''User'' means any market participant that requests to receive co-location services directly from the Exchange. *See* Securities Exchange Act Release No. 76008 (September 29, 2015), 80 FR 60190 (October 5, 2015) (SR–NYSE–2015–40).

[11] *See* Securities Exchange Act Release No. 70206 (August 15, 2013), 78 FR 51765 (August 21, 2013) (SR–NYSE–2013–59). Some Users do not connect to the Exchange or the Affiliate SROs, but rather provide services to other Users co-located at the data center. *Id.*

[12] *See* Securities Exchange Act Release No. 79730 (January 4, 2017), 82 FR 3045 (January 10, 2017) (SR–NYSE–2016–92).

When a User purchases access to the LCN or IP network, it receives the ability to access the trading and execution systems of the NYSE, NYSE American, [and] NYSE Arca and NYSE National (Exchange Systems), subject, in each case, to authorization by the NYSE, NYSE American, [or] NYSE Arca or NYSE National, as applicable. Such access includes access to the customer gateways that provide for order entry, order receipt (i.e. confirmation that an order has been received), receipt of drop copies and trade reporting (i.e. whether a trade is executed or cancelled), as well as for sending information to shared data services for clearing and settlement. A User can change the access it receives at any time, subject to authorization by NYSE, NYSE American, [or] NYSE Arca, or NYSE National. NYSE, NYSE American, [and]NYSE Arca and NYSE National also offer access to Exchange Systems to their members, such that a User does not have to purchase access to the LCN or IP network to obtain access to Exchange Systems.

In addition, the Exchange proposes to add NYSE National to the table of Included Data Products set forth in General Note 4.

Toronto Stock Exchange

The Exchange offers Users the option to receive certain market data feeds from third party markets through a wireless connection. The description of the charge for the TSX wireless connection in the Price List states that ''[c]ustomers with an existing wireless connection to TSX at the time the Exchange makes the service available will not be subject to an initial charge or receive 30-day testing period.'' Because the wireless connection to the TSX has become effective, the statement is obsolete. Accordingly, the Exchange proposes to delete the statement from the Price List.

General

As is the case with all Exchange co-location arrangements, (i) neither a User nor any of the User's customers would be permitted to submit orders directly to the Exchange unless such User or customer is a member organization, a Sponsored Participant or an agent thereof (*e.g.,* a service bureau providing order entry services); (ii) use of the co-location services proposed herein would be completely voluntary and available to all Users on a non-discriminatory basis; [13] and (iii) a User would only incur one charge for the particular co-location service described herein, regardless of whether the User connects only to the Exchange or to the Exchange, one or both of its Affiliate SROs, or NYSE National.[14]

The proposed change is not otherwise intended to address any other issues relating to co-location services and/or related fees, and the Exchange is not aware of any problems that Users would have in complying with the proposed change.

2. Statutory Basis

The Exchange believes that the proposal is consistent with Section 6(b) of the Act,[15] in general, and furthers the objectives of Section 6(b)(5) of the Act,[16] in particular, because it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to, and perfect the mechanisms of, a free and open market and a national market system and, in general, to protect investors and the public interest and because it is not designed to permit

[13] As is currently the case, Users that receive co-location services from the Exchange will not receive any means of access to the Exchange's trading and execution systems that is separate from, or superior to, that of other Users. In this regard, all orders sent to the Exchange enter the Exchange's trading and execution systems through the same order gateway, regardless of whether the sender is co-located in the data center or not. In addition, co-located Users do not receive any market data or data service product that is not available to all Users, although Users that receive co-location services normally would expect reduced latencies in sending orders to, and receiving market data from, the Exchange.

[14] *See* 78 FR 51765, *supra* note 11, at 51766. The Affiliate SROs have also submitted substantially the same proposed rule change to propose the changes described herein. *See* SR–NYSEAMER–2018–23 and SR–NYSEArca–2018–36.

[15] 15 U.S.C. 78f(b).

[16] 15 U.S.C. 78f(b)(5).

unfair discrimination between customers, issuers, brokers, or dealers.

The Exchange believes that the proposed change would remove impediments to, and perfect the mechanisms of, a free and open market and a national market system and, in general, protect investors and the public interest because the amendments would update General Note 1 to reflect NYSE National's provision of co-location services. By including the proposed reference to NYSE National, General Note 1 would provide that the fees a User pays for co-location services would not depend on whether the User connects to none, one, some, or all of the Exchange, the Affiliate SROs, and NYSE National. For example, to charge one User three times for a cage because that User connects to the Exchange, NYSE National, and an Affiliate SRO, when another User that buys the same size cage and only connects to the Exchange only pays once, would not promote just and equitable principles of trade. The Exchange also believes that the proposed amendments to General Note 1 are not designed to permit unfair discrimination between customers, issuers, brokers, or dealers because charging a User for co-location services based on how many markets to which a User connects could result in the Exchange, NYSE National and the Affiliate SROs receiving the proceeds from multiple fees despite only providing a service once.

The Exchange believes that the proposed amendments would remove impediments to, and perfect the mechanisms of, a free and open market and a national market system and, in general, protect investors and the public interest because the amendments would update General Note 4 to reflect NYSE National's provision of co-location services. By expanding the definition of ''Exchange Systems'' to include the NYSE National trading and execution system, incorporating references to NYSE National, and adding NYSE National to the list of Included Data Products, the Exchange would provide market participants with clarity as to what access and connectivity a User receives when it purchases access to the LCN or IP network, thereby making the description more accessible and transparent.

Further, the Exchange believes that revising General Note 4 to provide a more detailed description of the access and connectivity to NYSE National that Users would receive with their purchase of access to the LCN or IP network would promote just and equitable principles of trade and remove impediments to, and perfect the mechanisms of, a free and open market and a national market system as it would make clear that all Users that voluntarily select to access the LCN or IP network would receive the same access to the NYSE National trading and execution systems and connectivity to NYSE National data and would not be subject to a charge above and beyond the fee paid for the relevant LCN or IP network access. In addition, a User would not be required to use any of its bandwidth to access the NYSE National trading and execution system or connect to NYSE National data unless it wishes to do so. A User only receives the access to Exchange Systems and connectivity to Included Data Products that it selects, and a User can change such access or connectivity it receives at any time, subject to authorization from the data provider or relevant Exchange or Affiliate SRO.

The Exchange believes that the non-substantive change to remove obsolete text with respect to the wireless connection to TSX data would remove impediments to, and perfect the mechanisms of, a free and open market and a national market system and, in general, protect investors and the public interest because the amendment would clarify Exchange rules and alleviate any possible market participant confusion caused by the obsolete reference.

The Exchange also believes that the proposed fee change is consistent with Section 6(b)(4) of the Act,[17] in particular, because it provides for the equitable allocation of reasonable dues, fees, and other charges among its members, issuers and other persons using its facilities and does not unfairly discriminate between customers, issuers, brokers or dealers.

The Exchange believes that the proposed change provides for the equitable allocation of reasonable dues, fees, and other charges among its members, issuers and other persons using its facilities and does not unfairly discriminate between customers, issuers, brokers or dealers, because the change would result in the Exchange offering co-location services related to access and connectivity to NYSE National, an affiliate of the Exchange, on the same terms and in the same manner as it offers access and connectivity to the Exchange and the Affiliate SROs. By adding NYSE National to General Notes 1 and 4, the proposed change would ensure that the fees a User pays for co-location services would not depend on whether the User connects to none, one or more of the Exchange, the SRO Affiliates and NYSE National. For example, a User that connects to the Exchange, NYSE National, and an Affiliate SRO, and another User that only connects to the Exchange, would both receive the same services for the same fee, including the same access and connectivity with their purchase of access to the LCN or IP network.

The Exchange believes that the proposed non-substantive change to remove obsolete text with respect to the wireless connection to TSX data would be reasonable because the change would have no impact on pricing. Rather, the change would remove obsolete information from the description of the pricing for the service, alleviating possible market participant confusion.

For these reasons, the Exchange believes that the proposal is consistent with the Act.

B. Self-Regulatory Organization's Statement on Burden on Competition

In accordance with Section 6(b)(8) of the Act,[18] the Exchange believes that the proposed rule change will not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act because, in addition to the use of co-location services being completely voluntary, they are available to all Users on an equal basis (*i.e.,* the same range of products and services are available to all Users).

The Exchange believes that the proposed change would not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act because the change would result in the Exchange offering co-location services related to access and connectivity to NYSE National, an affiliate of the Exchange, on the same terms and in the same manner as it offers access and connectivity to the Exchange and the Affiliate SROs. By adding NYSE National to General Notes 1 and 4, the proposed change would ensure that the fees a User pays for co-location services would not depend on whether the User connects only to none, one or more of the Exchange, the SRO Affiliates and NYSE National. Further, the Exchange believes that revising General Note 4 to provide a more detailed description of the access and connectivity to NYSE National that Users would receive with their purchase of access to the LCN or IP network would make clear that all Users that voluntarily select to access the LCN or IP network would receive the same access to the NYSE National trading and execution systems and connectivity to NYSE National data and would not be

[17] 15 U.S.C. 78f(b)(4).

[18] 15 U.S.C. 78f(b)(8).

subject to a charge above and beyond the fee paid for the relevant LCN or IP network access.

In addition, a User would not be required to use any of its bandwidth to access the NYSE National trading and execution system or connect to NYSE National data unless it wishes to do so.

The Exchange believes that the non-substantive change to remove obsolete text with respect to the wireless connection to TSX data would not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act because it would have no impact on pricing or existing services. Rather, the change would remove obsolete information from the description of the pricing for the service, alleviating possible market participant confusion.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The Exchange has filed the proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act [19] and Rule 19b–4(f)(6) thereunder.[20] Because the proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative prior to 30 days from the date on which it was filed, or such shorter time as the Commission may designate, if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act and Rule 19b–4(f)(6)(iii) thereunder.[21]

A proposed rule change filed under Rule 19b–4(f)(6) [22] normally does not become operative prior to 30 days after the date of the filing. However, pursuant to Rule 19b–4(f)(6)(iii),[23] the Commission may designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange requests that the Commission waive the 30-day operative delay so that the proposed rule changes may become operative immediately upon filing. The Exchange believes that waiver of the operative delay is consistent with the protection of investors and the public interest because it would allow the Exchange to offer co-location services related to access and connectivity to NYSE National to coincide with the relaunch of the NYSE National and its proposed co-location services. The Exchange also notes that waiver would alleviate the possibility of confusion that could be caused by inconsistencies between the Exchange's Price List and NYSE National co-location services that are to be included in NYSE National's price list. The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest as it would allow the Exchange to offer co-locations services in the form of access and connectivity to NYSE National without undue delay. Accordingly, the Commission waives the 30-day operative delay and designates the proposed rule change operative upon filing.[24]

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) [25] 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–NYSE–2018–23 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–NYSE–2018–23. 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 website (*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 website 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. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NYSE–2018–23 and should be submitted on or before July 6, 2018.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[26]

Eduardo A. Aleman,

Assistant Secretary.

[FR Doc. 2018–12853 Filed 6–14–18; 8:45 am]

BILLING CODE 8011–01–P

[19] 15 U.S.C. 78s(b)(3)(A)(iii).

[20] 17 CFR 240.19b–4(f)(6).

[21] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6) requires the Exchange to give the Commission written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

[22] 17 CFR 240.19b–4(f)(6).

[23] 17 CFR 240.19b–4(f)(6)(iii).

[24] 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).

[25] 15 U.S.C. 78s(b)(2)(B).

[26] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–83403; File No. SR–NYSEARCA–2018–36]

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend the NYSE Arca Options Fees and Charges and the NYSE Arca Equities Fees and Charges Related to Co-Location Services in Connection With the Re-Launch of Trading on NYSE National, Inc. and Proposed NYSE National Co-Location Services

June 11, 2018.

Pursuant to Section 19(b)(1) [1] of the Securities Exchange Act of 1934 (the ''Act'') [2] and Rule 19b–4 thereunder,[3] notice is hereby given that, on May 30, 2018, NYSE Arca, Inc. (the ''Exchange'' or ''NYSE Arca'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend the NYSE Arca Options Fees and Charges (the ''Options Fee Schedule'') and the NYSE Arca Equities Fees and Charges (the ''Equities Fee Schedule'' and, together with the Options Fee Schedule, the ''Fee Schedules'') related to co-location services in connection with the re-launch of trading on NYSE National, Inc. (''NYSE National'') and proposed NYSE National co-location services. The Exchange also proposes to make a non-substantive change to remove obsolete text from the Fee Schedules. The proposed rule change is available on the Exchange's website at *www.nyse.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

[1] 15 U.S.C. 78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend the Fee Schedules related to co-location [4] services in connection with the re-launch of trading on NYSE National and proposed NYSE National co-location services. Specifically, the Exchange proposes to make changes to General Note 1 and General Note 4 of the Fee Schedules to add references to NYSE National. The Exchange also proposes to make a non-substantive change to remove obsolete text from the Fee Schedules, with respect to the wireless connection to third party data provided by the Toronto Stock Exchange (''TSX'').

On January 31, 2017, Intercontinental Exchange, Inc. (''ICE''), the indirect parent of the Exchange, acquired all of the outstanding capital stock of NYSE National through its wholly-owned subsidiary NYSE Group.[5] As a result, NYSE National is an affiliate of the Exchange. On February 1, 2017, NYSE National ceased trading operations.[6]

NYSE National filed proposed rule changes to re-launch trading operations.[7] NYSE National has stated that it anticipates re-launching trading operations in the second quarter of 2018. In connection with the anticipated re-launch of NYSE National's trading operations, NYSE National has filed a proposed rule change to offer the same co-location services and fees offered by the Exchange, the New York Stock Exchange LLC (''NYSE LLC''), and NYSE American LLC (''NYSE American'' and, together with the NYSE LLC, the ''Affiliate SROs''), which are its affiliates.[8]

The Exchange requests that the proposed rule change become both effective and operative immediately upon filing.[9]

General Note 1

General Note 1 of the Fee Schedules provides that a User [10] that incurs co-location fees for a particular co-location service shall not be subject to co-location fees for the same co-location service charged by the other Affiliate SROs.[11] The Exchange proposes to add NYSE National to General Note 1 to the Options Fee Schedule, as follows (additions underlined, deletions in brackets):

[4] The Exchange initially filed rule changes relating to its co-location services with the Commission in 2010. *See* Securities Exchange Act Release No. 63275 (November 8, 2010), 75 FR 70048 (November 16, 2010) (SR–NYSEArca–2010–100). The Exchange operates a data center in Mahwah, New Jersey (the ''data center'') from which it provides co-location services to Users.

[5] *See* Securities Exchange Act Release No. 79902 (January 30, 2017), 82 FR 9258 (February 3, 2017) (SR–NSX–2016–16). Prior to its acquisition, NYSE National was named ''National Stock Exchange, Inc.''

[6] *See* Securities Exchange Act Release No. 80018 (February 10, 2017), 82 FR 10947 (February 16, 2017) (SR–NSX–2017–04).

[7] *See* Securities Exchange Act Release No. 83289 (May 17, 2018) (notice of filing of Amendment No. 1 and order granting accelerated approval of a proposed rule change, as amended by Amendment No. 1, to support the re-launch of NYSE National, Inc. on the Pillar Trading Platform) (''NYSE National Trading Rules Approval''). *See also* Securities Exchange Act Release No. 82819 (March 7, 2018), 83 FR 11098 (March 13, 2018) (SR–NYSENat–2018–02).

[8] *See* SR–NYSENat–2018–07 (May 18, 2018).

[9] *See* NYSE National Trading Rules Approval, *supra* note 7.

[10] For purposes of the Exchange's co-location services, a ''User'' means any market participant that requests to receive co-location services directly from the Exchange. *See* Securities Exchange Act Release No. 76010 (September 29, 2015), 80 FR 60197 (October 5, 2015) (SR–NYSEArca–2015–82).

[11] *See* Securities Exchange Act Release No. 70173 (August 13, 2013), 78 FR 50459 (August 19, 2013) (SR–NYSEArca–2013–80). Some Users do not connect to the Exchange or the Affiliate SROs, but rather provide services to other Users co-located at the data center. *Id.*

A User that incurs co-location fees for a particular co-location service pursuant to this Fee Schedule shall not be subject to co-location fees for the same co-location service charged pursuant to the NYSE Arca Equities Fee Schedule or by the Exchange's affiliates NYSE American LLC (NYSE American), [and] New York Stock Exchange LLC (NYSE) and NYSE National, Inc. (NYSE National).

The Exchange proposes to add NYSE National to General Note 1 to the Equities Fee Schedule, as follows (additions underlined, deletions in brackets):

A User that incurs co-location fees for a particular co-location service pursuant to this Fee Schedule shall not be subject to co-location fees for the same co-location service charged pursuant to the NYSE Arca Options Fee Schedule or by the Exchange's affiliates NYSE American LLC (NYSE American), [and] New York Stock Exchange LLC (NYSE) and NYSE National, Inc. (NYSE National).

By including the proposed reference to NYSE National, General Note 1 would provide that the fees a User pays for co-location services would not depend on whether the User connects to none, one, some, or all of the Exchange, the Affiliate SROs, and NYSE National.

General Note 4

General Note 4 of the Fee Schedules provides that, when a User purchases access to the Liquidity Center Network (''LCN'') or the internet protocol (''IP'') network, the two local area networks available in the data center,[12] a User receives (a) the ability to access the trading and execution systems of the Exchange and Affiliate SROs, and (b) connectivity to any of the listed data products (''Included Data Products'') that it selects.

The Exchange proposes to add NYSE National to the list of trading and execution system providers in the first sentence of the first paragraph, thereby expanding the definition of ''Exchange Systems'' which Users may access to include NYSE National. It also proposes to add NYSE National to the lists of affiliated entities in the first, third and fourth sentences. The proposed changes are as follows (additions underlined, deletions in brackets):

[12] *See* Securities Exchange Act Release No. 79729 (January 4, 2017), 82 FR 3061 (January 10, 2017) (SR–NYSEArca–2016–172).

When a User purchases access to the LCN or IP network, it receives the ability to access the trading and execution systems of the NYSE, NYSE American, [and] NYSE Arca and NYSE National (Exchange Systems), subject, in each case, to authorization by the NYSE, NYSE American, [or] NYSE Arca or NYSE National, as applicable. Such access includes access to the customer gateways that provide for order entry, order receipt (i.e. confirmation that an order has been received), receipt of drop copies and trade reporting (i.e. whether a trade is executed or cancelled), as well as for sending information to shared data services for clearing and settlement. A User can change the access it receives at any time, subject to authorization by NYSE, NYSE American, [or] NYSE Arca, or NYSE National. NYSE, NYSE American, [and]NYSE Arca and NYSE National also offer access to Exchange Systems to their members, such that a User does not have to purchase access to the LCN or IP network to obtain access to Exchange Systems.

In addition, the Exchange proposes to add NYSE National to the table of Included Data Products set forth in General Note 4.

Toronto Stock Exchange

The Exchange offers Users the option to receive certain market data feeds from third party markets through a wireless connection. The description of the charge for the TSX wireless connection in the Fee Schedules states that ''[c]ustomers with an existing wireless connection to TSX at the time the Exchange makes the service available will not be subject to an initial charge or receive 30-day testing period.'' Because the wireless connection to the TSX has become effective, the statement is obsolete. Accordingly, the Exchange proposes to delete the statement from the Fee Schedules.

General

As is the case with all Exchange co-location arrangements, (i) neither a User nor any of the User's customers would be permitted to submit orders directly to the Exchange unless such User or customer is a member organization, a Sponsored Participant or an agent thereof (*e.g.,* a service bureau providing order entry services); (ii) use of the co-location services proposed herein would be completely voluntary and available to all Users on a non-discriminatory basis; [13] and (iii) a User would only incur one charge for the particular co-location service described herein, regardless of whether the User connects only to the Exchange or to the Exchange, one or both of its Affiliate SROs, or NYSE National.[14]

The proposed change is not otherwise intended to address any other issues relating to co-location services and/or related fees, and the Exchange is not aware of any problems that Users would have in complying with the proposed change.

2. Statutory Basis

The Exchange believes that the proposal is consistent with Section 6(b) of the Act,[15] in general, and furthers the objectives of Section 6(b)(5) of the Act,[16] in particular, because it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to, and perfect the mechanisms of, a free and open market and a national market system and, in general, to protect

[13] As is currently the case, Users that receive co-location services from the Exchange will not receive any means of access to the Exchange's trading and execution systems that is separate from, or superior to, that of other Users. In this regard, all orders sent to the Exchange enter the Exchange's trading and execution systems through the same order gateway, regardless of whether the sender is co-located in the data center or not. In addition, co-located Users do not receive any market data or data service product that is not available to all Users, although Users that receive co-location services normally would expect reduced latencies in sending orders to, and receiving market data from, the Exchange.

[14] *See* 78 FR 50459, *supra* note 11, at 50459. The Affiliate SROs have also submitted substantially the same proposed rule change to propose the changes described herein. *See* SR–NYSE–2018–23 and SR–NYSEAMER–2018–23.

[15] 15 U.S.C. 78f(b).

[16] 15 U.S.C. 78f(b)(5).

investors and the public interest and because it is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

The Exchange believes that the proposed change would remove impediments to, and perfect the mechanisms of, a free and open market and a national market system and, in general, protect investors and the public interest because the amendments would update General Note 1 to reflect NYSE National's provision of co-location services. By including the proposed reference to NYSE National, General Note 1 would provide that the fees a User pays for co-location services would not depend on whether the User connects to none, one, some, or all of the Exchange, the Affiliate SROs, and NYSE National. For example, to charge one User three times for a cage because that User connects to the Exchange, NYSE National, and an Affiliate SRO, when another User that buys the same size cage and only connects to the Exchange only pays once, would not promote just and equitable principles of trade. The Exchange also believes that the proposed amendments to General Note 1 are not designed to permit unfair discrimination between customers, issuers, brokers, or dealers because charging a User for co-location services based on how many markets to which a User connects could result in the Exchange, NYSE National and the Affiliate SROs receiving the proceeds from multiple fees despite only providing a service once.

The Exchange believes that the proposed amendments would remove impediments to, and perfect the mechanisms of, a free and open market and a national market system and, in general, protect investors and the public interest because the amendments would update General Note 4 to reflect NYSE National's provision of co-location services. By expanding the definition of ''Exchange Systems'' to include the NYSE National trading and execution system, incorporating references to NYSE National, and adding NYSE National to the list of Included Data Products, the Exchange would provide market participants with clarity as to what access and connectivity a User receives when it purchases access to the LCN or IP network, thereby making the description more accessible and transparent.

Further, the Exchange believes that revising General Note 4 to provide a more detailed description of the access and connectivity to NYSE National that Users would receive with their purchase of access to the LCN or IP network would promote just and equitable principles of trade and remove impediments to, and perfect the mechanisms of, a free and open market and a national market system as it would make clear that all Users that voluntarily select to access the LCN or IP network would receive the same access to the NYSE National trading and execution systems and connectivity to NYSE National data and would not be subject to a charge above and beyond the fee paid for the relevant LCN or IP network access. In addition, a User would not be required to use any of its bandwidth to access the NYSE National trading and execution system or connect to NYSE National data unless it wishes to do so. A User only receives the access to Exchange Systems and connectivity to Included Data Products that it selects, and a User can change such access or connectivity it receives at any time, subject to authorization from the data provider or relevant Exchange or Affiliate SRO.

The Exchange believes that the non-substantive change to remove obsolete text with respect to the wireless connection to TSX data would remove impediments to, and perfect the mechanisms of, a free and open market and a national market system and, in general, protect investors and the public interest because the amendment would clarify Exchange rules and alleviate any possible market participant confusion caused by the obsolete reference.

The Exchange also believes that the proposed fee change is consistent with Section 6(b)(4) of the Act,[17] in particular, because it provides for the equitable allocation of reasonable dues, fees, and other charges among its members, issuers and other persons using its facilities and does not unfairly discriminate between customers, issuers, brokers or dealers.

The Exchange believes that the proposed change provides for the equitable allocation of reasonable dues, fees, and other charges among its members, issuers and other persons using its facilities and does not unfairly discriminate between customers, issuers, brokers or dealers, because the change would result in the Exchange offering co-location services related to access and connectivity to NYSE National, an affiliate of the Exchange, on the same terms and in the same manner as it offers access and connectivity to the Exchange and the Affiliate SROs. By adding NYSE National to General Notes 1 and 4, the proposed change would ensure that the fees a User pays for co-location services would not depend on whether the User connects to none, one or more of the Exchange, the SRO Affiliates and NYSE National. For example, a User that connects to the Exchange, NYSE National, and an Affiliate SRO, and another User that only connects to the Exchange, would both receive the same services for the same fee, including the same access and connectivity with their purchase of access to the LCN or IP network.

The Exchange believes that the proposed non-substantive change to remove obsolete text with respect to the wireless connection to TSX data would be reasonable because the change would have no impact on pricing. Rather, the change would remove obsolete information from the description of the pricing for the service, alleviating possible market participant confusion.

For these reasons, the Exchange believes that the proposal is consistent with the Act.

B. Self-Regulatory Organization's Statement on Burden on Competition

In accordance with Section 6(b)(8) of the Act,[18] the Exchange believes that the proposed rule change will not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act because, in addition to the use of co-location services being completely voluntary, they are available to all Users on an equal basis (*i.e.,* the same range of products and services are available to all Users).

The Exchange believes that the proposed change would not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act because the change would result in the Exchange offering co-location services related to access and connectivity to NYSE National, an affiliate of the Exchange, on the same terms and in the same manner as it offers access and connectivity to the Exchange and the Affiliate SROs. By adding NYSE National to General Notes 1 and 4, the proposed change would ensure that the fees a User pays for co-location services would not depend on whether the User connects only to none, one or more of the Exchange, the SRO Affiliates and NYSE National. Further, the Exchange believes that revising General Note 4 to provide a more detailed description of the access and connectivity to NYSE National that Users would receive with their purchase of access to the LCN or IP network would make clear that all Users that voluntarily select to access the LCN or IP network would receive the same access to the NYSE National trading and

[17] 15 U.S.C. 78f(b)(4).

[18] 15 U.S.C. 78f(b)(8).

execution systems and connectivity to NYSE National data and would not be subject to a charge above and beyond the fee paid for the relevant LCN or IP network access.

In addition, a User would not be required to use any of its bandwidth to access the NYSE National trading and execution system or connect to NYSE National data unless it wishes to do so.

The Exchange believes that the non-substantive change to remove obsolete text with respect to the wireless connection to TSX data would not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act because it would have no impact on pricing or existing services. Rather, the change would remove obsolete information from the description of the pricing for the service, alleviating possible market participant confusion.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The Exchange has filed the proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act[19] and Rule 19b–4(f)(6) thereunder.[20] Because the proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative prior to 30 days from the date on which it was filed, or such shorter time as the Commission may designate, if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act and Rule 19b–4(f)(6)(iii) thereunder.[21]

A proposed rule change filed under Rule 19b–4(f)(6)[22] normally does not become operative prior to 30 days after the date of the filing. However, pursuant to Rule 19b–4(f)(6)(iii),[23] the Commission may designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange requests that the Commission waive the 30-day operative delay so that the proposed rule changes may become operative immediately upon filing. The Exchange believes that waiver of the operative delay is consistent with the protection of investors and the public interest because it would allow the Exchange to offer co-location services related to access and connectivity to NYSE National to coincide with the relaunch of the NYSE National and its proposed co-location services. The Exchange also notes that waiver would alleviate the possibility of confusion that could be caused by inconsistencies between the Exchange's Price List and NYSE National co-location services that are to be included in NYSE National's price list. The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest as it would allow the Exchange to offer co-locations services in the form of access and connectivity to NYSE National without undue delay. Accordingly, the Commission waives the 30-day operative delay and designates the proposed rule change operative upon filing.[24]

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)[25] of the Act to determine whether the proposed rule change should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov*. Please include File Number SR–NYSEARCA–2018–36 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–NYSEARCA–2018–36. 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 website (*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 website 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. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NYSEARCA–2018–36 and should be submitted on or before July 6, 2018.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[26]

Eduardo A. Aleman,

Assistant Secretary.

[FR Doc. 2018–12852 Filed 6–14–18; 8:45 am]

BILLING CODE 8011–01–P

[19] 15 U.S.C. 78s(b)(3)(A)(iii).

[20] 17 CFR 240.19b–4(f)(6).

[21] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6) requires the Exchange to give the Commission written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

[22] 17 CFR 240.19b–4(f)(6).

[23] 17 CFR 240.19b–4(f)(6)(iii).

[24] 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).

[25] 15 U.S.C. 78s(b)(2)(B).

[26] 17 CFR 200.30–3(a)(12).

DEPARTMENT OF STATE

[Public Notice 10450]

Privacy Act of 1974; System of Records

AGENCY: Department of State.

ACTION: Notice of a modified system of records.

SUMMARY: This system of records, Security Records, captures data related to incidents and threats affecting U.S. Government personnel, U.S. Government information, or U.S. Government facilities world-wide, for a variety of legal purposes including federal and state law enforcement, counterterrorism purposes, and administrative security functions.

DATES: This system of records notice is effective upon publication, with the exception of the new or modified routine uses (b), (c), (d), (e), (m), (n), (p), (q), (r), (s), (t), and (u) that are subject to a 30-day period during which interested persons may submit comments to the Department. Please submit any comments by July 16, 2018.

ADDRESSES: Questions can be submitted by mail or email. If mail, please write to: U.S. Department of State; Office of Global Information Systems, Privacy Staff; A/GIS/PRV; SA–2, Suite 8100; Washington, DC 20522–0208. If email, please address the email to the Senior Agency Official for Privacy, Mary R. Avery, at *Privacy@state.gov* or call (202) 663–2215. Please write ''Security Records, State-36'' on the envelope or the subject line of your email.

FOR FURTHER INFORMATION CONTACT: Mary R. Avery, Senior Agency Official for Privacy; U.S. Department of State; Office of Global Information Services, A/GIS/PRV; SA–2, Suite 8100; Washington, DC 20522–0208; at *Privacy@state.gov,* or (202) 663–2215.

SUPPLEMENTARY INFORMATION: In accordance with the Privacy Act of 1974, the Department of State proposes to consolidate two record systems: Security Records, State-36 (previously published at 80 FR 77691) and Identity Management System, State-72 (previously published at 71 FR 62653) under Security Records, State-36. These two systems are being merged because the records and system purposes are substantially related. This notice modifies the following sections of State-36, Security Records: System Location; Authority for Maintenance of the System; Purposes of the System; Categories of Individuals Covered by the System; Categories of Records in the System; Routine Uses of Records Maintained in the System, including categories of users and purposes of such uses; Policies and Practices for Storage of Records; Policies and Practices for Retention and Disposal of Records; and Administrative, Technical, and Physical safeguards. In addition, this notice makes administrative updates to the following sections: Policies and Procedures for Retrieval of Records, Record Access Procedures, Notification Procedures, and History. These changes reflect the incorporation of State-72 into State-36, the Department's move to cloud storage, new OMB guidance, expanded authorities and routine uses for these records, updated contact information, and a notice publication history.

SYSTEM NAME AND NUMBER

State-36, Security Records.

SECURITY CLASSIFICATION:

Unclassified and Classified.

SYSTEM LOCATION:

Department of State, located at 2201 C Street NW, Washington, DC 20520, and its annexes, Bureau of Diplomatic Security, and various field and regional offices throughout the United States, and abroad at some U.S. Embassies, U.S. Consulates General, and U.S. Consulates. Within a government certified cloud provided, implemented, and overseen by the Department's Enterprise Server Operations Center (ESOC), 2201 C Street NW, Washington, DC 20520.

SYSTEM MANAGER(S):

Principal Deputy Assistant Secretary for Diplomatic Security and Director for the Diplomatic Security Service; Department of State; SA–20; 23rd Floor; 1801 North Lynn Street; Washington, DC 20522–2008 for the Harry S Truman Building, domestic annexes, field offices and missions; Security Officers at respective U.S. Embassies, Consulates, and missions overseas. The Principal Deputy Assistant Secretary for Diplomatic Security can be reached at (571) 345–3815.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

(a) 5 U.S.C. 301 (Government Organization and Employees) (Departmental regulations); (b) 5 U.S.C. Chapter 73 (Suitability, Security, and Conduct); (c) 5 U.S.C. 7531–33 (National Security); (d) 8 U.S.C. 1104 (Enforcement of immigration and nationality laws); (e) 18 U.S.C. 111 (Crimes and Criminal Procedures) (Assaulting, resisting, or impeding certain officers or employees); (f) 18 U.S.C. 112 (Protection of foreign officials, official guests, and internationally protected persons); (g) 18 U.S.C. 201 (Bribery of public officials and witnesses); (h) 18 U.S.C. 1030 (Fraud and related activity in connection with computers); (i) 18 U.S.C. 1114 (Protection of officers and employees of the U.S.); (j) 18 U.S.C. 1116 (Murder or manslaughter of foreign officials, official guests, or internationally protected persons); (k) 18 U.S.C. 1117 (Conspiracy to murder); (l) 18 U.S.C. 1541–1546 (Issuance without authority, false statement in application and use of passport, forgery or false use of passport, misuse of passport, safe conduct violation, fraud and misuse of visas, permits, and other documents); (m) 22 U.S.C. 211a (Foreign Relations and Intercourse) (Authority to grant, issue, and verify passports); (n) 22 U.S.C. 842, 846, 911 (Duties of Officers and Employees and Foreign Service Officers) (Repealed, but applicable to past records); (o) 22 U.S.C. 2454 (Administration); (p) 22 U.S.C. 2651a (Organization of the Department of State); (q) 22 U.S.C. 2658 (Rules and regulations; promulgation by Secretary; delegation of authority) (Repealed, but applicable to past records); (r) 22 U.S.C. 2708 (Department of State Rewards Program); (s) 22 U.S.C. 2709 (Special Agents); (t) 22 U.S.C. 2712 (Authority to control certain terrorism-related services); (u) 22 U.S.C. 3921 (Administration by Secretary of State); (v) 22 U.S.C. 4802 (Diplomatic Security) (Responsibility of Secretary of State), (w) 22 U.S.C. 4804(3)(D) (Responsibilities of Assistant Secretary for Diplomatic Security) (Repealed, but applicable to past records); (x) 22 U.S.C. 4831–4835 (Accountability review, accountability review board, procedures, findings and recommendations by a board, relation to other proceedings); (y) 22 U.S.C. Sec. 4807 (Establishment of Visa and Passport Security Program in the Department of State) (z) 44 U.S.C. 31 (Federal Records Act of 1950, Sec. 506(a), as amended) (applicable to past records); (aa) 44 U.S.C. 3541 (Federal Information Security Management); (bb) Executive Order 10450 (Security requirements for government employment) (revoked but applicable to past records) and its successor orders; (cc) Executive Order 12107 (Relating to the Civil Service Commission and Labor-Management in the Federal Service); (dd) Executive Order 13526 and its predecessor orders (Classified National Security Information); (ee) Executive Order 12968, as amended (Access to Classified Information); (ff) Executive Order 13587 (Structural Reforms to Improve the Security of

Classified Networks and Information); (gg) Executive Order 12333, as amended, and its predecessor orders (United States Intelligence Activities); (hh) Executive Order 13467, as amended (Reforming Processes Related to Suitability for Government Employment, Fitness, for Contractor Employees, and Eligibility for Access to Classified National Security Information); (ii) 22 CFR Subchapter M (International Traffic in Arms) (applicable to past records); (jj) 40 U.S.C. Chapter 10 (Federal Property and Administrative Services Act (1949)); (kk) 31 U.S.C. (Internal Revenue Code); (ll) Public Law 99–399, 8/27/1986 (Omnibus Diplomatic Security and Antiterrorism Act of 1986, as amended); (mm) Public Law 100–202, 12/22/1987 (Appropriations for Departments of Commerce, Justice, and State) (applicable to past records); (nn) Public Law 100–461, 10/1/1988 (Foreign Operations, Export Financing, and Related Programs Appropriations Act); (oo) Public Law 104–347, sec. 203 (Electronic Government Act); (pp) Public Law 107–56, 10/26/2001 (USA PATRIOT Act—Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism); (qq) Public Law 108–21, 4/30/2003 (PROTECT Act—Prosecutorial Remedies and Other Tools to End the Exploitation of Children Today Act of 2003); (rr) Executive Order 12356 (National Security Information) (applicable to past records); (ss) Executive Order 9397 (Numbering System for Federal Accounts Relating to Individual Persons); (tt) Homeland Security Presidential Directive (HSPD–12) (Policy for a Common Identification Standard for Federal Employees and Contractors, 8/27/2004; (uu) Executive Order 13356 (Strengthening the Sharing of Terrorism Information to Protect Americans); (vv) Public Law 108–458 (Sect.1016), 12/17/2004 (Intelligence Reform and Terrorism Prevention Act of 2004; (ww) Public Law 92–463: 5 U.S.C. App. (Federal Advisory Committee Act); (xx) E.O. 12829, National Industrial Security Program; (yy) PDD/NSC–12 Security Awareness and Reporting Foreign Contacts; (yy) Security Executive Agent Directive 3 (Reporting Requirements for Personnel with Access to Classified Information or Who Hold a Sensitive Position); (zz) Security Executive Agent Directive 4 (National Security Adjudicative Guidelines); (aaa) Security Executive Agent Directive 5 (Social Media in Background Investigations).

PURPOSE(S) OF THE SYSTEM:

The records maintained in State-36, Security Records, capture data related to incidents and threats affecting U.S. Government personnel, U.S. Government information, or U.S. Government facilities world-wide, for a variety of legal purposes including federal, state, and international law enforcement and counterterrorism purposes. The information maintained in Security Records may be used to determine general suitability for employment or retention in employment, to grant a contract or issue a license, grant, national security eligibility, security clearance, or Department credential (including PIV card).

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Present and former employees of the Department of State; U.S. Agency for International Development (AID), and Peace Corps employees; applicants for Department employment who are presently undergoing a background investigation; individuals communicating on publicly available social media with employees or applicants undergoing a background investigation; contractors working for the Department; interns and detailees to the Department; employees of other federal agencies who have accounts on Department networks; individuals requiring access to the official Department of State premises who have undergone or are undergoing security clearance; some passport and visa applicants concerning matters of adjudication; individuals and institutions identified in passport and visa crime investigations; individuals and institutions identified in investigations regarding identity theft or document fraud affecting or relating to the programs, functions or authorities of the Department of State; individuals identified in investigations of Federal offenses committed within the special maritime and territorial jurisdiction of the United States; individuals involved in unauthorized access to classified information; prospective alien spouses of U.S. citizen employees of the Department of State; individuals or groups whose activities have a potential bearing on the security of Departmental or Foreign Service operations, domestically or abroad, including those involved in criminal or terrorist activity; individuals and organizations who apply to be constituents in the exchange of security information from public-private partnerships; and visitors to the Department of State main building (Harry S Truman Building), to its domestic annexes, field offices, missions, and to the U.S. Embassies and U.S. Consulates and missions overseas. Also covered are individuals issued security or cybersecurity violations or infractions; litigants in civil suits and criminal prosecutions of interest to the Bureau of Diplomatic Security; individuals who have Department building passes; individuals using Department devices or networks; uniformed security officers; individuals named in congressional inquiries to the Bureau of Diplomatic Security; individuals subject to investigations conducted abroad on behalf of other federal agencies; individuals who participate in Department rewards programs; and individuals whose activities other agencies believe may have a bearing on U.S. foreign policy interests. The Privacy Act defines an individual at 5 U.S.C. 552a(a)(2) as a United States citizen or lawful permanent resident.

CATEGORIES OF RECORDS IN THE SYSTEM:

Incident and investigative material relating to any category of individual described above, including case files containing items such as name, date and place of birth, citizenship, telephone numbers, addresses, physical description (including height, weight, body type, hair, clothing, gender, ethnicity, race, and other general and distinguishing physical features), medical records, accent description, identification media (such as passport, residency, or driver's license numbers), vehicle registration and vehicle information; email address, family identifiers (such as names of relatives and biographic information), employer identifiers, applications for passports and employment, photographs, biometric data (to include fingerprints, and deoxyribonucleic acid (DNA) information), birth certificates, credit checks, security evaluations and clearances, national security eligibility determinations, fitness determinations, other agency reports and informant reports; legal case pleadings and files; evidence collected during investigations; polygraphs; network audit records, network use records, email, chat conversations, and text messages sent using Department devices or networks; social media account communications and/or findings for individuals undergoing background or security investigations; publicly available social media communications of third parties with individuals undergoing background investigations; security violation files; training reports; weapons assignment database; firing proficiency and other security-related

testing scores; availability for special protective assignments; language proficiency scores; intelligence reports; counterintelligence material; counterterrorism material; threat information pertaining to private U.S. entities and individuals operating overseas; internal Departmental memoranda; internal personnel, fiscal, and other administrative documents, to include PIV-related documents; emergency contact information for Department employees and contractors; Social Security number; specific areas and times of authorized accessibility; escort authority; status and level of security clearance; issuing agency and issue date; and for all individuals: Date and times of building entrance and exit.

For visitors, information collected can include name, date of birth, citizenship, identification type, identification number, temporary badge number, host's name, office symbol, room number, and telephone number. For public-private partnerships to exchange security information, information collected can include name, address, telephone number and email address.

Security files contain information needed to provide protective services for the Secretary of State and visiting and resident foreign officials and associated foreign official facilities, and to protect the Department's official facilities and information assets. Security files contain documents and reports furnished to the Department by other agencies concerning individuals whose activities the other agencies believe may have a bearing on U.S. foreign policy interests.

RECORD SOURCE CATEGORIES:

These records contain information obtained from the individual; persons having knowledge of the individual; persons having knowledge of incidents or other matters of investigative interest to the Department; other U.S. law enforcement agencies and court systems; pertinent records of other federal, state, or local agencies or foreign governments; pertinent records of private firms or organizations; the intelligence community; and other public sources. The records also contain information obtained from interviews, review of records, and other authorized investigative techniques.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND PURPOSES OF SUCH USES:

The information in Security Records is used by:

(a) Department of State officials in the administration of their responsibilities;

(b) Appropriate committees and subcommittees of Congress in furtherance of their respective oversight functions;

(c) Department of Treasury; U.S. Office of Personnel Management; Agency for International Development; Department of Commerce; Peace Corps; Department of Defense; Central Intelligence Agency; Department of Justice; Department of Homeland Security; National Counter Terrorism Center; and other federal agencies inquiring pursuant to law or Executive Order, in order to make a determination of or verify general suitability for employment, fitness, or retention in employment, to grant a contract or issue a license, grant, security clearance, national security eligibility, credential or accreditation;

(d) Any federal, state, municipal, foreign or international law enforcement or other relevant agency or organization as needed for security, law enforcement or counterterrorism purposes, such as: Investigative material, threat alerts and analyses, protective intelligence and counterintelligence information, information relevant for screening purposes;

(e) Any other agency or department of the federal government pursuant to statutory intelligence responsibilities or other lawful purposes (including, but not limited to, adjudications, hearings and appeals, continuous evaluation, inspector general functions, counterintelligence, and research, and insider threat programs);

(f) Any other agency or department of the Executive Branch having oversight or review authority with regard to its investigative responsibilities;

(g) A federal, state, local, foreign, or international agency or other public authority that investigates, prosecutes, or assists in investigation or prosecution of violation of criminal law or enforces, implements, or assists in enforcement or implementation of statute, rule, regulation, or order;

(h) A federal, state, local or foreign agency or other public authority or professional organization maintaining civil, criminal, and other relevant enforcement or pertinent records such as current licenses; information may be given to a consumer reporting agency:

(1) To obtain information, relevant enforcement records or other pertinent records such as current licenses, or

(2) to obtain information relevant to an agency investigation, a decision concerning the hiring or retention of an employee or other personnel action, the issuance of a security clearance or the initiation of administrative, civil, or criminal action;

(i) Officials of government agencies in the letting of a contract, issuance of a license, grant or other benefit, and the establishment of a claim;

(j) Any private or public source, witness, or subject from which information is requested in the course of a legitimate agency investigation or other inquiry, to the extent necessary to identify an individual; to inform a source, witness or subject of the nature and purpose of the investigation or other inquiry; and to identify the information requested;

(k) An attorney or other designated representative of any source, witness or subject described in paragraph (j) of the Privacy Act only to the extent that the information would be provided to that category of individual itself in the course of an investigation or other inquiry;

(l) A federal agency following a response to its subpoena or to a prosecution request that such record be released for the purpose of its introduction to a grand jury or in another criminal proceeding;

(m) Relevant information may be disclosed from this system to the news media and general public in furtherance of a legitimate law enforcement or public safety function as determined by the Department. Such uses may include, for example to assist in the location of federal fugitives, to provide notification of arrests, to provide alerts, assessments, or similar information on potential threats to life, health, or property, or to keep the public appropriately informed of other law enforcement matters where disclosure could not reasonably be expected to constitute an unwarranted invasion of personal privacy and could not reasonably be expected to prejudice the outcome of a pending or future trial;

(n) State, local, federal or non-governmental agencies and entities as needed for purposes of emergency or disaster response or identification of bodies;

(o) U.S. government agencies within the framework of the National Suspicious Activity Report (SAR) Initiative (NSI) regarding foreign intelligence and terrorist threats, managed by the Department of Justice;

(p) Appropriate agencies, entities, and persons when (1) the Department of State suspects or has confirmed that there has been a breach of the system of records; (2) the Department of State has determined that as a result of the suspected or confirmed breach there is a risk of harm to individuals, the Department of State (including its information systems, programs, and operations), the Federal Government, or national security; and (3) the disclosure made to such agencies, entities, and persons is reasonably necessary to assist

in connection with the Department of State efforts to respond to the suspected or confirmed breach or to prevent, minimize, or remedy such harm;

(q) To another Federal agency or Federal entity, when the Department of State determines that information from this system of records is reasonably necessary to assist the recipient agency or entity in (1) responding to a suspected or confirmed breach or (2) preventing, minimizing, or remedying the risk of harm to individuals, the recipient agency or entity (including its information systems, programs, and operations), the Federal Government, or national security, resulting from a suspected or confirmed breach;

(r) To Department of State officials for the purpose of vetting for employee participation in public speaking events, recruitment events, awards, and assignments;

(s) To private U.S. entities operating overseas to communicate threats against them and their employees;

(t) To the Office of the Director of National Intelligence for inclusion in its Scattered Castles system in order to facilitate reciprocity of background investigations and national security eligibility determinations; and

(u) To a court, adjudicative body, or administrative body before which the Department is authorized to appear when (a) the Department; (b) any employee of the Department in his or her official capacity; (c) any employee of the Department in his or her individual capacity where the U.S. Department of Justice (''DOJ'') or the Department has agreed to represent the employee; or (d) the Government of the United States, when the Department determines that litigation is likely to affect the Department, is a party to litigation or has an interest in such litigation, and the use of such records by the Department is deemed to be relevant and necessary to the litigation or administrative proceeding.

The Department of State periodically publishes in the **Federal Register** its standard routine uses that apply to all of its Privacy Act systems of records. These notices appear in the form of a Prefatory Statement (published in Volume 73, Number 136, Public Notice 6290, on July 15, 2008). All these standard routine uses apply to Security Records, State-36.

POLICIES AND PRACTICES FOR STORAGE OF RECORDS:

Records are stored both in hard copy and on electronic media. A description of standard Department of State policies concerning storage of electronic records is found here *https://fam.state.gov/FAM/05FAM/05FAM0440.html.* All hard copies of records containing personal information are maintained in secured file cabinets in restricted areas, access to which is limited to authorized personnel only.

POLICIES AND PRACTICES FOR RETRIEVAL OF RECORDS:

By individual name, personal or biometric identifier, case number, Department building passes, and Social Security number (for other than visitors), as well as by each category of records in the system.

POLICIES AND PRACTICES FOR RETENTION AND DISPOSAL OF RECORDS:

Retention of these records varies depending upon the specific kind of record involved. The retention periods of records maintained in this system of records range from three years for security support records to 100 years for investigation case files. These records are retired or destroyed in accordance with published schedules of the Department of State and as approved by the National Archives and Records Administration and outlined here *https://foia.state.gov/Learn/RecordsDisposition.aspx.* More specific information may be obtained by writing to the following address: U.S. Department of State; Director, Office of Information Programs and Services; A/GIS/IPS; SA–2, Suite 8100; Washington, DC 20522–8100.

ADMINISTRATIVE, TECHNICAL, AND PHYSICAL SAFEGUARDS:

All users are given cybersecurity awareness training which covers the procedures for handling Sensitive But Unclassified information, including personally identifiable information (PII). Annual refresher training is mandatory. In addition, all Foreign Service and Civil Service employees and those Locally Engaged Staff who handle PII are required to take the Foreign Service Institute distance learning course, PA 459, instructing employees on privacy and security requirements, including the rules of behavior for handling PII and the potential consequences if it is handled improperly.

Access to the Department of State, its annexes and posts abroad is controlled by security guards and admission is limited to those individuals possessing a valid identification card or individuals under proper escort. All paper records containing personal information are maintained in secured file cabinets in restricted areas, access to which is limited to authorized personnel. Access to computerized files is password-protected and under the direct supervision of the system manager. The system manager has the capability of printing audit trails of access from the computer media, thereby permitting regular and ad hoc monitoring of computer usage. When it is determined that a user no longer needs access, the user account is disabled.

Before being granted access to Security Records, a user must first be granted access to the Department of State computer system, and user access is not granted until a background investigation has been completed. All Department of State employees and contractors with authorized access have undergone a thorough background security investigation. Remote access to the Department of State network from non-Department owned systems is authorized only through a Department-approved access program. Remote access to the network is configured with the authentication requirements contained in the Office of Management and Budget Circular Memorandum A–130.

The Department of State will store records maintained in this system of records in cloud systems. All cloud systems that provide IT services and process Department of State information must be specifically authorized by the Department of State Authorizing Official and Senior Agency Official for Privacy.

Only information that conforms with Department-specific definitions for FISMA low or moderate categorization are permissible for cloud usage unless specifically authorized by the Cloud Computing Governance Board. Prior to operation, all Cloud systems must comply with applicable security measures that are outlined in FISMA, FedRAMP, OMB regulations, NIST Federal Information Processing Standards (FIPS) and Special Publication (SP), and Department of State policy and standards.

RECORD ACCESS PROCEDURES:

Individuals who wish to gain access to or amend records pertaining to themselves should write to U.S. Department of State; Director, Office of Information Programs and Services; A/GIS/IPS; SA–2, Suite 8100; Washington, DC 20522–8100. The individual must specify that he or she wishes Security Records to be checked. At a minimum, the individual must include: Full name (including maiden name, if appropriate) and any other names used; current mailing address and zip code; date and place of birth; notarized signature or statement under penalty of perjury; a brief description of the circumstances that caused the creation of the record (including the city and/or country and the approximate dates) which gives the

individual cause to believe that Security Records include records pertaining to him or her. Detailed instructions on Department of State procedures for accessing and amending records can be found at the Department's FOIA website (*https://foia.state.gov/Request/Guide.aspx*).

CONTESTING RECORD PROCEDURES:

Individuals who wish to contest record procedures should write to U.S. Department of State; Director, Office of Information Programs and Services; A/GIS/IPS; SA–2, Suite 8100; Washington, DC 20522–8100.

NOTIFICATION PROCEDURES:

Individuals who have reason to believe that this system of records may contain information pertaining to themselves should write to following address: U.S. Department of State; Director, Office of Information Programs and Services; A/GIS/IPS; SA–2, Suite 8100; Washington, DC 20522–8100. The individual must specify that he or she wishes Security Records to be checked. At a minimum, the individual must include: Full name (including maiden name, if appropriate) and any other names used; date and place of birth; current mailing address and zip code; notarized signature or statement under penalty of perjury; a brief description of the circumstances that caused the creation of the record (including the city and/or country and the approximate dates) which gives the individual cause to believe that Security Records include records to him or her.

EXEMPTIONS PROMULGATED FOR THE SYSTEM:

Any other exempt records from other agencies' systems of records that are recompiled into this system are also considered exempt to the extent they are claimed as such in the original systems.

Pursuant to 5 U.S.C. 552a (j)(2), records in this system may be exempted from subsections (c)(3) and (4), (d), (e)(1), (2), (3), and (e)(4)(G), (H), and (I), and (f) of the Privacy Act. Pursuant to 5 U.S.C. 552a (k)(1), (k)(2), and (k)(5), records in this system may be exempted from subsections (c)(3), (d)(1), (d)(2), (d)(3), (d)(4), (d)(5), (e)(1), (e)(4)(G), (e)(4)(H), (e)(4)(I), (f)(1), (f)(2), (f)(3), (f)(4), and (f)(5).

See 22 CFR 171.

HISTORY:

Security Records, State-36, was previously published at 80 FR 77691 and Identity Management System, State-72, was previously published at 71 FR 62653.

Mary R. Avery,

Senior Agency Official for Privacy, Senior Advisor, Office of Global Information Services, Bureau of Administration, Department of State.

[FR Doc. 2018–12872 Filed 6–14–18; 8:45 am]

BILLING CODE 4710–24–P

DEPARTMENT OF STATE

[Public Notice 10449]

Privacy Act of 1974; System of Records

AGENCY: Department of State.

ACTION: Notice of a modified system of records.

SUMMARY: This System of Records compiles information used in the adjudication of U.S. visas.

DATES: This system of records notice is effective upon publication, with the exception of the routine uses (m), (n), and (o) that are subject to a 30-day period during which interested persons may submit comments to the Department. Please submit any comments by July 16, 2018.

ADDRESSES: Questions can be submitted by mail or email. If mail, please write to: U.S. Department of State; Office of Global Information Services, Privacy Staff; A/GIS/PRV; SA–2, Suite 8100; Washington, DC 20522–0208. If email, please address the email to the Senior Agency Official for Privacy, Mary R. Avery, at *Privacy@state.gov* or call (202) 663–2215. Please write ''Visa Records, State-39'' on the envelope or the subject line of your email.

FOR FURTHER INFORMATION CONTACT: Mary R. Avery, Senior Agency Official for Privacy; U.S. Department of State; Office of Global Information Services, A/GIS/PRV; SA–2, Suite 8100; Washington, DC 20522–0208; at *Privacy@state.gov* or (202) 663–2215.

SUPPLEMENTARY INFORMATION: The purpose of this modification is to make substantive and administrative changes to the previously published notice. This notice modifies the following sections of State-39, Visa Records: System Location, Categories of Individuals, Categories of Records, Routine Uses, Policies and Practices for Retention and Disposal of Records, and Safeguards. In addition, this notice makes administrative updates to the following sections: Record Access Procedures, Contesting Record Procedures, Notification Procedures, and History. These changes reflect new OMB guidance, new visa adjudication procedures, updated contact information, and a notice publication history.

SYSTEM NAME AND NUMBER

Visa Records, State-39.

SECURITY CLASSIFICATION:

Unclassified and Classified.

SYSTEM LOCATION:

Department of State (''Department''), located at 2201 C Street NW, Washington, DC 20520; Visa Office, Department of State, Annex 17, 600 19th Street NW, Washington, DC 20006; National Visa Center, 32 Rochester Avenue, Portsmouth, NH 03801; Kentucky Consular Center, 3505 N U.S. Hwy. 25 W, Williamsburg, KY 40769; U.S. embassies, consulates general, and consulates (henceforth referred to as the Department of State).

SYSTEM MANAGER(S):

Deputy Assistant Secretary for Visa Services, Room 6811, Department of State, 2201 C Street NW, Washington, DC 20520–4818; Director, National Visa Center, 32 Rochester Avenue, Portsmouth, NH 63801; Director, Kentucky Consular Center, 3505 N U.S. Hwy. 25 W, Williamsburg, KY 40769; *VO_SORN@state.gov.* At specific locations abroad, the on-site manager is the consular officer responsible for visa processing.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301 (Secretary of State's authorities with respect to Management of the Department of State); 22 U.S.C. 2651a (Organization of the Department of State); 22 U.S.C. 3921 (Management of the Foreign Service); 8 U.S.C. 1101–1537 (Immigration and Nationality Act of 1952, as amended).

PURPOSE(S) OF THE SYSTEM:

The Visa Records system maintains information used to assist the Bureau of Consular Affairs and consular officers in the Department and abroad in adjudicating visas and Certificates of Identity. It is also used in dealing with problems of a legal, enforcement, technical, or procedural nature that may arise in connection with a U.S. visa or Certificate of Identity.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Visa Records may include the following individuals when required by a visa application or a Certificate of Identity application: U.S. petitioners, U.S. persons applying for returning residence travel documentation, and visa and Certificate of Identity applicants who subsequently become documented as U.S. persons.

CATEGORIES OF RECORDS IN THE SYSTEM:

Visa Records maintains visa applications and related forms; Certificate of Identity applications or portions thereof; documents of identity; biometric information; photographs; birth, marriage, death and divorce certificates; interview worksheets; biographic information sheets; affidavits of relationship; medical examinations and immunization reports; police records; educational and employment records; petitions for immigrant status and nonimmigrant status; bank statements; communications between the Visa Office, the National Visa Center, the Kentucky Consular Center, U.S. embassies, U.S. consulates general and U.S. consulates, other U.S. government agencies, international organizations, members of Congress, legal and other representatives of visa applicants, relatives of visa applicants, and other interested parties where such communications are, or may be, relevant to visa adjudication; and internal Department of State correspondence and notes relating to visa adjudication. Visa Records may also contain information collected regarding applicants' or petitioners' U.S. family members; U.S. employers; other U.S. persons referenced by the applicant or petitioner.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND PURPOSES OF SUCH USES:

The principal users of this information outside the Department of State may include, when consistent with Section 222(f) of the Immigration and Nationality Act:

A. The Department of Homeland Security for uses within its statutory mission, including to process, approve or deny visa petitions and waivers, as well as for law enforcement, counterterrorism, transportation and border security, administration of immigrant benefits, critical infrastructure protection, fraud prevention, or employment verification purposes;

B. Public or private employers seeking to confirm the authenticity of the visa when it is presented as evidence of identity and/or authorization to work in the United States;

C. The Department of Justice, including the Federal Bureau of Investigation (and its National Crime Information Center), the Terrorist Screening Center, the Bureau of Alcohol, Tobacco, Firearms and Explosives, the U.S. National Central Bureau (Interpol) and the Drug Enforcement Administration, for purposes of law enforcement, criminal prosecution, representation of the U.S. government in civil litigation, fraud prevention, counterterrorism, or border security;

D. The Department of the Treasury for uses within its statutory mission, including the enforcement of U.S. tax laws, economic sanctions, and counterterrorism;

E. The National Counterterrorism Center, the Office of the Director of National Intelligence and other U.S. intelligence community (IC) agencies, for uses within their statutory missions, including intelligence, counterintelligence, counterterrorism and other national security interests;

F. The Department of Defense, for uses within its statutory mission including for purposes of border security, homeland defense, force protection, law enforcement and counterterrorism;

G. The Department of Labor for uses within its statutory mission including the administration and enforcement of U.S. labor laws;

H. Congress, for the formulation, amendment, administration, or enforcement of the immigration, nationality, and other laws of the United States;

I. State, local, and tribal government officials for law enforcement, counter-terrorism, or border security purposes;

J. Interested persons (such as the visa applicant, the applicant's legal representative or other designated representative) inquiring as to the status of a particular visa case (limited unclassified information may be released when appropriate);

K. Courts provided the Secretary of State has determined that release is appropriate, and the court has certified it needs such information in the interest of the ends of justice in a case pending before the court;

L. Foreign governments for purposes relating to the administration or enforcement of the immigration, nationality, and other laws of the United States, or in the Secretary's discretion and on the basis of reciprocity, for the purpose of preventing, investigating, or punishing acts that would constitute a crime in the United States or, pursuant to an agreement with a foreign government, to enable such government to consider whether the record indicates a person would be inadmissible to the United States when it determines whether to deny a visa, grant entry, authorize an immigration benefit, or order removal of such person.

M. The Centers for Disease Control and Prevention, for uses within its statutory mission, including its role relative to the physical and mental examination of aliens under immigration laws.

N. Appropriate agencies, entities, and persons when (1) the Department of State suspects or has confirmed that there has been a breach of the system of records; (2) the Department of State has determined that as a result of the suspected or confirmed breach there is a risk of harm to individuals, the Department of State (including its information systems, programs, and operations), the Federal Government, or national security; and (3) the disclosure made to such agencies, entities, and persons is reasonably necessary to assist in connection with the Department of State efforts to respond to the suspected or confirmed breach or to prevent, minimize, or remedy such harm.

O. Another Federal agency or Federal entity, when the Department of State determines that information from this system of records is reasonably necessary to assist the recipient agency or entity in (1) responding to a suspected or confirmed breach or (2) preventing, minimizing, or remedying the risk of harm to individuals, the recipient agency or entity (including its information systems, programs, and operations), the Federal Government, or national security, resulting from a suspected or confirmed breach.

The Department of State periodically publishes in the **Federal Register** its standard routine uses that apply to all of its Privacy Act systems of records. These notices appear in the form of a Prefatory Statement (published in Volume 73, Number 136, Public Notice 6290, on July 15, 2008). All these standard routine uses apply to Visa Records, State-39.

POLICIES AND PRACTICES FOR STORAGE OF RECORDS:

Records are stored both in hard copy and on electronic media. A description of standard Department of State policies concerning storage of electronic records is found in the Department's Foreign Affairs Manual (*https://fam.state.gov/FAM/05FAM/05FAM0440.html*). All hard copies of records containing personal information are maintained in secured file cabinets in restricted areas, access to which is limited to authorized personnel.

POLICIES AND PRACTICES FOR RETRIEVAL OF RECORDS:

Records may be retrieved through individual data fields including but not limited to: Applicant personal data; biometrics and namecheck data; case data; and visa data.

POLICIES AND PRACTICES FOR RETENTION AND DISPOSAL OF RECORDS:

The retention period for visa records depends on the nature of the information and disposition of the visa adjudication. Some files related to issued immigrant visas are destroyed six months after issuance. In some instances, files with historical significance are permanent records. Most files related to Certificates of Identity are retained for twenty years after closure. These records are retired and destroyed in accordance with published Department of State Records Disposition Schedules as approved by the National Archives and Records Administration (NARA), and a complete list of the Department's schedules can be found on our Freedom of Information Act (FOIA) program's website (*https://foia.state.gov/Learn/RecordsDisposition.aspx*). More specific information may be obtained by writing to the following address: Director, Office of Information Programs and Services, A/GIS/IPS; SA–2, Department of State; 515 22nd Street NW; Washington, DC 20522–8100.

ADMINISTRATIVE, TECHNICAL, AND PHYSICAL SAFEGUARDS:

All users are given cyber security awareness training which covers the procedures for handling Sensitive but Unclassified information, including personally identifiable information (PII). Annual refresher training is mandatory. In addition, all Foreign Service and Civil Service employees and those Locally Employed Staff who handle PII are required to take the Foreign Service Institute's distance learning course instructing employees on privacy and security requirements, including the rules of behavior for handling PII and the potential consequences if it is handled improperly.

Access to the Department of State, its annexes and posts abroad is controlled by security guards and admission is limited to those individuals possessing a valid identification card or individuals under proper escort. While the majority of records covered in Visa Records are electronic, all paper records containing personal information are maintained in secured file cabinets in restricted areas, access to which is limited to authorized personnel only. Access to computerized files is password-protected and under the direct supervision of the system manager. The system manager has the capability of printing audit trails of access from the computer media, thereby permitting regular and ad hoc monitoring of computer usage. When it is determined that a user no longer needs access, the user account is disabled.

Before being granted access to Visa Records, a user must first be granted access to the Department of State computer system. Remote access to the Department of State network from non-Department owned systems is authorized only through a Department approved access program. Remote access to the network is configured with the authentication requirements contained in the Office of Management and Budget Circular Memorandum A–130. All Department of State employees and contractors with authorized access have undergone a background security investigation.

RECORD ACCESS PROCEDURES:

Individuals who wish to gain access to or to amend records pertaining to themselves should write to U.S. Department of State; Director, Office of Information Programs and Services; A/GIS/IPS; SA–2, Suite 8100; Washington, DC 20522–0208. The individual must specify that he or she wishes the Visa Records to be checked. At a minimum, the individual must include: Full name (including maiden name, if appropriate) and any other names used; current mailing address and zip code; date and place of birth; notarized signature or statement under penalty of perjury; a brief description of the circumstances that caused the creation of the record (including the city and/or country and the approximate dates) which gives the individual cause to believe that the Visa Records include records pertaining to him or her. Detailed instructions on Department of State procedures for accessing and amending records can be found at the Department's FOIA website (*https://foia.state.gov/Request/Guide.aspx*).

However, in general, visa records are confidential and may not be released under section 222(f) of the Immigration and Nationality Act, except that, the Department of State may consider requests for records that originated with, or were sent to, a requesting visa applicant or someone acting on such applicant's behalf to be releasable thereto.

CONTESTING RECORD PROCEDURES:

Individuals who wish to contest record procedures should write to U.S. Department of State; Director, Office of Information Programs and Services; A/GIS/IPS; SA–2, Suite 8100; Washington, DC 20522–0208.

NOTIFICATION PROCEDURES:

Individuals who have reason to believe that this system of records may contain information pertaining to them may write to U.S. Department of State; Director, Office of Information Programs and Services; A/GIS/IPS; SA–2, Suite 8100; Washington, DC 20522–0208. The individual must specify that he or she wishes the Visa Records to be checked. At a minimum, the individual must include: Full name (including maiden name, if appropriate) and any other names used; current mailing address and zip code; date and place of birth; notarized signature or statement under penalty of perjury; a brief description of the circumstances that caused the creation of the record (including the city and/or country and the approximate dates) which gives the individual cause to believe that the Visa Records include records pertaining to him or her.

EXEMPTIONS PROMULGATED FOR THE SYSTEM:

Pursuant to 5 U.S.C. 552a(k)(1), (k)(2), and (k)(3), records contained within this system of records are exempted from 5 U.S.C. 552a(c)(3), (d), (e)(1), (e)(4)(G), (H), and (I), and (f). See Department of State Rules published in the **Federal Register**, under 22 CFR 171.26.

HISTORY:

This SORN was previously published at 77 FR 65245 (October 25, 2012).

Mary R. Avery,

Senior Agency Official for Privacy, Senior Advisor, Office of Global Information Services, Bureau of Administration, Department of State.

[FR Doc. 2018–12871 Filed 6–14–18; 8:45 am]

BILLING CODE 4710–24–P

SURFACE TRANSPORTATION BOARD

[Docket No. FD 36199]

Oregon International Port of Coos Bay and Coos Bay Rail Line, Inc.—Intra-Corporate Family Transaction Exemption

Oregon International Port of Coos Bay (the Port), and Coos Bay Rail Line, Inc. (Coos Rail) (collectively, the Applicants), have jointly filed a verified notice of exemption under 49 CFR 1180.2(d)(3) for an intra-corporate family transaction. According to the Applicants, the Port is a rail common carrier that owns certain interconnected railroad lines in Oregon extending from Eugene to Coquille via Coos Bay, a total of roughly 133 route miles.[1] The

[1] *See Or. Int'l Port of Coos Bay—Acquis. Exemption—Rail Line of Union Pac. R.R. in Coos Cty., Or.,* FD 35385 (STB served Jul. 9, 2010); *Or. Int'l Port of Coos Bay—Feeder Line Application—Coos Bay Line of Cent. Ore. & Pac. R.R.,* FD 35160 (STB served Oct. 31, 2008; modified Mar. 12, 2009.)

Applicants state that the lines in question extend from milepost 652.114 at Danebo, Or., to milepost 763.13 at Cordes, Or., and from milepost 761.13 at Cordes to milepost 785.5 at Coquille (collectively, the Line).

The Line is currently operated by Coos Bay Railroad Operating Company, LLC d/b/a Coos Bay Rail Link (CBRL) pursuant to a lease agreement with the Port.[2] The Applicants state that CBRL's parent company has advised the Port that it no longer wishes to operate the Line, and that the Port has begun to contemplate assuming operations of the Line in place of CBRL.[3] However, the Applicants assert the Port does not wish to become an operating common carrier itself, and therefore has created Coos Rail as a public benefit corporation under the control of the Port for purposes of assuming operations over the Line in place of the Port. According to the Applicants, the Port would retain ownership of the Line, but common carrier service would be provided by Coos Rail, either alone or jointly with CBRL. The Applicants state that the proposed transaction will be governed by a lease agreement that has yet to be executed, a copy of which was submitted with their verified notice of exemption.

The Applicants state that the transaction and underlying lease agreement do not involve or contain any provision or agreement that may limit future interchange with a third-party connecting carrier.

Unless stayed, the exemption will be effective on June 30, 2018 (30 days after the verified notice was filed). The Applicants state that they intend to consummate the proposed transaction on or after June 30, 2018, as circumstances warrant.

This is a transaction within a corporate family of the type specially exempted from prior review and approval under 49 CFR 1180.2(d)(3). The Applicants have not indicated that the transaction would result in adverse changes in service levels, significant operational changes, or any changes in the competitive balance with carriers outside the corporate family. According to the Applicants, the transaction will permit the Port to take common carrier operations in house quickly (if necessary) and to create a discrete corporate subdivision to handle the business of running the Line as ancillary to the Port's primary functions.

Under 49 U.S.C. 10502(g), the Board may not use its exemption authority to relieve a rail carrier of its statutory obligation to protect the interests of its employees. Section 11326(c), however, does not provide for labor protection for transactions under sections 11324 and 11325 that involve only Class III rail carriers. The Port is a Class III carrier and Coos Rail would become a Class III carrier. Accordingly, labor protective conditions will not be imposed.

If the verified notice contains false or misleading information, the exemption is void ab initio. Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the exemption. Petitions to stay must be filed no later than June 22, 2018 (at least seven days before the exemption becomes effective).

An original and 10 copies of all pleadings, referring to Docket No. FD 36199, must be filed with the Surface Transportation Board, 395 E Street SW, Washington, DC 20423–0001. In addition, a copy must be served on Audrey L. Brodrick, Fletcher & Sippel LLC, 29 North Wacker Drive, Suite 920, Chicago, IL 60606–2832.

According to the Applicants, this action is exempt from environmental review under 49 CFR 1105.6(c) and exempt from historic review under 49 CFR 1105.8(b).

Board decisions and notices are available on our website at *WWW.STB.GOV''.*

Decided: June 12, 2018.

By the Board, Scott M. Zimmerman, Acting Director, Office of Proceedings.

Jeffrey Herzig,

Clearance Clerk.

[FR Doc. 2018–12914 Filed 6–14–18; 8:45 am]

BILLING CODE 4915–01–P

[2] *See Coos Bay R.R. Operating Co., LLC—Operation Exemption—Line of R.R. owned by the Or. Int'l Port of Coos Bay,* FD 35551 (STB served Sep. 14, 2011.)

[3] On June 4, 2018, CBRL filed a notice of intent to participate, stating that it intends to submit a petition to reject the notice on or before June 20, 2018.

FEDERAL REGISTER

Vol. 83 Friday,
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Part II

Environmental Protection Agency

40 CFR Part 60
Standards of Performance for New Stationary Sources and Emission Guidelines for Existing Sources: Commercial and Industrial Solid Waste Incineration Units; Technical Amendments; Proposed Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 60

[EPA–HQ–OAR–2003–0119; FRL–9978–12–OAR]

RIN 2060–AT84

Standards of Performance for New Stationary Sources and Emission Guidelines for Existing Sources: Commercial and Industrial Solid Waste Incineration Units; Technical Amendments

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: On June 23, 2016, the Environmental Protection Agency (EPA) promulgated its final response to petitions for reconsideration of the final new source performance standards (NSPS) and emission guidelines (EG) for commercial and industrial solid waste incineration (CISWI) units that were promulgated on March 21, 2011, and revised after reconsideration on February 7, 2013. Following promulgation of the June 2016 final action, the EPA received requests from industry stakeholders and implementing agencies to clarify various issues with implementation of the standards. In addition, the EPA identified certain testing and monitoring issues and inconsistencies within the rules that required further clarification or correction. To address these issues, the EPA is proposing amendments to several provisions of the 2016 CISWI NSPS and EG. In addition, the EPA identified regulatory provisions that require clarification and editorial correction to address inconsistencies and errors in the final rules. If finalized, the proposed amendments will provide clarity and address implementation issues in the final CISWI NSPS and EG. The proposed revisions will not have any environmental, energy, or economic impacts, if finalized.

DATES:

Comments. Comments must be received on or before July 30, 2018.

Public Hearing. If a public hearing is requested by June 20, 2018, then we will hold a public hearing on July 2, 2018 at the location described in the **ADDRESSES** section. The last day to pre-register in advance to speak at the public hearing will be June 28, 2018.

ADDRESSES: *Comments.* Submit your comments, identified by Docket ID No. EPA–HQ–OAR–2003–0119, at *http://www.regulations.gov.* Follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from *Regulations.gov*. *Regulations.gov* is our preferred method of receiving comments. However, other submission formats are accepted. To ship or send mail via the United States Postal Service, use the following address: U.S. Environmental Protection Agency, EPA Docket Center, Docket ID No. EPA–HQ–OAR–2003–0119, Mail Code 28221T, 1200 Pennsylvania Avenue NW, Washington, DC 20460. Use the following Docket Center address if you are using express mail, commercial delivery, hand delivery, or courier: EPA Docket Center, EPA WJC West Building, Room 3334, 1301 Constitution Avenue NW, Washington, DC 20004. Delivery verification signatures will be available only during regular business hours. 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. See section I.B of this preamble for instructions on submitting CBI. 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.*

Public Hearing. If a public hearing is requested, it will be held at EPA Headquarters, EPA WJC East Building, 1201 Constitution Avenue NW, Washington, DC 20004. If a public hearing is requested, then we will provide details about the public hearing on our website at: *https://www.epa.gov/stationary-sources-air-pollution/commercial-and-industrial-solid-waste-incineration-units-ciswi-new.* The EPA does not intend to publish another document in the **Federal Register** announcing any updates on the request for a public hearing. Please contact Ms. Aimee St. Clair at (919) 541–1063 or by email at *StClair.Aimee@epa.gov* to request a public hearing, to register to speak at the public hearing, or to inquire as to whether a public hearing will be held.

The EPA will make every effort to accommodate all speakers who arrive and register. If a hearing is held at a U.S. government facility, individuals planning to attend should be prepared to show a current, valid state- or federal-approved picture identification to the security staff in order to gain access to the meeting room. An expired form of identification will not be permitted. Please note that the Real ID Act, passed by Congress in 2005, established new requirements for entering federal facilities. If your driver's license is issued by a noncompliant state, you must present an additional form of identification to enter a federal facility. Acceptable alternative forms of identification include: Federal employee badge, passports, enhanced driver's licenses, and military identification cards. Additional information on the Real ID Act is available at *https://www.dhs.gov/real-id-frequently-asked-questions.* In addition, you will need to obtain a property pass for any personal belongings you bring with you. Upon leaving the building, you will be required to return this property pass to the security desk. No large signs will be allowed in the building, cameras may only be used outside of the building, and demonstrations will not be allowed on federal property for security reasons.

FOR FURTHER INFORMATION CONTACT: Dr. Nabanita Modak Fischer, Fuels and Incineration Group, Sector Policies and Programs Division (E143–05), Environmental Protection Agency, Research Triangle Park, North Carolina 27711; telephone number: (919) 541–5572; fax number: (919) 541–0516; email address: *modak.nabanita@epa.gov.*

In addition to being available in the docket, an electronic copy of this action is available on the internet. Following signature by the Administrator, the EPA will post a copy of this proposed action at *https://www.epa.gov/stationary-sources-air-pollution/commercial-and-industrial-solid-waste-incineration-units-ciswi-new.* Following publication in the **Federal Register**, the EPA will post the **Federal Register** version of the proposal and key technical documents at the same website.

SUPPLEMENTARY INFORMATION:

Docket. The EPA has established a docket for this rulemaking under Docket ID No. EPA–HQ–OAR–2003–0119. All documents in the docket are listed in the *Regulations.gov* index. Although listed in the index, some information is not publicly available, *e.g.,* CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the internet and will be

publicly available only in hard copy. Publicly available docket materials are available either electronically in *Regulations.gov* or in hard copy at the EPA Docket Center, Room 3334, EPA WJC West Building, 1301 Constitution Avenue 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 EPA Docket Center is (202) 566–1742.

Instructions. Direct your comments to Docket ID No. EPA–HQ–OAR–2003–0119. The EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *http://www.regulations.gov,* including any personal information provided, unless the comment includes information claimed to be 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. See section I.B of this preamble for instructions on submitting CBI. The *http://www.regulations.gov* website is an ''anonymous access'' system, which means the EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an email comment directly to the EPA without going through *http://www.regulations.gov,* your email address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the internet. If you submit an electronic comment, the EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If the EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, the EPA may not be able to consider your comment. Electronic files should not include special characters or any form of encryption and be free of any defects or viruses. For additional information about the EPA's public docket, visit EPA Docket Center homepage at *http://www.epa.gov/dockets.*

Acronyms and Abbreviations. The following acronyms and abbreviations are used in this document.

ACI Air Curtain Incinerator
CAA Clean Air Act
CBI Confidential Business Information
CEDRI Compliance and Emissions Data Reporting Interface
CEMS Continuous Emissions Monitoring System
CFR Code of Federal Regulations
CISWI Commercial and Industrial Solid Waste Incineration
CO Carbon Monoxide
COMS Continuous Opacity Monitoring System
CPMS Continuous Parameter Monitoring System
dscm Dry Standard Cubic Meter
EG Emission Guidelines
EPA U.S. Environmental Protection Agency
ESP Electrostatic Precipitator
HCl Hydrogen Chloride
Hg Mercury
mg/dscm Milligrams per Dry Standard Cubic Meter
mmBtu/hr Million British Thermal Units per Hour
NAICS North American Industry Classification System
NESHAP National Emission Standards for Hazardous Air Pollutants
NHSM Non-Hazardous Secondary Material(s)
NSPS New Source Performance Standards
NTTAA National Technology Transfer and Advancement Act
OAQPS Office of Air Quality Planning and Standards
OMB Office of Management and Budget
PC Portland Cement
PM Particulate Matter
ppmv Parts Per Million by Volume
ppmvd Parts Per Million by Dry Volume
RIN Regulatory Information Number
UMRA Unfunded Mandates Reform Act
U.S.C. United States Code

Organization of this Document. The following outline is provided to aid in locating information in this preamble.

I. General Information

A. Does this action apply to me?

Categories and entities potentially affected by the proposed action are those that operate CISWI units. The NSPS and EG, herein after referred to as ''standards,'' for CISWI affect the following categories of sources:

Category	NAICS [1] code	Examples of potentially regulated entities
Any industrial or commercial facility using a solid waste incinerator.	211, 212, 486	Oil and gas exploration operations; Mining, pipeline operators.
	221	Utility providers.
	321, 322, 337	Manufacturers of wood products; Manufacturers of pulp, paper and paperboard; Manufacturers of furniture and related products.
	325, 326	Manufacturers of chemicals and allied products; Manufacturers of plastics and rubber products.
	327	Manufacturers of cement; Nonmetallic mineral product manufacturing.
	333, 336	Manufacturers of machinery; Manufacturers of transportation equipment.
	423, 44	Merchant wholesalers, durable goods; Retail trade.

[1] North American Industry Classification System.

This table is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by the proposed action. To determine whether your facility will be affected by the proposed action, you should examine the applicability criteria in 40 Code of Federal Regulations (CFR) 60.2010 of subpart CCCC, 40 CFR 60.2505 of subpart DDDD, and 40 CFR 241. If you have any questions regarding the applicability of the proposed action to a particular entity, contact the person listed in the preceding **FOR FURTHER INFORMATION CONTACT** section.

B. What should I consider as I prepare my comments for the EPA?

Submitting CBI. Do not submit information containing CBI to the EPA through *http://www.regulations.gov* or email. Clearly mark the part or all of the information that you claim to be CBI. For CBI information on a disk or CD–ROM that you mail to the EPA, mark the outside of the disk or CD–ROM as CBI and then identify electronically within the disk or CD–ROM the specific information that is claimed as CBI. In addition to one complete version of the comments that includes information claimed as CBI, you must submit a copy of the comments that does not contain the information claimed as CBI for inclusion in the public docket. If you submit a CD–ROM or disk that does not contain CBI, mark the outside of the disk or CD–ROM clearly that it does not contain CBI. Information not marked as CBI will be included in the public docket and the EPA's electronic public docket without prior notice. Information marked as CBI will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. Send or deliver information identified as CBI only to the following address: OAQPS Document Control Officer (C404–02), OAQPS, U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711, Attention Docket ID No. EPA–HQ–OAR–2003–0119.

C. What action is the Agency taking?

In this notice, we are proposing to amend, and requesting comment on certain issues, as discussed further in sections II.C and II.D of this preamble. We are not reopening and will not respond to comments on any aspects of the CISWI NSPS and EG other than those specifically identified in sections II.C. and II.D of this preamble.

D. What is the Agency's authority for taking this action?

Section 129 of the Clean Air Act (CAA) requires the EPA to establish NSPS and EG pursuant to sections 111 and 129 of the CAA for new and existing solid waste incineration units located at commercial and industrial facilities. This action amends standards developed under these authorities.

E. What are the incremental costs and benefits of this action?

This action requests comment on some provisions and makes technical and clarifying corrections to aid in implementation of and compliance with the standards, but does not propose substantial changes to the February 7, 2013, final CISWI rule (78 FR 9112). As such, there are no incremental environmental, energy, or economic impacts associated with this proposed action. The impacts associated with the CISWI rule were discussed in detail in the February 7, 2013, final CISWI rule document.

II. Background

A. Background Information

On March 21, 2011, the EPA promulgated revised NSPS and EG for CISWI units (*i.e.,* solid waste incineration units located at commercial or industrial facilities). Following that action, the Administrator received petitions for reconsideration that identified certain issues that warranted further opportunity for public comment. In response to the petitions, the EPA reconsidered, proposed revisions to, and requested comment on several provisions of the March 2011 final NSPS and EG for CISWI units. These proposed revisions were published on December 23, 2011 (76 FR 80452).

On February 7, 2013, the EPA finalized revisions to the CISWI NSPS and EG (78 FR 9112). In that final action, the EPA made additional revisions in response to comments that had not been proposed in the December 23, 2011, **Federal Register** document. Subsequently, the EPA received petitions for reconsideration of the final 2013 action. These petitions allege that the public did not have sufficient opportunity to comment on some of the provisions contained in that final rule. In response, the EPA proposed to reconsider four provisions of the 2013 final NSPS and EG for CISWI units (80 FR 3018, January 21, 2015). The EPA took final action on that proposal on June 23, 2016 (81 FR 40956). We will refer to this final CISWI rule, as revised through June 2016, as the 2016 CISWI rule.

In this action, the EPA is proposing clarifying changes and corrections to the 2016 CISWI rule. For a more detailed background and additional information on how this rule is related to other CAA combustion rules issued under CAA section 112 and the Resource Conservation and Recovery Act definition of solid waste, refer to prior actions (76 FR 15704, March 21, 2011; 78 FR 9112, February 7, 2013).

B. Actions We Are Taking

In this document, we are proposing to amend the 2016 CISWI rule to address certain issues raised by industry stakeholders and implementing agencies, as well as to address other issues identified during implementation of the CISWI rule. We request comment on all of the proposed amendments. These provisions that would be affected by the proposed amendments are: (1) Alternative equivalent emission limit for mercury (Hg) for the waste-burning kiln subcategory; (2) timing of initial test and initial performance evaluation; (3) extension of electronic data reporting requirements; (4) clarification of non-delegated authorities; (5) demonstration of initial compliance when using a continuous emissions monitoring system (CEMS); (6) continuous opacity monitoring requirements; (7) other CEMS requirements; (8) clarification of skip testing requirements; (9) deviation reporting requirements for continuous monitoring data; and (10) clarification of air curtain incinerator (ACI) requirements. In addition to these provisions, we are also correcting minor typographical errors identified in the rule.

We are seeking public comment only on the issues specifically identified in this action, discussed further in sections II.C and II.D of this preamble. We are not reopening and will not respond to comments on any aspects of the CISWI NSPS and EG other than those specifically identified in sections II.C. and II.D of this preamble.

C. Discussion of Proposed Technical Amendments

This section of the preamble explains why the EPA is proposing to make the amendments identified in this proposed rule. We request comment on the issues discussed in this section and on the proposed minor typographical corrections discussed in section II.D of this preamble.

1. Alternative Equivalent Emission Limit for Hg for the Waste-Burning Kiln Subcategory

The December 23, 2011, proposed CISWI reconsideration rule preamble discussed and presented equivalent emission limits for waste-burning kilns expressed on a production basis (76 FR 80458). In the February 2013 CISWI

final reconsideration rule preamble, the EPA again included these equivalent production-based limits, but at that time the EPA decided not to codify these within the rule text. In the process of approving state plans to implement the CISWI EG, the EPA has recognized that there is benefitting to affected sources and implementing agencies in codifying the emission limit for Hg for waste-burning kilns in a production-based limit (*i.e.,* pound/million (lb/MM) ton clinker) as this is the format of the Hg standards found in the Portland Cement National Emission Standards for Hazardous Air Pollutants (PC NESHAP). The EPA strives to make compliance with both CISWI standards and the PC NESHAP as streamlined and consistent as possible to facilitate compliance with both standards because these sources (and energy recovery units) must comply with the CISWI standard when they are combusting solid waste and must comply with the PC NESHAP or Boiler Maximum Achievable Control Technology standards, as applicable, when combusting nonwaste materials. Having an equivalent emission limit in the same units as the PC NESHAP will aid affected sources in demonstrating compliance with both standards, and will aid implementing agencies in enforcing the standards.

As discussed in 2011 and repeated in 2013 (78 FR 9122–3, February 7, 2013), the Hg emission limit of 58 lb/MM ton clinker and 21 lb/MM ton clinker for existing and new sources, respectively, are equivalent to the concentration-based Hg standards of 0.011 milligram/dry standard cubic meter (mg/dscm) and 0.0037 mg/dscm within the currently published CISWI rule. To facilitate use of the equivalent production-based emission limits, the EPA is not only proposing to add these emission limits to the emission limitation tables, but also proposing to include recordkeeping, calculation, and reporting requirements for clinker production rate as necessary. The proposed regulatory provisions and calculations are consistent with those found in the PC NESHAP.

2. Timing of Initial Test and Initial Performance Evaluation

The current CISWI NSPS and EG require affected sources to conduct a performance evaluation of each continuous monitoring system within 60 days of installation of the monitoring system (see 40 CFR 60.2135 and 60.2700). The rule also allows up to 180 days from the final compliance date for affected sources to conduct an initial performance test. The EPA received questions from implementing agencies asking whether these requirements can be synchronized to prevent duplicate testing requirements because the continuous monitoring system performance evaluation would require an emissions test being conducted at the same time regardless. We recognize that the requirement to conduct a performance evaluation within 60 days of installation could present a situation for sources where the deadline for conducting the performance evaluation would precede the deadline for conducting the initial performance test. The EPA did not intend to require sources to conduct duplicative initial performance tests, and we see a benefit to sources and implementing agencies to be able to schedule and conduct both of these demonstrations at the same time during a single testing episode. Therefore, the EPA is adjusting the timing of the continuous monitoring system initial performance evaluation to allow 180 days from installation to match the schedule which is allowed for conducting the initial performance test. The EPA has determined that making these timelines consistent (*i.e.,* 180 days from installation) will streamline compliance demonstrations and prevent possible duplicative testing requirements.

3. Extension of Electronic Data Reporting Requirement

In this action, the EPA is proposing to extend the electronic reporting requirement dates found in 40 CFR 60.2235(a) and 60.2795(a). The electronic reporting provisions promulgated in CISWI require submittal of initial, annual, and deviation reports electronically through the EPA's Compliance and Emissions Data Reporting Interface (CEDRI), which is accessed through the EPA's Central Data Exchange. The existing rule provides that the requirement for electronic submittal will take effect once the relevant forms have been available in CEDRI for 90 calendar days. As stated in the CISWI reconsideration (81 FR 40956), the EPA intended to make the requirements of the CISWI rule consistent with the Electronic Reporting and Recordkeeping Requirements for New Source Performance Standards, which was proposed on March 20, 2015 (80 FR 15100).[1] However, the CISWI reconsideration final rule was published on June 23, 2016 (81 FR 40956), before the Electronic Reporting and Recordkeeping Requirements for New Source Performance Standards rule [2] was finalized and did not take into account comments received on that rule.

The proposed extension for CISWI units in this action is consistent with the EPA's approach to electronic reporting outlined in the Electronic Reporting and Recordkeeping Requirements for New Source Performance Standards final rule.[3] This approach has also been used in recent EPA rulemakings (*e.g.,* National Emissions Standards for Hazardous Air Pollutants for Chemical Recovery Combustion Sources at Kraft, Soda, Sulfite, and Stand-Alone Semi chemical Pulp Mills, 82 FR 47328, and National Emissions Standards for Hazardous Air Pollutants: Publicly Owned Treatment Works Residual Risk and Technology Review, 82 FR 49513). The proposed extension requires electronic submission of initial, annual, and deviation reports 2 years from publication of the final rule or 1 year after the reporting form becomes available in CEDRI, whichever date is later. This extension is necessary to allow the EPA time to develop and adequately test the new forms and for regulated entities to become familiar with the forms and reprogram systems that collect data for periodic reports once the forms are available. The extension also allows state, local, and tribal agencies more time to implement electronic reporting and to make any needed permit revisions to accommodate electronic reporting and allows for development of third-party software to populate the reporting forms.

4. Clarification of Non-Delegated Authorities

In this action, the EPA is proposing corrections to the authorities listed in 40 CFR 60.2030(c). Specifically, the reference to 40 CFR 60.2125(j) is an outdated reference to previously-proposed, but never promulgated, performance test waiver provisions. These provisions were included in the June 4, 2010, CISWI proposed rule (*see* 75 FR 31975), but were not made final

[1] Originally, the Electronic Reporting and Recordkeeping Requirements for New Source Performance Standards Rule included CISWI as one of the affected subparts. However, because the CISWI reconsideration package was proposed at nearly the same time as that rule, CISWI was removed as an affected subpart, and the language associated with the Electronic Reporting and Recordkeeping Requirements for New Source Performance Standards Rule was inserted into the CISWI reconsideration proposal.

[2] This final rule was signed on December 21, 2016, but was withdrawn from the Office of the Federal Register prior to publication.

[3] The prepublication version of the final rule is available at *https://www.epa.gov/sites/production/files/2017-04/documents/e-reporting-nsps-final-rule-pre-publication.pdf.* Accessed January 24, 2018.

in the March 21, 2011, final rule (*see* 76 FR 15752–3). This reference was inadvertently not updated to reflect that the proposed 40 CFR 60.2125(j) was not finalized. Furthermore, the provisions of 40 CFR 60.2030(c)(10) that require obtaining a determination from the EPA of whether a qualifying small power facility or cogeneration facility is combusting homogeneous waste were intended to be removed in the 2013 CISWI final rule as part of the removal of the definition of homogeneous waste (*see* 78 FR 9124, February 7, 2013). As discussed in the February 7, 2013, document, the EPA determined that the proposed ''definition and provisions could be interpreted in a manner that would be unduly restrictive.'' Therefore, the EPA did not include a definition of ''homogeneous waste'' in the final CISWI rule and the Agency stated it was ''removing the requirement that qualifying small power producers and qualifying cogeneration facilities that combust solid waste obtain a determination from the EPA that such waste is homogeneous.'' *Id.* Accordingly, the EPA has proposed the removal of paragraph 40 CFR 60.2030(c)(10). While no other authorities have been added or removed from this list, that the EPA is proposing minor revisions to streamline the section by removing the reserved subparagraphs (*i.e.,* (5) and (10)) and renumbering the subparagraphs sequentially.

In this action, we are also clarifying which authorities will not be delegated to EG guidelines, 40 CFR 60.2542 simply contains a reference to the analogous paragraph (40 CFR 60.2030(c)) within the CISWI NSPS. However, since the CISWI NSPS applies to new sources, applicability of these non-delegated authorities to state plans implementing the emission guidelines for existing sources was unclear to implementing agencies. To remove this confusion, we have eliminated the cross reference to 40 CFR 60.2030(c) and have instead provided the specific details on which authorities will not be delegated within the text of 40 CFR 60.2542. The list of authorities being proposed in 40 CFR 60.2542 matches the updated list found in 40 CFR 60.2030(c), with the appropriate adjustments made to subpart section cross references.

5. Demonstrating Initial Compliance When Using CEMS

The EPA has become aware of an inconsistency in the regulations that make CEMS monitoring an option for demonstrating initial compliance. The final CISWI rules require some sources to demonstrate compliance using CEMS, and allow the option for any source to use CEMS to demonstrate compliance ''with any of the emission limits of this subpart'' (*see* 40 CFR 60.2145(u) and 60.2710(u)). However, for most of the paragraphs containing the pollutant-specific CEMS requirements, the language was unclear on whether these demonstrations were applicable to demonstrating initial compliance, with the exception of carbon monoxide (CO). The EPA's intent was to allow this compliance option for any pollutant (*i.e.,* with any of the emission limits of this subpart). To express the EPA's intent of providing this flexibility for compliance demonstration more clearly, we have revised language in several sections of the rule. For example, the initial compliance requirements in 40 CFR 60.2135 and 60.2700 have been revised to also reflect use of CEMS data as an initial compliance demonstration alternative to an emissions test, provided that the initial CEMS performance evaluation has been conducted prior to collecting CEMS data used for the initial performance test. Likewise, language surrounding the CEMS requirements found in 40 CFR 60.2145, 60.2165, 60.2710, and 60.2730, and the emission limitation tables, have been revised and streamlined to clarify that CEMS data may be used to demonstrate compliance (*i.e.,* initial and continuing) with the standards.

6. Clarification of Continuous Opacity Monitoring System (COMS) Requirements

In addition to the clarifications to CEMS provisions, we also propose to revise 40 CFR 60.2145(i) and 60.2710(i) to clarify our intent regarding the types of units required to install COMS and to make it consistent with the COMS monitoring requirement language found in 40 CFR 60.2165(m) and 60.2730(m), respectively. We propose to add language clarifying that energy recovery units between 10 and 250 million British thermal units/hour (MMBtu/hr) design heat input that are equipped with electrostatic precipitators (ESP), particulate matter CEMS, or particulate matter continuous parameter monitoring systems (CPMS) are also not required to install and operate COMS because these units have an air pollution control device that has continuous parameter monitoring requirements or are using continuous particulate matter monitoring compliant with provisions within the rule already (*see* 40 CFR 60.2145(q), for example). The rule currently excludes the COMS requirement for energy recovery units using other types of particulate matter control devices or that use particulate matter CEMS for continuous particulate matter monitoring, but inadvertently omitted ESPs and particulate matter CPMS from the list. Therefore, we propose to add ''electrostatic precipitator'' and ''particulate matter CPMS'' to the list of wet scrubber and fabric filters found in 40 CFR 60.2165(m) and 60.2730(m) as types of units that do not require COMS. As a further clarification, we also propose to amend the text to 40 CFR 60.2145(i) and 60.2710(i) to clearly specify that the COMS requirement is applicable to units within the specified size range ''that do not use a wet scrubber, fabric filter with bag leak detection system, an electrostatic precipitator, particulate matter CEMS, or particulate matter CPMS.''

7. Clarification of Other CEMS Requirements

In addition to the CEMS-related requirements discussed above, the EPA is proposing two other CEMS-related clarifications: (1) To not require CO CEMS for new source waste-burning kilns; and (2) to remove outdated notification requirements when particulate matter CEMS are being used. For the CO CEMS issue, there is an incorrect requirement in 40 CFR 60.2145(j) for new waste-burning kilns to demonstrate compliance with CO emission limits using CEMS. This is inconsistent with the requirements found in Table 7 to 40 CFR 60, subpart CCCC, and with the EPA's intent to remove CO CEMS requirements for new CISWI sources, as stated in the February 7, 2013, final CISWI rules (*see* 78 FR 9120). Carbon monoxide CEMS are allowed as an alternative compliance demonstration, but the requirement is annual testing by EPA Method 10. To make this clarification, the EPA is proposing to revise 40 CFR 60.2145(j) so that CO is one of the pollutants requiring an annual test and remove CO from the list of pollutants requiring CEMS for demonstrating compliance.

Another clarification the EPA is proposing is to remove the outdated requirements of notifying the Administrator prior to beginning and stopping use of an optional particulate matter CEMS. These provisions are 40 CFR 60.2165(n)(1) and (2), and 60.2730(n)(1) and (2). These provisions are an inadvertent holdover from model provisions from a much older rule. CEMS technology and application has progressed to an extent that these notifications are no longer needed or desired by the EPA. Furthermore, these notifications do not appear in the reporting requirements outlined in the reporting requirment tables (Table 4 to

40 CFR part 60, subpart CCCC and Table 3 to 40 CFR part 60, subpart DDDD), nor the other notification requirements, so they introduced an unintended inconsistency within the rule. To resolve this, we propose deleting the current subparagraphs (1) and (2) of these sections and renumbering the remaining subparagraphs sequentially to streamline these requirements.

8. Clarification of Reduced Testing Requirements

It has come to the EPA's attention that there is confusion regarding how reduced testing is applied after a source has demonstrated good performance and has skipped testing for 2 years (*see* 40 CFR 60.2155 and 60.2720). Stakeholders suggest that the current CISWI rule language would have a good performing source return to an annual testing schedule after being able to skip testing for 2 years, with no opportunity for additional reduced testing. It was not the EPA's intent to only offer this allowance once when developing these provisions. To the contrary, the EPA intended this allowance to be available for as long as good performance could be reaffirmed with testing every 3 years instead of annually (*see* 76 FR 15714, March 21, 2011). The intended sequence of testing consisted of two consecutive annual tests showing 75 percent or less of the applicable standard is achieved; followed by 2 years of testing being skipped; followed by an annual test showing that 75 percent of the standard is achieved; followed by 2 years of testing being skipped; etc. Since the promulgation of these standards, these skip testing provisions have been refined and promulgated during regulatory development efforts in the CAA section 129 rulemaking for sewage sludge incinerators (40 CFR part 60, subparts LLLL and MMMM). In this action, the EPA proposes to clarify the ongoing allowance for reduced testing provisions we intended, based largely on language used in the recent sewage sludge incinerator rule.

9. Clarification of Deviation Reporting Requirements for Continuous Monitoring Data

The EPA has become aware of some unclear requirements in the deviation reporting requirements of 40 CFR 60.2215(a) and 60.2775(a). In particular, the requirements for continuously-measured parameters or emissions using CEMS are not clearly outlined within these sections. While these provisions are clear for 3-hour average parameters and performance testing, the EPA recognizes that 30-day averages allowed for energy recovery units and particulate matter CEMS were inadvertently omitted, as well as requirements for any other 30-day average measured using CEMS that deviated from an emission limit. The EPA proposes to add language to these paragraphs to clarify that deviations for these other operating parameters or CEMS-measurements that deviate from an operating limit or emissions limitation must be included in a deviation report.

Furthermore, we propose to amend these paragraphs to also include deviations for the 30 kiln operating day average operating parameter in deviation reports. The 30 kiln operating day average is a necessary component of the provisions proposed in 40 CFR 60.2145(j) and 60.2710(j).

10. Clarification of ACI Requirements

Since promulgation of the 2016 CISWI final rule, the EPA has received various questions from implementing agencies regarding the CISWI applicability status of ACI. While the limited requirements of ACIs burning only wood waste, clean lumber or a mixture of wood waste, clean lumber and/or yard waste are defined within the rule and a CISWI affected source is unclear to some implementing agencies as they work to prepare state plans and negative declarations, because of confusing language in the final CISWI rule. See 40 CFR 60.2550. Specifically, the section of the EG addressing the units subject to the final CISWI rule includes a reference to ACI in 40 CFR 60.2550(a)(1), but 40 CFR 60.2550(a)(2) further states that only units that meet the definition of a CISWI unit are subject to the final rule, and ACIs do not meet the regulatory definition of a CISWI unit.[4]

Notwithstanding that confusing provision, the record demonstrates that the EPA considers ACIs located at commercial and industrial facilities and otherwise meeting the definition of an ACI as being CISWI-affected sources. See CAA section 129(g)(1)(C) (defining ACIs) and 40 CFR 60.2245–2260 of the NSPS and 60.2810–2870 of the EG (setting forth the CISWI EG requirements applicable to ACI). Facilities can have CISWI-affected ACIs even if they do not have CISWI units located at the facility. If an ACI begins burning solid waste as defined in the Non Hazardous Secondary Materials rule (*see* 40 CFR part 241) in addition to, or instead of, wood waste, clean lumber, or a mixture of wood waste, clean lumber, and/or yard waste, it is a solid waste incineration unit instead of an ACI that will be subject to the applicable numerical emission standards contained in CISWI or another CAA section 129 standard, depending on the type of waste combusted (*e.g.,* such as a unit burning more than 30-percent municipal solid waste would be a municipal solid waste incineration unit instead of a CISWI unit).

The EPA's intent is further demonstrated in a response to comments on title V permitting requirements for ACIs in the preamble to the March 21, 2011, final CISWI rule (76 FR 15741):

Commenters are correct that ACIs are not solid waste incineration units pursuant to CAA section 129(g)(1)(C), but that is only correct if the units ''only burn wood wastes, yard wastes and clean lumber and [they] * * * comply with opacity limitations to be established by the Administrator by rule.'' The EPA has established opacity limitations for ACIs pursuant to CAA sections 111 and 129.

Pursuant to CAA section 502(a), sources subject to standards or regulations under CAA section 111 must obtain a title V permit; therefore, ACIs are required to obtain a title V permit. As commenters note, the EPA may exempt minor and area sources from the requirement to obtain a title V permit, but the EPA must first determine that compliance with title V requirements is ''impracticable, infeasible, or unnecessarily burdensome'' on the sources before exempting them (CAA section 502(a)). The EPA has not made the necessary finding pursuant to CAA section 502(a) for ACIs in any of the CAA section 129 rulemakings, and we believe that ACIs exist at CAA section 129 facilities other than at the commercial and industrial facilities subject to this final rule. Because we think it is important to treat all ACIs in the same manner, we decline to consider a title V exemption for minor and area source ACIs at commercial and industrial facilities.

As the record demonstrates, the EPA determined that ACIs located at commercial and industrial facilities are CISWI-affected sources that must be included in state plans and regulated consistent with the final CISWI standards applicable to such units. To address the uncertainty created by the CISWI rule, the EPA proposes to clarify the affected source status of ACIs by revising the regulations to make clear that ''air curtain incinerators'' do not need to meet the definition of a ''CISWI unit'' to be subject to the CISWI rule

[4] The phrasing of the regulations at 40 CFR 60.2010 and 60.2015 of the NSPS similarly confuse the applicability of the final CISWI rule to new ACIs located at commercial and industrial facilities.

(*e.g.,* 40 CFR 60.2010 of the NSPS and 40 CFR 60.2500 and 60.2550 of the EG).

D. Typographical Errors and Corrections

In this action, we are also proposing changes to the final rule to correct minor typographical errors and clarify provisions that are unclear. The list of these changes is included in the ''Typographical Errors and Corrections'' memorandum in Docket ID No. EPA–OAR–HQ–2003–0119.

E. Environmental, Energy, and Economic Impacts

This action requests comments on some provisions, and makes technical and clarifying corrections to aid in implementation and compliance, but does not propose substantive changes to the February 7, 2013, final CISWI rule (78 FR 9112).[5] As such, there are no environmental, energy, or economic impacts associated with this proposed action. The impacts associated with the CISWI rule were discussed in detail in the February 7, 2013, final CISWI rule document.

III. Statutory and Executive Order Reviews

Additional information about these statutes and Executive Orders can be found at *http://www2.epa.gov/laws-regulations/laws-and-executive-orders.*

A. Executive Order 12866: Regulatory Planning and Review and Executive Order 13563: Improving Regulation and Regulatory Review

This action is not a significant regulatory action and was, therefore, not submitted to the OMB for review.

B. Executive Order 13771: Reducing Regulations and Controlling Regulatory Costs

This action is not expected to be an Executive Order 13771 regulatory action because this action is not significant under Executive Order 12866.

C. Paperwork Reduction Act (PRA)

This action does not impose any new information collection burden under the PRA. OMB has previously approved the information collection activities contained in the existing regulations and assigned OMB Control number 2060–0662 for 40 CFR part 60, subpart CCCC, and OMB Control number 2060–0664 for 40 CFR part 60, subpart DDDD. This action is believed to result in no changes to the information collection requirements of the 2016 CISWI rule, so that the information collection estimate of project cost and hour burden from the final CISWI rule have not been revised.

D. 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. In making this determination, the impact of concern is any significant adverse economic impact on small entities. An agency may certify that a rule will not have a significant economic impact on a substantial number of small entities if the rule relieves regulatory burden, has no net burden, or otherwise has a positive economic effect on the small entities subject to the rule. This proposed rule will not impose any new requirements on any entities because it does not impose any additional regulatory requirements relative to those specified in the 2016 CISWI rule, which also did not impose any additional regulatory requirements beyond those specified in the February 2013 final CISWI rule. The February 2013 final CISWI rule was certified as not having a significant economic impact on a substantial number of small entities. We have, therefore, concluded that this action will have no net regulatory burden for all directly regulated small entities.

E. 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.

F. 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.

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

This action does not have tribal implications, as specified in Executive Order 13175. The EPA is not aware of any CISWI in Indian country or owned or operated by Indian tribal governments. The CISWI aspects of this rule may, however, invoke minor indirect tribal implications to the extent that entities generating solid wastes on tribal lands could be affected. Thus, Executive Order 13175 does not apply to this action.

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

The EPA interprets Executive Order 13045 as applying 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.

I. Executive Order 13211: Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use

This action is not subject to Executive Order 13211 because it is not a significant regulatory action under Executive Order 12866.

J. National Technology Transfer and Advancement Act (NTTAA)

This rulemaking does not involve technical standards.

K. Executive Order 12898: Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations

The EPA believes that this action does not have disproportionately high and adverse human health or environmental effects on minority populations, low-income populations, and/or indigenous peoples, as specified in Executive Order 12898 (58 FR 7629, February 16, 1994).

It does not affect the level of protection provided to human health or the environment. The proposed corrections do not relax the control measures on sources regulated by the 2016 CISWI rule, which also did not relax any control measures on sources regulated by the February 2013 final CISWI rule. Therefore, this proposed action will not cause emissions increases from these sources. The February 2013 final CISWI rule will reduce emissions of all the listed toxics emitted from this source, thereby helping to further ensure against any disproportionately high and adverse human health or environmental effects on minority or low-income populations.

List of Subjects 40 CFR Part 60

Environmental protection, Administrative practice and procedure,

[5] The June 23, 2016 final CISWI rule amendments (81 FR 40956) also did not entail any environmental, energy or economic impacts, so therefore the February 7, 2013 final CISWI rule presents the impacts associated with the CISWI rule.

Air pollution control, Hazardous substances.

Dated: May 9, 2018.

E. Scott Pruitt,

Administrator.

For the reasons stated in the preamble, the Environmental Protection Agency is proposing to amend title 40, chapter I, of the Code of Federal Regulations 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.*

■ 2. Part 60 is amended by revising subpart CCCC to read as follows:

Subpart CCCC—Standards of Performance for Commercial and Industrial Solid Waste Incineration Units

Sec.

Subpart CCCC—Standards of Performance for Commercial and Industrial Solid Waste Incineration Units

Introduction

§ 60.2000 What does this subpart do?

This subpart establishes new source performance standards for commercial and industrial solid waste incineration units (CISWIs) and air curtain incinerators (ACIs).

§ 60.2005 When does this subpart become effective?

This subpart took effect on August 7, 2013. Some of the requirements in this subpart apply to planning the CISWI or ACI (*i.e.,* the preconstruction requirements in §§ 60.2045 and 60.2050). Other requirements such as the emission limitations and operating limits apply after the CISWI or ACI begins operation.

Applicability

§ 60.2010 Does this subpart apply to my incineration unit?

Yes, if your incineration unit meets all the requirements specified in paragraphs (a) through (c) of this section:

(a) Your incineration unit is a new incineration unit as defined in § 60.2015;

(b) Your incineration unit is a CISWI as defined in § 60.2265, or an ACI as defined in § 60.2265; and

(c) Your incineration unit is not exempt under § 60.2020.

§ 60.2015 What is a new incineration unit?

(a) A new incineration unit is an incineration unit that meets any of the criteria specified in paragraphs (a)(1) through (3) of this section:

(1) A CISWI or ACI that commenced construction after June 4, 2010;

(2) A CISWI or ACI that commenced reconstruction or modification after August 7, 2013; and

(3) Incinerators and ACIs, as defined in this subpart, that commenced construction after November 30, 1999, but no later than June 4, 2010, or that commenced reconstruction or modification on or after June 1, 2001, but no later than August 7, 2013, are considered new incineration units and remain subject to the applicable requirements of this subpart until the units become subject to the requirements of an approved state plan or federal plan that implements subpart DDDD of this part (Emission Guidelines and Compliance Times for Commercial and Industrial Solid Waste Incineration Units).

(b) This subpart does not affect your CISWI or ACI if you make physical or operational changes to your incineration unit primarily to comply with subpart DDDD of this part (Emission Guidelines and Compliance Times for Commercial and Industrial Solid Waste Incineration Units). Such changes do not qualify as reconstruction or modification under this subpart.

§ 60.2020 What combustion units are exempt from this subpart?

This subpart exempts the types of units described in paragraphs (a) through (j) of this section, but some units are required to provide notifications.

(a) *Pathological waste incineration units.* Incineration units burning 90 percent or more by weight (on a calendar quarter basis and excluding the weight of auxiliary fuel and combustion air) of pathological waste, low-level radioactive waste, and/or chemotherapeutic waste as defined in § 60.2265 are not subject to this subpart if you meet the two requirements specified in paragraphs (a)(1) and (2) of this section:

(1) Notify the Administrator that the unit meets these criteria; and

(2) Keep records on a calendar quarter basis of the weight of pathological waste, low-level radioactive waste, and/or chemotherapeutic waste burned, and the weight of all other fuels and wastes burned in the unit.

(b) *Municipal waste combustion units.* Incineration units that are subject to subpart Ea of this part (Standards of Performance for Municipal Waste Combustors); subpart Eb of this part (Standards of Performance for Large Municipal Waste Combustors); subpart Cb of this part (Emission Guidelines and Compliance Time for Large Municipal Combustors); subpart AAAA of this part (Standards of Performance for Small Municipal Waste Combustion Units); or subpart BBBB of this part (Emission Guidelines for Small Municipal Waste Combustion Units).

(c) *Medical waste incineration units.* Incineration units regulated under subpart Ec of this part (Standards of Performance for Hospital/Medical/Infectious Waste Incinerators for Which Construction is Commenced After June 20, 1996) or subpart Ce of this part (Emission Guidelines and Compliance Times for Hospital/Medical/Infectious Waste Incinerators).

(d) *Small power production facilities.* Units that meet the four requirements specified in paragraphs (d)(1) through (4) of this section:

(1) The unit qualifies as a small power-production facility under section 3(17)(C) of the Federal Power Act (16 U.S.C. 796(17)(C));

(2) The unit burns homogeneous waste (not including refuse-derived fuel) to produce electricity;

(3) You submit documentation to the Administrator notifying the EPA that the qualifying small power production facility is combusting homogenous waste; and

(4) You maintain the records specified in § 60.2175(w).

(e) *Cogeneration facilities.* Units that meet the four requirements specified in paragraphs (e)(1) through (4) of this section:

(1) The unit qualifies as a cogeneration facility under section 3(18)(B) of the Federal Power Act (16 U.S.C. 796(18)(B));

(2) The unit burns homogeneous waste (not including refuse-derived fuel) to produce electricity and steam or other forms of energy used for industrial, commercial, heating, or cooling purposes;

(3) You submit documentation to the Administrator notifying the Agency that the qualifying cogeneration facility is combusting homogenous waste; and

(4) You maintain the records specified in § 60.2175(x).

(f) *Hazardous waste combustion units.* Units for which you are required to get a permit under section 3005 of the Solid Waste Disposal Act.

(g) *Materials recovery units.* Units that combust waste for the primary purpose of recovering metals, such as primary and secondary smelters.

(h) *Sewage treatment plants.* Incineration units regulated under subpart O of this part (Standards of Performance for Sewage Treatment Plants).

(i) *Sewage sludge incineration units.* Incineration units combusting sewage sludge for the purpose of reducing the volume of the sewage sludge by removing combustible matter that are subject to subpart LLLL of this part (Standards of Performance for New Sewage Sludge Incineration Units) or subpart MMMM of this part (Emission Guidelines and Compliance Times for Existing Sewage Sludge Incineration Units).

(j) *Other solid waste incineration units.* Incineration units that are subject to subpart EEEE of this part (Standards of Performance for Other Solid Waste Incineration Units for Which Construction is Commenced After December 9, 2004, or for Which Modification or Reconstruction is Commenced on or After June 16, 2006) or subpart FFFF of this part (Emission Guidelines and Compliance Times for Other Solid Waste Incineration Units That Commenced Construction On or Before December 9, 2004).

§ 60.2030 Who implements and enforces this subpart?

(a) This subpart can be implemented and enforced by the U.S. Environmental Protection Agency (EPA), or a delegated authority such as your state, local, or tribal agency. If the EPA Administrator

has delegated authority to your state, local, or tribal agency, then that agency (as well as EPA) has the authority to implement and enforce this subpart. You should contact your EPA Regional Office to find out if this subpart is delegated to your state, local, or tribal agency.

(b) In delegating implementation and enforcement authority of this subpart to a state, local, or tribal agency, the authorities contained in paragraph (c) of this section are retained by the EPA Administrator and are not transferred to the state, local, or tribal agency.

(c) The authorities that will not be delegated to state, local, or tribal agencies are specified in paragraphs (c)(1) through (9) of this section:

(1) Approval of alternatives to the emission limitations in tables 1, 5, 6, 7, and 8 of this subpart and operating limits established under § 60.2110;

(2) Approval of major alternatives to test methods;

(3) Approval of major alternatives to monitoring;

(4) Approval of major alternatives to recordkeeping and reporting;

(5) The requirements in § 60.2115;

(6) The requirements in § 60.2100(b)(2);

(7) Approval of alternative opacity emission limits in § 60.2105 under § 60.11(e)(6) through (8);

(8) Performance test and data reduction waivers under § 60.8(b)(4) and (5);

(9) Approval of an alternative to any electronic reporting to the EPA required by this subpart.

§ 60.2035 How are these new source performance standards structured?

These new source performance standards contain the eleven major components listed in paragraphs (a) through (k) of this section:

(a) Preconstruction siting analysis;

(b) Waste management plan;

(c) Operator training and qualification;

(d) Emission limitations and operating limits;

(e) Performance testing;

(f) Initial compliance requirements;

(g) Continuous compliance requirements;

(h) Monitoring;

(i) Recordkeeping and reporting;

(j) Definitions; and

(k) Tables.

§ 60.2040 Do all eleven components of these new source performance standards apply at the same time?

No. You must meet the preconstruction siting analysis and waste management plan requirements before you commence construction of the CISWI. The operator training and qualification, emission limitations, operating limits, performance testing and compliance, monitoring, and most recordkeeping and reporting requirements are met after the CISWI begins operation.

Preconstruction Siting Analysis

§ 60.2045 Who must prepare a siting analysis?

(a) You must prepare a siting analysis if you plan to commence construction of an incinerator after December 1, 2000.

(b) You must prepare a siting analysis for CISWIs that commenced construction after June 4, 2010, or that commenced reconstruction or modification after August 7, 2013.

(c) You must prepare a siting analysis if you are required to submit an initial application for a construction permit under 40 CFR part 51, subpart I, or 40 CFR part 52, as applicable, for the reconstruction or modification of your CISWI.

§ 60.2050 What is a siting analysis?

(a) The siting analysis must consider air pollution control alternatives that minimize, on a site-specific basis, to the maximum extent practicable, potential risks to public health or the environment. In considering such alternatives, the analysis may consider costs, energy impacts, nonair environmental impacts, or any other factors related to the practicability of the alternatives.

(b) Analyses of your CISWI's impacts that are prepared to comply with state, local, or other federal regulatory requirements may be used to satisfy the requirements of this section, provided they include the consideration of air pollution control alternatives specified in paragraph (a) of this section.

(c) You must complete and submit the siting requirements of this section as required under § 60.2190(c) prior to commencing construction.

Waste Management Plan

§ 60.2055 What is a waste management plan?

A waste management plan is a written plan that identifies both the feasibility and the methods used to reduce or separate certain components of solid waste from the waste stream in order to reduce or eliminate toxic emissions from incinerated waste.

§ 60.2060 When must I submit my waste management plan?

(a) You must submit a waste management plan prior to commencing construction.

(b) For CISWIs that commence reconstruction or modification after August 7, 2013, you must submit a waste management plan prior to the commencement of modification or reconstruction.

§ 60.2065 What should I include in my waste management plan?

A waste management plan must include consideration of the reduction or separation of waste-stream elements such as paper, cardboard, plastics, glass, batteries, or metals; or the use of recyclable materials. The plan must identify any additional waste management measures and implement those measures the source considers practical and feasible, considering the effectiveness of waste management measures already in place, the costs of additional measures, the emissions reductions expected to be achieved, and any other environmental or energy impacts they might have.

Operator Training and Qualification

§ 60.2070 What are the operator training and qualification requirements?

(a) No CISWI can be operated unless a fully trained and qualified CISWI operator is accessible, either at the facility or can be at the facility within 1 hour. The trained and qualified CISWI operator may operate the CISWI directly or be the direct supervisor of one or more other plant personnel who operate the unit. If all qualified CISWI operators are temporarily not accessible, you must follow the procedures in § 60.2100.

(b) Operator training and qualification must be obtained through a state-approved program or by completing the requirements included in paragraph (c) of this section.

(c) Training must be obtained by completing an incinerator operator training course that includes, at a minimum, the three elements described in paragraphs (c)(1) through (3) of this section:

(1) Training on the eleven subjects listed in paragraphs (c)(1)(i) through (xi) of this section;

(i) Environmental concerns, including types of emissions;

(ii) Basic combustion principles, including products of combustion;

(iii) Operation of the specific type of incinerator to be used by the operator, including proper startup, waste charging, and shutdown procedures;

(iv) Combustion controls and monitoring;

(v) Operation of air pollution control equipment and factors affecting performance (if applicable);

(vi) Inspection and maintenance of the incinerator and air pollution control devices;

(vii) Actions to prevent and correct malfunctions or to prevent conditions that may lead to malfunctions;

(viii) Bottom and fly ash characteristics and handling procedures;

(ix) Applicable federal, state, and local regulations, including Occupational Safety and Health Administration workplace standards;

(x) Pollution prevention; and

(xi) Waste management practices.

(2) An examination designed and administered by the instructor.

(3) Written material covering the training course topics that may serve as reference material following completion of the course.

§ 60.2075 When must the operator training course be completed?

The operator training course must be completed by the later of the three dates specified in paragraphs (a) through (c) of this section:

(a) Six months after your CISWI startup;

(b) December 3, 2001; and

(c) The date before an employee assumes responsibility for operating the CISWI or assumes responsibility for supervising the operation of the CISWI.

§ 60.2080 How do I obtain my operator qualification?

(a) You must obtain operator qualification by completing a training course that satisfies the criteria under § 60.2070(b).

(b) Qualification is valid from the date on which the training course is completed and the operator successfully passes the examination required under § 60.2070(c)(2).

§ 60.2085 How do I maintain my operator qualification?

To maintain qualification, you must complete an annual review or refresher course covering, at a minimum, the five topics described in paragraphs (a) through (e) of this section:

(a) Update of regulations;

(b) Incinerator operation, including startup and shutdown procedures, waste charging, and ash handling;

(c) Inspection and maintenance;

(d) Prevention and correction of malfunctions or conditions that may lead to malfunction; and

(e) Discussion of operating problems encountered by attendees.

§ 60.2090 How do I renew my lapsed operator qualification?

You must renew a lapsed operator qualification by one of the two methods specified in paragraphs (a) and (b) of this section:

(a) For a lapse of less than 3 years, you must complete a standard annual refresher course described in § 60.2085; and

(b) For a lapse of 3 years or more, you must repeat the initial qualification requirements in § 60.2080(a).

§ 60.2095 What site-specific documentation is required?

(a) Documentation must be available at the facility and readily accessible for all CISWI operators that addresses the ten topics described in paragraphs (a)(1) through (10) of this section. You must maintain this information and the training records required by paragraph (c) of this section in a manner that they can be readily accessed and are suitable for inspection upon request:

(1) Summary of the applicable standards under this subpart;

(2) Procedures for receiving, handling, and charging waste;

(3) Incinerator startup, shutdown, and malfunction procedures;

(4) Procedures for maintaining proper combustion air supply levels;

(5) Procedures for operating the incinerator and associated air pollution control systems within the standards established under this subpart;

(6) Monitoring procedures for demonstrating compliance with the incinerator operating limits;

(7) Reporting and recordkeeping procedures;

(8) The waste management plan required under §§ 60.2055 through 60.2065;

(9) Procedures for handling ash; and

(10) A list of the wastes burned during the performance test.

(b) You must establish a program for reviewing the information listed in paragraph (a) of this section with each incinerator operator:

(1) The initial review of the information listed in paragraph (a) of this section must be conducted within 6 months after the effective date of this subpart or prior to an employee's assumption of responsibilities for operation of the CISWI, whichever date is later; and

(2) Subsequent annual reviews of the information listed in paragraph (a) of this section must be conducted not later than 12 months following the previous review.

(c) You must also maintain the information specified in paragraphs (c)(1) through (3) of this section:

(1) Records showing the names of CISWI operators who have completed review of the information in § 60.2095(a) as required by § 60.2095(b), including the date of the initial review and all subsequent annual reviews;

(2) Records showing the names of the CISWI operators who have completed the operator training requirements under § 60.2070, met the criteria for qualification under § 60.2080, and maintained or renewed their qualification under § 60.2085 or § 60.2090. Records must include documentation of training, the dates of the initial and refresher training, and the dates of their qualification and all subsequent renewals of such qualifications; and

(3) For each qualified operator, the phone and/or pager number at which they can be reached during operating hours.

§ 60.2100 What if all the qualified operators are temporarily not accessible?

If all qualified operators are temporarily not accessible (*i.e.,* not at the facility and not able to be at the facility within 1 hour), you must meet one of the two criteria specified in paragraphs (a) and (b) of this section, depending on the length of time that a qualified operator is not accessible:

(a) When all qualified operators are not accessible for more than 8 hours, but less than 2 weeks, the CISWI may be operated by other plant personnel familiar with the operation of the CISWI who have completed a review of the information specified in § 60.2095(a) within the past 12 months. However, you must record the period when all qualified operators were not accessible and include this deviation in the annual report as specified under § 60.2210; and

(b) When all qualified operators are not accessible for 2 weeks or more, you must take the two actions that are described in paragraphs (b)(1) and (2) of this section:

(1) Notify the Administrator of this deviation in writing within 10 days. In the notice, state what caused this deviation, what you are doing to ensure that a qualified operator is accessible, and when you anticipate that a qualified operator will be accessible; and

(2) Submit a status report to the Administrator every 4 weeks outlining what you are doing to ensure that a qualified operator is accessible, stating when you anticipate that a qualified operator will be accessible and requesting approval from the Administrator to continue operation of the CISWI. You must submit the first status report 4 weeks after you notify the Administrator of the deviation under paragraph (b)(1) of this section. If the Administrator notifies you that your request to continue operation of the CISWI is disapproved, the CISWI may continue operation for 90 days, then must cease operation. Operation of the

unit may resume if you meet the two requirements in paragraphs (b)(2)(i) and (ii) of this section:

(i) A qualified operator is accessible as required under § 60.2070(a); and

(ii) You notify the Administrator that a qualified operator is accessible and that you are resuming operation.

Emission Limitations and Operating Limits

§ 60.2105 What emission limitations must I meet and by when?

(a) You must meet the emission limitations for each CISWI, including bypass stack or vent, specified in table 1 of this subpart or tables 5 through 8 of this subpart by the applicable date in § 60.2140. You must be in compliance with the emission limitations of this subpart that apply to you at all times.

(b) A CISWI or ACI that commenced construction after November 30, 1999, but no later than June 4, 2010, or that commenced reconstruction or modification on or after June 1, 2001 but no later than August 7, 2013, must continue to meet the emission limits in table 1 of this subpart for units in the incinerator subcategory and § 60.2250 for ACIs until the units become subject to the requirements of an approved state plan or federal plan that implements subpart DDDD of this part (Emission Guidelines and Compliance Times for Commercial and Industrial Solid Waste Incineration Units).

§ 60.2110 What operating limits must I meet and by when?

(a) If you use a wet scrubber(s) to comply with the emission limitations, you must establish operating limits for up to four operating parameters (as specified in table 2 of this subpart) as described in paragraphs (a)(1) through (4) of this section during the initial performance test:

(1) Maximum charge rate, calculated using one of the two different procedures in paragraph (a)(1)(i) or (ii) of this section, as appropriate:

(i) For continuous and intermittent units, maximum charge rate is 110 percent of the average charge rate measured during the most recent performance test demonstrating compliance with all applicable emission limitations; and

(ii) For batch units, maximum charge rate is 110 percent of the daily charge rate measured during the most recent performance test demonstrating compliance with all applicable emission limitations.

(2) Minimum pressure drop across the wet particulate matter scrubber, which is calculated as the lowest 1-hour average pressure drop across the wet scrubber measured during the most recent performance test demonstrating compliance with the particulate matter emission limitations; or minimum amperage to the wet scrubber, which is calculated as the lowest 1-hour average amperage to the wet scrubber measured during the most recent performance test demonstrating compliance with the particulate matter emission limitations;

(3) Minimum scrubber liquid flow rate, which is calculated as the lowest 1-hour average liquid flow rate at the inlet to the wet acid gas or particulate matter scrubber measured during the most recent performance test demonstrating compliance with all applicable emission limitations; and

(4) Minimum scrubber liquor pH, which is calculated as the lowest 1-hour average liquor pH at the inlet to the wet acid gas scrubber measured during the most recent performance test demonstrating compliance with the HCl emission limitation.

(b) You must meet the operating limits established during the initial performance test 60 days after your CISWI reaches the charge rate at which it will operate, but no later than 180 days after its initial startup.

(c) If you use a fabric filter to comply with the emission limitations and you do not use a PM CPMS for monitoring PM compliance, you must operate each fabric filter system such that the bag leak detection system alarm does not sound more than 5 percent of the operating time during a 6-month period. In calculating this operating time percentage, if inspection of the fabric filter demonstrates that no corrective action is required, no alarm time is counted. If corrective action is required, each alarm shall be counted as a minimum of 1 hour. If you take longer than 1 hour to initiate corrective action, the alarm time shall be counted as the actual amount of time taken by you to initiate corrective action.

(d) If you use an electrostatic precipitator to comply with the emission limitations and you do not use a PM CPMS for monitoring PM compliance, you must measure the (secondary) voltage and amperage of the electrostatic precipitator collection plates during the particulate matter performance test. Calculate the average electric power value (secondary voltage × secondary current = secondary electric power) for each test run. The operating limit for the electrostatic precipitator is calculated as the lowest 1-hour average secondary electric power measured during the most recent performance test demonstrating compliance with the particulate matter emission limitations.

(e) If you use activated carbon sorbent injection to comply with the emission limitations, you must measure the sorbent flow rate during the performance testing. The operating limit for the carbon sorbent injection is calculated as the lowest 1-hour average sorbent flow rate measured during the most recent performance test demonstrating compliance with the mercury emission limitations. For energy recovery units, when your unit operates at lower loads, multiply your sorbent injection rate by the load fraction, as defined in this subpart, to determine the required injection rate (*e.g.,* for 50 percent load, multiply the injection rate operating limit by 0.5).

(f) If you use selective noncatalytic reduction to comply with the emission limitations, you must measure the charge rate, the secondary chamber temperature (if applicable to your CISWI), and the reagent flow rate during the nitrogen oxides performance testing. The operating limits for the selective noncatalytic reduction are calculated as the highest 1-hour average charge rate, lower secondary chamber temperature, and lowest reagent flow rate measured during the most recent performance test demonstrating compliance with the nitrogen oxides emission limitations.

(g) If you use a dry scrubber to comply with the emission limitations, you must measure the injection rate of each sorbent during the performance testing. The operating limit for the injection rate of each sorbent is calculated as the lowest 1-hour average injection rate for each sorbent measured during the most recent performance test demonstrating compliance with the hydrogen chloride emission limitations. For energy recovery units, when your unit operates at lower loads, multiply your sorbent injection rate by the load fraction, as defined in this subpart, to determine the required injection rate (*e.g.,* for 50 percent load, multiply the injection rate operating limit by 0.5).

(h) If you do not use a wet scrubber, electrostatic precipitator, or fabric filter to comply with the emission limitations, and if you do not determine compliance with your particulate matter emission limitation with either a particulate matter CEMS or a particulate matter CPMS, you must maintain opacity to less than or equal to 10 percent opacity (1-hour block average).

(i) If you use a PM CPMS to demonstrate compliance, you must establish your PM CPMS operating limit and determine compliance with it according to paragraphs (i)(1) through (5) of this section:

(1) Determine your operating limit as the average PM CPMS output value

recorded during the performance test or at a PM CPMS output value corresponding to 75 percent of the emission limit if your PM performance test demonstrates compliance below 75 percent of the emission limit. You must verify an existing or establish a new operating limit after each repeated performance test. You must repeat the performance test annually and reassess and adjust the site-specific operating limit in accordance with the results of the performance test:

(i) Your PM CPMS must provide a 4–20 milliamp output, or digital equivalent, and the establishment of its relationship to manual reference method measurements must be determined in units of milliamps;

(ii) Your PM CPMS operating range must be capable of reading PM concentrations from zero to a level equivalent to at least two times your allowable emission limit. If your PM CPMS is an auto-ranging instrument capable of multiple scales, the primary range of the instrument must be capable of reading PM concentration from zero to a level equivalent to two times your allowable emission limit; and

(iii) During the initial performance test or any such subsequent performance test that demonstrates compliance with the PM limit, record and average all milliamp output values, or their digital equivalent, from the PM CPMS for the periods corresponding to the compliance test runs (*e.g.,* average all your PM CPMS output values for three corresponding 2-hour Method 5I test runs).

(2) If the average of your three PM performance test runs are below 75 percent of your PM emission limit, you must calculate an operating limit by establishing a relationship of PM CPMS signal to PM concentration using the PM CPMS instrument zero, the average PM CPMS output values corresponding to the three compliance test runs, and the average PM concentration from the Method 5 or performance test with the procedures in (i)(1) through (5) of this section:

(i) Determine your instrument zero output with one of the following procedures:

(A) Zero point data for *in-situ* instruments should be obtained by removing the instrument from the stack and monitoring ambient air on a test bench;

(B) Zero point data for extractive instruments should be obtained by removing the extractive probe from the stack and drawing in clean ambient air;

(C) The zero point can also can be established obtained by performing manual reference method measurements when the flue gas is free of PM emissions or contains very low PM concentrations (*e.g.,* when your process is not operating, but the fans are operating or your source is combusting only natural gas) and plotting these with the compliance data to find the zero intercept; and

(D) If none of the steps in paragraphs (i)(2)(i)(A) through (C) of this section are possible, you must use a zero output value provided by the manufacturer.

(ii) Determine your PM CPMS instrument average in milliamps, or the digital equivalent, and the average of your corresponding three PM compliance test runs, using equation 1:

$$\bar{x} = \frac{1}{n}\sum_{i=1}^{n} X_1, \bar{y} = \frac{1}{n}\sum_{i=1}^{n} Y_1 \quad \text{(Eq. 1)}$$

Where:

X_1 = the PM CPMS output data points for the three runs constituting the performance test,

Y_1 = the PM concentration value for the three runs constituting the performance test, and

n = the number of data points.

(iii) With your instrument zero expressed in milliamps, or the digital equivalent, your three run average PM CPMS milliamp value, or its digital equivalent, and your three run average PM concentration from your three compliance tests, determine a relationship of mg/dscm per milliamp or digital signal equivalent with equation 2:

$$R = \frac{Y_1}{(X_1 - z)} \quad \text{(Eq. 2)}$$

Where:

R = the relative mg/dscm per milliamp or digital equivalent for your PM CPMS,

Y_1 = the three run average mg/dscm PM concentration,

X_1 = the three run average milliamp or digital signal output from you PM CPMS, and

z = the milliamp or digital signal equivalent of your instrument zero determined from paragraph (2)(i) of this section.

(iv) Determine your source specific 30-day rolling average operating limit using the mg/dscm per milliamp or digital value from equation 2 in equation 3, below. This sets your operating limit at the PM CPMS output value corresponding to 75 percent of your emission limit:

$$O_l = z + \frac{0.75(L)}{R} \quad \text{(Eq. 3)}$$

Where:

O_l = the operating limit for your PM CPMS on a 30-day rolling average, in milliamps or their digital signal equivalent,

L = your source emission limit expressed in mg/dscm,

z = your instrument zero in milliamps or the digital equivalent, determined from paragraph (2)(i) of this secction, and

R = the relative mg/dscm per milliamp or digital signal output equivalent for your PM CPMS, from equation 2.

(3) If the average of your three PM compliance test runs is at or above 75 percent of your PM emission limit you must determine your operating limit by averaging the PM CPMS milliamp or digital signal output corresponding to your three PM performance test runs that demonstrate compliance with the emission limit using equation 4 and you must submit all compliance test and PM CPMS data according to the reporting requirements in paragraph (i)(5) of this section:

$$O_h = \frac{1}{n}\sum_{i=1}^{n} X_1 \quad \text{(Eq. 4)}$$

Where:

X_1 = the PM CPMS data points for all runs i,

n = the number of data points, and

O_h = your site specific operating limit, in milliamps or digital signal equivalent.

(4) To determine continuous compliance, you must record the PM CPMS output data for all periods when the process is operating and the PM CPMS is not out-of-control. You must demonstrate continuous compliance by using all quality-assured hourly average data collected by the PM CPMS for all operating hours to calculate the arithmetic average operating parameter in units of the operating limit (*e.g.,* milliamps or digital signal bits, PM concentration, raw data signal) on a 30-day rolling average basis.

(5) For PM performance test reports used to set a PM CPMS operating limit, the electronic submission of the test report must also include the make and model of the PM CPMS instrument, serial number of the instrument, analytical principle of the instrument (*e.g.,* beta attenuation), span of the instruments primary analytical range, milliamp or digital signal value equivalent to the instrument zero output, technique by which this zero value was determined, and the average milliamp or digital signals corresponding to each PM compliance test run.

§ 60.2115 What if I do not use a wet scrubber, fabric filter, activated carbon injection, selective noncatalytic reduction, an electrostatic precipitator, or a dry scrubber to comply with the emission limitations?

If you use an air pollution control device other than a wet scrubber, activated carbon injection, selective

noncatalytic reduction, fabric filter, an electrostatic precipitator, or a dry scrubber or limit emissions in some other manner, including material balances, to comply with the emission limitations under § 60.2105, you must petition the EPA Administrator for specific operating limits to be established during the initial performance test and continuously monitored thereafter. You must submit the petition at least sixty days before the performance test is scheduled to begin. Your petition must include the five items listed in paragraphs (a) through (e) of this section:

(a) Identification of the specific parameters you propose to use as additional operating limits;

(b) A discussion of the relationship between these parameters and emissions of regulated pollutants, identifying how emissions of regulated pollutants change with changes in these parameters and how limits on these parameters will serve to limit emissions of regulated pollutants;

(c) A discussion of how you will establish the upper and/or lower values for these parameters which will establish the operating limits on these parameters;

(d) A discussion identifying the methods you will use to measure and the instruments you will use to monitor these parameters, as well as the relative accuracy and precision of these methods and instruments; and

(e) A discussion identifying the frequency and methods for recalibrating the instruments you will use for monitoring these parameters.

Performance Testing

§ 60.2125 How do I conduct the initial and annual performance test?

(a) All performance tests must consist of a minimum of three test runs conducted under conditions representative of normal operations.

(b) You must document that the waste burned during the performance test is representative of the waste burned under normal operating conditions by maintaining a log of the quantity of waste burned (as required in § 60.2175(b)(1)) and the types of waste burned during the performance test.

(c) All performance tests must be conducted using the minimum run duration specified in table 1 of this subpart or tables 5 through 8 of this subpart.

(d) Method 1 of appendix A of this part must be used to select the sampling location and number of traverse points.

(e) Method 3A or 3B of appendix A of this part must be used for gas composition analysis, including measurement of oxygen concentration. Method 3A or 3B of appendix A of this part must be used simultaneously with each method (except when using Method 9 and Method 22).

(f) All pollutant concentrations, except for opacity, must be adjusted to 7 percent oxygen using equation 5 of this section:

$$C_{adj} = C_{meas}\,(20.9\text{-}7)/(20.9\text{-}\%O_2) \quad \text{(Eq. 5)}$$

Where:

C_{adj} = pollutant concentration adjusted to 7 percent oxygen;

C_{meas} = pollutant concentration measured on a dry basis;

(20.9–7) = 20.9 percent oxygen − 7 percent oxygen (defined oxygen correction basis);

20.9 = oxygen concentration in air, percent; and

$\%O_2$ = oxygen concentration measured on a dry basis, percent.

(g) You must determine dioxins/furans toxic equivalency by following the procedures in paragraphs (g)(1) through (4) of this section:

(1) Measure the concentration of each dioxin/furan tetra-through octa-chlorinated isomer emitted using EPA Method 23 at 40 CFR part 60, appendix A–7;

(2) Quantify isomers meeting identification criteria 2, 3, 4, and 5 in Section 5.3.2.5 of Method 23, regardless of whether the isomers meet identification criteria 1 and 7. You must quantify the isomers per Section 9.0 of Method 23. (Note: You may reanalyze the sample aliquot or split to reduce the number of isomers not meeting identification criteria 1 or 7 of Section 5.3.2.5.);

(3) For each dioxin/furan (tetra-through octa-chlorinated) isomer measured in accordance with paragraphs (g)(1) and (2) of this section, multiply the isomer concentration by its corresponding toxic equivalency factor specified in table 3 of this subpart; and

(4) Sum the products calculated in accordance with paragraph (g)(3) of this section to obtain the total concentration of dioxins/furans emitted in terms of toxic equivalency.

(h) Method 22 at 40 CFR part 60, appendix A–7 of this part must be used to determine compliance with the fugitive ash emission limit in table 1 of this subpart or tables 5 through 8 of this subpart.

(i) If you have an applicable opacity operating limit, you must determine compliance with the opacity limit using Method 9 at 40 CFR part 60, appendix A–4, based on three 1-hour blocks consisting of ten 6-minute average opacity values, unless you are required to install a continuous opacity monitoring system, consistent with §§ 60.2145 and 60.2165.

(j) You must determine dioxins/furans total mass basis by following the procedures in paragraphs (j)(1) through (3) of this section:

(1) Measure the concentration of each dioxin/furan tetra-through octa-chlorinated isomer emitted using EPA Method 23 at 40 CFR part 60, appendix A–7;

(2) Quantify isomers meeting identification criteria 2, 3, 4, and 5 in Section 5.3.2.5 of Method 23, regardless of whether the isomers meet identification criteria 1 and 7. You must quantify the isomers per Section 9.0 of Method 23. (Note: You may reanalyze the sample aliquot or split to reduce the number of isomers not meeting identification criteria 1 or 7 of Section 5.3.2.5.); and

(3) Sum the quantities measured in accordance with paragraphs (j)(1) and (2) of this section to obtain the total concentration of dioxins/furans emitted in terms of total mass basis.

§ 60.2130 How are the performance test data used?

You use results of performance tests to demonstrate compliance with the emission limitations in table 1 of this subpart or tables 5 through 8 of this subpart.

Initial Compliance Requirements

§ 60.2135 How do I demonstrate initial compliance with the emission limitations and establish the operating limits?

You must conduct a performance test, as required under §§ 60.2125 and 60.2105 to determine compliance with the emission limitations in table 1 of this subpart or tables 5 through 8 of this subpart, to establish compliance with any opacity operating limit in § 60.2110, to establish the kiln-specific emission limit in § 60.2145(y), as applicable, and to establish operating limits using the procedures in §§ 60.2110 or 60.2115. The performance test must be conducted using the test methods listed

in table 1 of this subpart or tables 5 through 8 of this subpart and the procedures in § 60.2125. The use of the bypass stack during a performance test shall invalidate the performance test.

As an alternative to conducting a performance test, as required under §§ 60.2125 and 60.2105, you may use a 30-day rolling average of the 1-hour arithmetic average CEMS data, including CEMS data during startup and shutdown as defined in this subpart, to determine compliance with the emission limitations in Table 1 of this subpart or tables 5 through 8 of this subpart. You must conduct a performance evaluation of each continuous monitoring system within 180 days of installation of the monitoring system. The initial performance evaluation must be conducted prior to collecting CEMS data that will be used for the initial compliance demonstration.

§ 60.2140 By what date must I conduct the initial performance test?

(a) The initial performance test must be conducted within 60 days after your CISWI reaches the charge rate at which it will operate, but no later than 180 days after its initial startup.

(b) If you commence or recommence combusting a solid waste at an existing combustion unit at any commercial or industrial facility, and you conducted a test consistent with the provisions of this subpart while combusting the solid waste within the 6 months preceding the reintroduction of that solid waste in the combustion chamber, you do not need to retest until 6 months from the date you reintroduce that solid waste.

(c) If you commence or recommence combusting a solid waste at an existing combustion unit at any commercial or industrial facility and you have not conducted a performance test consistent with the provisions of this subpart while combusting the solid waste within the 6 months preceding the reintroduction of that solid waste in the combustion chamber, you must conduct a performance test within 60 days from the date you reintroduce that solid waste.

§ 60.2141 By what date must I conduct the initial air pollution control device inspection?

(a) The initial air pollution control device inspection must be conducted within 60 days after installation of the control device and the associated CISWI reaches the charge rate at which it will operate, but no later than 180 days after the device's initial startup.

(b) Within 10 operating days following an air pollution control device inspection, all necessary repairs must be completed unless the owner or operator obtains written approval from the state agency establishing a date whereby all necessary repairs of the designated facility must be completed.

Continuous Compliance Requirements

§ 60.2145 How do I demonstrate continuous compliance with the emission limitations and the operating limits?

(a) *Compliance with standards.*

(1) The emission standards and operating requirements set forth in this subpart apply at all times;

(2) If you cease combusting solid waste, you may opt to remain subject to the provisions of this subpart. Consistent with the definition of CISWI, you are subject to the requirements of this subpart at least 6 months following the last date of solid waste combustion. Solid waste combustion is ceased when solid waste is not in the combustion chamber (*i.e.,* the solid waste feed to the combustor has been cut off for a period of time not less than the solid waste residence time);

(3) If you cease combusting solid waste, you must be in compliance with any newly applicable standards on the effective date of the waste-to-fuel switch. The effective date of the waste-to-fuel switch is a date selected by you, that must be at least 6 months from the date that you ceased combusting solid waste, consistent with § 60.2145(a)(2). Your source must remain in compliance with this subpart until the effective date of the waste-to-fuel switch;

(4) If you own or operate an existing commercial or industrial combustion unit that combusted a fuel or non-waste material, and you commence or recommence combustion of solid waste, you are subject to the provisions of this subpart as of the first day you introduce or reintroduce solid waste to the combustion chamber, and this date constitutes the effective date of the fuel-to-waste switch. You must complete all initial compliance demonstrations for any section 112 standards that are applicable to your facility before you commence or recommence combustion of solid waste. You must provide 30 days prior notice of the effective date of the waste-to-fuel switch. The notification must identify:

(i) The name of the owner or operator of the CISWI, the location of the source, the emissions unit(s) that will cease burning solid waste, and the date of the notice;

(ii) The currently applicable subcategory under this subpart, and any 40 CFR part 63 subpart and subcategory that will be applicable after you cease combusting solid waste;

(iii) The fuel(s), non-waste material(s) and solid waste(s) the CISWI is currently combusting and has combusted over the past 6 months, and the fuel(s) or non-waste materials the unit will commence combusting;

(iv) The date on which you became subject to the currently applicable emission limits; and

(v) The date upon which you will cease combusting solid waste, and the date (if different) that you intend for any new requirements to become applicable (*i.e.,* the effective date of the waste-to-fuel switch), consistent with paragraphs (a)(2) and (3) of this section.

(5) All air pollution control equipment necessary for compliance with any newly applicable emissions limits which apply as a result of the cessation or commencement or recommencement of combusting solid waste must be installed and operational as of the effective date of the waste-to-fuel, or fuel-to-waste switch.

(6) All monitoring systems necessary for compliance with any newly applicable monitoring requirements which apply as a result of the cessation or commencement or recommencement of combusting solid waste must be installed and operational as of the effective date of the waste-to-fuel, or fuel-to-waste switch. All calibration and drift checks must be performed as of the effective date of the waste-to-fuel, or fuel-to-waste switch. Relative accuracy tests must be performed as of the performance test deadline for PM CEMS (if PM CEMS are elected to demonstrate continuous compliance with the particulate matter emission limits). Relative accuracy testing for other CEMS need not be repeated if that testing was previously performed consistent with Clean Air Act section 112 monitoring requirements or monitoring requirements under this subpart.

(b) You must conduct an annual performance test for the pollutants listed in table 1 of this subpart or tables 5 through 8 of this subpart and opacity for each CISWI as required under § 60.2125. The annual performance test must be conducted using the test methods listed in table 1 of this subpart or tables 5 through 8 of this subpart and the procedures in § 60.2125. Annual performance tests are not required if you use CEMS or continuous opacity monitoring systems to determine compliance.

(c) You must continuously monitor the operating parameters specified in § 60.2110 or established under § 60.2115 and as specified in § 60.2170. Use 3-hour block average values to determine compliance (except for baghouse leak

detection system alarms) unless a different averaging period is established under § 60.2115 or, for energy recovery units, where the averaging time for each operating parameter is a 30-day rolling, calculated each hour as the average of the previous 720 operating hours. Operation above the established maximum, below the established minimum, or outside the allowable range of operating limits specified in paragraph (a) of this section constitutes a deviation from your operating limits established under this subpart, except during performance tests conducted to determine compliance with the emission and operating limits or to establish new operating limits. Operating limits are confirmed or reestablished during performance tests.

(d) You must burn only the same types of waste and fuels used to establish subcategory applicability (for energy recovery units) and operating limits during the performance test.

(e) For energy recovery units, incinerators, and small remote units, you must perform an annual visual emissions test for ash handling.

(f) For energy recovery units, you must conduct an annual performance test for opacity (except where particulate matter CEMS or continuous opacity monitoring systems are used are used) and the pollutants listed in table 6 of this subpart.

(g) You may elect to demonstrate initial and continuous compliance with the carbon monoxide emission limit using a carbon monoxide CEMS, as described in § 60.2165(o).

(h) Coal and liquid/gas energy recovery units with average annual heat input rates greater than or equal to 250 MMBtu/hr may elect to demonstrate initial and continuous compliance with the particulate matter emissions limit using a particulate matter CEMS according to the procedures in § 60.2165(n) instead of the particulate matter continuous parameter monitoring system (CPMS) specified in § 60.2145. Coal and liquid/gas energy recovery units with annual average heat input rates less than 250 MMBtu/hr, incinerators, and small remote incinerators may also elect to demonstrate initial and continuous compliance using a particulate matter CEMS according to the procedures in § 60.2165(n) instead of particulate matter testing with EPA Method 5 at 40 CFR part 60, appendix A–3 and, if applicable, the continuous opacity monitoring requirements in paragraph (i) of this section.

(i) For energy recovery units with annual average heat input rates greater than or equal to 10 MMBtu/hour and less than 250 MMBtu/hr that do not use a wet scrubber, fabric filter with bag leak detection system, an electrostatic precipitator, particulate matter CEMS, or particulate matter CPMS, you must install, operate, certify and maintain a continuous opacity monitoring system (COMS) according to the procedures in § 60.2165(m).

(j) For waste-burning kilns, you must conduct an annual performance test for cadmium, lead, carbon monoxide, dioxins/furans and hydrogen chloride as listed in Table 7 of this subpart, unless you choose to demonstrate initial and continuous compliance using CEMS, as allowed in paragraph (u) of this section. If you do not use an acid gas wet scrubber or dry scrubber, you must determine compliance with the hydrogen chloride emissions limit using a HCl CEMS according to the requirements in paragraph (j)(1) of this section. You must determine compliance with the mercury emissions limit using a mercury CEMS or an integrated sorbent trap monitoring system according to paragraph (j)(2) of this section. You must determine compliance with nitrogen oxides and sulfur dioxide using CEMS. You must determine compliance with particulate matter using CPMS.

(1) If you monitor compliance with the HCl emissions limit by operating an HCl CEMS, you must do so in accordance with Performance Specification 15 (PS 15) of appendix B to 40 CFR part 60 or PS 18 of appendix B to 40 CFR part 60. You must operate, maintain, and quality assure a HCl CEMS installed and certified under PS 15 according to the quality assurance requirements in Procedure 1 of appendix F to 40 CFR part 60 except that the Relative Accuracy Test Audit requirements of Procedure 1 must be replaced with the validation requirements and criteria of sections 11.1.1 and 12.0 of PS 15. You must operate, maintain and quality assure a HCl CEMS installed and certified under PS 18 according to the quality assurance requirements in Procedure 6 of appendix F to 40 CFR part 60. For any performance specification that you use, you must use Method 321 of appendix A to 40 CFR part 63 as the reference test method for conducting relative accuracy testing. The span value and calibration requirements in paragraphs (j)(1)(i) and (ii) of this section apply to all HCl CEMS used under this subpart:

(i) You must use a measurement span value for any HCl CEMS of 0–10 ppmvw unless the monitor is installed on a kiln without an inline raw mill. Kilns without an inline raw mill may use a higher span value sufficient to quantify all expected emissions concentrations. The HCl CEMS data recorder output range must include the full range of expected HCl concentration values which would include those expected during ''mill off'' conditions. The corresponding data recorder range shall be documented in the site-specific monitoring plan and associated records;

(ii) In order to quality assure data measured above the span value, you must use one of the three options in paragraphs (j)(1)(ii)(A) through (C) of this section:

(A) Include a second span that encompasses the HCl emission concentrations expected to be encountered during ''mill off'' conditions. This second span may be rounded to a multiple of 5 ppm of total HCl. The requirements of the appropriate HCl monitor performance specification shall be followed for this second span with the exception that a RATA with the mill off is not required;

(B) Quality assure any data above the span value by proving instrument linearity beyond the span value established in paragraph (j)(1)(i) of this section using the following procedure. Conduct a weekly ''above span linearity'' calibration challenge of the monitoring system using a reference gas with a certified value greater than your highest expected hourly concentration or greater than 75% of the highest measured hourly concentration. The ''above span'' reference gas must meet the requirements of the applicable performance specification and must be introduced to the measurement system at the probe. Record and report the results of this procedure as you would for a daily calibration. The ''above span linearity'' challenge is successful if the value measured by the HCl CEMS falls within 10 percent of the certified value of the reference gas. If the value measured by the HCl CEMS during the above span linearity challenge exceeds 10 percent of the certified value of the reference gas, the monitoring system must be evaluated and repaired and a new ''above span linearity'' challenge met before returning the HCl CEMS to service, or data above span from the HCl CEMS must be subject to the quality assurance procedures established in (j)(1)(ii)(D) of this section. In this manner values measured by the HCl CEMS during the above span linearity challenge exceeding +/-20 percent of the certified value of the reference gas must be normalized using equation 6;

(C) Quality assure any data above the span value established in paragraph (j)(1)(i) of this section using the following procedure. Any time two consecutive one-hour average measured

concentration of HCl exceeds the span value you must, within 24 hours before or after, introduce a higher, ''above span'' HCl reference gas standard to the HCl CEMS. The ''above span'' reference gas must meet the requirements of the applicable performance specification and target a concentration level between 50 and 150 percent of the highest expected hourly concentration measured during the period of measurements above span, and must be introduced at the probe. While this target represents a desired concentration range that is not always achievable in practice, it is expected that the intent to meet this range is demonstrated by the value of the reference gas. Expected values may include above span calibrations done before or after the above-span measurement period. Record and report the results of this procedure as you would for a daily calibration. The ''above span'' calibration is successful if the value measured by the HCl CEMS is within 20 percent of the certified value of the reference gas. If the value measured by the HCl CEMS is not within 20 percent of the certified value of the reference gas, then you must normalize the stack gas values measured above span as described in paragraph (j)(1)(ii)(D) of this section. If the ''above span'' calibration is conducted during the period when measured emissions are above span and there is a failure to collect the one data point in an hour due to the calibration duration, then you must determine the emissions average for that missed hour as the average of hourly averages for the hour preceding the missed hour and the hour following the missed hour. In an hour where an ''above span'' calibration is being conducted and one or more data points are collected, the emissions average is represented by the average of all valid data points collected in that hour;

(D) In the event that the ''above span'' calibration is not successful (*i.e.,* the HCl CEMS measured value is not within 20 percent of the certified value of the reference gas), then you must normalize the one-hour average stack gas values measured above the span during the 24-hour period preceding or following the ''above span'' calibration for reporting based on the HCl CEMS response to the reference gas as shown in equation 6:

$$\frac{Certified\ reference\ gas\ value}{Measured\ value\ of\ reference\ gas}\ x\ Measured\ stack\ gas\ result\ = \quad \text{(Eq. 6)}$$

$$Normalized\ stack\ gas\ result$$

Only one ''above span'' calibration is needed per 24-hour period.

(2) Compliance with the mercury emissions limit must be determined using a mercury CEMS or integrated sorbent trap monitoring system according to the following requirements:

(i) You must operate a mercury CEMS system in accordance with performance specification 12A of 40 CFR part 60, appendix B or an integrated sorbent trap monitoring system in accordance with performance specification 12B of 40 CFR part 60, appendix B; these monitoring systems must be quality assured according to procedure 5 of 40 CFR 60, Appendix F. For the purposes of emissions calculations when using an integrated sorbent trap monitoring system, the mercury concentration determined for each sampling period must be assigned to each hour during the sampling period. If you choose to comply with the production-rate based mercury limit for your waste-burning kiln, you must also monitor hourly clinker production and determine the hourly mercury emissions rate in pounds per million ton of clinker produced. You must demonstrate compliance with the mercury emissions limit using a 30-day rolling average of these 1-hour mercury concentrations or mass emissions rates, including CEMS and integerated sorbent trap monitoring system data during startup and shutdown as defined in this subpart, calculated using equation 19–19 in section 12.4.1 of EPA Reference Method 19 at 40 CFR part 60, Appendix A–7 of this part. Integerated sorbent trap monitoring system and CEMS data during startup and shutdown, as defined in this subpart, are not corrected to 7 percent oxygen, and are measured at stack oxygen content;

(ii) Owners or operators using a mercury CEMS or integrated sorbent trap monitoring system to determine mass emission rate must install, operate, calibrate, and maintain an instrument for continuously measuring and recording the mercury mass emissions rate to the atmosphere according to the requirements of performance specification 6 of 40 CFR part 60, Appendix B, and conducting an annual relative accuracy test of the continuous emission rate monitoring system according to section 8.2 of performance specification 6; and

(iii) The owner or operator of a waste-burning kiln must demonstrate initial compliance by operating a mercury CEMS or integrated sorbent trap monitoring system while the raw mill of the in-line kiln/raw mill is operating under normal conditions and including at least one period when the raw mill is off.

(k) If you use an air pollution control device to meet the emission limitations in this subpart, you must conduct an initial and annual inspection of the air pollution control device. The inspection must include, at a minimum, the following:

(1) Inspect air pollution control device(s) for proper operation; and

(2) Develop a site-specific monitoring plan according to the requirements in paragraph (l) of this section. This requirement also applies to you if you petition the EPA Administrator for alternative monitoring parameters under § 60.13(i).

(l) For each continuous monitoring system required in this section, you must develop and submit to the EPA Administrator for approval a site-specific monitoring plan according to the requirements of this paragraph (l) that addresses paragraphs (l)(1)(i) through (vi) of this section:

(1) You must submit this site-specific monitoring plan at least 60 days before your initial performance evaluation of your continuous monitoring system:

(i) Installation of the continuous monitoring system sampling probe or other interface at a measurement location relative to each affected process unit such that the measurement is representative of control of the exhaust emissions (*e.g.,* on or downstream of the last control device);

(ii) Performance and equipment specifications for the sample interface, the pollutant concentration or parametric signal analyzer and the data collection and reduction systems.

(iii) Performance evaluation procedures and acceptance criteria (*e.g.,* calibrations);

(iv) Ongoing operation and maintenance procedures in accordance with the general requirements of § 60.11(d);

(v) Ongoing data quality assurance procedures in accordance with the general requirements of § 60.13; and

(vi) Ongoing recordkeeping and reporting procedures in accordance with

the general requirements of § 60.7(b), (c), (c)(1), (c)(4), (d), (e), (f), and (g).

(2) You must conduct a performance evaluation of each continuous monitoring system in accordance with your site-specific monitoring plan.

(3) You must operate and maintain the continuous monitoring system in continuous operation according to the site-specific monitoring plan.

(m) If you have an operating limit that requires the use of a flow monitoring system, you must meet the requirements in paragraphs (l) and (m)(1) through (4) of this section:

(1) Install the flow sensor and other necessary equipment in a position that provides a representative flow;

(2) Use a flow sensor with a measurement sensitivity at full scale of no greater than 2 percent;

(3) Minimize the effects of swirling flow or abnormal velocity distributions due to upstream and downstream disturbances; and

(4) Conduct a flow monitoring system performance evaluation in accordance with your monitoring plan at the time of each performance test but no less frequently than annually.

(n) If you have an operating limit that requires the use of a pressure monitoring system, you must meet the requirements in paragraphs (l) and (n)(1) through (6) of this section:

(1) Install the pressure sensor(s) in a position that provides a representative measurement of the pressure (*e.g.,* PM scrubber pressure drop);

(2) Minimize or eliminate pulsating pressure, vibration, and internal and external corrosion;

(3) Use a pressure sensor with a minimum tolerance of 1.27 centimeters of water or a minimum tolerance of 1 percent of the pressure monitoring system operating range, whichever is less;

(4) Perform checks at the frequency outlined in your site-specific monitoring plan to ensure pressure measurements are not obstructed (*e.g.,* check for pressure tap plugging daily);

(5) Conduct a performance evaluation of the pressure monitoring system in accordance with your monitoring plan at the time of each performance test but no less frequently than annually; and

(6) If at any time the measured pressure exceeds the manufacturer's specified maximum operating pressure range, conduct a performance evaluation of the pressure monitoring system in accordance with your monitoring plan and confirm that the pressure monitoring system continues to meet the performance requirements in your monitoring plan. Alternatively, install and verify the operation of a new pressure sensor.

(o) If you have an operating limit that requires a pH monitoring system, you must meet the requirements in paragraphs (l) and (o)(1) through (4) of this section:

(1) Install the pH sensor in a position that provides a representative measurement of scrubber effluent pH;

(2) Ensure the sample is properly mixed and representative of the fluid to be measured;

(3) Conduct a performance evaluation of the pH monitoring system in accordance with your monitoring plan at least once each process operating day; and

(4) Conduct a performance evaluation (including a two-point calibration with one of the two buffer solutions having a pH within 1 of the pH of the operating limit) of the pH monitoring system in accordance with your monitoring plan at the time of each performance test but no less frequently than quarterly.

(p) If you have an operating limit that requires a secondary electric power monitoring system for an electrostatic precipitator, you must meet the requirements in paragraphs (l) and (p)(1) and (2) of this section:

(1) Install sensors to measure (secondary) voltage and current to the precipitator collection plates; and

(2) Conduct a performance evaluation of the electric power monitoring system in accordance with your monitoring plan at the time of each performance test but no less frequently than annually.

(q) If you have an operating limit that requires the use of a monitoring system to measure sorbent injection rate (*e.g.,* weigh belt, weigh hopper, or hopper flow measurement device), you must meet the requirements in paragraphs (l) and (q)(1) and (2) of this section:

(1) Install the system in a position(s) that provides a representative measurement of the total sorbent injection rate; and

(2) Conduct a performance evaluation of the sorbent injection rate monitoring system in accordance with your monitoring plan at the time of each performance test but no less frequently than annually.

(r) If you elect to use a fabric filter bag leak detection system to comply with the requirements of this subpart, you must install, calibrate, maintain, and continuously operate a bag leak detection system as specified in paragraphs (l) and (r)(1) through (5) of this section:

(1) Install a bag leak detection sensor(s) in a position(s) that will be representative of the relative or absolute particulate matter loadings for each exhaust stack, roof vent, or compartment (*e.g.,* for a positive pressure fabric filter) of the fabric filter;

(2) Use a bag leak detection system certified by the manufacturer to be capable of detecting particulate matter emissions at concentrations of 10 milligrams per actual cubic meter or less;

(3) Conduct a performance evaluation of the bag leak detection system in accordance with your monitoring plan and consistent with the guidance provided in EPA–454/R–98–015 (incorporated by reference, *see* § 60.17);

(4) Use a bag leak detection system equipped with a device to continuously record the output signal from the sensor; and

(5) Use a bag leak detection system equipped with a system that will sound an alarm when an increase in relative particulate matter emissions over a preset level is detected. The alarm must be located where it is observed readily by plant operating personnel.

(s) For facilities using a CEMS to demonstrate initial and continuous compliance with the sulfur dioxide emission limit, compliance with the sulfur dioxide emission limit may be demonstrated by using the CEMS specified in § 60.2165(l) to measure sulfur dioxide. The sulfur dioxide CEMS must follow the procedures and methods specified in paragraph (s) of this section. For sources that have actual inlet emissions less than 100 parts per million dry volume, the relative accuracy criterion for inlet sulfur dioxide CEMS should be no greater than 20 percent of the mean value of the reference method test data in terms of the units of the emission standard, or 5 parts per million dry volume absolute value of the mean difference between the reference method and the CEMS, whichever is greater:

(1) During each relative accuracy test run of the CEMS required by performance specification 2 in appendix B of this part, collect sulfur dioxide and oxygen (or carbon dioxide) data concurrently (or within a 30- to 60-minute period) with both the CEMS and the test methods specified in paragraphs (s)(1)(i) and (ii) of this section:

(i) For sulfur dioxide, EPA Reference Method 6 or 6C, or as an alternative ANSI/ASME PTC 19.10–1981 (incorporated by reference, *see* § 60.17) must be used; and

(ii) For oxygen (or carbon dioxide), EPA Reference Method 3A or 3B, or as an alternative ANSI/ASME PTC 19.10–1981 (incorporated by reference, *see* § 60.17), must be used.

(2) The span value of the CEMS at the inlet to the sulfur dioxide control device must be 125 percent of the maximum estimated hourly potential sulfur dioxide emissions of the unit subject to this subpart. The span value of the CEMS at the outlet of the sulfur dioxide control device must be 50 percent of the maximum estimated hourly potential sulfur dioxide emissions of the unit subject to this subpart.

(3) Conduct accuracy determinations quarterly and calibration drift tests daily in accordance with procedure 1 in appendix F of this part.

(t) For facilities using a CEMS to demonstrate initial and continuous compliance with the nitrogen oxides emission limit, compliance with the nitrogen oxides emission limit may be demonstrated by using the CEMS specified in § 60.2165 to measure nitrogen oxides. The nitrogen oxides CEMS must follow the procedures and methods specified in paragraphs (t)(1) through (4) of this section:

(1) During each relative accuracy test run of the CEMS required by performance specification 2 of appendix B of this part, collect nitrogen oxides and oxygen (or carbon dioxide) data concurrently (or within a 30- to 60-minute period) with both the CEMS and the test methods specified in paragraphs (t)(1)(i) and (ii) of this section:

(i) For nitrogen oxides, EPA Reference Method 7 or 7E at 40 CFR part 60, appendix A–4 must be used; and

(ii) For oxygen (or carbon dioxide), EPA Reference Method 3A or 3B at 40 CFR part 60, appendix A–3, or as an alternative ANSI/ASME PTC 19–10.1981 (incorporated by reference, *see* § 60.17), as applicable, must be used.

(2) The span value of the continuous emission monitoring system must be 125 percent of the maximum estimated hourly potential nitrogen oxide emissions of the unit.

(3) Conduct accuracy determinations quarterly and calibration drift tests daily in accordance with procedure 1 in appendix F of this part.

(4) The owner or operator of an affected facility may request that compliance with the nitrogen oxides emission limit be determined using carbon dioxide measurements corrected to an equivalent of 7 percent oxygen. If carbon dioxide is selected for use in diluent corrections, the relationship between oxygen and carbon dioxide levels must be established during the initial performance test according to the procedures and methods specified in paragraphs (t)(4)(i) through (iv) of this section. This relationship may be re-established during performance compliance tests:

(i) The fuel factor equation in Method 3B must be used to determine the relationship between oxygen and carbon dioxide at a sampling location. Method 3A or 3B, or as an alternative ANSI/ASME PTC 19.10–1981 (incorporated by reference, *see* § 60.17), as applicable, must be used to determine the oxygen concentration at the same location as the carbon dioxide monitor;

(ii) Samples must be taken for at least 30 minutes in each hour;

(iii) Each sample must represent a 1-hour average; and

(iv) A minimum of three runs must be performed.

(u) For facilities using a CEMS or an integrated sorbent trap monitoring system for mercury to demonstrate initial and continuouscompliance with any of the emission limits of this subpart, you must complete the following:

(1) Demonstrate compliance with the appropriate emission limit(s) using a 30-day rolling average of 1-hour arithmetic average emission concentrations, including CEMS or integrated sorbent trap monitoring systems data during startup and shutdown as defined in this subpart, calculated using equation 19–19 in section 12.4.1 of EPA Reference Method 19 at appendix A–7 of this part. The 1-hour arithmetic averages for CEMS must be calculated using the data points required under § 60.13(e)(2). Except for CEMS or integrated sorbent trap monitoring systems data during startup and shutdown, the 1-hour arithmetic averages used to calculate the 30-day rolling average emission concentrations must be corrected to 7 percent oxygen (dry basis). Integrated sorbent trap monitoring systems or CEMS data during startup and shutdown, as defined in the subpart, are not corrected to 7 percent oxygen, and are measured at stack oxygen content; and

(2) Operate all CEMS and integrated sorbent trap monitoring systems in accordance with the applicable procedures under appendices B and F of this part.

(v) Use of the bypass stack at any time is an emissions standards deviation for particulate matter, HCl, Pb, Cd, Hg, NO_X, SO_2, and dioxin/furans.

(w) For energy recovery units with a design heat input capacity of 100 MMBtu per hour or greater that do not use a carbon monoxide CEMS, you must install, operate, and maintain a oxygen analyzer system as defined in § 60.2265 according to the procedures in paragraphs (w)(1) through (4) of this section:

(1) The oxygen analyzer system must be installed by the initial performance test date specified in § 60.2140;

(2) You must operate the oxygen trim system within compliance with paragraph (w)(3) of this section at all times;

(3) You must maintain the oxygen level such that the 30-day rolling average that is established as the operating limit for oxygen is not below the lowest hourly average oxygen concentration measured during the most recent CO performance test; and

(4) You must calculate and record a 30-day rolling average oxygen concentration using equation 19–19 in section 12.4.1 of EPA Reference Method 19 of Appendix A–7 of this part.

(x) For energy recovery units with annual average heat input rates greater than or equal to 250 MMBtu/hour and waste-burning kilns, you must install, calibrate, maintain, and operate a PM CPMS and record the output of the system as specified in paragraphs (x)(1) through (8) of this section. For other energy recovery units, you may elect to use PM CPMS operated in accordance with this section. PM CPMS are suitable in lieu of using other CMS for monitoring PM compliance (*e.g.,* bag leak detectors, ESP secondary power, PM scrubber pressure):

(1) Install, calibrate, operate, and maintain your PM CPMS according to the procedures in your approved site-specific monitoring plan developed in accordance with paragraphs (l) and (x)(1)(i) through (iii) of this section:

(i) The operating principle of the PM CPMS must be based on in-stack or extractive light scatter, light scintillation, beta attenuation, or mass accumulation detection of the exhaust gas or representative sample. The reportable measurement output from the PM CPMS must be expressed as milliamps or the digital signal equivalent;

(ii) The PM CPMS must have a cycle time (*i.e.,* period required to complete sampling, measurement, and reporting for each measurement) no longer than 60 minutes; and

(iii) The PM CPMS must be capable of detecting and responding to particulate matter concentrations increments no greater than 0.5 mg/actual cubic meter.

(2) During the initial performance test or any such subsequent performance test that demonstrates compliance with the PM limit, you must adjust the site-specific operating limit in accordance with the results of the performance test according to the procedures specified in § 60.2110.

(3) Collect PM CPMS hourly average output data for all energy recovery unit

or waste-burning kiln operating hours. Express the PM CPMS output as milliamps.

(4) Calculate the arithmetic 30-day rolling average of all of the hourly average PM CPMS output collected during all energy recovery unit or waste-burning kiln operating hours data (milliamps or their digital equivalent).

(5) You must collect data using the PM CPMS at all times the energy recovery unit or waste-burning kiln is operating and at the intervals specified in paragraph (x)(1)(ii) of this section, except for periods of monitoring system malfunctions, repairs associated with monitoring system malfunctions, required monitoring system quality assurance or quality control activities (including, as applicable, calibration checks and required zero and span adjustments), and any scheduled maintenance as defined in your site-specific monitoring plan.

(6) You must use all the data collected during all energy recovery unit or waste-burning kiln operating hours in assessing the compliance with your operating limit except:

(i) Any data collected during monitoring system malfunctions, repairs associated with monitoring system malfunctions, or required monitoring system quality assurance or quality control activities conducted during monitoring system malfunctions are not used in calculations (report any such periods in your annual deviation report);

(ii) Any data collected during periods when the monitoring system is out of control as specified in your site-specific monitoring plan, repairs associated with periods when the monitoring system is out of control, or required monitoring system quality assurance or quality control activities conducted during out-of-control periods are not used in calculations (report emissions or operating levels and report any such periods in your annual deviation report);

(iii) Any PM CPMS data recorded during periods of CEMS data during startup and shutdown, as defined in this subpart.

(7) You must record and make available upon request results of PM CPMS system performance audits, as well as the dates and duration of periods from when the PM CPMS is out of control until completion of the corrective actions necessary to return the PM CPMS to operation consistent with your site-specific monitoring plan.

(8) For any deviation of the 30-day rolling average PM CPMS average value from the established operating parameter limit, you must:

(i) Within 48 hours of the deviation, visually inspect the air pollution control device;

(ii) If inspection of the air pollution control device identifies the cause of the deviation, take corrective action as soon as possible and return the PM CPMS measurement to within the established value;

(iii) Within 30 days of the deviation or at the time of the annual compliance test, whichever comes first, conduct a PM emissions compliance test to determine compliance with the PM emissions limit. Within 45 days of the deviation, you must re-establish the CPMS operating limit. You are not required to conduct additional testing for any deviations that occur between the time of the original deviation and the PM emissions compliance test required under paragraph (x) of this section; and

(iv) PM CPMS deviations leading to more than four required performance tests in a 12-month process operating period (rolling monthly) constitute a violation of this subpart.

(y) When there is an alkali bypass and/or an in-line coal mill that exhaust emissions through a separate stack(s), the combined emissions are subject to the emission limits applicable to waste-burning kilns. To determine the kiln-specific emission limit for demonstrating compliance, you must:

(1) Calculate a kiln-specific emission limit using equation 8:

$$C_{ks} = ((\text{Emission limit} \times (Q_{ab}+Q_{cm}+Q_{ks})) - (Q_{ab} \times C_{ab}) - (Q_{cm} \times C_{cm}))/Q_{ks} \quad \text{(Eq. 7)}$$

Where:

C_{ks} = Kiln stack concentration (ppmvd, mg/dscm, ng/dscm, depending on pollutant. Each corrected to 7% O_2.)

Q_{ab} = Alkali bypass flow rate (volume/hr)

C_{ab} = Alkali bypass concentration (ppmvd, mg/dscm, ng/dscm, depending on pollutant. Each corrected to 7% O_2.)

Q_{cm} = In-line coal mill flow rate (volume/hr)

C_{cm} = In-line coal mill concentration (ppmvd, mg/dscm, ng/dscm, depending on pollutant. Each corrected to 7% O_2.)

Q_{ks} = Kiln stack flow rate (volume/hr)

(2) Particulate matter concentration must be measured downstream of the in-line coal mill. All other pollutant concentrations must be measured either upstream or downstream of the in-line coal mill; and

(3) For purposes of determining the combined emissions from kilns equipped with an alkali bypass or that exhaust kiln gases to a coal mill that exhausts through a separate stack, instead of installing a CEMS or PM CPMS on the alkali bypass stack or in-line coal mill stack, the results of the initial and subsequent performance test can be used to demonstrate compliance with the relevant emissions limit. A performance test must be conducted on an annual basis (between 11 and 13 calendar months following the previous performance test).

§ 60.2150 By what date must I conduct the annual performance test?

You must conduct annual performance tests between 11 and 13 months of the previous performance test.

§ 60.2151 By what date must I conduct the annual air pollution control device inspection?

On an annual basis (no more than 12 months following the previous annual air pollution control device inspection), you must complete the air pollution control device inspection as described in § 60.2141.

§ 60.2155 May I conduct performance testing less often?

(a) You must conduct annual performance tests according to the schedule specified in § 60.2150, with the following exceptions:

(1) You may conduct a repeat performance test at any time to establish new values for the operating limits, as specified in § 60.2160. New operating limits become effective on the date that the performance test report is submitted to the EPA's Central Data Exchange or postmarked, per the requirements of § 60.2235(b). The Administrator may request a repeat performance test at any time;

(2) You must repeat the performance test within 60 days of a process change, as defined in § 60.2265;

(3) You can conduct performance tests less often if you meet the following conditions: Your performance tests for the pollutant for at least 2 consecutive years demonstrates that the emission level for the pollutant is no greater than

the emission level specified in paragraph (a)(3)(i) or (a)(3)(ii) of this section, as applicable; there are no changes in the operation of the affected source or air pollution control equipment that could increase emissions; and you are not required to conduct a performance test for the pollutant in response to a request by the Administrator in paragraph (a)(1) of this section or a process change in paragraph (a)(2) of this section. In this case, you do not have to conduct a performance test for that pollutant for the next 2 years. You must conduct a performance test for the pollutant during the third year and no more than 37 months following the previous performance test for the pollutant. If the emission level for your CISWI continues to meet the emission level specified in paragraph (a)(3)(i) or (a)(3)(ii) of this section, as applicable, you may choose to conduct performance tests for the pollutant every third year, as long as there are no changes in the operation of the affected source or air pollution control equipment that could increase emissions. Each such performance test must be conducted no more than 37 months after the previous performance test.

(i) For particulate matter, hydrogen chloride, mercury, nitrogen oxides, sulfur dioxide, cadmium, lead and dioxins/furans, the emission level equal to 75 percent of the applicable emission limit in table 1 or tables 5 through 8 of this subpart, as applicable; and

(ii) For fugitive emissions, visible emissions (of combustion ash from the ash conveying system) for 2 percent of the time during each of the three 1-hour observations periods.

(4) If you are conducting less frequent testing for a pollutant as provided in paragraph (a)(3) of this section and a subsequent performance test for the pollutant indicates that your CISWI does not meet the emission level specified in paragraph (a)(3)(i) or (a)(3)(ii) of this section, as applicable, you must conduct annual performance tests for the pollutant according to the schedule specified in paragraph (a) of this section until you qualify for less frequent testing for the pollutant as specified in paragraph (a)(3) of this section.

(b) [Reserved]

§ 60.2160 May I conduct a repeat performance test to establish new operating limits?

(a) Yes. You may conduct a repeat performance test at any time to establish new values for the operating limits. The Administrator may request a repeat performance test at any time.

(b) You must repeat the performance test if your feed stream is different than the feed streams used during any performance test used to demonstrate compliance.

Monitoring

§ 60.2165 What monitoring equipment must I install and what parameters must I monitor?

(a) If you are using a wet scrubber to comply with the emission limitation under § 60.2105, you must install, calibrate (to manufacturers' specifications), maintain, and operate devices (or establish methods) for monitoring the value of the operating parameters used to determine compliance with the operating limits listed in table 2 of this subpart. These devices (or methods) must measure and record the values for these operating parameters at the frequencies indicated in table 2 of this subpart at all times except as specified in § 60.2170(a).

(b) If you use a fabric filter to comply with the requirements of this subpart and you do not use a PM CPMS or PM CEMS for monitoring PM compliance, you must install, calibrate, maintain, and continuously operate a bag leak detection system as specified in paragraphs (b)(1) through (8) of this section:

(1) You must install and operate a bag leak detection system for each exhaust stack of the fabric filter;

(2) Each bag leak detection system must be installed, operated, calibrated, and maintained in a manner consistent with the manufacturer's written specifications and recommendations;

(3) The bag leak detection system must be certified by the manufacturer to be capable of detecting particulate matter emissions at concentrations of 10 milligrams per actual cubic meter or less;

(4) The bag leak detection system sensor must provide output of relative or absolute particulate matter loadings;

(5) The bag leak detection system must be equipped with a device to continuously record the output signal from the sensor;

(6) The bag leak detection system must be equipped with an alarm system that will alert automatically an operator when an increase in relative particulate matter emissions over a preset level is detected. The alarm must be located where it is observed easily by plant operating personnel;

(7) For positive pressure fabric filter systems, a bag leak detection system must be installed in each baghouse compartment or cell. For negative pressure or induced air fabric filters, the bag leak detector must be installed downstream of the fabric filter; and

(8) Where multiple detectors are required, the system's instrumentation and alarm may be shared among detectors.

(c) If you are using something other than a wet scrubber, activated carbon, selective non-catalytic reduction, an electrostatic precipitator, or a dry scrubber to comply with the emission limitations under § 60.2105, you must install, calibrate (to the manufacturers' specifications), maintain, and operate the equipment necessary to monitor compliance with the site-specific operating limits established using the procedures in § 60.2115.

(d) If you use activated carbon injection to comply with the emission limitations in this subpart, you must measure the minimum mercury sorbent flow rate once per hour.

(e) If you use selective noncatalytic reduction to comply with the emission limitations, you must complete the following:

(1) Following the date on which the initial performance test is completed or is required to be completed under § 60.2125, whichever date comes first, ensure that the affected facility does not operate above the maximum charge rate, or below the minimum secondary chamber temperature (if applicable to your CISWI) or the minimum reagent flow rate measured as 3-hour block averages at all times; and

(2) Operation of the affected facility above the maximum charge rate, below the minimum secondary chamber temperature and below the minimum reagent flow rate simultaneously constitute a violation of the nitrogen oxides emissions limit.

(f) If you use an electrostatic precipitator to comply with the emission limits of this subpart and you do not use a PM CPMS for monitoring PM compliance, you must monitor the secondary power to the electrostatic precipitator collection plates and maintain the 3-hour block averages at or above the operating limits established during the mercury or particulate matter performance test.

(g) For waste-burning kilns not equipped with a wet scrubber or dry scrubber, you must install, calibrate, maintain, and operate a CEMS for monitoring hydrogen chloride emissions discharged to the atmosphere, as specified in § 60.2145(j), and record the output of the system. You may substitute use of a HCl CEMS for conducting the HCl initial and annual testing with EPA Method 321 at 40 CFR part 63, appendix A. For units other than waste-burning kilns not equipped

with a wet scrubber or dry scrubber, a facility may substitute use of a hydrogen chloride CEMS for conducting the hydrogen chloride initial and annual performance test, monitoring the minimum hydrogen chloride sorbent flow rate, monitoring the minimum scrubber liquor pH, and monitoring minimum injection rate.

(h) To demonstrate compliance with the particulate matter emissions limit, a facility may substitute use of a particulate matter CEMS for conducting the PM initial and annual performance test and using other CMS for monitoring PM compliance (*e.g.,* bag leak detectors, ESP secondary power, PM scrubber pressure).

(i) To demonstrate initial and continuous compliance with the dioxin/furan emissions limit, a facility may substitute use of a continuous automated sampling system for the dioxin/furan initial and annual performance tests. You must record the output of the system and analyze the sample according to EPA Method 23 at 40 CFR part 60, Appendix A–7 of this part. This option to use a continuous automated sampling system takes effect on the date a final performance specification applicable to dioxin/furan from continuous monitors is published in the **Federal Register**. The owner or operator who elects to continuously sample dioxin/furan emissions instead of sampling and testing using EPA Method 23 at 40 CFR part 60, appendix A–7 must install, calibrate, maintain, and operate a continuous automated sampling system and must comply with the requirements specified in § 60.58b(p) and (q). A facility may substitute continuous dioxin/furan monitoring for the minimum sorbent flow rate, if activated carbon sorbent injection is used solely for compliance with the dioxin/furan emission limit.

(j) To demonstrate initial and continuous compliance with the mercury emissions limit, a facility may substitute use of a mercury CEMS or an integrated sorbent trap monitoring system for the mercury initial and annual performance test. The owner or operator who elects to continuously measure mercury emissions instead of sampling and testing using EPA Reference Method 29 or 30B at 40 CFR part 60, appendix A–8, ASTM D6784–02 (Reapproved 2008) (incorporated by reference, *see* § 60.17), or an approved alternative method for measuring mercury emissions, must install, calibrate, maintain, and operate the mercury CEMS or integrated sorbent trap monitoring system and must comply with performance specification 12A or performance specification 12B, respectively, and quality assurance procedure 5. For the purposes of emissions calculations when using an integrated sorbent trap monitoring system, the mercury concentration determined for each sampling period must be assigned to each hour during the sampling period. A facility may substitute continuous mercury monitoring for monitoring the minimum sorbent flow rate, if activated carbon sorbent injection is used solely for compliance with the mercury emission limit. Waste-burning kilns must install, calibrate, maintain, and operate a mercury CEMS or an integrated sorbent trap monitoring system as specified in § 60.2145(j).

(k) To demonstrate initial and continuous compliance with the nitrogen oxides emissions limit, a facility may substitute use of a CEMS for the nitrogen oxides initial and annual performance test to demonstrate compliance with the nitrogen oxides emissions limits and monitoring the charge rate, secondary chamber temperature, and reagent flow for selective noncatalytic reduction, if applicable:

(1) Install, calibrate, maintain, and operate a CEMS for measuring nitrogen oxides emissions discharged to the atmosphere and record the output of the system. The requirements under performance specification 2 of appendix B of this part, the quality assurance procedure 1 of appendix F of this part and the procedures under § 60.13 must be followed for installation, evaluation, and operation of the CEMS; and

(2) Compliance with the emission limit for nitrogen oxides must be determined based on the 30-day rolling average of the hourly emission concentrations using CEMS outlet data, as outlined in § 60.2145(u).

(l) To demonstrate initial and continuous compliance with the sulfur dioxide emissions limit, a facility may substitute use of a CEMS for the sulfur dioxide initial and annual performance test to demonstrate compliance with the sulfur dioxide emissions limits:

(1) Install, calibrate, maintain, and operate a CEMS for measuring sulfur dioxide emissions discharged to the atmosphere and record the output of the system. The requirements under performance specification 2 of appendix B of this part, the quality assurance requirements of procedure one of appendix F of this part and procedures under § 60.13 must be followed for installation, evaluation, and operation of the CEMS; and

(2) Compliance with the sulfur dioxide emission limit shall be determined based on the 30-day rolling average of the hourly arithmetic average emission concentrations using CEMS outlet data, as outlined in § 60.2145(u).

(m) For energy recovery units over 10 MMBtu/hr but less than 250 MMBtu/hr annual average heat input rates that do not use a wet scrubber, fabric filter with bag leak detection system, an electrostatic precipitator, particulate matter CEMS, or particulate matter CPMS you must install, operate, certify, and maintain a continuous opacity monitoring system according to the procedures in paragraphs (m)(1) through (5) of this section by the compliance date specified in § 60.2105. Energy recovery units that use a CEMS to demonstrate initial and continuing compliance according to the procedures in § 60.2165(n) are not required to install a continuous opacity monitoring system and must perform the annual performance tests for the opacity consistent with § 60.2145(f):

(1) Install, operate, and maintain each continuous opacity monitoring system according to performance specification 1 of 40 CFR part 60, appendix B;

(2) Conduct a performance evaluation of each continuous opacity monitoring system according to the requirements in § 60.13 and according to PS–1 of 40 CFR part 60, appendix B;

(3) As specified in § 60.13(e)(1), each continuous opacity monitoring system must complete a minimum of one cycle of sampling and analyzing for each successive 10-second period and one cycle of data recording for each successive 6-minute period;

(4) Reduce the continuous opacity monitoring system data as specified in § 60.13(h)(1); and

(5) Determine and record all the 6-minute averages (and 1-hour block averages as applicable) collected.

(n) For coal and liquid/gas energy recovery units, incinerators, and small remote incinerators, an owner or operator may elect to install, calibrate, maintain, and operate a CEMS for monitoring particulate matter emissions discharged to the atmosphere and record the output of the system. The owner or operator of an affected facility who continuously monitors particulate matter emissions instead of conducting performance testing using EPA Method 5 at 40 CFR part 60, appendix A–3 or monitoring with a particulate matter CPMS according to paragraph (r) of this section, must install, calibrate, maintain, and operate a PM CEMS and must comply with the requirements specified in paragraphs (n)(1) through (10) of this section:

(1) The PM CEMS must be installed, evaluated, and operated in accordance with the requirements of performance

specification 11 of appendix B of this part and quality assurance requirements of procedure 2 of appendix F of this part and § 60.13. Use Method 5 or Method 5I of Appendix A of this part for the PM CEMS correlation testing;

(2) The initial performance evaluation must be completed no later than 180 days after the date of initial startup of the affected facility, as specified under § 60.2125 or within 180 days of notification to the Administrator of use of the continuous monitoring system if the owner or operator was previously determining compliance by Method 5 performance tests, whichever is later;

(3) The owner or operator of an affected facility may request that compliance with the particulate matter emission limit be determined using carbon dioxide measurements corrected to an equivalent of 7 percent oxygen. The relationship between oxygen and carbon dioxide levels for the affected facility must be established according to the procedures and methods specified in § 60.2145(t)(4)(i) through (iv);

(4) The owner or operator of an affected facility must conduct an initial performance test for particulate matter emissions. If PM CEMS are elected for demonstrating compliance, and the initial performance test has not yet been conducted, then initial compliance must be determined by using the CEMS specified in paragraph (n) of this section to measure particulate matter. You must calculate a 30-day rolling average of 1-hour arithmetic average emission concentrations, including CEMS data during startup and shutdown, as defined in this subpart, using equation 19–19 in section 12.4.1 of EPA Reference Method 19 at 40 CFR part 60, appendix A–7;

(5) Continuous compliance with the particulate matter emission limit must be determined based on the 30-day rolling average calculated using equation 19–19 in section 12.4.1 of EPA Reference Method 19 at 40 CFR part 60, appendix A–7 from the 1-hour arithmetic average CEMS outlet data;

(6) At a minimum, valid continuous monitoring system hourly averages must be obtained as specified in § 60.2170(e);

(7) The 1-hour arithmetic averages required under paragraph (n)(5) of this section must be expressed in milligrams per dry standard cubic meter corrected to 7 percent oxygen (dry basis) and must be used to calculate the 30-day rolling average emission concentrations. CEMS data during startup and shutdown, as defined in this subpart, are not corrected to 7 percent oxygen, and are measured at stack oxygen content. The 1-hour arithmetic averages must be calculated using the data points required under § 60.13(e)(2);

(8) All valid CEMS data must be used in calculating average emission concentrations even if the minimum CEMS data requirements of paragraph (n)(6) of this section are not met.

(9) The CEMS must be operated according to performance specification 11 in appendix B of this part; and,

(10) Quarterly and yearly accuracy audits and daily drift, system optics, and sample volume checks must be performed in accordance with procedure 2 in appendix F of this part.

(o) To demonstrate initial and continuous compliance with the carbon monoxide emissions limit, you may substitute use of a CEMS for the carbon monoxide initial and annual performance test:

(1) Install, calibrate, maintain, and operate a CEMS for measuring carbon monoxide emissions discharged to the atmosphere and record the output of the system. The requirements under performance specification 4A or 4B of appendix B of this part, the quality assurance procedure 1 of appendix F of this part and the procedures under § 60.13 must be followed for installation, evaluation, and operation of the CEMS; and

(2) Compliance with the carbon monoxide emission limit shall be determined based on the 30-day rolling average of the hourly arithmetic average emission concentrations, including CEMS data during startup and shutdown as defined in this subpart, using CEMS outlet data, as outlined in § 60.2145(u).

(p) The owner/operator of an affected source with a bypass stack shall install, calibrate (to manufacturers' specifications), maintain, and operate a device or method for measuring the use of the bypass stack including date, time and duration.

(q) For energy recovery units with a design heat input capacity of 100 MMBtu per hour or greater that do not use a carbon monoxide CEMS, you must install, operate, and maintain a oxygen analyzer system as defined in § 60.2265 according to the procedures in paragraphs (q)(1) through (4) of this section:

(1) The oxygen analyzer system must be installed by the initial performance test date specified in § 60.2140;

(2) You must operate the oxygen trim system within compliance with paragraph (q)(3) of this section at all times;

(3) You must maintain the oxygen level such that the 30-day rolling average that is established as the operating limit for oxygen according to paragraph (q)(4) of this section is not below the lowest hourly average oxygen concentration measured during the most recent CO performance test; and

(4) You must calculate and record a 30-day rolling average oxygen concentration using equation 19–19 in section 12.4.1 of EPA Reference Method 19 of Appendix A–7 of this part.

(r) For energy recovery units with annual average heat input rates greater than or equal to 250 MMBtu/hour and waste-burning kilns, you must install, calibrate, maintain, and operate a PM CPMS and record the output of the system as specified in paragraphs (r)(1) through (8) of this section. If you elect to use a particulate matter CEMS as specified in paragraph (n) of this section, you are not required to use a PM CPMS to monitor particulate matter emissions. For other energy recovery units, you may elect to use PM CPMS operated in accordance with this section. PM CPMS are suitable in lieu of using other CMS for monitoring PM compliance (*e.g.,* bag leak detectors, ESP secondary power, PM scrubber pressure):

(1) Install, calibrate, operate, and maintain your PM CPMS according to the procedures in your approved site-specific monitoring plan developed in accordance with § 60.2145(l) and paragraphs (r)(1)(i) through (iii) of this section:

(i) The operating principle of the PM CPMS must be based on in-stack or extractive light scatter, light scintillation, beta attenuation, or mass accumulation detection of PM in the exhaust gas or representative sample. The reportable measurement output from the PM CPMS must be expressed as milliamps or a digital signal equivalent;

(ii) The PM CPMS must have a cycle time (*i.e.,* period required to complete sampling, measurement, and reporting for each measurement) no longer than 60 minutes; and

(iii) The PM CPMS must be capable of detecting and responding to particulate matter concentration increments no greater than 0.5 mg/actual cubic meter.

(2) During the initial performance test or any such subsequent performance test that demonstrates compliance with the PM limit, you must adjust the site-specific operating limit in accordance with the results of the performance test according to the procedures specified in § 60.2110.

(3) Collect PM CPMS hourly average output data for all energy recovery unit or waste-burning kiln operating hours. Express the PM CPMS output as milliamps or the digital signal equivalent.

(4) Calculate the arithmetic 30-day rolling average of all of the hourly average PM CPMS output collected during all energy recovery unit or waste-burning kiln operating hours data (milliamps or digital bits).

(5) You must collect data using the PM CPMS at all times the energy recovery unit or waste-burning kiln is operating and at the intervals specified in paragraph (r)(1)(ii) of this section, except for periods of monitoring system malfunctions, repairs associated with monitoring system malfunctions, required monitoring system quality assurance or quality control activities (including, as applicable, calibration checks and required zero and span adjustments), and any scheduled maintenance as defined in your site-specific monitoring plan.

(6) You must use all the data collected during all energy recovery unit or waste-burning kiln operating hours in assessing the compliance with your operating limit except:

(i) Any data collected during monitoring system malfunctions, repairs associated with monitoring system malfunctions, or required monitoring system quality assurance or quality control activities conducted during monitoring system malfunctions are not used in calculations (report any such periods in your annual deviation report);

(ii) Any data collected during periods when the monitoring system is out of control as specified in your site-specific monitoring plan, repairs associated with periods when the monitoring system is out of control, or required monitoring system quality assurance or quality control activities conducted during out-of-control periods are not used in calculations (report emissions or operating levels and report any such periods in your annual deviation report); and

(iii) Any PM CPMS data recorded during periods of CEMS data during startup and shutdown, as defined in this subpart.

(7) You must record and make available upon request results of PM CPMS system performance audits, as well as the dates and duration of periods from when the PM CPMS is out of control until completion of the corrective actions necessary to return the PM CPMS to operation consistent with your site-specific monitoring plan.

(8) For any deviation of the 30-day rolling average PM CPMS average value from the established operating parameter limit, you must:

(i) Within 48 hours of the deviation, visually inspect the air pollution control device;

(ii) If inspection of the air pollution control device identifies the cause of the deviation, take corrective action as soon as possible and return the PM CPMS measurement to within the established value;

(iii) Within 30 days of the deviation or at the time of the annual compliance test, whichever comes first, conduct a PM emissions compliance test to determine compliance with the PM emissions limit and to verify the operation of the emissions control device(s). Within 45 days of the deviation, you must re-establish the CPMS operating limit. You are not required to conduct additional testing for any deviations that occur between the time of the original deviation and the PM emissions compliance test required under this paragraph; and

(iv) PM CPMS deviations leading to more than four required performance tests in a 12-month process operating period (rolling monthly) constitute a violation of this subpart.

(s) If you use a dry scrubber to comply with the emission limits of this subpart, you must monitor the injection rate of each sorbent and maintain the 3-hour block averages at or above the operating limits established during the hydrogen chloride performance test.

(t) If you are required to monitor clinker production because you comply with the production-rate based mercury limit for your waste-burning kiln, you must:

(1) Determine hourly clinker production by one of two methods:

(i) Install, calibrate, maintain, and operate a permanent weigh scale system to measure and record weight rates in tons-mass per hour of the amount of clinker produced. The system of measuring hourly clinker production must be maintained within ±5 percent accuracy, or

(ii) Install, calibrate, maintain, and operate a permanent weigh scale system to measure and record weight rates in tons-mass per hour of the amount of feed to the kiln. The system of measuring feed must be maintained within ±5 percent accuracy. Calculate your hourly clinker production rate using a kiln-specific feed to clinker ratio based on reconciled clinker production determined for accounting purposes and recorded feed rates. Update this ratio monthly. Note that if this ratio changes at clinker reconciliation, you must use the new ratio going forward, but you do not have to retroactively change clinker production rates previously estimated.

(2) Determine the accuracy of the system of measuring hourly clinker production (or feed mass flow if applicable) before the effective date and during each quarter of source operation.

(3) Conduct accuracy checks in accordance with the procedures outlined in your site-specific monitoring plan under § 60.2145(l).

§ 60.2170 Is there a minimum amount of monitoring data I must obtain?

For each continuous monitoring system required or optionally allowed under § 60.2165, you must collect data according to this section:

(a) You must operate the monitoring system and collect data at all required intervals at all times compliance is required except for periods of monitoring system malfunctions or out-of-control periods, repairs associated with monitoring system malfunctions or out-of-control periods (as specified in 60.2210(o)), and required monitoring system quality assurance or quality control activities (including, as applicable, calibration checks and required zero and span adjustments). A monitoring system malfunction is any sudden, infrequent, not reasonably preventable failure of the monitoring system to provide valid data. Monitoring system failures that are caused in part by poor maintenance or careless operation are not malfunctions. You are required to effect monitoring system repairs in response to monitoring system malfunctions or out-of-control periods and to return the monitoring system to operation as expeditiously as practicable;

(b) You may not use data recorded during monitoring system malfunctions or out-of-control periods, repairs associated with monitoring system malfunctions or out-of-control periods, or required monitoring system quality assurance or control activities in calculations used to report emissions or operating levels. You must use all the data collected during all other periods, including data normalized for above scale readings, in assessing the operation of the control device and associated control system; and

(c) Except for periods of monitoring system malfunctions or out-of-control periods, repairs associated with monitoring system malfunctions or out-of-control periods, and required monitoring system quality assurance or quality control activities including, as applicable, calibration checks and required zero and span adjustments, failure to collect required data is a deviation of the monitoring requirements.

Recordkeeping and Reporting

§ 60.2175 What records must I keep?

You must maintain the items (as applicable) as specified in paragraphs (a), (b), and (e) through (x) of this section for a period of at least 5 years:

(a) Calendar date of each record; and

(b) Records of the data described in paragraphs (b)(1) through (7) of this section:

(1) The CISWI charge dates, times, weights, and hourly charge rates;

(2) Liquor flow rate to the wet scrubber inlet every 15 minutes of operation, as applicable;

(3) Pressure drop across the wet scrubber system every 15 minutes of operation or amperage to the wet scrubber every 15 minutes of operation, as applicable;

(4) Liquor pH as introduced to the wet scrubber every 15 minutes of operation, as applicable;

(5) For affected CISWIs that establish operating limits for controls other than wet scrubbers under § 60.2110(d) through (g) or § 60.2115, you must maintain data collected for all operating parameters used to determine compliance with the operating limits. For energy recovery units using activated carbon injection or a dry scrubber, you must also maintain records of the load fraction and corresponding sorbent injection rate records;

(6) If a fabric filter is used to comply with the emission limitations, you must record the date, time, and duration of each alarm and the time corrective action was initiated and completed, and a brief description of the cause of the alarm and the corrective action taken. You must also record the percent of operating time during each 6-month period that the alarm sounds, calculated as specified in § 60.2110(c);

(7) If you monitor clinker production in accordance with § 60.2165(t):

(i) Hourly clinker rate produced if clinker production is measured directly;

(ii) Hourly measured kiln feed rates and calculated clinker production rates if clinker production is not measured directly;

(iii) 30-day rolling averages for mercury in pounds per million tons of clinker produced;

(iv) The initial and quarterly accuracy of the system of measruing hourly clinker production (or feed mass flow).

(c)–(d) [Reserved]

(e) Identification of calendar dates and times for which data show a deviation from the operating limits in table 2 of this subpart or a deviation from other operating limits established under § 60.2110(d) through (g) or § 60.2115 with a description of the deviations, reasons for such deviations, and a description of corrective actions taken;

(f) The results of the initial, annual, and any subsequent performance tests conducted to determine compliance with the emission limits and/or to establish operating limits, as applicable. Retain a copy of the complete test report including calculations;

(g) All documentation produced as a result of the siting requirements of §§ 60.2045 and 60.2050;

(h) Records showing the names of CISWI operators who have completed review of the information in § 60.2095(a) as required by § 60.2095(b), including the date of the initial review and all subsequent annual reviews;

(i) Records showing the names of the CISWI operators who have completed the operator training requirements under § 60.2070, met the criteria for qualification under § 60.2080, and maintained or renewed their qualification under § 60.2085 or § 60.2090. Records must include documentation of training, the dates of the initial and refresher training, and the dates of their qualification and all subsequent renewals of such qualifications;

(j) For each qualified operator, the phone and/or pager number at which they can be reached during operating hours;

(k) Records of calibration of any monitoring devices as required under § 60.2165;

(l) Equipment vendor specifications and related operation and maintenance requirements for the incinerator, emission controls, and monitoring equipment;

(m) The information listed in § 60.2095(a);

(n) On a daily basis, keep a log of the quantity of waste burned and the types of waste burned (always required);

(o) Maintain records of the annual air pollution control device inspections that are required for each CISWI subject to the emissions limits in table 1 of this subpart or tables 5 through 8 of this subpart, any required maintenance, and any repairs not completed within 10 days of an inspection or the timeframe established by the state regulatory agency;

(p) For continuously monitored pollutants or parameters, you must document and keep a record of the following parameters measured using continuous monitoring systems. If you monitor emissions with a CEMS, you must indicate which data are CEMS data during startup and shutdown:

(1) All 6-minute average levels of opacity;

(2) All 1-hour average concentrations of sulfur dioxide emissions;

(3) All 1-hour average concentrations of nitrogen oxides emissions;

(4) All 1-hour average concentrations of carbon monoxide emissions;

(5) All 1-hour average concentrations of particulate matter emissions;

(6) All 1-hour average concentrations of mercury emissions;

(7) All 1-hour average concentrations of HCl CEMS outputs;

(8) All 1-hour average percent oxygen concentrations; and

(9) All 1-hour average PM CPMS readings or particulate matter CEMS outputs;

(q) Records indicating use of the bypass stack, including dates, times, and durations.

(r) If you choose to stack test less frequently than annually, consistent with § 60.2155(a) through (c), you must keep annual records that document that your emissions in the previous stack test(s) were less than 75 percent of the applicable emission limit and document that there was no change in source operations including fuel composition and operation of air pollution control equipment that would cause emissions of the relevant pollutant to increase within the past year.

(s) Records of the occurrence and duration of each malfunction of operation (*i.e.,* process equipment) or the air pollution control and monitoring equipment.

(t) Records of all required maintenance performed on the air pollution control and monitoring equipment.

(u) Records of actions taken during periods of malfunction to minimize emissions in accordance with § 60.11(d), including corrective actions to restore malfunctioning process and air pollution control and monitoring equipment to its normal or usual manner of operation.

(v) For operating units that combust non-hazardous secondary materials that have been determined not to be solid waste pursuant to § 241.3(b)(1) of this chapter, you must keep a record which documents how the secondary material meets each of the legitimacy criteria under § 241.3(d)(1). If you combust a fuel that has been processed from a discarded non-hazardous secondary material pursuant to § 241.3(b)(4) of this chapter, you must keep records as to how the operations that produced the fuel satisfies the definition of processing in § 241.2 and each of the legitimacy criteria of § 241.3(d)(1) of this chapter. If the fuel received a non-waste

determination pursuant to the petition process submitted under § 241.3(c) of this chapter, you must keep a record that documents how the fuel satisfies the requirements of the petition process. For operating units that combust non-hazardous secondary materials as fuel per § 241.4, you must keep records documenting that the material is a listed non-waste under § 241.4(a).

(w) Records of the criteria used to establish that the unit qualifies as a small power production facility under section 3(17)(C) of the Federal Power Act (16 U.S.C. 796(17)(C)) and that the waste material the unit is proposed to burn is homogeneous.

(x) Records of the criteria used to establish that the unit qualifies as a cogeneration facility under section 3(18)(B) of the Federal Power Act (16 U.S.C. 796(18)(B)) and that the waste material the unit is proposed to burn is homogeneous.

§ 60.2180 Where and in what format must I keep my records?

All records must be available onsite in either paper copy or computer-readable format that can be printed upon request, unless an alternative format is approved by the Administrator.

§ 60.2185 What reports must I submit?

See table 4 of this subpart for a summary of the reporting requirements.

§ 60.2190 What must I submit prior to commencing construction?

You must submit a notification prior to commencing construction that includes the five items listed in paragraphs (a) through (e) of this section:

(a) A statement of intent to construct;

(b) The anticipated date of commencement of construction;

(c) All documentation produced as a result of the siting requirements of § 60.2050;

(d) The waste management plan as specified in §§ 60.2055 through 60.2065; and

(e) Anticipated date of initial startup.

§ 60.2195 What information must I submit prior to initial startup?

You must submit the information specified in paragraphs (a) through (e) of this section prior to initial startup:

(a) The type(s) of waste to be burned;

(b) The maximum design waste burning capacity;

(c) The anticipated maximum charge rate;

(d) If applicable, the petition for site-specific operating limits under § 60.2115; and

(e) The anticipated date of initial startup.

§ 60.2200 What information must I submit following my initial performance test?

You must submit the information specified in paragraphs (a) through (c) of this section no later than 60 days following the initial performance test. All reports must be signed by the facilities manager:

(a) The complete test report for the initial performance test results obtained under § 60.2135, as applicable;

(b) The values for the site-specific operating limits established in § 60.2110 or § 60.2115; and

(c) If you are using a fabric filter to comply with the emission limitations, documentation that a bag leak detection system has been installed and is being operated, calibrated, and maintained as required by § 60.2165(b).

§ 60.2205 When must I submit my annual report?

You must submit an annual report no later than 12 months following the submission of the information in § 60.2200. You must submit subsequent reports no more than 12 months following the previous report. (If the unit is subject to permitting requirements under title V of the Clean Air Act, you may be required by the permit to submit these reports more frequently.)

§ 60.2210 What information must I include in my annual report?

The annual report required under § 60.2205 must include the ten items listed in paragraphs (a) through (j) of this section. If you have a deviation from the operating limits or the emission limitations, you must also submit deviation reports as specified in §§ 60.2215, 60.2220, and 60.2225:

(a) Company name and address;

(b) Statement by a responsible official, with that official's name, title, and signature, certifying the accuracy of the content of the report;

(c) Date of report and beginning and ending dates of the reporting period;

(d) The values for the operating limits established pursuant to § 60.2110 or § 60.2115;

(e) If no deviation from any emission limitation or operating limit that applies to you has been reported, a statement that there was no deviation from the emission limitations or operating limits during the reporting period;

(f) The highest recorded 3-hour average and the lowest recorded 3-hour average (30-day average for energy recovery units), as applicable, for each operating parameter recorded for the calendar year being reported;

(g) Information recorded under § 60.2175(b)(6) and (c) through (e) for the calendar year being reported;

(h) For each performance test conducted during the reporting period, if any performance test is conducted, the process unit(s) tested, the pollutant(s) tested and the date that such performance test was conducted. Submit, following the procedure specified in § 60.2235(b)(1), the performance test report no later than the date that you submit the annual report;

(i) If you met the requirements of § 60.2155(a) or (b), and did not conduct a performance test during the reporting period, you must state that you met the requirements of § 60.2155(a) or (b), and, therefore, you were not required to conduct a performance test during the reporting period;

(j) Documentation of periods when all qualified CISWI operators were unavailable for more than 8 hours, but less than 2 weeks;

(k) If you had a malfunction during the reporting period, the compliance report must include the number, duration, and a brief description for each type of malfunction that occurred during the reporting period and that caused or may have caused any applicable emission limitation to be exceeded. The report must also include a description of actions taken by an owner or operator during a malfunction of an affected source to minimize emissions in accordance with § 60.11(d), including actions taken to correct a malfunction;

(l) For each deviation from an emission or operating limitation that occurs for a CISWI for which you are not using a continuous monitoring system to comply with the emission or operating limitations in this subpart, the annual report must contain the following information:

(1) The total operating time of the CISWI at which the deviation occurred during the reporting period; and

(2) Information on the number, duration, and cause of deviations (including unknown cause, if applicable), as applicable, and the corrective action taken.

(m) If there were periods during which the continuous monitoring system, including the CEMS, was out of control as specified in paragraph (o) of this section, the annual report must contain the following information for each deviation from an emission or operating limitation occurring for a CISWI for which you are using a continuous monitoring system to comply with the emission and operating limitations in this subpart:

(1) The date and time that each malfunction started and stopped;

(2) The date, time, and duration that each CMS was inoperative, except for zero (low-level) and high-level checks;

(3) The date, time, and duration that each continuous monitoring system was out-of-control, including start and end dates and hours and descriptions of corrective actions taken;

(4) The date and time that each deviation started and stopped, and whether each deviation occurred during a period of malfunction or during another period;

(5) A summary of the total duration of the deviation during the reporting period, and the total duration as a percent of the total source operating time during that reporting period;

(6) A breakdown of the total duration of the deviations during the reporting period into those that are due to control equipment problems, process problems, other known causes, and other unknown causes;

(7) A summary of the total duration of continuous monitoring system downtime during the reporting period, and the total duration of continuous monitoring system downtime as a percent of the total operating time of the CISWI at which the continuous monitoring system downtime occurred during that reporting period;

(8) An identification of each parameter and pollutant that was monitored at the CISWI;

(9) A brief description of the CISWI;

(10) A brief description of the continuous monitoring system;

(11) The date of the latest continuous monitoring system certification or audit; and

(12) A description of any changes in continuous monitoring system, processes, or controls since the last reporting period.

(n) If there were periods during which the continuous monitoring system, including the CEMS, was not out of control as specified in paragraph (o) of this section, a statement that there were not periods during which the continuous monitoring system was out of control during the reporting period.

(o) A continuous monitoring system is out of control in accordance with the procedure in 40 CFR part 60, appendix F of this part, as if any of the following occur:

(1) The zero (low-level), mid-level (if applicable), or high-level calibration drift exceeds two times the applicable calibration drift specification in the applicable performance specification or in the relevant standard;

(2) The continuous monitoring system fails a performance test audit (*e.g.,* cylinder gas audit), relative accuracy audit, relative accuracy test audit, or linearity test audit; and

(3) The continuous opacity monitoring system calibration drift exceeds two times the limit in the applicable performance specification in the relevant standard.

§ 60.2215 What else must I report if I have a deviation from the operating limits or the emission limitations?

(a) You must submit a deviation report if any recorded 3-hour average (30-day average for energy recovery units or for PM CPMS) parameter level is above the maximum operating limit or below the minimum operating limit established under this subpart, if the bag leak detection system alarm sounds for more than 5 percent of the operating time for the 6-month reporting period, if a performance test was conducted that deviated from any emission limitation, if a 30 kiln operating day average is above the operating limit, or if a 30-day average measured using CEMS deviated from any emission limitation.

(b) The deviation report must be submitted by August 1 of that year for data collected during the first half of the calendar year (January 1 to June 30), and by February 1 of the following year for data you collected during the second half of the calendar year (July 1 to December 31).

§ 60.2220 What must I include in the deviation report?

In each report required under § 60.2215, for any pollutant or parameter that deviated from the emission limitations or operating limits specified in this subpart, include the six items described in paragraphs (a) through (f) of this section:

(a) The calendar dates and times your unit deviated from the emission limitations or operating limit requirements;

(b) The averaged and recorded data for those dates;

(c) Durations and causes of the following:

(1) Each deviation from emission limitations or operating limits and your corrective actions;

(2) Bypass events and your corrective actions; and

(d) A copy of the operating limit monitoring data during each deviation and for any test report that documents the emission levels the process unit(s) tested, the pollutant(s) tested and the date that the performance test was conducted. Submit, following the procedure specified in § 60.2235(b)(1), the performance test report no later than the date that you submit the deviation report.

§ 60.2225 What else must I report if I have a deviation from the requirement to have a qualified operator accessible?

(a) If all qualified operators are not accessible for 2 weeks or more, you must take the two actions in paragraphs (a)(1) and (2) of this section:

(1) Submit a notification of the deviation within 10 days that includes the three items in paragraphs (a)(1)(i) through (iii) of this section:

(i) A statement of what caused the deviation;

(ii) A description of what you are doing to ensure that a qualified operator is accessible; and

(iii) The date when you anticipate that a qualified operator will be available.

(2) Submit a status report to the Administrator every 4 weeks that includes the three items in paragraphs (a)(2)(i) through (iii) of this section:

(i) A description of what you are doing to ensure that a qualified operator is accessible;

(ii) The date when you anticipate that a qualified operator will be accessible; and

(iii) Request approval from the Administrator to continue operation of the CISWI.

(b) If your unit was shut down by the Administrator, under the provisions of § 60.2100(b)(2), due to a failure to provide an accessible qualified operator, you must notify the Administrator that you are resuming operation once a qualified operator is accessible.

§ 60.2230 Are there any other notifications or reports that I must submit?

(a) Yes. You must submit notifications as provided by § 60.7.

(b) If you cease combusting solid waste but continue to operate, you must provide 30 days prior notice of the effective date of the waste-to-fuel switch, consistent with 60.2145(a). The notification must identify:

(1) The name of the owner or operator of the CISWI, the location of the source, the emissions unit(s) that will cease burning solid waste, and the date of the notice;

(2) The currently applicable subcategory under this subpart, and any 40 CFR part 63 subpart and subcategory that will be applicable after you cease combusting solid waste;

(3) The fuel(s), non-waste material(s) and solid waste(s) the CISWI is currently combusting and has combusted over the past 6 months, and the fuel(s) or non-waste materials the unit will commence combusting;

(4) The date on which you became subject to the currently applicable emission limits; and

(5) The date upon which you will cease combusting solid waste, and the

date (if different) that you intend for any new requirements to become applicable (*i.e.,* the effective date of the waste-to-fuel switch), consistent with paragraphs (b)(2) and (3) of this section.

§ 60.2235 In what form can I submit my reports?

(a) Submit initial, annual and deviation reports electronically or in paper format, postmarked on or before the submittal due dates. Beginning on June 15, 2020 or once the reporting form has been available in CEDRI for 1 year, whichever is later, you must submit subsequent reports on or before the submittal dates to the EPA via the Compliance and Emissions Data Reporting Interface (CEDRI), which can be accessed through the EPA's Central Data Exchange (CDX) (*https://cdx.epa.gov/*). Use the appropriate electronic report in CEDRI for this subpart or an alternate electronic file format consistent with the extensible markup language (XML) schema listed on the CEDRI website (*https://www3.epa.gov/ttn/chief/cedri/index.html*). The date forms become available in CEDRI will be listed on the CEDRI website. The reports must be submitted by the deadlines specified in this subpart, regardless of the method in which the report is submitted.

(b) Submit results of each performance test and CEMS performance evaluation required by this subpart as follows:

(1) Within 60 days after the date of completing each performance test (*see* § 60.8) required by this subpart, you must submit the results of the performance test following the procedure specified in either paragraph (b)(1)(i) or (b)(1)(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 website (*https://www3.epa.gov/ttn/chief/ert/ert_info.html*) at the time of the test, you must submit the results of the performance test to the EPA via the CEDRI. (CEDRI can be accessed through the EPA's CDX (*https://cdx.epa.gov/*).) 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 XML schema listed on the EPA's ERT website. 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 website, including information claimed to be CBI, on a compact disc, flash drive, or other commonly used electronic storage media to the EPA. The electronic media must be clearly marked as CBI and mailed to U.S. EPA/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; and

(ii) For data collected using test methods that are not supported by the EPA's ERT as listed on the EPA's ERT website at the time of the test, you must submit the results of the performance test to the Administrator at the appropriate address listed in § 60.4.

(2) Within 60 days after the date of completing each continuous emissions monitoring system performance evaluation you must submit the results of the performance evaluation following the procedure specified in either paragraph (b)(2)(i) or (b)(2)(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 website at the time of the evaluation, you 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 website. 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 website, 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; and

(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 website at the time of the evaluation, you must submit the results of the performance evaluation to the Administrator at the appropriate address listed in § 60.4.

(c) If you are required to electronically submit a report through the Compliance and Emissions Data Reporting Interface (CEDRI) in the EPA's Central Data Exchange (CDX), and due to a planned or actual outage of either the EPA's CEDRI or CDX systems within the period of time beginning 5 business days prior to the date that the submission is due, you will be or are precluded from accessing CEDRI or CDX and submitting a required report within the time prescribed, you may assert a claim of EPA system outage for failure to timely comply with the reporting requirement. You must submit notification to the Administrator in writing as soon as possible following the date you first knew, or through due diligence should have known, that the event may cause or caused a delay in reporting. You must provide to the Administrator a written description identifying the date, time and length of the outage; a rationale for attributing the delay in reporting beyond the regulatory deadline to the EPA system outage; describe the measures taken or to be taken to minimize the delay in reporting; and identify a date by which you propose to report, or if you have already met the reporting requirement at the time of the notification, the date you reported. In any circumstance, the report must be submitted electronically as soon as possible after the outage is resolved. The decision to accept the claim of EPA system outage and allow an extension to the reporting deadline is solely within the discretion of the Administrator.

(d) If you are required to electronically submit a report through CEDRI in the EPA's CDX and a force majeure event is about to occur, occurs, or has occurred or there are lingering effects from such an event within the period of time beginning 5 business days prior to the date the submission is due, the owner or operator may assert a claim of force majeure for failure to timely comply with the reporting requirement. For the purposes of this section, a force majeure event is defined as an event that will be or has been caused by circumstances beyond the control of the affected facility, its contractors, or any entity controlled by the affected facility that prevents you from complying with the requirement to submit a report electronically within the time period prescribed. Examples of such events are acts of nature (*e.g.,* hurricanes, earthquakes, or floods), acts of war or terrorism, or equipment failure

or safety hazard beyond the control of the affected facility (*e.g.,* large scale power outage). If you intend to assert a claim of force majeure, you must submit notification to the Administrator in writing as soon as possible following the date you first knew, or through due diligence should have known, that the event may cause or caused a delay in reporting. You must provide to the Administrator a written description of the force majeure event and a rationale for attributing the delay in reporting beyond the regulatory deadline to the force majeure event; describe the measures taken or to be taken to minimize the delay in reporting; and identify a date by which you propose to report, or if you have already met the reporting requirement at the time of the notification, the date you reported. In any circumstance, the reporting must occur as soon as possible after the force majeure event occurs. The decision to accept the claim of force majeure and allow an extension to the reporting deadline is solely within the discretion of the Administrator.

§ 60.2240 Can reporting dates be changed?

If the Administrator agrees, you may change the semiannual or annual reporting dates. *See* § 60.19(c) for procedures to seek approval to change your reporting date.

Title V Operating Permits

§ 60.2242 Am I required to apply for and obtain a Title V operating permit for my unit?

Yes. Each CISWI and ACI subject to standards under this subpart must operate pursuant to a permit issued under Section 129(e) and Title V of the Clean Air Act.

Air Curtain Incinerators (ACIs)

§ 60.2245 What is an air curtain incinerator?

(a) An ACI operates by forcefully projecting a curtain of air across an open chamber or open pit in which combustion occurs. Incinerators of this type can be constructed above or below ground and with or without refractory walls and floor. Air curtain incinerators are not to be confused with conventional combustion devices with enclosed fireboxes and controlled air technology such as mass burn, modular, and fluidized bed combustors.

(b) Air curtain incinerators that burn only the materials listed in paragraphs (b)(1) through (3) of this section are only required to meet the requirements under § 60.2242 and under ''Air Curtain Incinerators'' (§§ 60.2245 through 60.2260):

(1) 100 percent wood waste;

(2) 100 percent clean lumber; and

(3) 100 percent mixture of only wood waste, clean lumber, and/or yard waste.

§ 60.2250 What are the emission limitations for air curtain incinerators?

Within 60 days after your ACI reaches the charge rate at which it will operate, but no later than 180 days after its initial startup, you must meet the two limitations specified in paragraphs (a) and (b) of this section:

(a) Maintain opacity to less than or equal to 10 percent opacity (as determined by the average of three 1-hour blocks consisting of ten 6-minute average opacity values), except as described in paragraph (b) of this section; and

(b) Maintain opacity to less than or equal to 35 percent opacity (as determined by the average of three 1-hour blocks consisting of ten 6-minute average opacity values) during the startup period that is within the first 30 minutes of operation.

§ 60.2255 How must I monitor opacity for air curtain incinerators?

(a) Use Method 9 of appendix A of this part to determine compliance with the opacity limitation.

(b) Conduct an initial test for opacity as specified in § 60.8.

(c) After the initial test for opacity, conduct annual tests no more than 12 calendar months following the date of your previous test.

§ 60.2260 What are the recordkeeping and reporting requirements for air curtain incinerators?

(a) Prior to commencing construction on your ACI, submit the three items described in paragraphs (a)(1) through (3) of this section:

(1) Notification of your intent to construct the ACI;

(2) Your planned initial startup date; and

(3) Types of materials you plan to burn in your ACI.

(b) Keep records of results of all initial and annual opacity tests onsite in either paper copy or electronic format, unless the Administrator approves another format, for at least 5 years.

(c) Make all records available for submittal to the Administrator or for an inspector's onsite review.

(d) You must submit the results (as determined by the average of three 1-hour blocks consisting of ten 6-minute average opacity values) of the initial opacity tests no later than 60 days following the initial test. Submit annual opacity test results within 12 months following the previous report.

(e) Submit initial and annual opacity test reports as electronic or paper copy on or before the applicable submittal date.

(f) Keep a copy of the initial and annual reports onsite for a period of 5 years.

Definitions

§ 60.2265 What definitions must I know?

Terms used but not defined in this subpart are defined in the Clean Air Act and subpart A (General Provisions) of this part.

30-day rolling average means the arithmetic mean of the previous 720 hours of valid operating data. Valid data excludes periods when this unit is not operating. The 720 hours should be consecutive, but not necessarily continuous if operations are intermittent.

Administrator means the Administrator of the U.S. Environmental Protection Agency or his/her authorized representative or Administrator of a State Air Pollution Control Agency.

Air curtain incinerator (ACI) means an incinerator that operates by forcefully projecting a curtain of air across an open chamber or pit in which combustion occurs. Incinerators of this type can be constructed above or below ground and with or without refractory walls and floor. Air curtain incinerators are not to be confused with conventional combustion devices with enclosed fireboxes and controlled air technology such as mass burn, modular, and fluidized bed combustors.

Annual heat input means the heat input for the 12 months preceding the compliance demonstration.

Auxiliary fuel means natural gas, liquified petroleum gas, fuel oil, or diesel fuel.

Average annual heat input rate means annual heat input divided by the hours of operation for the 12 months preceding the compliance demonstration.

Bag leak detection system means an instrument that is capable of monitoring particulate matter loadings in the exhaust of a fabric filter (*i.e.,* baghouse) in order to detect bag failures. A bag leak detection system includes, but is not limited to, an instrument that operates on triboelectric, light scattering, light transmittance, or other principle to monitor relative particulate matter loadings.

Burn-off oven means any rack reclamation unit, part reclamation unit, or drum reclamation unit. A burn-off oven is not an incinerator, waste-burning kiln, an energy recovery unit or a small, remote incinerator under this subpart.

Bypass stack means a device used for discharging combustion gases to avoid severe damage to the air pollution control device or other equipment.

Calendar quarter means three consecutive months (nonoverlapping) beginning on: January 1, April 1, July 1, or October 1.

Calendar year means 365 consecutive days starting on January 1 and ending on December 31.

CEMS data during startup and shutdown means the following:

(1) For incinerators and small remote incinerators: CEMS data collected during the first hours of a CISWI startup from a cold start until waste is fed to the unit and the hours of operation following the cessation of waste material being fed to the CISWI during a unit shutdown. For each startup event, the length of time that CEMS data may be claimed as being CEMS data during startup must be 48 operating hours or less. For each shutdown event, the length of time that CEMS data may be claimed as being CEMS data during shutdown must be 24 operating hours or less;

(2) For energy recovery units: CEMS data collected during the startup or shutdown periods of operation. Startup begins with either the first-ever firing of fuel in a boiler or process heater for the purpose of supplying useful thermal energy (such as steam or heat) for heating, cooling or process purposes, or producing electricity, or the firing of fuel in a boiler or process heater for any purpose after a shutdown event. Startup ends four hours after when the boiler or process heater makes useful thermal energy (such as heat or steam) for heating, cooling, or process purposes, or generates electricity, whichever is earlier. Shutdown begins when the boiler or process heater no longer makes useful thermal energy (such as heat or steam) for heating, cooling, or process purposes and/or generates electricity or when no fuel is being fed to the boiler or process heater, whichever is earlier. Shutdown ends when the boiler or process heater no longer makes useful thermal energy (such as steam or heat) for heating, cooling, or process purposes and/or generates electricity, and no fuel is being combusted in the boiler or process heater; and

(3) For waste-burning kilns: CEMS data collected during the periods of kiln operation that do not include normal operations. Startup means the time from when a shutdown kiln first begins firing fuel until it begins producing clinker. Startup begins when a shutdown kiln turns on the induced draft fan and begins firing fuel in the main burner. Startup ends when feed is being continuously introduced into the kiln for at least 120 minutes or when the feed rate exceeds 60 percent of the kiln design limitation rate, whichever occurs first. Shutdown means the cessation of kiln operation. Shutdown begins when feed to the kiln is halted and ends when continuous kiln rotation ceases.

Chemical recovery unit means combustion units burning materials to recover chemical constituents or to produce chemical compounds where there is an existing commercial market for such recovered chemical constituents or compounds. A chemical recovery unit is not an incinerator, a waste-burning kiln, an energy recovery unit or a small, remote incinerator under this subpart. The following seven types of units are considered chemical recovery units:

(1) Units burning only pulping liquors (*i.e.,* black liquor) that are reclaimed in a pulping liquor recovery process and reused in the pulping process;

(2) Units burning only spent sulfuric acid used to produce virgin sulfuric acid;

(3) Units burning only wood or coal feedstock for the production of charcoal;

(4) Units burning only manufacturing byproduct streams/residue containing catalyst metals that are reclaimed and reused as catalysts or used to produce commercial grade catalysts;

(5) Units burning only coke to produce purified carbon monoxide that is used as an intermediate in the production of other chemical compounds;

(6) Units burning only hydrocarbon liquids or solids to produce hydrogen, carbon monoxide, synthesis gas, or other gases for use in other manufacturing processes; and

(7) Units burning only photographic film to recover silver.

Chemotherapeutic waste means waste material resulting from the production or use of antineoplastic agents used for the purpose of stopping or reversing the growth of malignant cells.

Clean lumber means wood or wood products that have been cut or shaped and include wet, air-dried, and kiln-dried wood products. Clean lumber does not include wood products that have been painted, pigment-stained, or pressure-treated by compounds such as chromate copper arsenate, pentachlorophenol, and creosote.

Commercial and industrial solid waste incineration unit (CISWI) means any distinct operating unit of any commercial or industrial facility that combusts, or has combusted in the preceding 6 months, any solid waste as that term is defined in 40 CFR part 241. If the operating unit burns materials other than traditional fuels as defined in § 241.2 that have been discarded, and you do not keep and produce records as required by § 60.2175(v), the operating unit is a CISWI. While not all CISWIs will include all of the following components, a CISWI includes, but is not limited to, the solid waste feed system, grate system, flue gas system, waste heat recovery equipment, if any, and bottom ash system. The CISWI does not include air pollution control equipment or the stack. The CISWI boundary starts at the solid waste hopper (if applicable) and extends through two areas: The combustion unit flue gas system, which ends immediately after the last combustion chamber or after the waste heat recovery equipment, if any; and the combustion unit bottom ash system, which ends at the truck loading station or similar equipment that transfers the ash to final disposal. The CISWI includes all ash handling systems connected to the bottom ash handling system.

Contained gaseous material means gases that are in a container when that container is combusted.

Continuous emission monitoring system (CEMS) means the total equipment that may be required to meet the data acquisition and availability requirements of this subpart, used to sample, condition (if applicable), analyze, and provide a record of emissions.

Continuous monitoring system (CMS) means the total equipment, required under the emission monitoring sections in applicable subparts, used to sample and condition (if applicable), to analyze, and to provide a permanent record of emissions or process parameters. A particulate matter continuous parameter monitoring system (PM CPMS) is a type of CMS.

Cyclonic burn barrel means a combustion device for waste materials that is attached to a 55 gallon, open-head drum. The device consists of a lid, which fits onto and encloses the drum, and a blower that forces combustion air into the drum in a cyclonic manner to enhance the mixing of waste material and air. A cyclonic burn barrel is not an incinerator, a waste-burning kiln, an energy recovery unit or a small, remote incinerator under this subpart.

Deviation means any instance in which an affected source subject to this subpart, or an owner or operator of such a source:

(1) Fails to meet any requirement or obligation established by this subpart, including but not limited to any emission limitation, operating limit, or operator qualification and accessibility requirements; and

(2) Fails to meet any term or condition that is adopted to implement an applicable requirement in this subpart and that is included in the operating permit for any affected source required to obtain such a permit.

Dioxins/furans means tetra- through octa-chlorinated dibenzo-p-dioxins and dibenzofurans.

Discard means, for purposes of this subpart and 40 CFR part 60, subpart DDDD, only, burned in an incineration unit without energy recovery.

Drum reclamation unit means a unit that burns residues out of drums (*e.g.,* 55 gallon drums) so that the drums can be reused.

Dry scrubber means an add-on air pollution control system that injects dry alkaline sorbent (dry injection) or sprays an alkaline sorbent (spray dryer) to react with and neutralize acid gas in the exhaust stream forming a dry powder material. Sorbent injection systems in fluidized bed boilers and process heaters are included in this definition. A dry scrubber is a dry control system.

Energy recovery means the process of recovering thermal energy from combustion for useful purposes such as steam generation or process heating.

Energy recovery unit means a combustion unit combusting solid waste (as that term is defined by the Administrator in 40 CFR part 241) for energy recovery. Energy recovery units include units that would be considered boilers and process heaters if they did not combust solid waste.

Energy recovery unit designed to burn biomass (Biomass) means an energy recovery unit that burns solid waste, biomass, and non-coal solid materials but less than 10 percent coal, on a heat input basis on an annual average, either alone or in combination with liquid waste, liquid fuel or gaseous fuels.

Energy recovery unit designed to burn coal (Coal) means an energy recovery unit that burns solid waste and at least 10 percent coal on a heat input basis on an annual average, either alone or in combination with liquid waste, liquid fuel or gaseous fuels.

Energy recovery unit designed to burn liquid waste materials and gas (Liquid/gas) means an energy recovery unit that burns a liquid waste with liquid or gaseous fuels not combined with any solid fuel or waste materials.

Energy recovery unit designed to burn solid materials (Solids) includes energy recovery units designed to burn coal and energy recovery units designed to burn biomass.

Fabric filter means an add-on air pollution control device used to capture particulate matter by filtering gas streams through filter media, also known as a baghouse.

Foundry sand thermal reclamation unit means a type of part reclamation unit that removes coatings that are on foundry sand. A foundry sand thermal reclamation unit is not an incinerator, a waste-burning kiln, an energy recovery unit or a small, remote incinerator under this subpart.

Incinerator means any furnace used in the process of combusting solid waste (as that term is defined by the Administrator in 40 CFR part 241) for the purpose of reducing the volume of the waste by removing combustible matter. Incinerator designs include single chamber and two-chamber.

In-line coal mill means those coal mills using kiln exhaust gases in their process. Coal mills with a heat source other than the kiln or coal mills using exhaust gases from the clinker cooler alone are not an in-line coal mill.

In-line kiln/raw mill means a system in a Portland Cement production process where a dry kiln system is integrated with the raw mill so that all or a portion of the kiln exhaust gases are used to perform the drying operation of the raw mill, with no auxiliary heat source used. In this system the kiln is capable of operating without the raw mill operating, but the raw mill cannot operate without the kiln gases, and consequently, the raw mill does not generate a separate exhaust gas stream.

Kiln means an oven or furnace, including any associated preheater or precalciner devices, in-line raw mills, in-line coal mills or alkali bypasses used for processing a substance by burning, firing or drying. Kilns include cement kilns that produce clinker by heating limestone and other materials for subsequent production of Portland Cement. Because the alkali bypass, in-line raw mill and in-line coal mill are considered an integral part of the kiln, the kiln emissions limits also apply to the exhaust of the alkali bypass, in-line raw mill and in-line coal mill.

Laboratory analysis unit means units that burn samples of materials for the purpose of chemical or physical analysis. A laboratory analysis unit is not an incinerator, waste-burning kiln, an energy recovery unit or a small, remote incinerator under this subpart.

Load fraction means the actual heat input of an energy recovery unit divided by heat input during the performance test that established the minimum sorbent injection rate or minimum activated carbon injection rate, expressed as a fraction (*e.g.,* for 50 percent load the load fraction is 0.5).

Low-level radioactive waste means waste material which contains radioactive nuclides emitting primarily beta or gamma radiation, or both, in concentrations or quantities that exceed applicable federal or state standards for unrestricted release. Low-level radioactive waste is not high-level radioactive waste, spent nuclear fuel, or byproduct material as defined by the Atomic Energy Act of 1954 (42 U.S.C. 2014(e)(2)).

Malfunction means any sudden, infrequent, and not reasonably preventable failure of air pollution control equipment, process equipment, or a process to operate in a normal or usual manner. Failures that are caused, in part, by poor maintenance or careless operation are not malfunctions.

Minimum voltage or amperage means 90 percent of the lowest test-run average voltage or amperage to the electrostatic precipitator measured during the most recent particulate matter or mercury performance test demonstrating compliance with the applicable emission limits.

Modification or *modified CISWI* means a CISWI that has been changed later than August 7, 2013 and that meets one of two criteria:

(1) The cumulative cost of the changes over the life of the unit exceeds 50 percent of the original cost of building and installing the CISWI (not including the cost of land) updated to current costs (current dollars). To determine what systems are within the boundary of the CISWI used to calculate these costs, *see* the definition of CISWI; and

(2) Any physical change in the CISWI or change in the method of operating it that increases the amount of any air pollutant emitted for which section 129 or section 111 of the Clean Air Act has established standards.

Municipal solid waste or municipal-type solid waste means household, commercial/retail, or institutional waste. Household waste includes material discarded by residential dwellings, hotels, motels, and other similar permanent or temporary housing. Commercial/retail waste includes material discarded by stores, offices, restaurants, warehouses, nonmanufacturing activities at industrial facilities, and other similar establishments or facilities. Institutional waste includes materials discarded by schools, by hospitals (nonmedical), by nonmanufacturing activities at prisons and government facilities, and other similar establishments or facilities. Household, commercial/retail, and institutional waste does include yard waste and refuse-derived fuel. Household, commercial/retail, and institutional waste does not include used oil; sewage sludge; wood pallets;

construction, renovation, and demolition wastes (which include railroad ties and telephone poles); clean wood; industrial process or manufacturing wastes; medical waste; or motor vehicles (including motor vehicle parts or vehicle fluff).

Opacity means the degree to which emissions reduce the transmission of light and obscure the view of an object in the background.

Operating day means a 24-hour period between 12 midnight and the following midnight during which any amount of solid waste is combusted at any time in the CISWI.

Oxygen analyzer system means all equipment required to determine the oxygen content of a gas stream and used to monitor oxygen in the boiler or process heater flue gas, boiler or process heater, firebox, or other appropriate location. This definition includes oxygen trim systems and certified oxygen CEMS. The source owner or operator is responsible to install, calibrate, maintain, and operate the oxygen analyzer system in accordance with the manufacturer's recommendations.

Oxygen trim system means a system of monitors that is used to maintain excess air at the desired level in a combustion device over its operating range. A typical system consists of a flue gas oxygen and/or carbon monoxide monitor that automatically provides a feedback signal to the combustion air controller or draft controller.

Part reclamation unit means a unit that burns coatings off parts (*e.g.,* tools, equipment) so that the parts can be reconditioned and reused.

Particulate matter means total particulate matter emitted from CISWIs as measured by Method 5 or Method 29 of appendix A of this part.

Pathological waste means waste material consisting of only human or animal remains, anatomical parts, and/or tissue, the bags/containers used to collect and transport the waste material, and animal bedding (if applicable).

Performance evaluation means the conduct of relative accuracy testing, calibration error testing, and other measurements used in validating the continuous monitoring system data.

Performance test means the collection of data resulting from the execution of a test method (usually three emission test runs) used to demonstrate compliance with a relevant emission standard as specified in the performance test section of the relevant standard.

Process change means any of the following physical or operational changes:

(1) A physical change (maintenance activities excluded) to the CISWI which may increase the emission rate of any air pollutant to which a standard applies;

(2) An operational change to the CISWI where a new type of non-hazardous secondary material is being combusted;

(3) A physical change (maintenance activities excluded) to the air pollution control devices used to comply with the emission limits for the CISWI (*e.g.,* replacing an electrostatic precipitator with a fabric filter); and

(4) An operational change to the air pollution control devices used to comply with the emission limits for the affected CISWI (*e.g.,* change in the sorbent injection rate used for activated carbon injection).

Rack reclamation unit means a unit that burns the coatings off racks used to hold small items for application of a coating. The unit burns the coating overspray off the rack so the rack can be reused.

Raw mill means a ball or tube mill, vertical roller mill or other size reduction equipment, that is not part of an in-line kiln/raw mill, used to grind feed to the appropriate size. Moisture may be added or removed from the feed during the grinding operation. If the raw mill is used to remove moisture from feed materials, it is also, by definition, a raw material dryer. The raw mill also includes the air separator associated with the raw mill.

Reconstruction means rebuilding a CISWI and meeting two criteria:

(1) The reconstruction begins on or after August 7, 2013; and

(2) The cumulative cost of the construction over the life of the incineration unit exceeds 50 percent of the original cost of building and installing the CISWI (not including land) updated to current costs (current dollars). To determine what systems are within the boundary of the CISWI used to calculate these costs, *see* the definition of CISWI.

Refuse-derived fuel means a type of municipal solid waste produced by processing municipal solid waste through shredding and size classification. This includes all classes of refuse-derived fuel including two fuels:

(1) Low-density fluff refuse-derived fuel through densified refuse-derived fuel; and

(2) Pelletized refuse-derived fuel.

Responsible official means one of the following:

(1) For a corporation: A president, secretary, treasurer, or vice-president of the corporation in charge of a principal business function, or any other person who performs similar policy or decision-making functions for the corporation, or a duly authorized representative of such person if the representative is responsible for the overall operation of one or more manufacturing, production, or operating facilities applying for or subject to a permit and either:

(i) The facilities employ more than 250 persons or have gross annual sales or expenditures exceeding $25 million (in second quarter 1980 dollars); or

(ii) The delegation of authority to such representatives is approved in advance by the permitting authority;

(2) For a partnership or sole proprietorship: A general partner or the proprietor, respectively;

(3) For a municipality, state, federal, or other public agency: Either a principal executive officer or ranking elected official. For the purposes of this part, a principal executive officer of a federal agency includes the chief executive officer having responsibility for the overall operations of a principal geographic unit of the agency (*e.g.,* a Regional Administrator of EPA); or

(4) For affected facilities:

(i) The designated representative in so far as actions, standards, requirements, or prohibitions under Title IV of the Clean Air Act or the regulations promulgated thereunder are concerned; or

(ii) The designated representative for any other purposes under part 60.

Shutdown means, for incinerators and small, remote incinerators, the period of time after all waste has been combusted in the primary chamber.

Small, remote incinerator means an incinerator that combusts solid waste (as that term is defined by the Administrator in 40 CFR part 241) and combusts 3 tons per day or less solid waste and is more than 25 miles driving distance to the nearest municipal solid waste landfill.

Soil treatment unit means a unit that thermally treats petroleum-contaminated soils for the sole purpose of site remediation. A soil treatment unit may be direct-fired or indirect fired. A soil treatment unit is not an incinerator, a waste-burning kiln, an energy recovery unit or a small, remote incinerator under this subpart.

Solid waste means the term solid waste as defined in 40 CFR 241.2.

Solid waste incineration unit means a distinct operating unit of any facility which combusts any solid waste (as that term is defined by the Administrator in 40 CFR part 241) material from commercial or industrial establishments or the general public (including single

and multiple residences, hotels and motels). Such term does not include incinerators or other units required to have a permit under section 3005 of the Solid Waste Disposal Act. The term ''solid waste incineration unit'' does not include:

(1) Materials recovery facilities (including primary or secondary smelters) which combust waste for the primary purpose of recovering metals;

(2) Qualifying small power production facilities, as defined in section 3(17)(C) of the Federal Power Act (16 U.S.C. 769(17)(C)), or qualifying cogeneration facilities, as defined in section 3(18)(B) of the Federal Power Act (16 U.S.C. 796(18)(B)), which burn homogeneous waste (such as units which burn tires or used oil, but not including refuse-derived fuel) for the production of electric energy or in the case of qualifying cogeneration facilities which burn homogeneous waste for the production of electric energy and steam or forms of useful energy (such as heat) which are used for industrial, commercial, heating or cooling purposes; or

(3) Air curtain incinerators provided that such incinerators only burn wood wastes, yard wastes, and clean lumber and that such ACIs comply with opacity limitations to be established by the Administrator by rule.

Space heater means a unit that meets the requirements of 40 CFR 279.23. A space heater is not an incinerator, a waste-burning kiln, an energy recovery unit or a small, remote incinerator under this subpart.

Standard conditions, when referring to units of measure, means a temperature of 68 °F (20 °C) and a pressure of 1 atmosphere (101.3 kilopascals).

Startup period means, for incinerators and small, remote incinerators, the period of time between the activation of the system and the first charge to the unit.

Useful thermal energy means energy (*i.e.,* steam, hot water, or process heat) that meets the minimum operating temperature and/or pressure required by any energy use system that uses energy provided by the affected energy recovery unit.

Waste-burning kiln means a kiln that is heated, in whole or in part, by combusting solid waste (as that term is defined by the Administrator in 40 CFR part 241). Secondary materials used in Portland cement kilns shall not be deemed to be combusted unless they are introduced into the flame zone in the hot end of the kiln or mixed with the precalciner fuel.

Wet scrubber means an add-on air pollution control device that uses an aqueous or alkaline scrubbing liquor to collect particulate matter (including nonvaporous metals and condensed organics) and/or to absorb and neutralize acid gases.

Wood waste means untreated wood and untreated wood products, including tree stumps (whole or chipped), trees, tree limbs (whole or chipped), bark, sawdust, chips, scraps, slabs, millings, and shavings. Wood waste does not include:

(1) Grass, grass clippings, bushes, shrubs, and clippings from bushes and shrubs from residential, commercial/retail, institutional, or industrial sources as part of maintaining yards or other private or public lands;

(2) Construction, renovation, or demolition wastes; and

(3) Clean lumber.

TABLE 1 TO SUBPART CCCC OF PART 60—EMISSION LIMITATIONS FOR INCINERATORS FOR WHICH CONSTRUCTION IS COMMENCED AFTER NOVEMBER 30, 1999, BUT NO LATER THAN JUNE 4, 2010, OR FOR WHICH MODIFICATION OR RECONSTRUCTION IS COMMENCED ON OR AFTER JUNE 1, 2001, BUT NO LATER THAN AUGUST 7, 2013

For the air pollutant	You must meet this emission limitation [1]	Using this averaging time [2]	And determining compliance using this method [2]
Cadmium	0.004 milligrams per dry standard cubic meter.	3-run average (1 hour minimum sample time per run).	Performance test (Method 29 of appendix A of this part).
Carbon monoxide	157 parts per million by dry volume.	3-run average (1 hour minimum sample time per run).	Performance test (Method 10 at 40 CFR part 60, appendix A–4).
Dioxin/Furan (toxic equivalency basis).	0.41 nanograms per dry standard cubic meter.	3-run average (collect a minimum volume of 4 dry standard cubic meters per run).	Performance test (Method 23 of appendix A–7 of this part).
Hydrogen chloride	62 parts per million by dry volume.	3-run average (For Method 26, collect a minimum volume of 120 liters per run. For Method 26A, collect a minimum volume of 1 dry standard cubic meter per run).	Performance test (Method 26 or 26A at 40 CFR part 60, appendix A–8).
Lead	0.04 milligrams per dry standard cubic meter.	3-run average (1 hour minimum sample time per run).	Performance test (Method 29 of appendix A of this part).
Mercury	0.47 milligrams per dry standard cubic meter.	3-run average (1 hour minimum sample time per run).	Performance test (Method 29 of appendix A of this part).
Nitrogen oxides	388 parts per million by dry volume.	3-run average (for Method 7E, 1 hour minimum sample time per run).	Performance test (Method 7 or 7E at 40 CFR part 60, appendix A–4).
Opacity	10 percent	6-minute averages	Performance test (Method 9 of appendix A of this part).
Particulate matter	70 milligrams per dry standard cubic meter.	3-run average (1 hour minimum sample time per run).	Performance test (Method 5 or 29 of appendix A of this part).
Sulfur dioxide	20 parts per million by dry volume.	3-run average (For Method 6, collect a minimum volume of 20 liters per run. For Method 6C, collect sample for a minimum duration of 1 hour per run).	Performance test (Method 6 or 6C at 40 CFR part 60, appendix A–4).

[1] All emission limitations (except for opacity) are measured at 7 percent oxygen, dry basis at standard conditions.

[2] In lieu of performance testing, you may use a CEMS or, for mercury, an integrated sorbent trap monitoring system, to demonstrate initial and continuing compliance with an emissions limit, as long as you comply with the CEMS or integrated sorbent trap monitoring system requirements applicable to the specific pollutant in § 60.2145 and § 60.2165. As prescribed in § 60.2145(u), if you use a CEMS or an integrated sorbent trap monitoring system to demonstrate compliance with an emissions limit, your averaging time is a 30-day rolling average of 1-hour arithmetic average emission concentrations.

TABLE 2 TO SUBPART CCCC OF PART 60—OPERATING LIMITS FOR WET SCRUBBERS

For these operating parameters	You must establish these operating limits	And monitoring using these minimum frequencies		
		Data measurement	Data recording	Averaging time
Charge rate	Maximum charge rate	Continuous	Every hour	Daily (batch units) 3-hour rolling (continuous and intermittent units).[1]
Pressure drop across the wet scrubber or amperage to wet scrubber.	Minimum pressure drop or amperage.	Continuous	Every 15 minutes	3-hour rolling.[1]
Scrubber liquor flow rate	Minimum flow rate	Continuous	Every 15 minutes	3-hour rolling.[1]
Scrubber liquor pH	Minimum pH	Continuous	Every 15 minutes	3-hour rolling.[1]

[1] Calculated each hour as the average of the previous 3 operating hours.

TABLE 3 TO SUBPART CCCC OF PART 60—TOXIC EQUIVALENCY FACTORS

Dioxin/furan congener	Toxic equivalency factor
2,3,7,8-tetrachlorinated dibenzo-p-dioxin	1
1,2,3,7,8-pentachlorinated dibenzo-p-dioxin	0.5
1,2,3,4,7,8-hexachlorinated dibenzo-p-dioxin	0.1
1,2,3,7,8,9-hexachlorinated dibenzo-p-dioxin	0.1
1,2,3,6,7,8-hexachlorinated dibenzo-p-dioxin	0.1
1,2,3,4,6,7,8-heptachlorinated dibenzo-p-dioxin	0.01
octachlorinated dibenzo-p-dioxin	0.001
2,3,7,8-tetrachlorinated dibenzofuran	0.1
2,3,4,7,8-pentachlorinated dibenzofuran	0.5
1,2,3,7,8-pentachlorinated dibenzofuran	0.05
1,2,3,4,7,8-hexachlorinated dibenzofuran	0.1
1,2,3,6,7,8-hexachlorinated dibenzofuran	0.1
1,2,3,7,8,9-hexachlorinated dibenzofuran	0.1
2,3,4,6,7,8-hexachlorinated dibenzofuran	0.1
1,2,3,4,6,7,8-heptachlorinated dibenzofuran	0.01
1,2,3,4,7,8,9-heptachlorinated dibenzofuran	0.01
octachlorinated dibenzofuran	0.001

TABLE 4 TO SUBPART CCCC OF PART 60—SUMMARY OF REPORTING REQUIREMENTS [1]

Report	Due date	Contents	Reference
Preconstruction report.	Prior to commencing construction	• Statement of intent to construct • Anticipated date of commencement of construction. • Documentation for siting requirements. • Waste management plan. • Anticipated date of initial startup.	§ 60.2190.
Startup notification	Prior to initial startup	• Type of waste to be burned • Maximum design waste burning capacity. • Anticipated maximum charge rate. • If applicable, the petition for site-specific operating limits.	§ 60.2195.
Initial test report	No later than 60 days following the initial performance test.	• Complete test report for the initial performance test • The values for the site-specific operating limits. • Installation of bag leak detection system for fabric filter.	§ 60.2200.
Annual report	No later than 12 months following the submission of the initial test report. Subsequent reports are to be submitted no more than 12 months following the previous report.	• Name and address • Statement and signature by responsible official. • Date of report. • Values for the operating limits. • Highest recorded 3-hour average and the lowest 3-hour average, as applicable, (or 30-day average, if applicable) for each operating parameter recorded for the calendar year being reported. • For each performance test conducted during the reporting period, if any performance test is conducted, the process unit(s) tested, the pollutant(s) tested, and the date that such performance test was conducted. • If a performance test was not conducted during the reporting period, a statement that the requirements of § 60.2155(a) were met. • Documentation of periods when all qualified CISWI operators were unavailable for more than 8 hours but less than 2 weeks. • If you are conducting performance tests once every 3 years consistent with § 60.2155(a), the date of the last 2 performance tests, a comparison of the emission level you achieved in the last 2 performance tests to the 75 percent emission limit threshold required in § 60.2155(a) and a statement as to whether there have been any operational changes since the last performance test that could increase emissions.	§§ 60.2205 and 60.2210.
Emission limitation or operating limit deviation report.	By August 1 of that year for data collected during the first half of the calendar year. By February 1 of the following year for data collected during the second half of the calendar year.	• Dates and times of deviation • Averaged and recorded data for those dates. • Duration and causes of each deviation and the corrective actions taken. • Copy of operating limit monitoring data and, if any performance test was conducted that documents emission levels, the process unit(s) tested, the pollutant(s) tested, and the date that such performance text was conducted.	§ 60.2215 and 60.2220.

TABLE 4 TO SUBPART CCCC OF PART 60—SUMMARY OF REPORTING REQUIREMENTS [1]—Continued

Report	Due date	Contents	Reference
		• Dates, times and causes for monitor downtime incidents.	
Qualified operator deviation notification.	Within 10 days of deviation	• Statement of cause of deviation • Description of efforts to have an accessible qualified operator. • The date a qualified operator will be accessible.	§ 60.2225(a)(1).
Qualified operator deviation status report.	Every 4 weeks following deviation	• Description of efforts to have an accessible qualified operator • The date a qualified operator will be accessible. • Request for approval to continue operation.	§ 60.2225(a)(2).
Qualified operator deviation notification of resumed operation.	Prior to resuming operation	• Notification that you are resuming operation	§ 60.2225(b).

[1] This table is only a summary, *see* the referenced sections of the rule for the complete requirements.

TABLE 5 TO SUBPART CCCC OF PART 60—EMISSION LIMITATIONS FOR INCINERATORS THAT COMMENCED CONSTRUCTION AFTER JUNE 4, 2010, OR THAT COMMENCED RECONSTRUCTION OR MODIFICATION AFTER AUGUST 7, 2013

For the air pollutant	You must meet this emission limitation [1]	Using this averaging time [2]	And determining compliance using this method [2]
Cadmium	0.0023 milligrams per dry standard cubic meter.	3-run average (collect a minimum volume of 4 dry standard cubic meter per run).	Performance test (Method 29 at 40 CFR part 60, appendix A–8 of this part). Use ICPMS for the analytical finish.
Carbon monoxide	17 parts per million by dry volume.	3-run average (1 hour minimum sample time per run).	Performance test (Method 10 at 40 CFR part 60, appendix A–4).
Dioxin/furan (Total Mass Basis)	0.58 nanograms per dry standard cubic meter.	3-run average (collect a minimum volume of 4 dry standard cubic meters per run).	Performance test (Method 23 at 40 CFR part 60, appendix A–7).
Dioxin/furan (toxic equivalency basis).	0.13 nanograms per dry standard cubic meter.	3-run average (collect a minimum volume of 4 dry standard cubic meter per run).	Performance test (Method 23 at 40 CFR part 60, appendix A–7).
Fugitive ash	Visible emissions for no more than 5 percent of the hourly observation period.	Three 1-hour observation periods	Visible emission test (Method 22 at 40 CFR part 60, appendix A–7).
Hydrogen chloride	0.091 parts per million by dry volume.	3-run average (For Method 26, collect a minimum volume of 360 liters per run. For Method 26A, collect a minimum volume of 3 dry standard cubic meters per run).	Performance test (Method 26 or 26A at 40 CFR part 60, appendix A–8).
Lead	0.015 milligrams per dry standard cubic meter.	3-run average (collect a minimum volume of 4 dry standard cubic meters per run).	Performance test (Method 29 of appendix A–8 at 40 CFR part 60). Use ICPMS for the analytical finish.
Mercury	0.00084 milligrams per dry standard cubic meter.	3-run average (collect enough volume to meet a detection limit data quality objective of 0.03 ug/dry standard cubic meter).	Performance test (Method 29 or 30B at 40 CFR part 60, appendix A–8) or ASTM D6784–02 (Reapproved 2008).[3]
Nitrogen oxides	23 parts per million dry volume	3-run average (for Method 7E, 1 hour minimum sample time per run).	Performance test (Method 7 or 7E at 40 CFR part 60, appendix A–4).
Particulate matter (filterable)	18 milligrams per dry standard cubic meter.	3-run average (collect a minimum volume of 2 dry standard cubic meters per run).	Performance test (Method 5 or 29 at 40 CFR part 60, appendix A–3 or appendix A–8 at 40 CFR part 60).
Sulfur dioxide	11 parts per million dry volume	3-run average (1 hour minimum sample time per run).	Performance test (Method 6 or 6C at 40 CFR part 60, appendix A–4).

[1] All emission limitations are measured at 7 percent oxygen, dry basis at standard conditions. For dioxins/furans, you must meet either the Total Mass Limit or the toxic equivalency basis limit.

[2] In lieu of performance testing, you may use a CEMS or, for mercury, an integrated sorbent trap monitoring system to demonstrate initial and continuing compliance with an emissions limit, as long as you comply with the CEMS or integrated sorbent trap monitoring system requirements applicable to the specific pollutant in § 60.2145 and § 60.2165. As prescribed in § 60.2145(u), if you use a CEMS or an integrated sorbent trap monitoring system to demonstrate compliance with an emissions limit, your averaging time is a 30-day rolling average of 1-hour arithmetic average emission concentrations.

[3] Incorporated by reference, *see* § 60.17.

TABLE 6 TO SUBPART CCCC OF PART 60—EMISSION LIMITATIONS FOR ENERGY RECOVERY UNITS THAT COMMENCED CONSTRUCTION AFTER JUNE 4, 2010, OR THAT COMMENCED RECONSTRUCTION OR MODIFICATION AFTER AUGUST 7, 2013

For the air pollutant	You must meet this emission limitation [1]		Using this averaging time [2]	And determining compliance using this method [2]
	Liquid/gas	Solids		
Cadmium	0.023 milligrams per dry standard cubic meter.	Biomass—0.0014 milligrams per dry standard cubic meter. Coal—0.0017 milligrams per dry standard cubic meter.	3-run average (collect a minimum volume of 4 dry standard cubic meters per run).	Performance test (Method 29 at 40 CFR part 60, appendix A–8). Use ICPMS for the analytical finish.
Carbon monoxide	35 parts per million dry volume.	Biomass—240 parts per million dry volume. Coal—95 parts per million dry volume.	3-run average (1 hour minimum sample time per run).	Performance test (Method 10 at 40 CFR part 60, appendix A–4).

TABLE 6 TO SUBPART CCCC OF PART 60—EMISSION LIMITATIONS FOR ENERGY RECOVERY UNITS THAT COMMENCED CONSTRUCTION AFTER JUNE 4, 2010, OR THAT COMMENCED RECONSTRUCTION OR MODIFICATION AFTER AUGUST 7, 2013—Continued

For the air pollutant	You must meet this emission limitation [1]		Using this averaging time [2]	And determining compliance using this method [2]
	Liquid/gas	Solids		
Dioxin/furans (Total Mass Basis).	No Total Mass Basis limit, must meet the toxic equivalency basis limit below.	Biomass—0.52 nanograms per dry standard cubic meter. Coal—5.1 nanograms per dry standard cubic meter.	3-run average (collect a minimum volume of 4 dry standard cubic meters).	Performance test (Method 23 at 40 CFR part 60, appendix A–7).
Dioxins/furans (toxic equivalency basis).	0.093 nanograms per dry standard cubic meter.	Biomass—0.076 nanograms per dry standard cubic meter.[3] Coal—0.075 nanograms per dry standard cubic meter.	3-run average (collect a minimum volume of 4 dry standard cubic meters per run).	Performance test (Method 23 of appendix A–7 of this part).
Fugitive ash	Visible emissions for no more than 5 percent of the hourly observation period.	Three 1-hour observation periods.	Visible emission test (Method 22 at 40 CFR part 60, appendix A–7).	Fugitive ash.
Hydrogen chloride	14 parts per million dry volume.	Biomass—0.20 parts per million dry volume. Coal—58 parts per million dry volume.	3-run average (For Method 26, collect a minimum volume of 360 liters per run. For Method 26A, collect a minimum volume of 3 dry standard cubic meters per run).	Performance test (Method 26 or 26A at 40 CFR part 60, appendix A–8).
Lead	0.096 milligrams per dry standard cubic meter.	Biomass—0.014 milligrams per dry standard cubic meter. Coal—0.057 milligrams per dry standard cubic meter.	3-run average (collect a minimum volume of 4 dry standard cubic meters per run).	Performance test (Method 29 at 40 CFR part 60, appendix A–8). Use ICPMS for the analytical finish.
Mercury	0.00056 milligrams per dry standard cubic meter.	Biomass—0.0022 milligrams per dry standard cubic meter. Coal—0.013 milligrams per dry standard cubic meter.	3-run average (collect enough volume to meet an in-stack detection limit data quality objective of 0.03 ug/dscm).	Performance test (Method 29 or 30B at 40 CFR part 60, appendix A–8) or ASTM D6784–02 (Reapproved 2008).[3]
Nitrogen oxides	76 parts per million dry volume.	Biomass—290 parts per million dry volume. Coal—460 parts per million dry volume.	3-run average (for Method 7E, 1 hour minimum sample time per run).	Performance test (Method 7 or 7E at 40 CFR part 60, appendix A–4).
Particulate matter (filterable).	110 milligrams per dry standard cubic meter.	Biomass—5.1 milligrams per dry standard cubic meter. Coal—130 milligrams per dry standard cubic meter.	3-run average (collect a minimum volume of 1 dry standard cubic meter per run).	Performance test (Method 5 or 29 at 40 CFR part 60, appendix A–3 or appendix A–8) if the unit has an annual average heat input rate less than 250 MMBtu/hr; or PM CPMS (as specified in §60.2145(x)) if the unit has an annual average heat input rate equal to or greater than 250 MMBtu/hr.
Sulfur dioxide	720 parts per million dry volume.	Biomass—7.3 parts per million dry volume. Coal—850 parts per million dry volume.	3-run average (for Method 6, collect a minimum of 60 liters, for Method 6C,1 hour minimum sample time per run).	Performance test (Method 6 or 6C at 40 CFR part 60, appendix A–4).

[1] All emission limitations are measured at 7 percent oxygen, dry basis at standard conditions. For dioxins/furans, you must meet either the Total Mass Basis limit or the toxic equivalency basis limit.

[2] In lieu of performance testing, you may use a CEMS or, for mercury, an integrated sorbent trap monitoring system to demonstrate initial and continuing compliance with an emissions limit, as long as you comply with the CEMS or integrated sorbent trap monitoring system requirements applicable to the specific pollutant in §60.2145 and §60.2165. As prescribed in §60.2145(u), if you use a CEMS or an integrated sorbent trap monitoring system to demonstrate compliance with an emissions limit, your averaging time is a 30-day rolling average of 1-hour arithmetic average emission concentrations.

[3] Incorporated by reference, *see* §60.17.

TABLE 7 TO SUBPART CCCC OF PART 60—EMISSION LIMITATIONS FOR WASTE-BURNING KILNS THAT COMMENCED CONSTRUCTION AFTER JUNE 4, 2010, OR RECONSTRUCTION OR MODIFICATION AFTER AUGUST 7, 2013

For the air pollutant	You must meet this emission limitation [1]	Using this averaging time [2]	And determining compliance using this method [2 3]
Cadmium	0.0014 milligrams per dry standard cubic meter.	3-run average (collect a minimum volume of 4 dry standard cubic meters per run).	Performance test (Method 29 at 40 CFR part 60, appendix A–8). Use ICPMS for the analytical finish.
Carbon monoxide	90 (long kilns)/190 (preheater/precalciner) parts per million dry volume.	3-run average (1 hour minimum sample time per run).	Performance test (Method 10 at 40 CFR part 60, appendix A–4).
Dioxins/furans (total mass basis)	0.51 nanograms per dry standard cubic meter.	3-run average (collect a minimum volume of 4 dry standard cubic meters per run).	Performance test (Method 23 at 40 CFR part 60, appendix A–7).
Dioxins/furans (toxic equivalency basis).	0.075 nanograms per dry standard cubic meter.	3-run average (collect a minimum volume of 4 dry standard cubic meters).	Performance test (Method 23 at 40 CFR part 60, appendix A–7).

TABLE 7 TO SUBPART CCCC OF PART 60—EMISSION LIMITATIONS FOR WASTE-BURNING KILNS THAT COMMENCED CONSTRUCTION AFTER JUNE 4, 2010, OR RECONSTRUCTION OR MODIFICATION AFTER AUGUST 7, 2013—Continued

For the air pollutant	You must meet this emission limitation [1]	Using this averaging time [2]	And determining compliance using this method [2 3]
Hydrogen chloride	3.0 parts per million dry volume	3-run average (1 hour minimum sample time per run) or 30-day rolling average if HCl CEMS is being used.	If a wet scrubber or dry scrubber is used, performance test (Method 321 at 40 CFR part 63, appendix A). If a wet scrubber or dry scrubber is not used, HCl CEMS as specified in § 60.2145(j).
Lead	0.014 milligrams per dry standard cubic meter.	3-run average (collect a minimum volume of 4 dry standard cubic meters).	Performance test (Method 29 at 40 CFR part 60, appendix A–8). Use ICPMS for the analytical finish.
Mercury	0.0037 milligrams per dry standard cubic meter *or* 21 pounds/million tons of clinker.[3]	30-day rolling average	Mercury CEMS or integrated sorbent trap monitoring system (performance specification 12A or 12B, respectively, of appendix B and procedure 5 of appendix F of this part), as specified in § 60.2145(j).
Nitrogen oxides	200 parts per million dry volume.	30-day rolling average	NO_X CEMS (performance specification 2 of appendix B and procedure 1 of appendix F of this part).
Particulate matter (filterable)	4.9 milligrams per dry standard cubic meter.	30-day rolling average	PM CPMS (as specified in § 60.2145(x)).
Sulfur dioxide	28 parts per million dry volume	30-day rolling average	Sulfur dioxide CEMS (performance specification 2 of appendix B and procedure 1 of appendix F of this part).

[1] All emission limitations are measured at 7 percent oxygen (except for CEMS and integrated sorbent trap monitoring system data during startup and shutdown), dry basis at standard conditions. For dioxins/furans, you must meet either the Total Mass Basis limit or the toxic equivalency basis limit.

[2] In lieu of performance testing, you may use a CEMS or, for mercury, an integrated sorbent trap monitoring system, to demonstrate initial and continuing compliance with an emissions limit, as long as you comply with the CEMS or integrated sorbent trap monitoring system requirements applicable to the specific pollutant in § 60.2145 and § 60.2165. As prescribed in § 60.2145(u), if you use a CEMS or integrated sorbent trap monitoring system to demonstrate compliance with an emissions limit, your averaging time is a 30-day rolling average of 1-hour arithmetic average emission concentrations.

[3] Alkali bypass and in-line coal mill stacks are subject to performance testing only, as specified in § 60.2145(y)(3). They are not subject to the CEMS, integrated sorbent trap monitoring system, or CPMS requirements that otherwise may apply to the main kiln exhaust.

TABLE 8 TO SUBPART CCCC OF PART 60—EMISSION LIMITATIONS FOR SMALL, REMOTE INCINERATORS THAT COMMENCED CONSTRUCTION AFTER JUNE 4, 2010, OR THAT COMMENCED RECONSTRUCTION OR MODIFICATION AFTER AUGUST 7, 2013

For the air pollutant	You must meet this emission limitation [1]	Using this averaging time [2]	And determining compliance using this method [2]
Cadmium	0.67 milligrams per dry standard cubic meter.	3-run average (collect a minimum volume of 1 dry standard cubic meters per run).	Performance test (Method 29 at 40 CFR part 60, appendix A–8).
Carbon monoxide	13 parts per million dry volume	3-run average (1 hour minimum sample time per run).	Performance test (Method 10 at 40 CFR part 60, appendix A–4).
Dioxins/furans (total mass basis)	1,800 nanograms per dry standard cubic meter.	3-run average (collect a minimum volume of 1 dry standard cubic meters per run).	Performance test (Method 23 at 40 CFR part 60, appendix A–7).
Dioxins/furans (toxic equivalency basis).	31 nanograms per dry standard cubic meter.	3-run average (collect a minimum volume of 1 dry standard cubic meters).	Performance test (Method 23 at 40 CFR part 60, appendix A–7).
Fugitive ash	Visible emissions for no more than 5 percent of the hourly observation period.	Three 1-hour observation periods	Visible emissions test (Method 22 at 40 CFR part 60, appendix A–7).
Hydrogen chloride	200 parts per million by dry volume.	3-run average (For Method 26, collect a minimum volume of 60 liters per run. For Method 26A, collect a minimum volume of 1 dry standard cubic meter per run).	Performance test (Method 26 or 26A at 40 CFR part 60, appendix A–8).
Lead	2.0 milligrams per dry standard cubic meter.	3-run average (collect a minimum volume of 1 dry standard cubic meters).	Performance test (Method 29 at 40 CFR part 60, appendix A–8). Use ICPMS for the analytical finish.
Mercury	0.0035 milligrams per dry standard cubic meter.	3-run average (For Method 29 and ASTM D6784–02 (Reapproved 2008),[2] collect a minimum volume of 2 dry standard cubic meters per run. For Method 30B, collect a minimum volume as specified in Method 30B at 40 CFR part 60, appendix A).	Performance test (Method 29 or 30B at 40 CFR part 60, appendix A–8) or ASTM D6784–02 (Reapproved 2008).[3]
Nitrogen oxides	170 parts per million dry volume.	3-run average (for Method 7E, 1 hour minimum sample time per run).	Performance test (Method 7 or 7E at 40 CFR part 60, appendix A–4).
Particulate matter (filterable)	270 milligrams per dry standard cubic meter.	3-run average (collect a minimum volume of 1 dry standard cubic meters).	Performance test (Method 5 or 29 at 40 CFR part 60, appendix A–3 or appendix A–8).
Sulfur dioxide	1.2 parts per million dry volume	3-run average (1 hour minimum sample time per run).	Performance test (Method 6 or 6c at 40 CFR part 60, appendix A–4).

[1] All emission limitations are measured at 7 percent oxygen, dry basis at standard conditions. For dioxins/furans, you must meet either the Total Mass Basis limit or the toxic equivalency basis limit.

[2] In lieu of performance testing, you may use a CEMS or, for mercury, an integrated sorbent trap monitoring system to demonstrate initial and continuing compliance with an emissions limit, as long as you comply with the CEMS or integrated sorbent trap monitoring system requirements applicable to the specific pollutant in § 60.2145 and § 60.2165. As prescribed in § 60.2145(u), if you use a CEMS or an integrated sorbent trap monitoring system to demonstrate compliance with an emissions limit, your averaging time is a 30-day rolling average of 1-hour arithmetic average emission concentrations.

[3] Incorporated by reference, *see* § 60.17.

■ 3. Part 60 is amended by revising subpart DDDD to read as follows:

Subpart DDDD—Emissions Guidelines and Compliance Times for Commercial and Industrial Solid Waste Incineration Units

Sec.

Subpart DDDD—Emissions Guidelines and Compliance Times for Commercial and Industrial Solid Waste Incineration Units

Introduction

§ 60.2500 What is the purpose of this subpart?

This subpart establishes emission guidelines and compliance schedules for the control of emissions from commercial and industrial solid waste incineration units (CISWIs) and air curtain incinerators (ACIs). The pollutants addressed by these emission guidelines are listed in table 2 of this subpart and tables 6 through 9 of this subpart. These emission guidelines are developed in accordance with sections 111(d) and 129 of the Clean Air Act and subpart B of this part.

§ 60.2505 Am I affected by this subpart?

(a) If you are the Administrator of an air quality program in a state or United States protectorate with one or more existing CISWIs that meet the criteria in paragraphs (b) through (d) of this section, you must submit a state plan to U.S. Environmental Protection Agency (EPA) that implements the emission guidelines contained in this subpart.

(b) You must submit a state plan to EPA by December 3, 2001 for incinerator units that commenced construction on or before November 30, 1999 and that were not modified or reconstructed after June 1, 2001.

(c) You must submit a state plan that meets the requirements of this subpart and contains the more stringent emission limit for the respective pollutant in table 6 of this subpart or table 1 of subpart CCCC of this part to EPA by February 7, 2014 for incinerators that commenced construction after November 30, 1999, but no later than June 4, 2010, or commenced modification or reconstruction after June 1, 2001 but no later than August 7, 2013.

(d) You must submit a state plan to EPA that meets the requirements of this subpart and contains the emission limits in tables 7 through 9 of this subpart by February 7, 2014, for CISWIs other than incinerator units that commenced construction on or before June 4, 2010, or commenced modification or reconstruction after June 4, 2010 but no later than August 7, 2013.

§ 60.2510 Is a state plan required for all states?

No. You are not required to submit a state plan if there are no existing CISWIs in your state, and you submit a negative declaration letter in place of the state plan.

§ 60.2515 What must I include in my state plan?

(a) You must include the nine items described in paragraphs (a)(1) through (9) of this section in your state plan:

(1) Inventory of affected CISWIs, including those that have ceased operation but have not been dismantled;

(2) Inventory of emissions from affected CISWIs in your state;

(3) Compliance schedules for each affected CISWI;

(4) Emission limitations, operator training and qualification requirements, a waste management plan, and operating limits for affected CISWIs that are at least as protective as the emission guidelines contained in this subpart;

(5) Performance testing, recordkeeping, and reporting requirements;

(6) Certification that the hearing on the state plan was held, a list of witnesses and their organizational affiliations, if any, appearing at the hearing, and a brief written summary of each presentation or written submission;

(7) Provision for state progress reports to EPA;

(8) Identification of enforceable state mechanisms that you selected for implementing the emission guidelines of this subpart; and

(9) Demonstration of your state's legal authority to carry out the sections 111(d) and 129 state plan.

(b) Your state plan may deviate from the format and content of the emission guidelines contained in this subpart. However, if your state plan does deviate in content, you must demonstrate that your state plan is at least as protective as the emission guidelines contained in this subpart. Your state plan must address regulatory applicability, increments of progress for retrofit, operator training and qualification, a waste management plan, emission limitations, performance testing, operating limits, monitoring, recordkeeping and reporting, and ACI requirements.

(c) You must follow the requirements of subpart B of this part (Adoption and Submittal of State Plans for Designated Facilities) in your state plan.

§ 60.2520 Is there an approval process for my state plan?

Yes. The EPA will review your state plan according to § 60.27.

§ 60.2525 What if my state plan is not approvable?

(a) If you do not submit an approvable state plan (or a negative declaration letter) by December 2, 2002, EPA will develop a federal plan according to § 60.27 to implement the emission guidelines contained in this subpart. Owners and operators of CISWIs not covered by an approved state plan must comply with the federal plan. The federal plan is an interim action and will be automatically withdrawn when your state plan is approved.

(b) If you do not submit an approvable state plan (or a negative declaration letter) to EPA that meets the requirements of this subpart and contains the emission limits in tables 6 through 9 of this subpart for CISWIs that commenced construction on or before June 4, 2010 and incinerator or ACIs that commenced reconstruction or modification on or after June 1, 2001 but no later than August 7, 2013, then EPA will develop a federal plan according to § 60.27 to implement the emission guidelines contained in this subpart. Owners and operators of CISWIs not covered by an approved state plan must comply with the federal plan. The federal plan is an interim action and will be automatically withdrawn when your state plan is approved.

§ 60.2530 Is there an approval process for a negative declaration letter?

No. The EPA has no formal review process for negative declaration letters. Once your negative declaration letter has been received, EPA will place a copy in the public docket and publish a notice in the **Federal Register**. If, at a later date, an existing CISWI is found in your state, the federal plan implementing the emission guidelines contained in this subpart would automatically apply to that CISWI until your state plan is approved.

§ 60.2535 What compliance schedule must I include in my state plan?

(a) For CISWIs in the incinerator subcategory and ACIs that commenced construction on or before November 30, 1999, your state plan must include compliance schedules that require CISWIs in the incinerator subcategory and ACIs to achieve final compliance as expeditiously as practicable after approval of the state plan but not later than the earlier of the two dates specified in paragraphs (a)(1) and (2) of this section:

(1) December 1, 2005; and

(2) Three years after the effective date of state plan approval.

(b) For CISWIs in the incinerator subcategory and ACIs that commenced construction after November 30, 1999, but on or before June 4, 2010 or that commenced reconstruction or modification on or after June 1, 2001 but no later than August 7, 2013, and for CISWIs in the small remote incinerator, energy recovery unit, and waste-burning kiln subcategories that commenced construction before June 4, 2010, your state plan must include compliance schedules that require CISWIs to achieve final compliance as expeditiously as practicable after approval of the state plan but not later than the earlier of the two dates specified in paragraphs (b)(1) and (2) of this section:

(1) February 7, 2018; and

(2) Three years after the effective date of State plan approval.

(c) For compliance schedules more than 1 year following the effective date of State plan approval, State plans must include dates for enforceable increments of progress as specified in § 60.2580.

§ 60.2540 Are there any State plan requirements for this subpart that apply instead of the requirements specified in subpart B?

Yes. Subpart B establishes general requirements for developing and processing section 111(d) plans. This subpart applies instead of the requirements in subpart B of this part for paragraphs (a) and (b) of this section:

(a) State plans developed to implement this subpart must be as protective as the emission guidelines contained in this subpart. State plans must require all CISWIs to comply by the dates specified in § 60.2535. This applies instead of the option for case-by-case less stringent emission standards and longer compliance schedules in § 60.24(f); and

(b) State plans developed to implement this subpart are required to include two increments of progress for the affected CISWIs. These two minimum increments are the final control plan submittal date and final compliance date in § 60.21(h)(1) and (5). This applies instead of the requirement of § 60.24(e)(1) that would require a State plan to include all five increments of progress for all CISWIs.

§ 60.2541 In lieu of a state plan submittal, are there other acceptable option(s) for a state to meet its Clean Air Act section 111(d)/129(b)(2) obligations?

Yes, a state may meet its Clean Air Act section 111(d)/129 obligations by submitting an acceptable written request for delegation of the federal plan that meets the requirements of this section. This is the only other option for a state to meet its Clean Air Act section 111(d)/129 obligations.

(a) An acceptable federal plan delegation request must include the following:

(1) A demonstration of adequate resources and legal authority to administer and enforce the federal plan;

(2) The items under § 60.2515(a)(1), (2) and (7);

(3) Certification that the hearing on the state delegation request, similar to the hearing for a state plan submittal, was held, a list of witnesses and their organizational affiliations, if any, appearing at the hearing, and a brief written summary of each presentation or written submission; and

(4) A commitment to enter into a Memorandum of Agreement with the Regional Administrator who sets forth the terms, conditions, and effective date of the delegation and that serves as the mechanism for the transfer of authority. Additional guidance and information is given in EPA's Delegation Manual, Item 7–139, Implementation and Enforcement of 111(d)(2) and 111(d)/(2)/129(b)(3) federal plans.

(b) A state with an already approved CISWI Clean Air Act section 111(d)/129 state plan is not precluded from receiving EPA approval of a delegation request for the revised federal plan, providing the requirements of paragraph (a) of this section are met, and at the time of the delegation request, the state also requests withdrawal of EPA's previous state plan approval.

(c) A state's Clean Air Act section 111(d)/129 obligations are separate from its obligations under Title V of the Clean Air Act.

§ 60.2542 What authorities will not be delegated to state, local, or tribal agencies?

The authorities that will not be delegated to state, local, or tribal agencies are specified in paragraphs (a) through (i) of this section:

(a) Approval of alternatives to the emission limitations in tables 2, 6, 7, 8, and 9 of this subpart and operating limits established under § 60.2675;

(b) Approval of major alternatives to test methods;

(c) Approval of major alternatives to monitoring;

(d) Approval of major alternatives to recordkeeping and reporting;

(e) The requirements in § 60.2680;

(f) The requirements in § 60.2665(b)(2);

(g) Approval of alternative opacity emission limits in § 60.2670 under § 60.11(e)(6) through (8);

(h) Performance test and data reduction waivers under § 60.8(b)(4) and (5); and

(i) Approval of an alternative to any electronic reporting to the EPA required by this subpart.

§ 60.2545 Does this subpart directly affect CISWI owners and operators in my state?

(a) No. This subpart does not directly affect CISWI owners and operators in your state. However, CISWI owners and operators must comply with the state plan you develop to implement the emission guidelines contained in this subpart. States may choose to incorporate the model rule text directly in their state plan.

(b) If you do not submit an approvable plan to implement and enforce the guidelines contained in this subpart for CISWIs that commenced construction before November 30, 1999 by December 2, 2002, EPA will implement and enforce a federal plan, as provided in § 60.2525, to ensure that each unit within your state reaches compliance with all the provisions of this subpart by December 1, 2005.

(c) If you do not submit an approvable plan to implement and enforce the guidelines contained in this subpart by February 7, 2014, for CISWIs that commenced construction on or before June 4, 2010, EPA will implement and enforce a federal plan, as provided in § 60.2525, to ensure that each unit within your state that commenced construction on or before June 4, 2010, reaches compliance with all the provisions of this subpart by February 7, 2018.

Applicability of State Plans

§ 60.2550 What CISWIs must I address in my state plan?

(a) Your state plan must address incineration units that meet all three criteria described in paragraphs (a)(1) through (3) of this section:

(1) Commercial and industrial solid waste incineration units and ACIs in your state that commenced construction on or before June 4, 2010, or commenced modification or

reconstruction after June 4, 2010 but no later than August 7, 2013;

(2) Incineration units that meet the definition of a CISWI as defined in § 60.2875 or an ACI as defined in § 60.2875; and

(3) Incineration units not exempt under § 60.2555.

(b) If the owner or operator of a CISWI or ACI makes changes that meet the definition of modification or reconstruction after August 7, 2013, the CISWI or ACI becomes subject to subpart CCCC of this part and the state plan no longer applies to that unit.

(c) If the owner or operator of a CISWI or ACI makes physical or operational changes to an existing CISWI or ACI primarily to comply with your state plan, subpart CCCC of this part does not apply to that unit. Such changes do not qualify as modifications or reconstructions under subpart CCCC of this part.

§ 60.2555 What combustion units are exempt from my state plan?

This subpart exempts the types of units described in paragraphs (a) through (j) of this section, but some units are required to provide notifications.

(a) *Pathological waste incineration units.* Incineration units burning 90 percent or more by weight (on a calendar quarter basis and excluding the weight of auxiliary fuel and combustion air) of pathological waste, low-level radioactive waste, and/or chemotherapeutic waste as defined in § 60.2875 are not subject to this subpart if you meet the two requirements specified in paragraphs (a)(1) and (2) of this section:

(1) Notify the Administrator that the unit meets these criteria; and

(2) Keep records on a calendar quarter basis of the weight of pathological waste, low-level radioactive waste, and/or chemotherapeutic waste burned, and the weight of all other fuels and wastes burned in the unit.

(b) *Municipal waste combustion units.* Incineration units that are subject to subpart Ea of this part (Standards of Performance for Municipal Waste Combustors); subpart Eb of this part (Standards of Performance for Large Municipal Waste Combustors); subpart Cb of this part (Emission Guidelines and Compliance Time for Large Municipal Combustors); AAAA of this part (Standards of Performance for Small Municipal Waste Combustion Units); or subpart BBBB of this part (Emission Guidelines for Small Municipal Waste Combustion Units).

(c) *Medical waste incineration units.* Incineration units regulated under subpart Ec of this part (Standards of Performance for Hospital/Medical/Infectious Waste Incinerators for Which Construction is Commenced After June 20, 1996) or subpart Ca of this part (Emission Guidelines and Compliance Times for Hospital/Medical/Infectious Waste Incinerators).

(d) *Small power production facilities.* Units that meet the four requirements specified in paragraphs (d)(1) through (4) of this section:

(1) The unit qualifies as a small power-production facility under section 3(17)(C) of the Federal Power Act (16 U.S.C. 796(17)(C));

(2) The unit burns homogeneous waste (not including refuse-derived fuel) to produce electricity;

(3) You submit documentation to the Administrator notifying the Agency that the qualifying small power production facility is combusting homogenous waste; and

(4) You maintain the records specified in § 60.2740(v).

(e) *Cogeneration facilities.* Units that meet the four requirements specified in paragraphs (e)(1) through (4) of this section:

(1) The unit qualifies as a cogeneration facility under section 3(18)(B) of the Federal Power Act (16 U.S.C. 796(18)(B));

(2) The unit burns homogeneous waste (not including refuse-derived fuel) to produce electricity and steam or other forms of energy used for industrial, commercial, heating, or cooling purposes;

(3) You submit documentation to the Administrator notifying the Agency that the qualifying cogeneration facility is combusting homogenous waste; and

(4) You maintain the records specified in § 60.2740(w).

(f) *Hazardous waste combustion units.* Units for which you are required to get a permit under section 3005 of the Solid Waste Disposal Act.

(g) *Materials recovery units.* Units that combust waste for the primary purpose of recovering metals, such as primary and secondary smelters.

(h) *Sewage treatment plants.* Incineration units regulated under subpart O of this part (Standards of Performance for Sewage Treatment Plants).

(i) *Sewage sludge incineration units.* Incineration units combusting sewage sludge for the purpose of reducing the volume of the sewage sludge by removing combustible matter that are subject to subpart LLLL of this part (Standards of Performance for New Sewage Sludge Incineration Units) or subpart MMMM of this part (Emission Guidelines and Compliance Times for Existing Sewage Sludge Incineration Units).

(j) *Other solid waste incineration units.* Incineration units that are subject to subpart EEEE of this part (Standards of Performance for Other Solid Waste Incineration Units for Which Construction is Commenced After December 9, 2004, or for Which Modification or Reconstruction is Commenced on or After June 16, 2006) or subpart FFFF of this part (Emission Guidelines and Compliance Times for Other Solid Waste Incineration Units That Commenced Construction On or Before December 9, 2004).

Use of Model Rule

§ 60.2560 What is the ''model rule'' in this subpart?

(a) The model rule is the portion of these emission guidelines (§§ 60.2575 through 60.2875 of this part) that addresses the regulatory requirements applicable to CISWIs. The model rule provides these requirements in regulation format. You must develop a state plan that is at least as protective as the model rule. You may use the model rule language as part of your state plan. Alternative language may be used in your state plan if you demonstrate that the alternative language is at least as protective as the model rule contained in this subpart.

(b) In the model rule of §§ 60.2575 to 60.2875, ''you'' means the owner or operator of a CISWI.

§ 60.2565 How does the model rule relate to the required elements of my state plan?

Use the model rule to satisfy the state plan requirements specified in § 60.2515(a)(4) and (5) of this part.

§ 60.2570 What are the principal components of the model rule?

The model rule contains the eleven major components listed in paragraphs (a) through (k) of this section:

(a) Increments of progress toward compliance;

(b) Waste management plan;

(c) Operator training and qualification;

(d) Emission limitations and operating limits;

(e) Performance testing;

(f) Initial compliance requirements;

(g) Continuous compliance requirements;

(h) Monitoring;

(i) Recordkeeping and reporting;

(j) Definitions; and

(k) Tables.

Model Rule—Increments of Progress

§ 60.2575 What are my requirements for meeting increments of progress and achieving final compliance?

If you plan to achieve compliance more than 1 year following the effective date of state plan approval, you must meet the two increments of progress specified in paragraphs (a) and (b) of this section:

(a) Submit a final control plan; and

(b) Achieve final compliance.

§ 60.2580 When must I complete each increment of progress?

Table 1 of this subpart specifies compliance dates for each of the increments of progress.

§ 60.2585 What must I include in the notifications of achievement of increments of progress?

Your notification of achievement of increments of progress must include the three items specified in paragraphs (a) through (c) of this section:

(a) Notification that the increment of progress has been achieved;

(b) Any items required to be submitted with each increment of progress; and

(c) Signature of the owner or operator of the CISWI.

§ 60.2590 When must I submit the notifications of achievement of increments of progress?

Notifications for achieving increments of progress must be postmarked no later than 10 business days after the compliance date for the increment.

§ 60.2595 What if I do not meet an increment of progress?

If you fail to meet an increment of progress, you must submit a notification to the Administrator postmarked within 10 business days after the date for that increment of progress in table 1 of this subpart. You must inform the Administrator that you did not meet the increment, and you must continue to submit reports each subsequent calendar month until the increment of progress is met.

§ 60.2600 How do I comply with the increment of progress for submittal of a control plan?

For your control plan increment of progress, you must satisfy the two requirements specified in paragraphs (a) and (b) of this section:

(a) Submit the final control plan that includes the five items described in paragraphs (a)(1) through (5) of this section:

(1) A description of the devices for air pollution control and process changes that you will use to comply with the emission limitations and other requirements of this subpart;

(2) The type(s) of waste to be burned;

(3) The maximum design waste burning capacity;

(4) The anticipated maximum charge rate; and

(5) If applicable, the petition for site-specific operating limits under § 60.2680.

(b) Maintain an onsite copy of the final control plan.

§ 60.2605 How do I comply with the increment of progress for achieving final compliance?

For the final compliance increment of progress, you must complete all process changes and retrofit construction of control devices, as specified in the final control plan, so that, if the affected CISWI is brought online, all necessary process changes and air pollution control devices would operate as designed.

§ 60.2610 What must I do if I close my CISWI and then restart it?

(a) If you close your CISWI but will restart it prior to the final compliance date in your state plan, you must meet the increments of progress specified in § 60.2575.

(b) If you close your CISWI but will restart it after your final compliance date, you must complete emission control retrofits and meet the emission limitations and operating limits on the date your unit restarts operation.

§ 60.2615 What must I do if I plan to permanently close my CISWI and not restart it?

If you plan to close your CISWI rather than comply with the state plan, submit a closure notification, including the date of closure, to the Administrator by the date your final control plan is due.

Model Rule—Waste Management Plan

§ 60.2620 What is a waste management plan?

A waste management plan is a written plan that identifies both the feasibility and the methods used to reduce or separate certain components of solid waste from the waste stream in order to reduce or eliminate toxic emissions from incinerated waste.

§ 60.2625 When must I submit my waste management plan?

You must submit a waste management plan no later than the date specified in table 1 of this subpart for submittal of the final control plan.

§ 60.2630 What should I include in my waste management plan?

A waste management plan must include consideration of the reduction or separation of waste-stream elements such as paper, cardboard, plastics, glass, batteries, or metals; or the use of recyclable materials. The plan must identify any additional waste management measures, and the source must implement those measures considered practical and feasible, based on the effectiveness of waste management measures already in place, the costs of additional measures, the emissions reductions expected to be achieved, and any other environmental or energy impacts they might have.

Model Rule—Operator Training and Qualification

§ 60.2635 What are the operator training and qualification requirements?

(a) No CISWI can be operated unless a fully trained and qualified CISWI operator is accessible, either at the facility or can be at the facility within 1 hour. The trained and qualified CISWI operator may operate the CISWI directly or be the direct supervisor of one or more other plant personnel who operate the unit. If all qualified CISWI operators are temporarily not accessible, you must follow the procedures in § 60.2665.

(b) Operator training and qualification must be obtained through a state-approved program or by completing the requirements included in paragraph (c) of this section.

(c) Training must be obtained by completing an incinerator operator training course that includes, at a minimum, the three elements described in paragraphs (c)(1) through (3) of this section:

(1) Training on the eleven subjects listed in paragraphs (c)(1)(i) through (xi) of this section:

(i) Environmental concerns, including types of emissions;

(ii) Basic combustion principles, including products of combustion;

(iii) Operation of the specific type of incinerator to be used by the operator, including proper startup, waste charging, and shutdown procedures;

(iv) Combustion controls and monitoring;

(v) Operation of air pollution control equipment and factors affecting performance (if applicable);

(vi) Inspection and maintenance of the incinerator and air pollution control devices;

(vii) Actions to prevent and correct malfunctions or to prevent conditions that may lead to malfunctions;

(viii) Bottom and fly ash characteristics and handling procedures;

(ix) Applicable federal, state, and local regulations, including Occupational Safety and Health Administration workplace standards;

(x) Pollution prevention; and

(xi) Waste management practices.

(2) An examination designed and administered by the instructor.

(3) Written material covering the training course topics that can serve as reference material following completion of the course.

§ 60.2640 When must the operator training course be completed?

The operator training course must be completed by the later of the three dates specified in paragraphs (a) through (c) of this section:

(a) The final compliance date (Increment 2);

(b) Six months after CISWI startup; and

(c) Six months after an employee assumes responsibility for operating the CISWI or assumes responsibility for supervising the operation of the CISWI.

§ 60.2645 How do I obtain my operator qualification?

(a) You must obtain operator qualification by completing a training course that satisfies the criteria under § 60.2635(b).

(b) Qualification is valid from the date on which the training course is completed and the operator successfully passes the examination required under § 60.2635(c)(2).

§ 60.2650 How do I maintain my operator qualification?

To maintain qualification, you must complete an annual review or refresher course covering, at a minimum, the five topics described in paragraphs (a) through (e) of this section:

(a) Update of regulations;

(b) Incinerator operation, including startup and shutdown procedures, waste charging, and ash handling;

(c) Inspection and maintenance;

(d) Prevention and correction of malfunctions or conditions that may lead to malfunction; and

(e) Discussion of operating problems encountered by attendees.

§ 60.2655 How do I renew my lapsed operator qualification?

You must renew a lapsed operator qualification by one of the two methods specified in paragraphs (a) and (b) of this section:

(a) For a lapse of less than 3 years, you must complete a standard annual refresher course described in § 60.2650; and

(b) For a lapse of 3 years or more, you must repeat the initial qualification requirements in § 60.2645(a).

§ 60.2660 What site-specific documentation is required?

(a) Documentation must be available at the facility and readily accessible for all CISWI operators that addresses the ten topics described in paragraphs (a)(1) through (10) of this section. You must maintain this information and the training records required by paragraph (c) of this section in a manner that they can be readily accessed and are suitable for inspection upon request:

(1) Summary of the applicable standards under this subpart;

(2) Procedures for receiving, handling, and charging waste;

(3) Incinerator startup, shutdown, and malfunction procedures;

(4) Procedures for maintaining proper combustion air supply levels;

(5) Procedures for operating the incinerator and associated air pollution control systems within the standards established under this subpart;

(6) Monitoring procedures for demonstrating compliance with the incinerator operating limits;

(7) Reporting and recordkeeping procedures;

(8) The waste management plan required under §§ 60.2620 through 60.2630;

(9) Procedures for handling ash; and

(10) A list of the wastes burned during the performance test.

(b) You must establish a program for reviewing the information listed in paragraph (a) of this section with each incinerator operator:

(1) The initial review of the information listed in paragraph (a) of this section must be conducted by the later of the three dates specified in paragraphs (b)(1)(i) through (iii) of this section:

(i) The final compliance date (Increment 2);

(ii) Six months after CISWI startup; and

(iii) Six months after being assigned to operate the CISWI.

(2) Subsequent annual reviews of the information listed in paragraph (a) of this section must be conducted no later than 12 months following the previous review.

(c) You must also maintain the information specified in paragraphs (c)(1) through (3) of this section:

(1) Records showing the names of CISWI operators who have completed review of the information in § 60.2660(a) as required by § 60.2660(b), including the date of the initial review and all subsequent annual reviews;

(2) Records showing the names of the CISWI operators who have completed the operator training requirements under § 60.2635, met the criteria for qualification under § 60.2645, and maintained or renewed their qualification under § 60.2650 or § 60.2655. Records must include documentation of training, the dates of the initial refresher training, and the dates of their qualification and all subsequent renewals of such qualifications; and

(3) For each qualified operator, the phone and/or pager number at which they can be reached during operating hours.

§ 60.2665 What if all the qualified operators are temporarily not accessible?

If all qualified operators are temporarily not accessible (*i.e.,* not at the facility and not able to be at the facility within 1 hour), you must meet one of the two criteria specified in paragraphs (a) and (b) of this section, depending on the length of time that a qualified operator is not accessible:

(a) When all qualified operators are not accessible for more than 8 hours, but less than 2 weeks, the CISWI may be operated by other plant personnel familiar with the operation of the CISWI who have completed a review of the information specified in § 60.2660(a) within the past 12 months. However, you must record the period when all qualified operators were not accessible and include this deviation in the annual report as specified under § 60.2770;

(b) When all qualified operators are not accessible for 2 weeks or more, you must take the two actions that are described in paragraphs (b)(1) and (2) of this section:

(1) Notify the Administrator of this deviation in writing within 10 days. In the notice, state what caused this deviation, what you are doing to ensure that a qualified operator is accessible, and when you anticipate that a qualified operator will be accessible; and

(2) Submit a status report to the Administrator every 4 weeks outlining what you are doing to ensure that a qualified operator is accessible, stating when you anticipate that a qualified operator will be accessible and requesting approval from the Administrator to continue operation of the CISWI. You must submit the first status report 4 weeks after you notify the Administrator of the deviation under paragraph (b)(1) of this section. If the Administrator notifies you that your request to continue operation of the CISWI is disapproved, the CISWI may continue operation for 90 days, then must cease operation. Operation of the unit may resume if you meet the two requirements in paragraphs (b)(2)(i) and (ii) of this section:

(i) A qualified operator is accessible as required under § 60.2635(a); and

(ii) You notify the Administrator that a qualified operator is accessible and that you are resuming operation.

Model Rule—Emission Limitations and Operating Limits

§ 60.2670 What emission limitations must I meet and by when?

(a) You must meet the emission limitations for each CISWI, including bypass stack or vent, specified in table 2 of this subpart or tables 6 through 9 of this subpart by the final compliance date under the approved state plan, federal plan, or delegation, as applicable. The emission limitations apply at all times the unit is operating including and not limited to startup, shutdown, or malfunction.

(b) Units that do not use wet scrubbers must maintain opacity to less than or equal to the percent opacity (three 1-hour blocks consisting of ten 6-minute average opacity values) specified in table 2 of this subpart, as applicable.

§ 60.2675 What operating limits must I meet and by when?

(a) If you use a wet scrubber(s) to comply with the emission limitations, you must establish operating limits for up to four operating parameters (as specified in table 3 of this subpart) as described in paragraphs (a)(1) through (4) of this section during the initial performance test:

(1) Maximum charge rate, calculated using one of the two different procedures in paragraph (a)(1)(i) or (ii) of this section, as appropriate:

(i) For continuous and intermittent units, maximum charge rate is 110 percent of the average charge rate measured during the most recent performance test demonstrating compliance with all applicable emission limitations; and

(ii) For batch units, maximum charge rate is 110 percent of the daily charge rate measured during the most recent performance test demonstrating compliance with all applicable emission limitations.

(2) Minimum pressure drop across the wet particulate matter scrubber, which is calculated as the lowest 1-hour average pressure drop across the wet scrubber measured during the most recent performance test demonstrating compliance with the particulate matter emission limitations; or minimum amperage to the wet scrubber, which is calculated as the lowest 1-hour average amperage to the wet scrubber measured during the most recent performance test demonstrating compliance with the particulate matter emission limitations.

(3) Minimum scrubber liquid flow rate, which is calculated as the lowest 1-hour average liquid flow rate at the inlet to the wet acid gas or particulate matter scrubber measured during the most recent performance test demonstrating compliance with all applicable emission limitations.

(4) Minimum scrubber liquor pH, which is calculated as the lowest 1-hour average liquor pH at the inlet to the wet acid gas scrubber measured during the most recent performance test demonstrating compliance with the HCl emission limitation.

(b) You must meet the operating limits established on the date that the performance test report is submitted to the EPA's Central Data Exchange or postmarked, per the requirements of § 60.2795(b).

(c) If you use a fabric filter to comply with the emission limitations and you do not use a PM CPMS for monitoring PM compliance, you must operate each fabric filter system such that the bag leak detection system alarm does not sound more than 5 percent of the operating time during a 6-month period. In calculating this operating time percentage, if inspection of the fabric filter demonstrates that no corrective action is required, no alarm time is counted. If corrective action is required, each alarm shall be counted as a minimum of 1 hour. If you take longer than 1 hour to initiate corrective action, the alarm time shall be counted as the actual amount of time taken by you to initiate corrective action.

(d) If you use an electrostatic precipitator to comply with the emission limitations and you do not use a PM CPMS for monitoring PM compliance, you must measure the (secondary) voltage and amperage of the electrostatic precipitator collection plates during the particulate matter performance test. Calculate the average electric power value (secondary voltage × secondary current = secondary electric power) for each test run. The operating limit for the electrostatic precipitator is calculated as the lowest 1-hour average secondary electric power measured during the most recent performance test demonstrating compliance with the particulate matter emission limitations.

(e) If you use activated carbon sorbent injection to comply with the emission limitations, you must measure the sorbent flow rate during the performance testing. The operating limit for the carbon sorbent injection is calculated as the lowest 1-hour average sorbent flow rate measured during the most recent performance test demonstrating compliance with the mercury emission limitations. For energy recovery units, when your unit operates at lower loads, multiply your sorbent injection rate by the load fraction, as defined in this subpart, to determine the required injection rate (*e.g.,* for 50 percent load, multiply the injection rate operating limit by 0.5).

(f) If you use selective noncatalytic reduction to comply with the emission limitations, you must measure the charge rate, the secondary chamber temperature (if applicable to your CISWI), and the reagent flow rate during the nitrogen oxides performance testing. The operating limits for the selective noncatalytic reduction are calculated as the highest 1-hour average charge rate, lowest secondary chamber temperature, and lowest reagent flow rate measured during the most recent performance test demonstrating compliance with the nitrogen oxides emission limitations.

(g) If you use a dry scrubber to comply with the emission limitations, you must measure the injection rate of each sorbent during the performance testing. The operating limit for the injection rate of each sorbent is calculated as the lowest 1-hour average injection rate of each sorbent measured during the most recent performance test demonstrating compliance with the hydrogen chloride emission limitations. For energy recovery units, when your unit operates at lower loads, multiply your sorbent injection rate by the load fraction, as defined in this subpart, to determine the required injection rate (*e.g.,* for 50 percent load, multiply the injection rate operating limit by 0.5).

(h) If you do not use a wet scrubber, electrostatic precipitator, or fabric filter to comply with the emission limitations, and if you do not determine compliance with your particulate matter emission limitation with either a particulate matter CEMS or a particulate matter CPMS, you must maintain opacity to less than or equal to ten percent opacity (1-hour block average).

(i) If you use a PM CPMS to demonstrate compliance, you must establish your PM CPMS operating limit and determine compliance with it according to paragraphs (i)(1) through (5) of this section:

(1) During the initial performance test or any such subsequent performance test that demonstrates compliance with the PM limit, record all hourly average output values (milliamps, or the digital signal equivalent) from the PM CPMS for the periods corresponding to the test runs (*e.g.,* three 1-hour average PM CPMS output values for three 1-hour test runs):

(i) Your PM CPMS must provide a 4–20 milliamp output, or the digital signal equivalent, and the establishment of its

relationship to manual reference method measurements must be determined in units of milliamps or digital bits;

(ii) Your PM CPMS operating range must be capable of reading PM concentrations from zero to a level equivalent to at least two times your allowable emission limit. If your PM CPMS is an auto-ranging instrument capable of multiple scales, the primary range of the instrument must be capable of reading PM concentration from zero to a level equivalent to two times your allowable emission limit; and

(iii) During the initial performance test or any such subsequent performance test that demonstrates compliance with the PM limit, record and average all milliamp output values, or their digital equivalent, from the PM CPMS for the periods corresponding to the compliance test runs (*e.g.,* average all your PM CPMS output values for three corresponding 2-hour Method 5I test runs).

(2) If the average of your three PM performance test runs are below 75 percent of your PM emission limit, you must calculate an operating limit by establishing a relationship of PM CPMS signal to PM concentration using the PM CPMS instrument zero, the average PM CPMS output values corresponding to the three compliance test runs, and the average PM concentration from the Method 5 or performance test with the procedures in (i)(1)through (5) of this section:

(i) Determine your instrument zero output with one of the following procedures:

(A) Zero point data for *in-situ* instruments should be obtained by removing the instrument from the stack and monitoring ambient air on a test bench;

(B) Zero point data for extractive instruments should be obtained by removing the extractive probe from the stack and drawing in clean ambient air;

(C) The zero point can also can be established obtained by performing manual reference method measurements when the flue gas is free of PM emissions or contains very low PM concentrations (*e.g.,* when your process is not operating, but the fans are operating or your source is combusting only natural gas) and plotting these with the compliance data to find the zero intercept; and

(D) If none of the steps in paragraphs (i)(2)(i)(A) through (C) of this section are possible, you must use a zero output value provided by the manufacturer.

(ii) Determine your PM CPMS instrument average in milliamps, or the digital equivalent, and the average of your corresponding three PM compliance test runs, using equation 1:

$$\bar{x} = \frac{1}{n}\sum_{i=1}^{n} X_1, \bar{y} = \frac{1}{n}\sum_{i=1}^{n} Y_1 \quad \text{(Eq. 1)}$$

Where:

X_1 = the PM CPMS output data points for the three runs constituting the performance test,

Y_1 = the PM concentration value for the three runs constituting the performance test, and

n = the number of data points.

(iii) With your instrument zero expressed in milliamps, or the digital equivalent, your three run average PM CPMS milliamp value, or its digital equivalent, and your three run average PM concentration from your three compliance tests, determine a relationship of mg/dscm per milliamp or digital signal equivalent, with equation 2:

$$R = \frac{Y_1}{(X_1 - z)} \quad \text{(Eq. 2)}$$

Where:

R = the relative mg/dscm per milliamp, or the digital equivalent, for your PM CPMS,

Y_1 = the three run average mg/dscm PM concentration,

X_1 = the three run average milliamp output, or the digital equivalent, from you PM CPMS, and

z = the milliamp or digital signal equivalent of your instrument zero determined from paragraph (i)(2)(i) of this section.

(iv) Determine your source specific 30-day rolling average operating limit using the mg/dscm per milliamp value, or per digital signal equivalent, from equation 2 in equation 3, below. This sets your operating limit at the PM CPMS output value corresponding to 75 percent of your emission limit:

$$O_l = z + \frac{0.75(L)}{R} \quad \text{(Eq. 3)}$$

Where:

O_l = the operating limit for your PM CPMS on a 30-day rolling average, in milliamps or their digital signal equivalent,

L = your source emission limit expressed in mg/dscm,

z = your instrument zero in milliamps or digital equivalent, determined from paragraph (i)(2)(i) of this section, and

R = the relative mg/dscm per milliamp, or per digital signal output equivalent, for your PM CPMS, from equation 2.

(3) If the average of your three PM compliance test runs is at or above 75 percent of your PM emission limit you must determine your operating limit by averaging the PM CPMS milliamp or digital signal output corresponding to your three PM performance test runs that demonstrate compliance with the emission limit using equation 4 and you must submit all compliance test and PM CPMS data according to the reporting requirements in paragraph (i)(5) of this section:

$$O_h = \frac{1}{n}\sum_{i=1}^{n} X_1 \quad \text{(Eq. 4)}$$

Where:

X_1 = the PM CPMS data points for all runs i,

n = the number of data points, and

O_h = your site specific operating limit, in milliamps or digital signal equivalent.

(4) To determine continuous compliance, you must record the PM CPMS output data for all periods when the process is operating and the PM CPMS is not out-of-control. You must demonstrate continuous compliance by using all quality-assured hourly average data collected by the PM CPMS for all operating hours to calculate the arithmetic average operating parameter in units of the operating limit (*e.g.,* milliamps or digital signal bits, PM concentration, raw data signal) on a 30-day rolling average basis.

(5) For PM performance test reports used to set a PM CPMS operating limit, the electronic submission of the test report must also include the make and model of the PM CPMS instrument, serial number of the instrument, analytical principle of the instrument (*e.g.,* beta attenuation), span of the instruments primary analytical range, milliamp or digital signal value equivalent to the instrument zero output, technique by which this zero value was determined, and the average milliamp or digital signals corresponding to each PM compliance test run.

§ 60.2680 What if I do not use a wet scrubber, fabric filter, activated carbon injection, selective noncatalytic reduction, an electrostatic precipitator, or a dry scrubber to comply with the emission limitations?

(a) If you use an air pollution control device other than a wet scrubber, activated carbon injection, selective noncatalytic reduction, fabric filter, an electrostatic precipitator, or a dry scrubber or limit emissions in some other manner, including mass balances, to comply with the emission limitations under § 60.2670, you must petition the EPA Administrator for specific operating limits to be established during the initial performance test and continuously monitored thereafter. You must submit the petition at least sixty days before the performance test is scheduled to begin. Your petition must include the five items listed in

paragraphs (a)(1) through (5) of this section:

(1) Identification of the specific parameters you propose to use as additional operating limits;

(2) A discussion of the relationship between these parameters and emissions of regulated pollutants, identifying how emissions of regulated pollutants change with changes in these parameters and how limits on these parameters will serve to limit emissions of regulated pollutants;

(3) A discussion of how you will establish the upper and/or lower values for these parameters which will establish the operating limits on these parameters;

(4) A discussion identifying the methods you will use to measure and the instruments you will use to monitor these parameters, as well as the relative accuracy and precision of these methods and instruments; and

(5) A discussion identifying the frequency and methods for recalibrating the instruments you will use for monitoring these parameters.

(b) [Reserved]

Model Rule—Performance Testing

§ 60.2690 How do I conduct the initial and annual performance test?

(a) All performance tests must consist of a minimum of three test runs conducted under conditions representative of normal operations.

(b) You must document that the waste burned during the performance test is representative of the waste burned under normal operating conditions by maintaining a log of the quantity of waste burned (as required in § 60.2740(b)(1)) and the types of waste burned during the performance test.

(c) All performance tests must be conducted using the minimum run duration specified in tables 2 and 6 through 9 of this subpart.

(d) Method 1 of appendix A of this part must be used to select the sampling location and number of traverse points.

(e) Method 3A or 3B of appendix A of this part must be used for gas composition analysis, including measurement of oxygen concentration. Method 3A or 3B of appendix A of this part must be used simultaneously with each method (except when using Method 9 and Method 22).

(f) All pollutant concentrations, except for opacity, must be adjusted to 7 percent oxygen using equation 5 of this section:

$$C_{adj} = C_{meas}\,(20.9-7)/(20.9-\%O_2) \qquad \text{(Eq. 5)}$$

Where:

C_{adj} = pollutant concentration adjusted to 7 percent oxygen;

C_{meas} = pollutant concentration measured on a dry basis;

$(20.9-7)$ = 20.9 percent oxygen − 7 percent oxygen (defined oxygen correction basis);

20.9 = oxygen concentration in air, percent; and

$\%O_2$ = oxygen concentration measured on a dry basis, percent.

(g) You must determine dioxins/furans toxic equivalency by following the procedures in paragraphs (g)(1) through (4) of this section:

(1) Measure the concentration of each dioxin/furan tetra- through octa-isomer emitted using EPA Method 23 at 40 CFR part 60, appendix A;

(2) Quantify isomers meeting identification criteria 2, 3, 4, and 5 in Section 5.3.2.5 of Method 23, regardless of whether the isomers meet identification criteria 1 and 7. You must quantify the isomers per Section 9.0 of Method 23. [Note: You may reanalyze the sample aliquot or split to reduce the number of isomers not meeting identification criteria 1 or 7 of Section 5.3.2.5.];

(3) For each dioxin/furan (tetra- through octa-chlorinated) isomer measured in accordance with paragraph (g)(1) and (2) of this section, multiply the isomer concentration by its corresponding toxic equivalency factor specified in table 4 of this subpart; and

(4) Sum the products calculated in accordance with paragraph (g)(3) of this section to obtain the total concentration of dioxins/furans emitted in terms of toxic equivalency.

(h) Method 22 at 40 CFR part 60, appendix A–7 must be used to determine compliance with the fugitive ash emission limit in table 2 of this subpart or tables 6 through 9 of this subpart.

(i) If you have an applicable opacity operating limit, you must determine compliance with the opacity limit using Method 9 at 40 CFR part 60, appendix A–4, based on three 1-hour blocks consisting of ten 6-minute average opacity values, unless you are required to install a continuous opacity monitoring system, consistent with § 60.2710 and § 60.2730.

(j) You must determine dioxins/furans total mass basis by following the procedures in paragraphs (j)(1) through (3) of this section:

(1) Measure the concentration of each dioxin/furan tetra- through octa-chlorinated isomer emitted using EPA Method 23 at 40 CFR part 60, appendix A–7;

(2) Quantify isomers meeting identification criteria 2, 3, 4, and 5 in Section 5.3.2.5 of Method 23, regardless of whether the isomers meet identification criteria 1 and 7. You must quantify the isomers per Section 9.0 of Method 23. (Note: You may reanalyze the sample aliquot or split to reduce the number of isomers not meeting identification criteria 1 or 7 of Section 5.3.2.5.); and

(3) Sum the quantities measured in accordance with paragraphs (j)(1) and (2) of this section to obtain the total concentration of dioxins/furans emitted in terms of total mass basis.

§ 60.2695 How are the performance test data used?

You use results of performance tests to demonstrate compliance with the emission limitations in table 2 of this subpart or tables 6 through 9 of this subpart.

Model Rule—Initial Compliance Requirements

§ 60.2700 How do I demonstrate initial compliance with the amended emission limitations and establish the operating limits?

You must conduct a performance test, as required under §§ 60.2670 and 60.2690, to determine compliance with the emission limitations in table 2 of this subpart and tables 6 through 9 of this subpart, to establish compliance with any opacity operating limits in § 60.2675, to establish the kiln-specific emission limit in § 60.2710(y), as applicable, and to establish operating limits using the procedures in § 60.2675 or § 60.2680. The performance test must be conducted using the test methods listed in table 2 of this subpart and tables 6 through 9 of this subpart and the procedures in § 60.2690. The use of the bypass stack during a performance test shall invalidate the performance test.

As an alternative to conducting a performance test, as required under §§ 60.2690 and 60.2670, you may use a 30-day rolling average of the 1-hour arithmetic average CEMS data, including CEMS data during startup and shutdown as defined in this subpart, to determine compliance with the emission limitations in Table 1 of this

subpart or Tables 5 through 8 of this subpart. You must conduct a performance evaluation of each continuous monitoring system within 180 days of installation of the monitoring system. The initial performance evaluation must be conducted prior to collecting CEMS data that will be used for the initial compliance demonstration.

§ 60.2705 By what date must I conduct the initial performance test?

(a) The initial performance test must be conducted no later than 180 days after your final compliance date. Your final compliance date is specified in table 1 of this subpart.

(b) If you commence or recommence combusting a solid waste at an existing combustion unit at any commercial or industrial facility and you conducted a test consistent with the provisions of this subpart while combusting the given solid waste within the 6 months preceding the reintroduction of that solid waste in the combustion chamber, you do not need to retest until 6 months from the date you reintroduce that solid waste.

(c) If you commence or recommence combusting a solid waste at an existing combustion unit at any commercial or industrial facility and you have not conducted a performance test consistent with the provisions of this subpart while combusting the given solid waste within the 6 months preceding the reintroduction of that solid waste in the combustion chamber, you must conduct a performance test within 60 days from the date you reintroduce solid waste.

§ 60.2706 By what date must I conduct the initial air pollution control device inspection?

(a) The initial air pollution control device inspection must be conducted within 60 days after installation of the control device and the associated CISWI reaches the charge rate at which it will operate, but no later than 180 days after the final compliance date for meeting the amended emission limitations.

(b) Within 10 operating days following an air pollution control device inspection, all necessary repairs must be completed unless the owner or operator obtains written approval from the state agency establishing a date whereby all necessary repairs of the designated facility must be completed.

Model Rule—Continuous Compliance Requirements

§ 60.2710 How do I demonstrate continuous compliance with the amended emission limitations and the operating limits?

(a) *Compliance with standards.* (1) The emission standards and operating requirements set forth in this subpart apply at all times.

(2) If you cease combusting solid waste you may opt to remain subject to the provisions of this subpart. Consistent with the definition of CISWI, you are subject to the requirements of this subpart at least 6 months following the last date of solid waste combustion. Solid waste combustion is ceased when solid waste is not in the combustion chamber (*i.e.,* the solid waste feed to the combustor has been cut off for a period of time not less than the solid waste residence time).

(3) If you cease combusting solid waste you must be in compliance with any newly applicable standards on the effective date of the waste-to-fuel switch. The effective date of the waste-to-fuel switch is a date selected by you, that must be at least 6 months from the date that you ceased combusting solid waste, consistent with § 60.2710(a)(2). Your source must remain in compliance with this subpart until the effective date of the waste-to-fuel switch.

(4) If you own or operate an existing commercial or industrial combustion unit that combusted a fuel or non-waste material, and you commence or recommence combustion of solid waste, you are subject to the provisions of this subpart as of the first day you introduce or reintroduce solid waste to the combustion chamber, and this date constitutes the effective date of the fuel-to-waste switch. You must complete all initial compliance demonstrations for any Section 112 standards that are applicable to your facility before you commence or recommence combustion of solid waste. You must provide 30 days prior notice of the effective date of the waste-to-fuel switch. The notification must identify:

(i) The name of the owner or operator of the CISWI, the location of the source, the emissions unit(s) that will cease burning solid waste, and the date of the notice;

(ii) The currently applicable subcategory under this subpart, and any 40 CFR part 63 subpart and subcategory that will be applicable after you cease combusting solid waste;

(iii) The fuel(s), non-waste material(s) and solid waste(s) the CISWI is currently combusting and has combusted over the past 6 months, and the fuel(s) or non-waste materials the unit will commence combusting;

(iv) The date on which you became subject to the currently applicable emission limits;

(v) The date upon which you will cease combusting solid waste, and the date (if different) that you intend for any new requirements to become applicable (*i.e.,* the effective date of the waste-to-fuel switch), consistent with paragraphs (a)(2) and (3) of this section.

(5) All air pollution control equipment necessary for compliance with any newly applicable emissions limits which apply as a result of the cessation or commencement or recommencement of combusting solid waste must be installed and operational as of the effective date of the waste-to-fuel, or fuel-to-waste switch.

(6) All monitoring systems necessary for compliance with any newly applicable monitoring requirements which apply as a result of the cessation or commencement or recommencement of combusting solid waste must be installed and operational as of the effective date of the waste-to-fuel, or fuel-to-waste switch. All calibration and drift checks must be performed as of the effective date of the waste-to-fuel, or fuel-to-waste switch. Relative accuracy tests must be performed as of the performance test deadline for PM CEMS (if PM CEMS are elected to demonstrate continuous compliance with the particulate matter emission limits). Relative accuracy testing for other CEMS need not be repeated if that testing was previously performed consistent with section 112 monitoring requirements or monitoring requirements under this subpart.

(b) You must conduct an annual performance test for the pollutants listed in table 2 of this subpart or tables 6 through 9 of this subpart and opacity for each CISWI as required under § 60.2690. The annual performance test must be conducted using the test methods listed in table 2 of this subpart or tables 6 through 9 of this subpart and the procedures in § 60.2690. Opacity must be measured using EPA Reference Method 9 at 40 CFR part 60. Annual performance tests are not required if you use CEMS or continuous opacity monitoring systems to determine compliance.

(c) You must continuously monitor the operating parameters specified in § 60.2675 or established under § 60.2680 and as specified in § 60.2735. Operation above the established maximum or below the established minimum operating limits constitutes a deviation from the established operating limits. Three-hour block average values are

used to determine compliance (except for baghouse leak detection system alarms) unless a different averaging period is established under § 60.2680 or, for energy recovery units, where the averaging time for each operating parameter is a 30-day rolling, calculated each hour as the average of the previous 720 operating hours over the previous 30 days of operation. Operation above the established maximum, below the established minimum, or outside the allowable range of the operating limits specified in paragraph (a) of this section constitutes a deviation from your operating limits established under this subpart, except during performance tests conducted to determine compliance with the emission and operating limits or to establish new operating limits. Operating limits are confirmed or reestablished during performance tests.

(d) You must burn only the same types of waste and fuels used to establish subcategory applicability (for ERUs) and operating limits during the performance test.

(e) For energy recovery units, incinerators, and small remote units, you must perform annual visual emissions test for ash handling.

(f) For energy recovery units, you must conduct an annual performance test for opacity using EPA Reference Method 9 at 40 CFR part 60 (except where particulate matter continuous monitoring system or continuous parameter monitoring systems are used) and the pollutants listed in table 7 of this subpart.

(g) For facilities using a CEMS to demonstrate compliance with the carbon monoxide emission limit, compliance with the carbon monoxide emission limit may be demonstrated by using the CEMS, as described in § 60.2730(o).

(h) Coal and liquid/gas energy recovery units with annual average heat input rates greater than 250 MMBtu/hr may elect to demonstrate continuous compliance with the particulate matter emissions limit using a particulate matter CEMS according to the procedures in § 60.2730(n) instead of the continuous parameter monitoring system specified in § 60.2710(i). Coal and liquid/gas energy recovery units with annual average heat input rates less than 250 MMBtu/hr, incinerators, and small remote incinerators may also elect to demonstrate compliance using a particulate matter CEMS according to the procedures in § 60.2730(n) instead of particulate matter testing with EPA Method 5 at 40 CFR part 60, appendix A–3 and, if applicable, the continuous opacity monitoring requirements in paragraph (i) of this section.

(i) For energy recovery units with annual average heat input rates greater than or equal to 10 MMBTU/hour but less than 250 MMBtu/hr that do not use a wet scrubber, fabric filter with bag leak detection system, an electrostatic precipitator, particulate matter CEMS, or particulate matter CPMS, you must install, operate, certify and maintain a continuous opacity monitoring system (COMS) according to the procedures in § 60.2730(m).

(j) For waste-burning kilns, you must conduct an annual performance test for the pollutants (except mercury and particulate matter, and hydrogen chloride if no acid gas wet scrubber or dry scrubber is used) listed in table 8 of this subpart, unless you choose to demonstrate initial and continuous compliance using CEMS, as allowed in paragraph (u) of this section. If you do not use an acid gas wet scrubber or dry scrubber, you must determine compliance with the hydrogen chloride emissions limit using a HCl CEMS according to the requirements in paragraph (j)(1) of this section. You must determine compliance with the mercury emissions limit using a mercury CEMS or an integrated sorbent trap monitoring system according to paragraph (j)(2) of this section. You must determine compliance with particulate matter using CPMS.

(1) If you monitor compliance with the HCl emissions limit by operating an HCl CEMS, you must do so in accordance with Performance Specification 15 (PS 15) of appendix B to 40 CFR part 60, or, PS 18 of appendix B to 40 CFR part 60. You must operate, maintain, and quality assure a HCl CEMS installed and certified under PS 15 according to the quality assurance requirements in Procedure 1 of appendix F to 40 CFR part 60 except that the Relative Accuracy Test Audit requirements of Procedure 1 must be replaced with the validation requirements and criteria of sections 11.1.1 and 12.0 of PS 15. You must operate, maintain and quality assure a HCl CEMS installed and certified under PS 18 according to the quality assurance requirements in Procedure 6 of appendix F to 40 CFR part 60. For any performance specification that you use, you must use Method 321 of appendix A to 40 CFR part 63 as the reference test method for conducting relative accuracy testing. The span value and calibration requirements in paragraphs (j)(1)(i) and (ii) of this section apply to all HCl CEMS used under this subpart:

(i) You must use a measurement span value for any HCl CEMS of 0–10 ppmvw unless the monitor is installed on a kiln without an inline raw mill. Kilns without an inline raw mill may use a higher span value sufficient to quantify all expected emissions concentrations. The HCl CEMS data recorder output range must include the full range of expected HCl concentration values which would include those expected during ''mill off'' conditions. The corresponding data recorder range shall be documented in the site-specific monitoring plan and associated records; and

(ii) In order to quality assure data measured above the span value, you must use one of the three options in paragraphs (j)(1)(ii)(A) through (C) of this section:

(A) Include a second span that encompasses the HCl emission concentrations expected to be encountered during ''mill off'' conditions. This second span may be rounded to a multiple of 5 ppm of total HCl. The requirements of the appropriate HCl monitor performance specification shall be followed for this second span with the exception that a RATA with the mill off is not required;

(B) Quality assure any data above the span value by proving instrument linearity beyond the span value established in paragraph (j)(1)(i) of this section using the following procedure. Conduct a weekly ''above span linearity'' calibration challenge of the monitoring system using a reference gas with a certified value greater than your highest expected hourly concentration or greater than 75% of the highest measured hourly concentration. The ''above span'' reference gas must meet the requirements of the applicable performance specification and must be introduced to the measurement system at the probe. Record and report the results of this procedure as you would for a daily calibration. The ''above span linearity'' challenge is successful if the value measured by the HCl CEMS falls within 10 percent of the certified value of the reference gas. If the value measured by the HCl CEMS during the above span linearity challenge exceeds 10 percent of the certified value of the reference gas, the monitoring system must be evaluated and repaired and a new ''above span linearity'' challenge met before returning the HCl CEMS to service, or data above span from the HCl CEMS must be subject to the quality assurance procedures established in (j)(1)(ii)(D) of this section. In this manner values measured by the HCl CEMS during the above span linearity challenge exceeding +/ − 20 percent of the certified value of the reference gas must be normalized using equation 6;

(C) Quality assure any data above the span value established in paragraph (j)(1)(i) of this section using the following procedure. Any time two consecutive one-hour average measured concentration of HCl exceeds the span value you must, within 24 hours before or after, introduce a higher, ''above span'' HCl reference gas standard to the HCl CEMS. The ''above span'' reference gas must meet the requirements of the applicable performance specification and target a concentration level between 50 and 150 percent of the highest expected hourly concentration measured during the period of measurements above span, and must be introduced at the probe. While this target represents a desired concentration range that is not always achievable in practice, it is expected that the intent to meet this range is demonstrated by the value of the reference gas. Expected values may include above span calibrations done before or after the above-span measurement period. Record and report the results of this procedure as you would for a daily calibration. The ''above span'' calibration is successful if the value measured by the HCl CEMS is within 20 percent of the certified value of the reference gas. If the value measured by the HCl CEMS is not within 20 percent of the certified value of the reference gas, then you must normalize the stack gas values measured above span as described in paragraph (j)(1)(ii)(D) of this section. If the ''above span'' calibration is conducted during the period when measured emissions are above span and there is a failure to collect the one data point in an hour due to the calibration duration, then you must determine the emissions average for that missed hour as the average of hourly averages for the hour preceding the missed hour and the hour following the missed hour. In an hour where an ''above span'' calibration is being conducted and one or more data points are collected, the emissions average is represented by the average of all valid data points collected in that hour; and

(D) In the event that the ''above span'' calibration is not successful (*i.e.,* the HCl CEMS measured value is not within 20 percent of the certified value of the reference gas), then you must normalize the one-hour average stack gas values measured above the span during the 24-hour period preceding or following the ''above span'' calibration for reporting based on the HCl CEMS response to the reference gas as shown in equation 6:

$$\frac{Certified\ reference\ gas\ value}{Measured\ value\ of\ reference\ gas}\ x\ Measured\ stack\ gas\ result\ = \qquad \text{(Eq. 6)}$$

$$Normalized\ stack\ gas\ result$$

Only one ''above span'' calibration is needed per 24-hour period.

(2) Compliance with the mercury emissions limit must be determined using a mercury CEMS or integrated sorbent trap monitoring system according to the following requirements:

(i) You must operate a mercury CEMS in accordance with performance specification 12A at 40 CFR part 60, appendix B or an integrated sorbent trap monitoring system in accordance with performance specification 12B at 40 CFR part 60, appendix B; these monitoring systems must be quality assured according to procedure 5 of 40 CFR 60, appendix F. For the purposes of emissions calculations when using an integrated sorbent trap monitoring system, the mercury concentration determined for each sampling period must be assigned to each hour during the sampling period. If you choose to comply with the production-rate based mercury limit for your waste-burning kiln, you must also monitor hourly clinker production and determine the hourly mercury emissions rate in pounds per million ton of clinker produced. You must demonstrate compliance with the mercury emissions limit using a 30-day rolling average of these 1-hour mercury concentrations or mass emissions rates, including CEMS data during startup and shutdown as defined in this subpart, calculated using equation 19–19 in section 12.4.1 of EPA Reference Method 19 at 40 CFR part 60, appendix A–7 of this part. CEMS data during startup and shutdown, as defined in this subpart, are not corrected to 7 percent oxygen, and are measured at stack oxygen content;

(ii) Owners or operators using a mercury CEMS or integrated sorbent trap monitoring system to determine mass emission rate must install, operate, calibrate and maintain an instrument for continuously measuring and recording the mercury mass emissions rate to the atmosphere according to the requirements of performance specification 6 at 40 CFR part 60, appendix B and conducting an annual relative accuracy test of the continuous emission rate monitoring system according to section 8.2 of performance specification 6; and

(iii) The owner or operator of a waste-burning kiln must demonstrate initial compliance by operating a mercury CEMS or integrated sorbent trap monitoring system while the raw mill of the in-line kiln/raw mill is operating under normal conditions and including at least one period when the raw mill is off.

(k) If you use an air pollution control device to meet the emission limitations in this subpart, you must conduct an initial and annual inspection of the air pollution control device. The inspection must include, at a minimum, the following:

(1) Inspect air pollution control device(s) for proper operation; and

(2) Develop a site-specific monitoring plan according to the requirements in paragraph (l) of this section. This requirement also applies to you if you petition the EPA Administrator for alternative monitoring parameters under § 60.13(i).

(l) For each CMS required in this section, you must develop and submit to the EPA Administrator for approval a site-specific monitoring plan according to the requirements of this paragraph (l) that addresses paragraphs (l)(1)(i) through (vi) of this section:

(1) You must submit this site-specific monitoring plan at least 60 days before your initial performance evaluation of your continuous monitoring system:

(i) Installation of the continuous monitoring system sampling probe or other interface at a measurement location relative to each affected process unit such that the measurement is representative of control of the exhaust emissions (*e.g.,* on or downstream of the last control device);

(ii) Performance and equipment specifications for the sample interface, the pollutant concentration or parametric signal analyzer and the data collection and reduction systems;

(iii) Performance evaluation procedures and acceptance criteria (*e.g.,* calibrations);

(iv) Ongoing operation and maintenance procedures in accordance with the general requirements of § 60.11(d);

(v) Ongoing data quality assurance procedures in accordance with the general requirements of § 60.13; and

(vi) Ongoing recordkeeping and reporting procedures in accordance with the general requirements of § 60.7(b),(c), (c)(1), (c)(4), (d), (e), (f) and (g).

(2) You must conduct a performance evaluation of each continuous monitoring system in accordance with your site-specific monitoring plan.

(3) You must operate and maintain the continuous monitoring system in continuous operation according to the site-specific monitoring plan.

(m) If you have an operating limit that requires the use of a flow monitoring system, you must meet the requirements in paragraphs (l) and (m)(1) through (4) of this section:

(1) Install the flow sensor and other necessary equipment in a position that provides a representative flow;

(2) Use a flow sensor with a measurement sensitivity at full scale of no greater than 2 percent;

(3) Minimize the effects of swirling flow or abnormal velocity distributions due to upstream and downstream disturbances; and

(4) Conduct a flow monitoring system performance evaluation in accordance with your monitoring plan at the time of each performance test but no less frequently than annually.

(n) If you have an operating limit that requires the use of a pressure monitoring system, you must meet the requirements in paragraphs (l) and (n)(1) through (6) of this section:

(1) Install the pressure sensor(s) in a position that provides a representative measurement of the pressure (*e.g.,* PM scrubber pressure drop);

(2) Minimize or eliminate pulsating pressure, vibration, and internal and external corrosion;

(3) Use a pressure sensor with a minimum tolerance of 1.27 centimeters of water or a minimum tolerance of 1 percent of the pressure monitoring system operating range, whichever is less;

(4) Perform checks at the frequency outlined in your site-specific monitoring plan to ensure pressure measurements are not obstructed (*e.g.,* check for pressure tap plugging daily);

(5) Conduct a performance evaluation of the pressure monitoring system in accordance with your monitoring plan at the time of each performance test but no less frequently than annually; and

(6) If at any time the measured pressure exceeds the manufacturer's specified maximum operating pressure range, conduct a performance evaluation of the pressure monitoring system in accordance with your monitoring plan and confirm that the pressure monitoring system continues to meet the performance requirements in your monitoring plan. Alternatively, install and verify the operation of a new pressure sensor.

(o) If you have an operating limit that requires a pH monitoring system, you must meet the requirements in paragraphs (l) and (o)(1) through (4) of this section:

(1) Install the pH sensor in a position that provides a representative measurement of scrubber effluent pH;

(2) Ensure the sample is properly mixed and representative of the fluid to be measured;

(3) Conduct a performance evaluation of the pH monitoring system in accordance with your monitoring plan at least once each process operating day; and

(4) Conduct a performance evaluation (including a two-point calibration with one of the two buffer solutions having a pH within 1 of the pH of the operating limit) of the pH monitoring system in accordance with your monitoring plan at the time of each performance test but no less frequently than quarterly.

(p) If you have an operating limit that requires a secondary electric power monitoring system for an electrostatic precipitator, you must meet the requirements in paragraphs (l) and (p)(1) and (2) of this section:

(1) Install sensors to measure (secondary) voltage and current to the precipitator collection plates; and

(2) Conduct a performance evaluation of the electric power monitoring system in accordance with your monitoring plan at the time of each performance test but no less frequently than annually.

(q) If you have an operating limit that requires the use of a monitoring system to measure sorbent injection rate (*e.g.,* weigh belt, weigh hopper, or hopper flow measurement device), you must meet the requirements in paragraphs (l) and (q)(1) and (2) of this section:

(1) Install the system in a position(s) that provides a representative measurement of the total sorbent injection rate; and

(2) Conduct a performance evaluation of the sorbent injection rate monitoring system in accordance with your monitoring plan at the time of each performance test but no less frequently than annually.

(r) If you elect to use a fabric filter bag leak detection system to comply with the requirements of this subpart, you must install, calibrate, maintain, and continuously operate a bag leak detection system as specified in paragraphs (l) and (r)(1) through (5) of this section:

(1) Install a bag leak detection sensor(s) in a position(s) that will be representative of the relative or absolute particulate matter loadings for each exhaust stack, roof vent, or compartment (*e.g.,* for a positive pressure fabric filter) of the fabric filter;

(2) Use a bag leak detection system certified by the manufacturer to be capable of detecting particulate matter emissions at concentrations of 10 milligrams per actual cubic meter or less;

(3) Conduct a performance evaluation of the bag leak detection system in accordance with your monitoring plan and consistent with the guidance provided in EPA–454/R–98–015 (incorporated by reference, *see* § 60.17);

(4) Use a bag leak detection system equipped with a device to continuously record the output signal from the sensor; and

(5) Use a bag leak detection system equipped with a system that will sound an alarm when an increase in relative particulate matter emissions over a preset level is detected. The alarm must be located where it is observed readily by plant operating personnel.

(s) For facilities using a CEMS to demonstrate initial and continuous compliance with the sulfur dioxide emission limit, compliance with the sulfur dioxide emission limit may be demonstrated by using the CEMS specified in § 60.2730(l) to measure sulfur dioxide. The sulfur dioxide CEMS must follow the procedures and methods specified in paragraph (s) of this section. For sources that have actual inlet emissions less than 100 parts per million dry volume, the relative accuracy criterion for inlet sulfur dioxide CEMS should be no greater than 20 percent of the mean value of the reference method test data in terms of the units of the emission standard, or 5 parts per million dry volume absolute value of the mean difference between the reference method and the CEMS, whichever is greater:

(1) During each relative accuracy test run of the CEMS required by performance specification 2 in appendix B of this part, collect sulfur dioxide and oxygen (or carbon dioxide) data concurrently (or within a 30- to 60-minute period) with both the CEMS and the test methods specified in paragraphs (s)(1)(i) and (ii) of this section:

(i) For sulfur dioxide, EPA Reference Method 6 or 6C, or as an alternative ANSI/ASME PTC 19.10–1981 (incorporated by reference, *see* § 60.17) must be used; and

(ii) For oxygen (or carbon dioxide), EPA Reference Method 3A or 3B, or as an alternative ANSI/ASME PTC 19.10–1981 (incorporated by reference, *see* § 60.17), as applicable, must be used.

(2) The span value of the CEMS at the inlet to the sulfur dioxide control device must be 125 percent of the maximum estimated hourly potential sulfur dioxide emissions of the unit subject to this subpart. The span value of the CEMS at the outlet of the sulfur dioxide control device must be 50 percent of the maximum estimated hourly potential sulfur dioxide emissions of the unit subject to this subpart.

(3) Conduct accuracy determinations quarterly and calibration drift tests daily in accordance with procedure 1 in appendix F of this part.

(t) For facilities using a CEMS to demonstrate initial and continuous compliance with the nitrogen oxides emission limit, compliance with the nitrogen oxides emission limit may be demonstrated by using the CEMS specified in § 60.2730 to measure nitrogen oxides. The nitrogen oxides CEMS must follow the procedures and methods specified in paragraphs (t)(1) through (4) of this section:

(1) During each relative accuracy test run of the CEMS required by performance specification 2 of appendix B of this part, collect nitrogen oxides and oxygen (or carbon dioxide) data concurrently (or within a 30- to 60-minute period) with both the CEMS and the test methods specified in paragraphs (t)(1)(i) and (ii) of this section:

(i) For nitrogen oxides, EPA Reference Method 7 or 7E at 40 CFR part 60, appendix A–4 must be used; and

(ii) For oxygen (or carbon dioxide), EPA Reference Method 3A or 3B, or as an alternative ANSI/ASME PTC 19.10–1981 (incorporated by reference, *see* § 60.17), as applicable, must be used.

(2) The span value of the CEMS must be 125 percent of the maximum estimated hourly potential nitrogen oxide emissions of unit.

(3) Conduct accuracy determinations quarterly and calibration drift tests daily in accordance with procedure 1 in appendix F of this part.

(4) The owner or operator of an affected facility may request that compliance with the nitrogen oxides emission limit be determined using carbon dioxide measurements corrected to an equivalent of 7 percent oxygen. If carbon dioxide is selected for use in diluent corrections, the relationship between oxygen and carbon dioxide levels must be established during the initial performance test according to the procedures and methods specified in paragraphs (t)(4)(i) through (iv) of this section. This relationship may be reestablished during performance compliance tests:

(i) The fuel factor equation in Method 3B must be used to determine the relationship between oxygen and carbon dioxide at a sampling location. Method 3A, 3B, or as an alternative ANSI/ASME PTC 19.10–1981 (incorporated by reference, *see* § 60.17), as applicable, must be used to determine the oxygen concentration at the same location as the carbon dioxide monitor;

(ii) Samples must be taken for at least 30 minutes in each hour;

(iii) Each sample must represent a 1-hour average; and

(iv) A minimum of 3 runs must be performed.

(u) For facilities using a CEMS or an integrated sorbent trap monitoring system for mercury to demonstrate initial and continuous compliance with any of the emission limits of this subpart, you must complete the following:

(1) Demonstrate compliance with the appropriate emission limit(s) using a 30-day rolling average of 1-hour arithmetic average emission concentrations, including CEMS or an integrated sorbent trap monitoring system data during startup and shutdown, as defined in this subpart, calculated using equation 19–19 in section 12.4.1 of EPA Reference Method 19 at appendix A–7 of this part. The 1-hour arithmetic averages for CEMS must be calculated using the data points required under § 60.13(e)(2). Except for CEMS or an integrated sorbent trap monitoring system data during startup and shutdown, the 1-hour arithmetic averages used to calculate the 30-day rolling average emission concentrations must be corrected to 7 percent oxygen (dry basis). Integrated sorbent trap monitoring system or CEMS data during startup and shutdown, as defined in this subpart, are not corrected to 7 percent oxygen, and are measured at stack oxygen content; and

(2) Operate all CEMS and integrated sorbent trap monitoring systems in accordance with the applicable procedures under appendices B and F of this part.

(v) Use of the bypass stack at any time is an emissions standards deviation for particulate matter, HCl, Pb, Cd, Hg, NO_X, SO_2, and dioxin/furans.

(w) For energy recovery units with a design heat input capacity of 100 MMBtu per hour or greater that do not use a carbon monoxide CEMS, you must install, operate, and maintain an oxygen analyzer system as defined in § 60.2875 according to the procedures in paragraphs (w)(1) through (4) of this section:

(1) The oxygen analyzer system must be installed by the initial performance test date specified in § 60.2675;

(2) You must operate the oxygen trim system within compliance with paragraph (w)(3) of this section at all times;

(3) You must maintain the oxygen level such that the 30-day rolling average that is established as the operating limit for oxygen is not below the lowest hourly average oxygen concentration measured during the most recent CO performance test; and

(4) You must calculate and record a 30-day rolling average oxygen concentration using equation 19–19 in section 12.4.1 of EPA Reference Method 19 of Appendix A–7 of this part.

(x) For energy recovery units with annual average heat input rates greater than or equal to 250 MMBtu/hour and waste-burning kilns, you must install, calibrate, maintain, and operate a PM CPMS and record the output of the system as specified in paragraphs (x)(1) through (8) of this section. For other energy recovery units, you may elect to use PM CPMS operated in accordance with this section. PM CPMS are suitable in lieu of using other CMS for monitoring PM compliance (*e.g.,* bag leak detectors, ESP secondary power, PM scrubber pressure):

(1) Install, calibrate, operate, and maintain your PM CPMS according to the procedures in your approved site-specific monitoring plan developed in accordance with paragraphs (l) and (x)(1)(i) through (iii) of this section:

(i) The operating principle of the PM CPMS must be based on in-stack or extractive light scatter, light scintillation, beta attenuation, or mass accumulation of the exhaust gas or representative sample. The reportable measurement output from the PM CPMS must be expressed as milliamps or the digital signal equivalent;

(ii) The PM CPMS must have a cycle time (*i.e.,* period required to complete sampling, measurement, and reporting for each measurement) no longer than 60 minutes; and

(iii) The PM CPMS must be capable of detecting and responding to particulate matter concentrations increments no greater than 0.5 mg/actual cubic meter.

(2) During the initial performance test or any such subsequent performance test that demonstrates compliance with the PM limit, you must adjust the site-specific operating limit in accordance with the results of the performance test according to the procedures specified in § 60.2675.

(3) Collect PM CPMS hourly average output data for all energy recovery unit or waste-burning kiln operating hours. Express the PM CPMS output as milliamps or the digital signal equivalent.

(4) Calculate the arithmetic 30-day rolling average of all of the hourly average PM CPMS output collected during all energy recovery unit or waste-burning kiln operating hours data (milliamps or their digital equivalent).

(5) You must collect data using the PM CPMS at all times the energy recovery unit or waste-burning kiln is operating and at the intervals specified in paragraph (x)(1)(ii) of this section, except for periods of monitoring system malfunctions, repairs associated with monitoring system malfunctions, required monitoring system quality assurance or quality control activities (including, as applicable, calibration checks and required zero and span adjustments), and any scheduled maintenance as defined in your site-specific monitoring plan.

(6) You must use all the data collected during all energy recovery unit or waste-burning kiln operating hours in assessing the compliance with your operating limit except:

(i) Any data collected during monitoring system malfunctions, repairs associated with monitoring system malfunctions, or required monitoring system quality assurance or quality control activities conducted during monitoring system malfunctions are not used in calculations (report any such periods in your annual deviation report);

(ii) Any data collected during periods when the monitoring system is out of control as specified in your site-specific monitoring plan, repairs associated with periods when the monitoring system is out of control, or required monitoring system quality assurance or quality control activities conducted during out-of-control periods are not used in calculations (report emissions or operating levels and report any such periods in your annual deviation report);

(iii) Any PM CPMS data recorded during periods of CEMS data during startup and shutdown, as defined in this subpart.

(7) You must record and make available upon request results of PM CPMS system performance audits, as well as the dates and duration of periods from when the PM CPMS is out of control until completion of the corrective actions necessary to return the PM CPMS to operation consistent with your site-specific monitoring plan.

(8) For any deviation of the 30-day rolling average PM CPMS average value from the established operating parameter limit, you must:

(i) Within 48 hours of the deviation, visually inspect the air pollution control device;

(ii) If inspection of the air pollution control device identifies the cause of the deviation, take corrective action as soon as possible and return the PM CPMS measurement to within the established value;

(iii) Within 30 days of the deviation or at the time of the annual compliance test, whichever comes first, conduct a PM emissions compliance test to determine compliance with the PM emissions limit. Within 45 days of the deviation, you must re-establish the CPMS operating limit. You are not required to conduct additional testing for any deviations that occur between the time of the original deviation and the PM emissions compliance test required under paragraph (x) of this section; and

(iv) PM CPMS deviations leading to more than four required performance tests in a 12-month process operating period (rolling monthly) constitute a violation of this subpart.

(y) When there is an alkali bypass and/or an in-line coal mill that exhaust emissions through a separate stack(s), the combined emissions are subject to the emission limits applicable to waste-burning kilns. To determine the kiln-specific emission limit for demonstrating compliance, you must:

(1) Calculate a kiln-specific emission limit using equation 8:

$$C_{ks} = ((\text{Emission limit} \times (Q_{ab}+Q_{cm}+Q_{ks})) - (Q_{ab} \times C_{ab}) - (Q_{cm} \times C_{cm}))/Q_{ks} \quad \text{(Eq. 7)}$$

Where:

C_{ks} = Kiln stack concentration (ppmvd, mg/dscm, ng/dscm, depending on pollutant. Each corrected to 7% O_2.)
Q_{ab} = Alkali bypass flow rate (volume/hr)
C_{ab} = Alkali bypass concentration (ppmvd, mg/dscm, ng/dscm, depending on pollutant. Each corrected to 7% O_2.)
Q_{cm} = In-line coal mill flow rate (volume/hr)
C_{cm} = In-line coal mill concentration (ppmvd, mg/dscm, ng/dscm, depending on pollutant. Each corrected to 7% O_2.)
Q_{ks} = Kiln stack flow rate (volume/hr)

(2) Particulate matter concentration must be measured downstream of the in-line coal mill. All other pollutant concentrations must be measured either upstream or downstream of the in-line coal mill.

(3) For purposes of determining the combined emissions from kilns equipped with an alkali bypass or that exhaust kiln gases to a coal mill that exhausts through a separate stack, instead of installing a CEMS or PM CPMS on the alkali bypass stack or in-line coal mill stack, the results of the initial and subsequent performance test can be used to demonstrate compliance with the relevant emissions limit. A performance test must be conducted on an annual basis (between 11 and 13 calendar months following the previous performance test).

§ 60.2715 By what date must I conduct the annual performance test?

You must conduct annual performance tests between 11 and 13 months of the previous performance test.

§ 60.2716 By what date must I conduct the annual air pollution control device inspection?

On an annual basis (no more than 12 months following the previous annual air pollution control device inspection), you must complete the air pollution control device inspection as described in § 60.2706.

§ 60.2720 May I conduct performance testing less often?

(a) You must conduct annual performance tests according to the schedule specified in § 60.2715, with the following exceptions:

(1) You may conduct a repeat performance test at any time to establish new values for the operating limits, as specified in § 60.2725. New operating limits become effective on the date that the performance test report is submitted to the EPA's Central Data Exchange or postmarked, per the requirements of § 60.2795(b). The Administrator may request a repeat performance test at any time;

(2) You must repeat the performance test within 60 days of a process change, as defined in § 60.2875; and

(3) You can conduct performance tests less often if you meet the following conditions: Your performance tests for the pollutant for at least 2 consecutive years demonstrates that the emission level for the pollutant is no greater than the emission level specified in paragraph (a)(3)(i) or (a)(3)(ii) of this section, as applicable; there are no changes in the operation of the affected source or air pollution control

equipment that could increase emissions; and you are not required to conduct a performance test for the pollutant in response to a request by the Administrator in paragraph (a)(1) of this section or a process change in paragraph (a)(2) of this section. In this case, you do not have to conduct a performance test for that pollutant for the next 2 years. You must conduct a performance test for the pollutant during the third year and no more than 37 months following the previous performance test for the pollutant. If the emission level for your CISWI continues to meet the emission level specified in paragraph (a)(3)(i) or (a)(3)(ii) of this section, as applicable, you may choose to conduct performance tests for the pollutant every third year, as long as there are no changes in the operation of the affected source or air pollution control equipment that could increase emissions. Each such performance test must be conducted no more than 37 months after the previous performance test.

(i) For particulate matter, hydrogen chloride, mercury, carbon monoxide, nitrogen oxides, sulfur dioxide, cadmium, lead, and dioxins/furans, the emission level equal to 75 percent of the applicable emission limit in table 2 or tables 6 through 9 of this subpart, as applicable; and

(ii) For fugitive emissions, visible emissions (of combustion ash from the ash conveying system) for 2 percent of the time during each of the three 1-hour observation periods.

(4) If you are conducting less frequent testing for a pollutant as provided in paragraph (a)(3) of this section and a subsequent performance test for the pollutant indicates that your CISWI does not meet the emission level specified in paragraph (a)(3)(i) or (a)(3)(ii) of this section, as applicable, you must conduct annual performance tests for the pollutant according to the schedule specified in paragraph (a) of this section until you qualify for less frequent testing for the pollutant as specified in paragraph (a)(3) of this section.

(b) [Reserved]

§ 60.2725 May I conduct a repeat performance test to establish new operating limits?

(a) Yes. You may conduct a repeat performance test at any time to establish new values for the operating limits. The Administrator may request a repeat performance test at any time.

(b) You must repeat the performance test if your feed stream is different than the feed streams used during any performance test used to demonstrate compliance.

Model Rule—Monitoring

§ 60.2730 What monitoring equipment must I install and what parameters must I monitor?

(a) If you are using a wet scrubber to comply with the emission limitation under § 60.2670, you must install, calibrate (to manufacturers' specifications), maintain, and operate devices (or establish methods) for monitoring the value of the operating parameters used to determine compliance with the operating limits listed in table 3 of this subpart. These devices (or methods) must measure and record the values for these operating parameters at the frequencies indicated in table 3 of this subpart at all times except as specified in § 60.2735(a).

(b) If you use a fabric filter to comply with the requirements of this subpart and you do not use a PM CPMS or PM CEMS for monitoring PM compliance, you must install, calibrate, maintain, and continuously operate a bag leak detection system as specified in paragraphs (b)(1) through (8) of this section:

(1) You must install and operate a bag leak detection system for each exhaust stack of the fabric filter;

(2) Each bag leak detection system must be installed, operated, calibrated, and maintained in a manner consistent with the manufacturer's written specifications and recommendations;

(3) The bag leak detection system must be certified by the manufacturer to be capable of detecting particulate matter emissions at concentrations of 10 milligrams per actual cubic meter or less;

(4) The bag leak detection system sensor must provide output of relative or absolute particulate matter loadings;

(5) The bag leak detection system must be equipped with a device to continuously record the output signal from the sensor;

(6) The bag leak detection system must be equipped with an alarm system that will alert automatically an operator when an increase in relative particulate matter emission over a preset level is detected. The alarm must be located where it is observed easily by plant operating personnel;

(7) For positive pressure fabric filter systems, a bag leak detection system must be installed in each baghouse compartment or cell. For negative pressure or induced air fabric filters, the bag leak detector must be installed downstream of the fabric filter; and

(8) Where multiple detectors are required, the system's instrumentation and alarm may be shared among detectors.

(c) If you are using something other than a wet scrubber, activated carbon, selective non-catalytic reduction, an electrostatic precipitator, or a dry scrubber to comply with the emission limitations under § 60.2670, you must install, calibrate (to the manufacturers' specifications), maintain, and operate the equipment necessary to monitor compliance with the site-specific operating limits established using the procedures in § 60.2680.

(d) If you use activated carbon injection to comply with the emission limitations in this subpart, you must measure the minimum sorbent flow rate once per hour.

(e) If you use selective noncatalytic reduction to comply with the emission limitations, you must complete the following:

(1) Following the date on which the initial performance test is completed or is required to be completed under § 60.2690, whichever date comes first, ensure that the affected facility does not operate above the maximum charge rate, or below the minimum secondary chamber temperature (if applicable to your CISWI) or the minimum reagent flow rate measured as 3-hour block averages at all times; and

(2) Operation of the affected facility above the maximum charge rate, below the minimum secondary chamber temperature and below the minimum reagent flow rate simultaneously constitute a violation of the nitrogen oxides emissions limit.

(f) If you use an electrostatic precipitator to comply with the emission limits of this subpart and you do not use a PM CPMS for monitoring PM compliance, you must monitor the secondary power to the electrostatic precipitator collection plates and maintain the 3-hour block averages at or above the operating limits established during the mercury or particulate matter performance test.

(g) For waste-burning kilns not equipped with a wet scrubber or dry scrubber, you must install, calibrate, maintain, and operate a CEMS for monitoring hydrogen chloride emissions discharged to the atmosphere, as specified in § 60.2710(j), and record the output of the system. You may substitute use of a HCl CEMS for conducting the HCl initial and annual testing with EPA Method 321 at 40 CFR part 63, appendix A. For units other than waste-burning kilns not equipped with a wet scrubber or dry scrubber, a facility may substitute use of a hydrogen chloride CEMS for conducting the hydrogen chloride initial and annual performance test, monitoring the minimum hydrogen chloride sorbent

flow rate, monitoring the minimum scrubber liquor pH, and monitoring minimum injection rate.

(h) To demonstrate continuous compliance with the particulate matter emissions limit, a facility may substitute use of either a particulate matter CEMS or a particulate matter CPMS for conducting the particulate matter annual performance test and other CMS monitoring for PM compliance (*e.g.,* bag leak detectors, ESP secondary power, PM scrubber pressure). A facility may also substitute use of a particulate matter CEMS for conducting the PM initial performance test.

(i) To demonstrate initial and continuous compliance with the dioxin/furan emissions limit, a facility may substitute use of a continuous automated sampling system for the dioxin/furan initial and annual performance test. You must record the output of the system and analyze the sample according to EPA Method 23 at 40 CFR part 60, appendix A–7. This option to use a continuous automated sampling system takes effect on the date a final performance specification applicable to dioxin/furan from continuous monitors is published in the **Federal Register**. The owner or operator who elects to continuously sample dioxin/furan emissions instead of sampling and testing using EPA Method 23 at 40 CFR part 60, appendix A–7 must install, calibrate, maintain and operate a continuous automated sampling system and must comply with the requirements specified in § 60.58b(p) and (q). A facility may substitute continuous dioxin/furan monitoring for the minimum sorbent flow rate, if activated carbon sorbent injection is used solely for compliance with the dioxin/furan emission limit.

(j) To demonstrate initial and continuous compliance with the mercury emissions limit, a facility may substitute use of a mercury CEMS or and integrated sorbent trap monitoring system for the mercury initial and annual performance test. The owner or operator who elects to continuously measure mercury emissions instead of sampling and testing using EPA Method 29 or 30B at 40 CFR part 60, appendix A–8, ASTM D6784–02 (Reapproved 2008) (incorporated by reference, *see* § 60.17), or an approved alternative method for measuring mercury emissions, must install, calibrate, maintain and operate the mercury CEMS or integrated sorbent trap monitoringsystem and must comply with performance specification 12A or performance specification 12B, respectively, and quality assurance procedure 5. For the purposes of emissions calculations when using an integrated sorbent trap monitoring system, the mercury concentration determined for each sampling period must be assigned to each hour during the sampling period. A facility may substitute continuous mercury monitoring for monitoring the minimum sorbent flow rate, if activated carbon sorbent injection is used solely for compliance with the mercury emission limit. Waste-burning kilns must install, calibrate, maintain, and operate a mercury CEMS or an integrated sorbent trap monitoring system as specified in § 60.2710(j).

(k) To demonstrate initial and continuous compliance with the nitrogen oxides emissions limit, a facility may substitute use of a CEMS for the nitrogen oxides initial and annual performance test to demonstrate compliance with the nitrogen oxides emissions limits and monitoring the charge rate, secondary chamber temperature and reagent flow for selective noncatalytic reduction, if applicable:

(1) Install, calibrate, maintain and operate a CEMS for measuring nitrogen oxides emissions discharged to the atmosphere and record the output of the system. The requirements under performance specification 2 of appendix B of this part, the quality assurance procedure 1 of appendix F of this part and the procedures under § 60.13 must be followed for installation, evaluation and operation of the CEMS; and

(2) Compliance with the emission limit for nitrogen oxides must be determined based on the 30-day rolling average of the hourly emission concentrations using CEMS outlet data, as outlined in § 60.2710(u).

(l) To demonstrate initial and continuous compliance with the sulfur dioxide emissions limit, a facility may substitute use of a CEMS for the sulfur dioxide initial and annual performance test to demonstrate compliance with the sulfur dioxide emissions limits:

(1) Install, calibrate, maintain and operate a CEMS for measuring sulfur dioxide emissions discharged to the atmosphere and record the output of the system. The requirements under performance specification 2 of appendix B of this part, the quality assurance requirements of procedure 1 of appendix F of this part and the procedures under § 60.13 must be followed for installation, evaluation and operation of the CEMS; and

(2) Compliance with the sulfur dioxide emission limit shall be determined based on the 30-day rolling average of the hourly arithmetic average emission concentrations using CEMS outlet data, as outlined in § 60.2710(u).

(m) For energy recovery units over 10 MMBtu/hr but less than 250 MMBtu/hr annual average heat input rates that do not use a wet scrubber, fabric filter with bag leak detection system, an electrostatic precipitator, particulate matter CEMS, or particulate matter CPMS, you must install, operate, certify and maintain a continuous opacity monitoring system according to the procedures in paragraphs (m)(1) through (5) of this section by the compliance date specified in § 60.2670. Energy recovery units that use a particulate matter CEMS to demonstrate initial and continuing compliance according to the procedures in § 60.2730(n) are not required to install a continuous opacity monitoring system and must perform the annual performance tests for opacity consistent with § 60.2710(f):

(1) Install, operate and maintain each continuous opacity monitoring system according to performance specification 1 at 40 CFR part 60, appendix B;

(2) Conduct a performance evaluation of each continuous opacity monitoring system according to the requirements in § 60.13 and according to performance specification 1 at 40 CFR part 60, appendix B;

(3) As specified in § 60.13(e)(1), each continuous opacity monitoring system must complete a minimum of one cycle of sampling and analyzing for each successive 10-second period and one cycle of data recording for each successive 6-minute period;

(4) Reduce the continuous opacity monitoring system data as specified in § 60.13(h)(1); and

(5) Determine and record all the 6-minute averages (and 1-hour block averages as applicable) collected.

(n) For coal and liquid/gas energy recovery units, incinerators, and small remote incinerators, an owner or operator may elect to install, calibrate, maintain and operate a CEMS for monitoring particulate matter emissions discharged to the atmosphere and record the output of the system. The owner or operator of an affected facility who continuously monitors particulate matter emissions instead of conducting performance testing using EPA Method 5 at 40 CFR part 60, appendix A–3 or monitoring with a particulate matter CPMS according to paragraph (r) of this section, must install, calibrate, maintain and operate a PM CEMS and must comply with the requirements specified in paragraphs (n)(1) through (10) of this section:

(1) The PM CEMS must be installed, evaluated and operated in accordance with the requirements of performance

specification 11 of appendix B of this part and quality assurance requirements of procedure 2 of appendix F of this part and § 60.13;

(2) The initial performance evaluation must be completed no later than 180 days after the final compliance date for meeting the amended emission limitations, as specified under § 60.2690 or within 180 days of notification to the Administrator of use of the continuous monitoring system if the owner or operator was previously determining compliance by Method 5 at 40 CFR part 60, appendix A–3 performance tests, whichever is later;

(3) The owner or operator of an affected facility may request that compliance with the particulate matter emission limit be determined using carbon dioxide measurements corrected to an equivalent of 7 percent oxygen. The relationship between oxygen and carbon dioxide levels for the affected facility must be established according to the procedures and methods specified in § 60.2710(t)(4)(i) through (iv);

(4) The owner or operator of an affected facility must conduct an initial performance test for particulate matter emissions. If PM CEMS are elected for demonstrating compliance, and the initial performance test has not yet been conducted, then initial compliance must be determined by using the CEMS specified in paragraph (n) of this section to measure particulate matter. You must calculate a 30-day rolling average of 1-hour arithmetic average emission concentrations, including CEMS data during startup and shutdown, as defined in this subpart, using equation 19–19 in section 12.4.1 of EPA Reference Method 19 at 40 CFR part 60, appendix A–7 of this part;

(5) Continuous compliance with the particulate matter emission limit must be determined based on the 30-day rolling average calculated using equation 19–19 in section 12.4.1 of EPA Reference Method 19 at 40 CFR part 60, Appendix A–7 of the part from the 1-hour arithmetic average of the CEMS outlet data.

(6) At a minimum, valid continuous monitoring system hourly averages must be obtained as specified § 60.2735;

(7) The 1-hour arithmetic averages required under paragraph (n)(5) of this section must be expressed in milligrams per dry standard cubic meter corrected to 7 percent oxygen (or carbon dioxide) (dry basis) and must be used to calculate the 30-day rolling average emission concentrations. CEMS data during startup and shutdown, as defined in this subpart, are not corrected to 7 percent oxygen, and are measured at stack oxygen content. The 1-hour arithmetic averages must be calculated using the data points required under § 60.13(e)(2);

(8) All valid CEMS data must be used in calculating average emission concentrations even if the minimum CEMS data requirements of paragraph (n)(6) of this section are not met;

(9) The CEMS must be operated according to performance specification 11 in appendix B of this part; and,

(10) Quarterly and yearly accuracy audits and daily drift, system optics, and sample volume checks must be performed in accordance with procedure 2 in appendix F of this part.

(o) To demonstrate initial and continuous compliance with the carbon monoxide emissions limit, a facility may substitute use of a CEMS for the carbon monoxide initial and annual performance test to demonstrate compliance with the carbon monoxide emissions limits:

(1) Install, calibrate, maintain, and operate a CEMS for measuring carbon monoxide emissions discharged to the atmosphere and record the output of the system. The requirements under performance specification 4A or 4B of appendix B of this part, the quality assurance procedure 1 of appendix F of this part and the procedures under § 60.13 must be followed for installation, evaluation, and operation of the CEMS; and

(2) Compliance with the carbon monoxide emission limit shall be determined based on the 30-day rolling average of the hourly arithmetic average emission concentrations, including CEMS data during startup and shutdown as defined in this subpart, using CEMS outlet data, as outlined in § 60.2710(u).

(p) The owner/operator of an affected source with a bypass stack shall install, calibrate (to manufacturers' specifications), maintain and operate a device or method for measuring the use of the bypass stack including date, time and duration.

(q) For energy recovery units with a heat input capacity of 100 MMBtu per hour or greater that do not use a carbon monoxide CEMS, you must install, operate and maintain the continuous oxygen monitoring system as defined in § 60.2875 according to the procedures in paragraphs (q)(1) through (4) of this section:

(1) The oxygen analyzer system must be installed by the initial performance test date specified in § 60.2675;

(2) You must operate the oxygen trim system within compliance with paragraph (q)(3) of this section at all times;

(3) You must maintain the oxygen level such that the 30-day rolling average that is established as the operating limit for oxygen according to paragraph (q)(4) of this section is not below the lowest hourly average oxygen concentration measured during the most recent CO performance test; and

(4) You must calculate and record a 30-day rolling average oxygen concentration using equation 19–19 in section 12.4.1 of EPA Reference Method 19 of Appendix A–7 of this part.

(r) For energy recovery units with annual average heat input rates greater than or equal to 250 MMBtu/hour and waste-burning kilns, you must install, calibrate, maintain, and operate a PM CPMS and record the output of the system as specified in paragraphs (r)(1) through (8) of this section. For other energy recovery units, you may elect to use PM CPMS operated in accordance with this section. PM CPMS are suitable in lieu of using other CMS for monitoring PM compliance (*e.g.,* bag leak detectors, ESP secondary power, PM scrubber pressure):

(1) Install, calibrate, operate, and maintain your PM CPMS according to the procedures in your approved site-specific monitoring plan developed in accordance with § 60.2710(l) and (r)(1)(i) through (iii) of this section:

(i) The operating principle of the PM CPMS must be based on in-stack or extractive light scatter, light scintillation, beta attenuation, or mass accumulation of the exhaust gas or representative sample. The reportable measurement output from the PM CPMS must be expressed as milliamps or the digital signal equivalent;

(ii) The PM CPMS must have a cycle time (*i.e.,* period required to complete sampling, measurement, and reporting for each measurement) no longer than 60 minutes; and

(iii) The PM CPMS must be capable of detecting and responding to particulate matter concentrations increments no greater than 0.5 mg/actual cubic meter.

(2) During the initial performance test or any such subsequent performance test that demonstrates compliance with the PM limit, you must adjust the site-specific operating limit in accordance with the results of the performance test according to the procedures specified in § 60.2675.

(3) Collect PM CPMS hourly average output data for all energy recovery unit or waste-burning kiln operating hours. Express the PM CPMS output as milliamps or the digital signal equivalent.

(4) Calculate the arithmetic 30-day rolling average of all of the hourly average PM CPMS output collected during all energy recovery unit or waste-

burning kiln operating hours data (milliamps or digital bits).

(5) You must collect data using the PM CPMS at all times the energy recovery unit or waste-burning kiln is operating and at the intervals specified in paragraph (r)(1)(ii) of this section, except for periods of monitoring system malfunctions, repairs associated with monitoring system malfunctions, required monitoring system quality assurance or quality control activities (including, as applicable, calibration checks and required zero and span adjustments), and any scheduled maintenance as defined in your site-specific monitoring plan.

(6) You must use all the data collected during all energy recovery unit or waste-burning kiln operating hours in assessing the compliance with your operating limit except:

(i) Any data collected during monitoring system malfunctions, repairs associated with monitoring system malfunctions, or required monitoring system quality assurance or quality control activities conducted during monitoring system malfunctions are not used in calculations (report any such periods in your annual deviation report);

(ii) Any data collected during periods when the monitoring system is out of control as specified in your site-specific monitoring plan, repairs associated with periods when the monitoring system is out of control, or required monitoring system quality assurance or quality control activities conducted during out-of-control periods are not used in calculations (report emissions or operating levels and report any such periods in your annual deviation report); and

(iii) Any PM CPMS data recorded during periods of CEMS data during startup and shutdown, as defined in this subpart.

(7) You must record and make available upon request results of PM CPMS system performance audits, as well as the dates and duration of periods from when the PM CPMS is out of control until completion of the corrective actions necessary to return the PM CPMS to operation consistent with your site-specific monitoring plan.

(8) For any deviation of the 30-day rolling average PM CPMS average value from the established operating parameter limit, you must:

(i) Within 48 hours of the deviation, visually inspect the air pollution control device;

(ii) If inspection of the air pollution control device identifies the cause of the deviation, take corrective action as soon as possible and return the PM CPMS measurement to within the established value;

(iii) Within 30 days of the deviation or at the time of the annual compliance test, whichever comes first, conduct a PM emissions compliance test to determine compliance with the PM emissions limit and to verify the operation of the emissions control device(s). Within 45 days of the deviation, you must re-establish the CPMS operating limit. You are not required to conduct additional testing for any deviations that occur between the time of the original deviation and the PM emissions compliance test required under this paragraph; and

(iv) PM CPMS deviations leading to more than four required performance tests in a 12-month process operating period (rolling monthly) constitute a violation of this subpart.

(s) If you use a dry scrubber to comply with the emission limits of this subpart, you must monitor the injection rate of each sorbent and maintain the 3-hour block averages at or above the operating limits established during the hydrogen chloride performance test.

(t) If you are required to monitor clinker production because you comply with the production-rate based mercury limit for your waste-burning kiln, you must:

(1) Determine hourly clinker production by one of two methods:

(i) Install, calibrate, maintain, and operate a permanent weigh scale system to measure and record weight rates in tons-mass per hour of the amount of clinker produced. The system of measuring hourly clinker production must be maintained within ±5 percent accuracy, or

(ii) Install, calibrate, maintain, and operate a permanent weigh scale system to measure and record weight rates in tons-mass per hour of the amount of feed to the kiln. The system of measuring feed must be maintained within ±5 percent accuracy. Calculate your hourly clinker production rate using a kiln-specific feed to clinker ratio based on reconciled clinker production determined for accounting purposes and recorded feed rates. Update this ratio monthly. Note that if this ratio changes at clinker reconciliation, you must use the new ratio going forward, but you do not have to retroactively change clinker production rates previously estimated.

(2) Determine the accuracy of the system of measuring hourly clinker production (or feed mass flow if applicable) before the final compliance date of this rule and during each quarter of source operation.

(3) Conduct accuracy checks in accordance with the procedures outlined in your site-specific monitoring plan under § 60.2710(l).

§ 60.2735 Is there a minimum amount of monitoring data I must obtain?

For each continuous monitoring system required or optionally allowed under § 60.2730, you must monitor and collect data according to this section:

(a) You must operate the monitoring system and collect data at all required intervals at all times compliance is required except for periods of monitoring system malfunctions or out-of-control periods, repairs associated with monitoring system malfunctions or out-of-control periods (as specified in § 60.2770(o)), and required monitoring system quality assurance or quality control activities including, as applicable, calibration checks and required zero and span adjustments. A monitoring system malfunction is any sudden, infrequent, not reasonably preventable failure of the monitoring system to provide valid data. Monitoring system failures that are caused in part by poor maintenance or careless operation are not malfunctions. You are required to effect monitoring system repairs in response to monitoring system malfunctions or out-of-control periods and to return the monitoring system to operation as expeditiously as practicable.

(b) You may not use data recorded during the monitoring system malfunctions, repairs associated with monitoring system malfunctions or out-of control periods, or required monitoring system quality assurance or control activities in calculations used to report emissions or operating levels. You must use all the data collected during all other periods, including data normalized for above scale readings, in assessing the operation of the control device and associated control system.

(c) Except for periods of monitoring system malfunctions or out-of-control periods, repairs associated with monitoring system malfunctions or out-of-control periods, and required monitoring system quality assurance or quality control activities including, as applicable, calibration checks and required zero and span adjustments, failure to collect required data is a deviation of the monitoring requirements.

Model Rule—Recordkeeping and Reporting

§ 60.2740 What records must I keep?

You must maintain the items (as applicable) as specified in paragraphs (a), (b), and (e) through (w) of this section for a period of at least 5 years:

(a) Calendar date of each record;

(b) Records of the data described in paragraphs (b)(1) through (7) of this section:

(1) The CISWI charge dates, times, weights, and hourly charge rates;

(2) Liquor flow rate to the wet scrubber inlet every 15 minutes of operation, as applicable;

(3) Pressure drop across the wet scrubber system every 15 minutes of operation or amperage to the wet scrubber every 15 minutes of operation, as applicable;

(4) Liquor pH as introduced to the wet scrubber every 15 minutes of operation, as applicable;

(5) For affected CISWIs that establish operating limits for controls other than wet scrubbers under § 60.2675(d) through (g) or § 60.2680, you must maintain data collected for all operating parameters used to determine compliance with the operating limits. For energy recovery units using activated carbon injection or a dry scrubber, you must also maintain records of the load fraction and corresponding sorbent injection rate records; and

(6) If a fabric filter is used to comply with the emission limitations, you must record the date, time, and duration of each alarm and the time corrective action was initiated and completed, and a brief description of the cause of the alarm and the corrective action taken. You must also record the percent of operating time during each 6-month period that the alarm sounds, calculated as specified in § 60.2675(c).

(7) If you monitor clinker production in accordance with § 60.2730(t):

(i) Hourly clinker rate produced if clinker production is measured directly;

(ii) Hourly measured kiln feed rates and calculated clinker production rates if clinker production is not measured directly;

(iii) 30-day rolling averages for mercury in pounds per million tons of clinker produced;

(iv) The initial and quarterly accuracy of the system of measruing hourly clinker production (or feed mass flow).

(c)–(d) [Reserved]

(e) Identification of calendar dates and times for which data show a deviation from the operating limits in table 3 of this subpart or a deviation from other operating limits established under § 60.2675(d) through (g) or § 60.2680 with a description of the deviations, reasons for such deviations, and a description of corrective actions taken.

(f) The results of the initial, annual, and any subsequent performance tests conducted to determine compliance with the emission limits and/or to establish operating limits, as applicable. Retain a copy of the complete test report including calculations.

(g) Records showing the names of CISWI operators who have completed review of the information in § 60.2660(a) as required by § 60.2660(b), including the date of the initial review and all subsequent annual reviews.

(h) Records showing the names of the CISWI operators who have completed the operator training requirements under § 60.2635, met the criteria for qualification under § 60.2645, and maintained or renewed their qualification under § 60.2650 or § 60.2655. Records must include documentation of training, the dates of the initial and refresher training, and the dates of their qualification and all subsequent renewals of such qualifications.

(i) For each qualified operator, the phone and/or pager number at which they can be reached during operating hours.

(j) Records of calibration of any monitoring devices as required under § 60.2730.

(k) Equipment vendor specifications and related operation and maintenance requirements for the incinerator, emission controls, and monitoring equipment.

(l) The information listed in § 60.2660(a).

(m) On a daily basis, keep a log of the quantity of waste burned and the types of waste burned (always required).

(n) Maintain records of the annual air pollution control device inspections that are required for each CISWI subject to the emissions limits in table 2 of this subpart or tables 6 through 9 of this subpart, any required maintenance and any repairs not completed within 10 days of an inspection or the timeframe established by the state regulatory agency.

(o) For continuously monitored pollutants or parameters, you must document and keep a record of the following parameters measured using continuous monitoring systems. If you monitor emissions with a CEMS, you must indicate which data are CEMS data during startup and shutdown:

(1) All 6-minute average levels of opacity;

(2) All 1-hour average concentrations of sulfur dioxide emissions;

(3) All 1-hour average concentrations of nitrogen oxides emissions;

(4) All 1-hour average concentrations of carbon monoxide emissions;

(5) All 1-hour average concentrations of particulate matter emissions;

(6) All 1-hour average concentrations of mercury emissions;

(7) All 1-hour average concentrations of HCl CEMS outputs;

(8) All 1-hour average percent oxygen concentrations; and

(9) All 1-hour average PM CPMS readings or particulate matter CEMS outputs.

(p) Records indicating use of the bypass stack, including dates, times and durations.

(q) If you choose to stack test less frequently than annually, consistent with § 60.2720(a) through (c), you must keep annual records that document that your emissions in the previous stack test(s) were less than 75 percent of the applicable emission limit and document that there was no change in source operations including fuel composition and operation of air pollution control equipment that would cause emissions of the relevant pollutant to increase within the past year.

(r) Records of the occurrence and duration of each malfunction of operation (*i.e.,* process equipment) or the air pollution control and monitoring equipment.

(s) Records of all required maintenance performed on the air pollution control and monitoring equipment.

(t) Records of actions taken during periods of malfunction to minimize emissions in accordance with § 60.11(d), including corrective actions to restore malfunctioning process and air pollution control and monitoring equipment to its normal or usual manner of operation.

(u) For operating units that combust non-hazardous secondary materials that have been determined not to be solid waste pursuant to § 241.3(b)(1) of this chapter, you must keep a record which documents how the secondary material meets each of the legitimacy criteria under § 241.3(d)(1). If you combust a fuel that has been processed from a discarded non-hazardous secondary material pursuant to § 241.3(b)(4), you must keep records as to how the operations that produced the fuel satisfies the definition of processing in § 241.2 and each of the legitimacy criteria in § 241.3(d)(1) of this chapter. If the fuel received a non-waste determination pursuant to the petition process submitted under § 241.3(c), you must keep a record that documents how the fuel satisfies the requirements of the petition process. For operating units that combust non-hazardous secondary materials as fuel per § 241.4, you must keep records documenting that the material is a listed non-waste under § 241.4(a).

(v) Records of the criteria used to establish that the unit qualifies as a

small power production facility under section 3(17)(C) of the Federal Power Act (16 U.S.C. 796(17)(C)) and that the waste material the unit is proposed to burn is homogeneous.

(w) Records of the criteria used to establish that the unit qualifies as a cogeneration facility under section 3(18)(B) of the Federal Power Act (16 U.S.C. 796(18)(B)) and that the waste material the unit is proposed to burn is homogeneous.

§ 60.2745 Where and in what format must I keep my records?

All records must be available onsite in either paper copy or computer-readable format that can be printed upon request, unless an alternative format is approved by the Administrator.

§ 60.2750 What reports must I submit?

See table 5 of this subpart for a summary of the reporting requirements.

§ 60.2755 When must I submit my waste management plan?

You must submit the waste management plan no later than the date specified in table 1 of this subpart for submittal of the final control plan.

§ 60.2760 What information must I submit following my initial performance test?

You must submit the information specified in paragraphs (a) through (c) of this section no later than 60 days following the initial performance test. All reports must be signed by the facilities manager:

(a) The complete test report for the initial performance test results obtained under § 60.2700, as applicable;

(b) The values for the site-specific operating limits established in § 60.2675 or § 60.2680; and

(c) If you are using a fabric filter to comply with the emission limitations, documentation that a bag leak detection system has been installed and is being operated, calibrated, and maintained as required by § 60.2730(b).

§ 60.2765 When must I submit my annual report?

You must submit an annual report no later than 12 months following the submission of the information in § 60.2760. You must submit subsequent reports no more than 12 months following the previous report. (If the unit is subject to permitting requirements under title V of the Clean Air Act, you may be required by the permit to submit these reports more frequently.)

§ 60.2770 What information must I include in my annual report?

The annual report required under § 60.2765 must include the ten items listed in paragraphs (a) through (j) of this section. If you have a deviation from the operating limits or the emission limitations, you must also submit deviation reports as specified in §§ 60.2775, 60.2780, and 60.2785:

(a) Company name and address;

(b) Statement by a responsible official, with that official's name, title, and signature, certifying the accuracy of the content of the report;

(c) Date of report and beginning and ending dates of the reporting period;

(d) The values for the operating limits established pursuant to § 60.2675 or § 60.2680;

(e) If no deviation from any emission limitation or operating limit that applies to you has been reported, a statement that there was no deviation from the emission limitations or operating limits during the reporting period;

(f) The highest recorded 3-hour average and the lowest recorded 3-hour average (30-day average for energy recovery units), as applicable, for each operating parameter recorded for the calendar year being reported;

(g) Information recorded under § 60.2740(b)(6) and (c) through (e) for the calendar year being reported;

(h) For each performance test conducted during the reporting period, if any performance test is conducted, the process unit(s) tested, the pollutant(s) tested and the date that such performance test was conducted. Submit, following the procedure specified in § 60.2795(b)(1), the performance test report no later than the date that you submit the annual report;

(i) If you met the requirements of § 60.2720(a) or (b), and did not conduct a performance test during the reporting period, you must state that you met the requirements of § 60.2720(a) or (b), and, therefore, you were not required to conduct a performance test during the reporting period;

(j) Documentation of periods when all qualified CISWI operators were unavailable for more than 8 hours, but less than 2 weeks;

(k) If you had a malfunction during the reporting period, the compliance report must include the number, duration, and a brief description for each type of malfunction that occurred during the reporting period and that caused or may have caused any applicable emission limitation to be exceeded. The report must also include a description of actions taken by an owner or operator during a malfunction of an affected source to minimize emissions in accordance with § 60.11(d), including actions taken to correct a malfunction;

(l) For each deviation from an emission or operating limitation that occurs for a CISWI for which you are not using a CMS to comply with the emission or operating limitations in this subpart, the annual report must contain the following information:

(1) The total operating time of the CISWI at which the deviation occurred during the reporting period; and

(2) Information on the number, duration, and cause of deviations (including unknown cause, if applicable), as applicable, and the corrective action taken.

(m) If there were periods during which the continuous monitoring system, including the CEMS, was out of control as specified in paragraph (o) of this section, the annual report must contain the following information for each deviation from an emission or operating limitation occurring for a CISWI for which you are using a continuous monitoring system to comply with the emission and operating limitations in this subpart:

(1) The date and time that each malfunction started and stopped;

(2) The date, time, and duration that each CMS was inoperative, except for zero (low-level) and high-level checks;

(3) The date, time, and duration that each continuous monitoring system was out-of-control, including start and end dates and hours and descriptions of corrective actions taken;

(4) The date and time that each deviation started and stopped, and whether each deviation occurred during a period of malfunction or during another period;

(5) A summary of the total duration of the deviation during the reporting period, and the total duration as a percent of the total source operating time during that reporting period;

(6) A breakdown of the total duration of the deviations during the reporting period into those that are due to control equipment problems, process problems, other known causes, and other unknown causes;

(7) A summary of the total duration of continuous monitoring system downtime during the reporting period, and the total duration of continuous monitoring system downtime as a percent of the total operating time of the CISWI at which the continuous monitoring system downtime occurred during that reporting period;

(8) An identification of each parameter and pollutant that was monitored at the CISWI;

(9) A brief description of the CISWI;

(10) A brief description of the continuous monitoring system;

(11) The date of the latest continuous monitoring system certification or audit; and

(12) A description of any changes in continuous monitoring system, processes, or controls since the last reporting period.

(n) If there were periods during which the continuous monitoring system, including the CEMS, was not out of control as specified in paragraph (o) of this section, a statement that there were not periods during which the continuous monitoring system was out of control during the reporting period.

(o) A continuous monitoring system is out of control if any of the following occur:

(1) The zero (low-level), mid-level (if applicable), or high-level calibration drift exceeds two times the applicable calibration drift specification in the applicable performance specification or in the relevant standard;

(2) The continuous monitoring system fails a performance test audit (*e.g.,* cylinder gas audit), relative accuracy audit, relative accuracy test audit, or linearity test audit; and

(3) The continuous opacity monitoring system calibration drift exceeds two times the limit in the applicable performance specification in the relevant standard.

(p) For energy recovery units, include the annual heat input and average annual heat input rate of all fuels being burned in the unit to verify which subcategory of energy recovery unit applies.

§ 60.2775 What else must I report if I have a deviation from the operating limits or the emission limitations?

(a) You must submit a deviation report if any recorded 3-hour average (30-day average for energy recovery units) parameter level is above the maximum operating limit or below the minimum operating limit established under this subpart, if the bag leak detection system alarm sounds for more than 5 percent of the operating time for the 6-month reporting period, if a performance test was conducted that deviated from any emission limitation, if a 30 kiln operating day average is above the operating limit, or if a 30-day average measured using a CEMS deviated from any emission limitation.

(b) The deviation report must be submitted by August 1 of that year for data collected during the first half of the calendar year (January 1 to June 30), and by February 1 of the following year for data you collected during the second half of the calendar year (July 1 to December 31).

§ 60.2780 What must I include in the deviation report?

In each report required under § 60.2775, for any pollutant or parameter that deviated from the emission limitations or operating limits specified in this subpart, include the four items described in paragraphs (a) through (d) of this section:

(a) The calendar dates and times your unit deviated from the emission limitations or operating limit requirements;

(b) The averaged and recorded data for those dates;

(c) Durations and causes of the following:

(1) Each deviation from emission limitations or operating limits and your corrective actions; and

(2) Bypass events and your corrective actions.

(d) A copy of the operating limit monitoring data during each deviation and for any test report that documents the emission levels the process unit(s) tested, the pollutant(s) tested and the date that the performance test was conducted. Submit, following the procedure specified in § 60.2795(b)(1), the performance test report no later than the date that you submit the deviation report.

§ 60.2785 What else must I report if I have a deviation from the requirement to have a qualified operator accessible?

(a) If all qualified operators are not accessible for 2 weeks or more, you must take the two actions in paragraphs (a)(1) and (2) of this section:

(1) Submit a notification of the deviation within 10 days that includes the three items in paragraphs (a)(1)(i) through (iii) of this section:

(i) A statement of what caused the deviation;

(ii) A description of what you are doing to ensure that a qualified operator is accessible; and

(iii) The date when you anticipate that a qualified operator will be available.

(2) Submit a status report to the Administrator every 4 weeks that includes the three items in paragraphs (a)(2)(i) through (iii) of this section:

(i) A description of what you are doing to ensure that a qualified operator is accessible;

(ii) The date when you anticipate that a qualified operator will be accessible; and

(iii) Request approval from the Administrator to continue operation of the CISWI.

(b) If your unit was shut down by the Administrator, under the provisions of § 60.2665(b)(2), due to a failure to provide an accessible qualified operator, you must notify the Administrator that you are resuming operation once a qualified operator is accessible.

§ 60.2790 Are there any other notifications or reports that I must submit?

(a) Yes. You must submit notifications as provided by § 60.7.

(b) If you cease combusting solid waste but continue to operate, you must provide 30 days prior notice of the effective date of the waste-to-fuel switch, consistent with § 60.2710(a). The notification must identify:

(1) The name of the owner or operator of the CISWI, the location of the source, the emissions unit(s) that will cease burning solid waste, and the date of the notice;

(2) The currently applicable subcategory under this subpart, and any 40 CFR part 63 subpart and subcategory that will be applicable after you cease combusting solid waste;

(3) The fuel(s), non-waste material(s) and solid waste(s) the CISWI is currently combusting and has combusted over the past 6 months, and the fuel(s) or non-waste materials the unit will commence combusting;

(4) The date on which you became subject to the currently applicable emission limits; and

(5) The date upon which you will cease combusting solid waste, and the date (if different) that you intend for any new requirements to become applicable (*i.e.,* the effective date of the waste-to-fuel switch), consistent with paragraphs (b)(2) and (3) of this section.

§ 60.2795 In what form can I submit my reports?

(a) Submit initial, annual and deviation reports electronically or in paper format, postmarked on or before the submittal due dates. Beginning on June 15, 2020 or once the reporting form has been available in CEDRI for 1 year, whichever is later, you must submit subsequent reports on or before the submittal dates to the EPA via the Compliance and Emissions Data Reporting Interface (CEDRI), which CEDRI can be accessed through the EPA's Central Data Exchange (CDX) (*https://cdx.epa.gov/*). Use the appropriate electronic report in CEDRI for this subpart or an alternate electronic file format consistent with the extensible markup language (XML) schema listed on the CEDRI website (*https://www3.epa.gov/ttn/chief/cedri/index.html*). When the date forms become available in CEDRI will be listed on the CEDRI website. The reports must be submitted by the deadlines specified in this subpart, regardless of the method in which the report is submitted.

(b) Submit results of each performance test and CEMS performance evaluation required by this subpart as follows:

(1) Within 60 days after the date of completing each performance test (*see* § 60.8) required by this subpart, you must submit the results of the performance test following the procedure specified in either paragraph (b)(1)(i) or (b)(1)(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 website (*https://www3.epa.gov/ttn/chief/ert/ert_info.html*) at the time of the test, you must submit the results of the performance test to the EPA via the CEDRI. (CEDRI can be accessed through the EPA's CDX (*https://cdx.epa.gov/*).) 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 XML schema listed on the EPA's ERT website. 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 website, including information claimed to be CBI, on a compact disc, flash drive, or other commonly used electronic storage media to the EPA. The electronic media must be clearly marked as CBI and mailed to U.S. EPA/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; and

(ii) For data collected using test methods that are not supported by the EPA's ERT as listed on the EPA's ERT website at the time of the test, you must submit the results of the performance test to the Administrator at the appropriate address listed in § 60.4.

(2) Within 60 days after the date of completing each continuous emissions monitoring system performance evaluation you must submit the results of the performance evaluation following the procedure specified in either paragraph (b)(1) or (b)(2) 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 website at the time of the evaluation, you 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 website. 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 website, 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; and

(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 website at the time of the evaluation, you must submit the results of the performance evaluation to the Administrator at the appropriate address listed in § 60.4.

(c) If you are required to electronically submit a report through the Compliance and Emissions Data Reporting Interface (CEDRI) in the EPA's Central Data Exchange (CDX), and due to a planned or actual outage of either the EPA's CEDRI or CDX systems within the period of time beginning 5 business days prior to the date that the submission is due, you will be or are precluded from accessing CEDRI or CDX and submitting a required report within the time prescribed, you may assert a claim of EPA system outage for failure to timely comply with the reporting requirement. You must submit notification to the Administrator in writing as soon as possible following the date you first knew, or through due diligence should have known, that the event may cause or caused a delay in reporting. You must provide to the Administrator a written description identifying the date, time and length of the outage; a rationale for attributing the delay in reporting beyond the regulatory deadline to the EPA system outage; describe the measures taken or to be taken to minimize the delay in reporting; and identify a date by which you propose to report, or if you have already met the reporting requirement at the time of the notification, the date you reported. In any circumstance, the report must be submitted electronically as soon as possible after the outage is resolved. The decision to accept the claim of EPA system outage and allow an extension to the reporting deadline is solely within the discretion of the Administrator.

(d) If you are required to electronically submit a report through CEDRI in the EPA's CDX and a force majeure event is about to occur, occurs, or has occurred or there are lingering effects from such an event within the period of time beginning 5 business days prior to the date the submission is due, the owner or operator may assert a claim of force majeure for failure to timely comply with the reporting requirement. For the purposes of this section, a force majeure event is defined as an event that will be or has been caused by circumstances beyond the control of the affected facility, its contractors, or any entity controlled by the affected facility that prevents you from complying with the requirement to submit a report electronically within the time period prescribed. Examples of such events are acts of nature (*e.g.,* hurricanes, earthquakes, or floods), acts of war or terrorism, or equipment failure or safety hazard beyond the control of the affected facility (*e.g.,* large scale power outage). If you intend to assert a claim of force majeure, you must submit notification to the Administrator in writing as soon as possible following the date you first knew, or through due diligence should have known, that the event may cause or caused a delay in reporting. You must provide to the Administrator a written description of the force majeure event and a rationale for attributing the delay in reporting beyond the regulatory deadline to the force majeure event; describe the measures taken or to be taken to minimize the delay in reporting; and identify a date by which you propose to report, or if you have already met the reporting requirement at the time of the notification, the date you reported. In any circumstance, the reporting must occur as soon as possible after the force majeure event occurs. The decision to accept the claim of force majeure and allow an extension to the reporting deadline is solely within the discretion of the Administrator.

§ 60.2800 Can reporting dates be changed?

If the Administrator agrees, you may change the semiannual or annual reporting dates. *See* § 60.19(c) for

procedures to seek approval to change your reporting date.

Model Rule—Title V Operating Permits

§ 60.2805 Am I required to apply for and obtain a Title V operating permit for my unit?

Yes. Each CISWI and ACI subject to standards under this subpart must operate pursuant to a permit issued under Clean Air Act sections 129(e) and Title V.

Model Rule—Air Curtain Incinerators (ACIs)

§ 60.2810 What is an air curtain incinerator?

(a) An ACI operates by forcefully projecting a curtain of air across an open chamber or open pit in which combustion occurs. Incinerators of this type can be constructed above or below ground and with or without refractory walls and floor. Air curtain incinerators are not to be confused with conventional combustion devices with enclosed fireboxes and controlled air technology such as mass burn, modular, and fluidized bed combustors.

(b) Air curtain incinerators that burn only the materials listed in paragraphs (b)(1) through (3) of this section are only required to meet the requirements under § 60.2805 and under ''Air Curtain Incinerators'' (§§ 60.2810 through 60.2870):

(1) 100 percent wood waste;

(2) 100 percent clean lumber; and

(3) 100 percent mixture of only wood waste, clean lumber, and/or yard waste.

§ 60.2815 What are my requirements for meeting increments of progress and achieving final compliance?

If you plan to achieve compliance more than 1 year following the effective date of state plan approval, you must meet the two increments of progress specified in paragraphs (a) and (b) of this section:

(a) Submit a final control plan; and

(b) Achieve final compliance.

§ 60.2820 When must I complete each increment of progress?

Table 1 of this subpart specifies compliance dates for each of the increments of progress.

§ 60.2825 What must I include in the notifications of achievement of increments of progress?

Your notification of achievement of increments of progress must include the three items described in paragraphs (a) through (c) of this section:

(a) Notification that the increment of progress has been achieved;

(b) Any items required to be submitted with each increment of progress (*see* § 60.2840); and

(c) Signature of the owner or operator of the incinerator.

§ 60.2830 When must I submit the notifications of achievement of increments of progress?

Notifications for achieving increments of progress must be postmarked no later than 10 business days after the compliance date for the increment.

§ 60.2835 What if I do not meet an increment of progress?

If you fail to meet an increment of progress, you must submit a notification to the Administrator postmarked within 10 business days after the date for that increment of progress in table 1 of this subpart. You must inform the Administrator that you did not meet the increment, and you must continue to submit reports each subsequent calendar month until the increment of progress is met.

§ 60.2840 How do I comply with the increment of progress for submittal of a control plan?

For your control plan increment of progress, you must satisfy the two requirements specified in paragraphs (a) and (b) of this section:

(a) Submit the final control plan, including a description of any devices for air pollution control and any process changes that you will use to comply with the emission limitations and other requirements of this subpart; and

(b) Maintain an onsite copy of the final control plan.

§ 60.2845 How do I comply with the increment of progress for achieving final compliance?

For the final compliance increment of progress, you must complete all process changes and retrofit construction of control devices, as specified in the final control plan, so that, if the affected incinerator is brought online, all necessary process changes and air pollution control devices would operate as designed.

§ 60.2850 What must I do if I close my air curtain incinerator and then restart it?

(a) If you close your incinerator but will reopen it prior to the final compliance date in your state plan, you must meet the increments of progress specified in § 60.2815.

(b) If you close your incinerator but will restart it after your final compliance date, you must complete emission control retrofits and meet the emission limitations on the date your incinerator restarts operation.

§ 60.2855 What must I do if I plan to permanently close my air curtain incinerator and not restart it?

If you plan to close your incinerator rather than comply with the state plan, submit a closure notification, including the date of closure, to the Administrator by the date your final control plan is due.

§ 60.2860 What are the emission limitations for air curtain incinerators?

After the date the initial stack test is required or completed (whichever is earlier), you must meet the limitations in paragraphs (a) and (b) of this section:

(a) Maintain opacity to less than or equal to 10 percent opacity (as determined by the average of three 1-hour blocks consisting of ten 6-minute average opacity values), except as described in paragraph (b) of this section; and

(b) Maintain opacity to less than or equal to 35 percent opacity (as determined by the average of three 1-hour blocks consisting of ten 6-minute average opacity values) during the startup period that is within the first 30 minutes of operation.

§ 60.2865 How must I monitor opacity for air curtain incinerators?

(a) Use Method 9 of appendix A of this part to determine compliance with the opacity limitation.

(b) Conduct an initial test for opacity as specified in § 60.8 no later than 180 days after your final compliance date.

(c) After the initial test for opacity, conduct annual tests no more than 12 calendar months following the date of your previous test.

§ 60.2870 What are the recordkeeping and reporting requirements for air curtain incinerators?

(a) Keep records of results of all initial and annual opacity tests onsite in either paper copy or electronic format, unless the Administrator approves another format, for at least 5 years.

(b) Make all records available for submittal to the Administrator or for an inspector's onsite review.

(c) Submit an initial report no later than 60 days following the initial opacity test that includes the information specified in paragraphs (c)(1) and (2) of this section:

(1) The types of materials you plan to combust in your ACI; and

(2) The results (as determined by the average of three 1-hour blocks consisting of ten 6-minute average opacity values) of the initial opacity tests.

(d) Submit annual opacity test results within 12 months following the previous report.

(e) Submit initial and annual opacity test reports as electronic or paper copy on or before the applicable submittal date and keep a copy onsite for a period of 5 years.

Model Rule—Definitions

§ 60.2875 What definitions must I know?

Terms used but not defined in this subpart are defined in the Clean Air Act and subparts A and B of this part.

30-day rolling average means the arithmetic mean of the previous 720 hours of valid operating data. Valid data excludes periods when this unit is not operating. The 720 hours should be consecutive, but not necessarily continuous if operations are intermittent.

Administrator means the Administrator of the U.S. Environmental Protection Agency or his/her authorized representative or Administrator of a State Air Pollution Control Agency.

Agricultural waste means vegetative agricultural materials such as nut and grain hulls and chaff (*e.g.,* almond, walnut, peanut, rice, and wheat), bagasse, orchard prunings, corn stalks, coffee bean hulls and grounds, and other vegetative waste materials generated as a result of agricultural operations.

Air curtain incinerator (ACI) means an incinerator that operates by forcefully projecting a curtain of air across an open chamber or pit in which combustion occurs. Incinerators of this type can be constructed above or below ground and with or without refractory walls and floor. Air curtain incinerators are not to be confused with conventional combustion devices with enclosed fireboxes and controlled air technology such as mass burn, modular, and fluidized bed combustors.

Annual heat input means the heat input for the 12 months preceding the compliance demonstration.

Auxiliary fuel means natural gas, liquified petroleum gas, fuel oil, or diesel fuel.

Average annual heat input rate means annual heat input divided by the hours of operation for the 12 months preceding the compliance demonstration.

Bag leak detection system means an instrument that is capable of monitoring particulate matter loadings in the exhaust of a fabric filter (*i.e.,* baghouse) in order to detect bag failures. A bag leak detection system includes, but is not limited to, an instrument that operates on triboelectric, light scattering, light transmittance, or other principle to monitor relative particulate matter loadings.

Burn-off oven means any rack reclamation unit, part reclamation unit, or drum reclamation unit. A burn-off oven is not an incinerator, waste-burning kiln, an energy recovery unit or a small, remote incinerator under this subpart.

Bypass stack means a device used for discharging combustion gases to avoid severe damage to the air pollution control device or other equipment.

Calendar quarter means three consecutive months (nonoverlapping) beginning on: January 1, April 1, July 1, or October 1.

Calendar year means 365 consecutive days starting on January 1 and ending on December 31.

CEMS data during startup and shutdown means the following:

(1) For incinerators and small remote incinerators: CEMS data collected during the first hours of operation of a CISWI startup from a cold start until waste is fed into the unit and the hours of operation following the cessation of waste material being fed to the CISWI during a unit shutdown. For each startup event, the length of time that CEMS data may be claimed as being CEMS data during startup must be 48 operating hours or less. For each shutdown event, the length of time that CEMS data may be claimed as being CEMS data during shutdown must be 24 operating hours or less;

(2) For energy recovery units: CEMS data collected during the startup or shutdown periods of operation. Startup begins with either the first-ever firing of fuel in a boiler or process heater for the purpose of supplying useful thermal energy (such as steam or heat) for heating, cooling or process purposes, or producing electricity, or the firing of fuel in a boiler or process heater for any purpose after a shutdown event. Startup ends four hours after when the boiler or process heater makes useful thermal energy (such as heat or steam) for heating, cooling, or process purposes, or generates electricity, whichever is earlier. Shutdown begins when the boiler or process heater no longer makes useful thermal energy (such as heat or steam) for heating, cooling, or process purposes and/or generates electricity or when no fuel is being fed to the boiler or process heater, whichever is earlier. Shutdown ends when the boiler or process heater no longer makes useful thermal energy (such as steam or heat) for heating, cooling, or process purposes and/or generates electricity, and no fuel is being combusted in the boiler or process heater; and

(3) For waste-burning kilns: CEMS data collected during the periods of kiln operation that do not include normal operations. Startup means the time from when a shutdown kiln first begins firing fuel until it begins producing clinker. Startup begins when a shutdown kiln turns on the induced draft fan and begins firing fuel in the main burner. Startup ends when feed is being continuously introduced into the kiln for at least 120 minutes or when the feed rate exceeds 60 percent of the kiln design limitation rate, whichever occurs first. Shutdown means the cessation of kiln operation. Shutdown begins when feed to the kiln is halted and ends when continuous kiln rotation ceases.

Chemical recovery unit means combustion units burning materials to recover chemical constituents or to produce chemical compounds where there is an existing commercial market for such recovered chemical constituents or compounds. A chemical recovery unit is not an incinerator, a waste-burning kiln, an energy recovery unit or a small, remote incinerator under this subpart. The following seven types of units are considered chemical recovery units:

(1) Units burning only pulping liquors (*i.e.,* black liquor) that are reclaimed in a pulping liquor recovery process and reused in the pulping process;

(2) Units burning only spent sulfuric acid used to produce virgin sulfuric acid;

(3) Units burning only wood or coal feedstock for the production of charcoal;

(4) Units burning only manufacturing byproduct streams/residue containing catalyst metals that are reclaimed and reused as catalysts or used to produce commercial grade catalysts;

(5) Units burning only coke to produce purified carbon monoxide that is used as an intermediate in the production of other chemical compounds;

(6) Units burning only hydrocarbon liquids or solids to produce hydrogen, carbon monoxide, synthesis gas, or other gases for use in other manufacturing processes; and

(7) Units burning only photographic film to recover silver.

Chemotherapeutic waste means waste material resulting from the production or use of antineoplastic agents used for the purpose of stopping or reversing the growth of malignant cells.

Clean lumber means wood or wood products that have been cut or shaped and include wet, air-dried, and kiln-dried wood products. Clean lumber does not include wood products that have been painted, pigment-stained, or pressure-treated by compounds such as chromate copper arsenate, pentachlorophenol, and creosote.

Commercial and industrial solid waste incineration unit (CISWI) means any distinct operating unit of any commercial or industrial facility that combusts, or has combusted in the preceding 6 months, any solid waste as that term is defined in 40 CFR part 241. If the operating unit burns materials other than traditional fuels as defined in § 241.2 that have been discarded, and you do not keep and produce records as required by § 60.2740(u), the operating unit is a CISWI. While not all CISWIs will include all of the following components, a CISWI includes, but is not limited to, the solid waste feed system, grate system, flue gas system, waste heat recovery equipment, if any, and bottom ash system. The CISWI does not include air pollution control equipment or the stack. The CISWI boundary starts at the solid waste hopper (if applicable) and extends through two areas: The combustion unit flue gas system, which ends immediately after the last combustion chamber or after the waste heat recovery equipment, if any; and the combustion unit bottom ash system, which ends at the truck loading station or similar equipment that transfers the ash to final disposal. The CISWI includes all ash handling systems connected to the bottom ash handling system.

Contained gaseous material means gases that are in a container when that container is combusted.

Continuous emission monitoring system (CEMS) means the total equipment that may be required to meet the data acquisition and availability requirements of this subpart, used to sample, condition (if applicable), analyze, and provide a record of emissions.

Continuous monitoring system (CMS) means the total equipment, required under the emission monitoring sections in applicable subparts, used to sample and condition (if applicable), to analyze, and to provide a permanent record of emissions or process parameters. A particulate matter continuous parameter monitoring system (PM CPMS) is a type of CMS.

Cyclonic burn barrel means a combustion device for waste materials that is attached to a 55 gallon, open-head drum. The device consists of a lid, which fits onto and encloses the drum, and a blower that forces combustion air into the drum in a cyclonic manner to enhance the mixing of waste material and air. A cyclonic burn barrel is not an incinerator, a waste-burning kiln, an energy recovery unit or a small, remote incinerator under this subpart.

Deviation means any instance in which an affected source subject to this subpart, or an owner or operator of such a source:

(1) Fails to meet any requirement or obligation established by this subpart, including but not limited to any emission limitation, operating limit, or operator qualification and accessibility requirements; and

(2) Fails to meet any term or condition that is adopted to implement an applicable requirement in this subpart and that is included in the operating permit for any affected source required to obtain such a permit.

Dioxins/furans means tetra-through octachlorinated dibenzo-p-dioxins and dibenzofurans.

Discard means, for purposes of this subpart and 40 CFR part 60, subpart DDDD, only, burned in an incineration unit without energy recovery.

Drum reclamation unit means a unit that burns residues out of drums (*e.g.,* 55 gallon drums) so that the drums can be reused.

Dry scrubber means an add-on air pollution control system that injects dry alkaline sorbent (dry injection) or sprays an alkaline sorbent (spray dryer) to react with and neutralize acid gas in the exhaust stream forming a dry powder material. Sorbent injection systems in fluidized bed boilers and process heaters are included in this definition. A dry scrubber is a dry control system.

Energy recovery means the process of recovering thermal energy from combustion for useful purposes such as steam generation or process heating.

Energy recovery unit means a combustion unit combusting solid waste (as that term is defined by the Administrator in 40 CFR part 241) for energy recovery. Energy recovery units include units that would be considered boilers and process heaters if they did not combust solid waste.

Energy recovery unit designed to burn biomass (Biomass) means an energy recovery unit that burns solid waste, biomass, and non-coal solid materials but less than 10 percent coal, on a heat input basis on an annual average, either alone or in combination with liquid waste, liquid fuel or gaseous fuels.

Energy recovery unit designed to burn coal (Coal) means an energy recovery unit that burns solid waste and at least 10 percent coal on a heat input basis on an annual average, either alone or in combination with liquid waste, liquid fuel or gaseous fuels.

Energy recovery unit designed to burn liquid waste materials and gas (Liquid/gas) means an energy recovery unit that burns a liquid waste with liquid or gaseous fuels not combined with any solid fuel or waste materials.

Energy recovery unit designed to burn solid materials (Solids) includes energy recovery units designed to burn coal and energy recovery units designed to burn biomass.

Fabric filter means an add-on air pollution control device used to capture particulate matter by filtering gas streams through filter media, also known as a baghouse.

Foundry sand thermal reclamation unit means a type of part reclamation unit that removes coatings that are on foundry sand. A foundry sand thermal reclamation unit is not an incinerator, a waste-burning kiln, an energy recovery unit or a small, remote incinerator under this subpart.

Incinerator means any furnace used in the process of combusting solid waste (as that term is defined by the Administrator in 40 CFR part 241) for the purpose of reducing the volume of the waste by removing combustible matter. Incinerator designs include single chamber and two-chamber.

In-line coal mill means those coal mills using kiln exhaust gases in their process. Coal mills with a heat source other than the kiln or coal mills using exhaust gases from the clinker cooler alone are not an in-line coal mill.

In-line kiln/raw mill means a system in a Portland Cement production process where a dry kiln system is integrated with the raw mill so that all or a portion of the kiln exhaust gases are used to perform the drying operation of the raw mill, with no auxiliary heat source used. In this system the kiln is capable of operating without the raw mill operating, but the raw mill cannot operate without the kiln gases, and consequently, the raw mill does not generate a separate exhaust gas stream.

Kiln means an oven or furnace, including any associated preheater or precalciner devices, in-line raw mills, in-line coal mills or alkali bypasses used for processing a substance by burning, firing or drying. Kilns include cement kilns that produce clinker by heating limestone and other materials for subsequent production of Portland Cement. Because the alkali bypass, in-line raw mill and in-line coal mill are considered an integral part of the kiln, the kiln emissions limits also apply to the exhaust of the alkali bypass, in-line raw mill and in-line coal mill.

Laboratory analysis unit means units that burn samples of materials for the purpose of chemical or physical analysis. A laboratory analysis unit is not an incinerator, waste-burning kiln, an energy recovery unit or a small, remote incinerator under this subpart.

Load fraction means the actual heat input of an energy recovery unit divided

by heat input during the performance test that established the minimum sorbent injection rate or minimum activated carbon injection rate, expressed as a fraction (*e.g.,* for 50 percent load the load fraction is 0.5).

Low-level radioactive waste means waste material which contains radioactive nuclides emitting primarily beta or gamma radiation, or both, in concentrations or quantities that exceed applicable federal or state standards for unrestricted release. Low-level radioactive waste is not high-level radioactive waste, spent nuclear fuel, or by-product material as defined by the Atomic Energy Act of 1954 (42 U.S.C. 2014(e)(2)).

Malfunction means any sudden, infrequent, and not reasonably preventable failure of air pollution control equipment, process equipment, or a process to operate in a normal or usual manner. Failures that are caused, in part, by poor maintenance or careless operation are not malfunctions.

Minimum voltage or amperage means 90 percent of the lowest test-run average voltage or amperage to the electrostatic precipitator measured during the most recent particulate matter or mercury performance test demonstrating compliance with the applicable emission limits.

Modification or *modified CISWI* means a CISWI that has been changed later than August 7, 2013, and that meets one of two criteria:

(1) The cumulative cost of the changes over the life of the unit exceeds 50 percent of the original cost of building and installing the CISWI (not including the cost of land) updated to current costs (current dollars). To determine what systems are within the boundary of the CISWI used to calculate these costs, *see* the definition of CISWI; and

(2) Any physical change in the CISWI or change in the method of operating it that increases the amount of any air pollutant emitted for which section 129 or section 111 of the Clean Air Act has established standards.

Municipal solid waste or municipal-type solid waste means household, commercial/retail, or institutional waste. Household waste includes material discarded by residential dwellings, hotels, motels, and other similar permanent or temporary housing. Commercial/retail waste includes material discarded by stores, offices, restaurants, warehouses, nonmanufacturing activities at industrial facilities, and other similar establishments or facilities. Institutional waste includes materials discarded by schools, by hospitals (nonmedical), by nonmanufacturing activities at prisons and government facilities, and other similar establishments or facilities. Household, commercial/retail, and institutional waste does include yard waste and refuse-derived fuel. Household, commercial/retail, and institutional waste does not include used oil; sewage sludge; wood pallets; construction, renovation, and demolition wastes (which include railroad ties and telephone poles); clean wood; industrial process or manufacturing wastes; medical waste; or motor vehicles (including motor vehicle parts or vehicle fluff).

Opacity means the degree to which emissions reduce the transmission of light and obscure the view of an object in the background.

Operating day means a 24-hour period between 12:00 midnight and the following midnight during which any amount of solid waste is combusted at any time in the CISWI.

Oxygen analyzer system means all equipment required to determine the oxygen content of a gas stream and used to monitor oxygen in the boiler or process heater flue gas, boiler/process heater, firebox, or other appropriate location. This definition includes oxygen trim systems and certified oxygen CEMS. The source owner or operator is responsible to install, calibrate, maintain, and operate the oxygen analyzer system in accordance with the manufacturer's recommendations.

Oxygen trim system means a system of monitors that is used to maintain excess air at the desired level in a combustion device over its operating range. A typical system consists of a flue gas oxygen and/or carbon monoxide monitor that automatically provides a feedback signal to the combustion air controller or draft controller.

Part reclamation unit means a unit that burns coatings off parts (*e.g.,* tools, equipment) so that the parts can be reconditioned and reused.

Particulate matter means total particulate matter emitted from CISWIs as measured by Method 5 or Method 29 of appendix A of this part.

Pathological waste means waste material consisting of only human or animal remains, anatomical parts, and/or tissue, the bags/containers used to collect and transport the waste material, and animal bedding (if applicable).

Performance evaluation means the conduct of relative accuracy testing, calibration error testing, and other measurements used in validating the continuous monitoring system data.

Performance test means the collection of data resulting from the execution of a test method (usually three emission test runs) used to demonstrate compliance with a relevant emission standard as specified in the performance test section of the relevant standard.

Process change means any of the following physical or operational changes:

(1) A physical change (maintenance activities excluded) to the CISWI which may increase the emission rate of any air pollutant to which a standard applies;

(2) An operational change to the CISWI where a new type of non-hazardous secondary material is being combusted;

(3) A physical change (maintenance activities excluded) to the air pollution control devices used to comply with the emission limits for the CISWI (*e.g.,* replacing an electrostatic precipitator with a fabric filter); and

(4) An operational change to the air pollution control devices used to comply with the emission limits for the affected CISWI (*e.g.,* change in the sorbent injection rate used for activated carbon injection).

Rack reclamation unit means a unit that burns the coatings off racks used to hold small items for application of a coating. The unit burns the coating overspray off the rack so the rack can be reused.

Raw mill means a ball or tube mill, vertical roller mill or other size reduction equipment, that is not part of an in-line kiln/raw mill, used to grind feed to the appropriate size. Moisture may be added or removed from the feed during the grinding operation. If the raw mill is used to remove moisture from feed materials, it is also, by definition, a raw material dryer. The raw mill also includes the air separator associated with the raw mill.

Reconstruction means rebuilding a CISWI and meeting two criteria:

(1) The reconstruction begins on or after August 7, 2013; and

(2) The cumulative cost of the construction over the life of the incineration unit exceeds 50 percent of the original cost of building and installing the CISWI (not including land) updated to current costs (current dollars). To determine what systems are within the boundary of the CISWI used to calculate these costs, *see* the definition of CISWI.

Refuse-derived fuel means a type of municipal solid waste produced by processing municipal solid waste through shredding and size classification. This includes all classes of refuse-derived fuel including two fuels:

(1) Low-density fluff refuse-derived fuel through densified refuse-derived fuel; and

(2) Pelletized refuse-derived fuel.

Responsible official means one of the following:

(1) For a corporation: A president, secretary, treasurer, or vice-president of the corporation in charge of a principal business function, or any other person who performs similar policy or decision-making functions for the corporation, or a duly authorized representative of such person if the representative is responsible for the overall operation of one or more manufacturing, production, or operating facilities applying for or subject to a permit and either:

(i) The facilities employ more than 250 persons or have gross annual sales or expenditures exceeding $25 million (in second quarter 1980 dollars); or

(ii) The delegation of authority to such representatives is approved in advance by the permitting authority;

(2) For a partnership or sole proprietorship: A general partner or the proprietor, respectively;

(3) For a municipality, state, federal, or other public agency: Either a principal executive officer or ranking elected official. For the purposes of this part, a principal executive officer of a Federal agency includes the chief executive officer having responsibility for the overall operations of a principal geographic unit of the agency (*e.g.,* a Regional Administrator of EPA); or

(4) For affected facilities:

(i) The designated representative in so far as actions, standards, requirements, or prohibitions under Title IV of the Clean Air Act or the regulations promulgated thereunder are concerned; or

(ii) The designated representative for any other purposes under part 60.

Shutdown means, for incinerators and small, remote incinerators, the period of time after all waste has been combusted in the primary chamber.

Small, remote incinerator means an incinerator that combusts solid waste (as that term is defined by the Administrator in 40 CFR part 241) and combusts 3 tons per day or less solid waste and is more than 25 miles driving distance to the nearest municipal solid waste landfill.

Soil treatment unit means a unit that thermally treats petroleum-contaminated soils for the sole purpose of site remediation. A soil treatment unit may be direct-fired or indirect fired. A soil treatment unit is not an incinerator, a waste-burning kiln, an energy recovery unit or a small, remote incinerator under this subpart.

Solid waste means the term solid waste as defined in 40 CFR 241.2.

Solid waste incineration unit means a distinct operating unit of any facility which combusts any solid waste (as that term is defined by the Administrator in 40 CFR part 241) material from commercial or industrial establishments or the general public (including single and multiple residences, hotels and motels). Such term does not include incinerators or other units required to have a permit under section 3005 of the Solid Waste Disposal Act. The term ''solid waste incineration unit'' does not include:

(1) Materials recovery facilities (including primary or secondary smelters) which combust waste for the primary purpose of recovering metals;

(2) Qualifying small power production facilities, as defined in section 3(17)(C) of the Federal Power Act (16 U.S.C. 769(17)(C)), or qualifying cogeneration facilities, as defined in section 3(18)(B) of the Federal Power Act (16 U.S.C. 796(18)(B)), which burn homogeneous waste (such as units which burn tires or used oil, but not including refuse-derived fuel) for the production of electric energy or in the case of qualifying cogeneration facilities which burn homogeneous waste for the production of electric energy and steam or forms of useful energy (such as heat) which are used for industrial, commercial, heating or cooling purposes; or

(3) Air curtain incinerators provided that such incinerators only burn wood wastes, yard wastes and clean lumber and that such air curtain incinerators comply with opacity limitations to be established by the Administrator by rule.

Space heater means a unit that meets the requirements of 40 CFR 279.23. A space heater is not an incinerator, a waste-burning kiln, an energy recovery unit or a small, remote incinerator under this subpart.

Standard conditions, when referring to units of measure, means a temperature of 68 °F (20 °C) and a pressure of 1 atmosphere (101.3 kilopascals).

Startup period means, for incinerators and small, remote incinerators, the period of time between the activation of the system and the first charge to the unit.

Useful thermal energy means energy (*i.e.,* steam, hot water, or process heat) that meets the minimum operating temperature and/or pressure required by any energy use system that uses energy provided by the affected energy recovery unit.

Waste-burning kiln means a kiln that is heated, in whole or in part, by combusting solid waste (as the term is defined by the Administrator in 40 CFR part 241). Secondary materials used in Portland cement kilns shall not be deemed to be combusted unless they are introduced into the flame zone in the hot end of the kiln or mixed with the precalciner fuel.

Wet scrubber means an add-on air pollution control device that uses an aqueous or alkaline scrubbing liquor to collect particulate matter (including nonvaporous metals and condensed organics) and/or to absorb and neutralize acid gases.

Wood waste means untreated wood and untreated wood products, including tree stumps (whole or chipped), trees, tree limbs (whole or chipped), bark, sawdust, chips, scraps, slabs, millings, and shavings. Wood waste does not include:

(1) Grass, grass clippings, bushes, shrubs, and clippings from bushes and shrubs from residential, commercial/retail, institutional, or industrial sources as part of maintaining yards or other private or public lands;

(2) Construction, renovation, or demolition wastes; or

(3) Clean lumber.

TABLE 1 TO SUBPART DDDD OF PART 60—MODEL RULE—INCREMENTS OF PROGRESS AND COMPLIANCE SCHEDULES

Comply with these increments of progress	By these dates [1]
Increment 1—Submit final control plan	(Dates to be specified in state plan).
Increment 2—Final compliance	(Dates to be specified in state plan).[2]

[1] Site-specific schedules can be used at the discretion of the state.

[2] The date can be no later than 3 years after the effective date of state plan approval or December 1, 2005 for CISWIs that commenced construction on or before November 30, 1999. The date can be no later than 3 years after the effective date of approval of a revised state plan or February 7, 2018, for CISWIs that commenced construction on or before June 4, 2010.

TABLE 2 TO SUBPART DDDD OF PART 60—MODEL RULE—EMISSION LIMITATIONS THAT APPLY TO INCINERATORS BEFORE

[Date to be specified in state plan] [1]

For the air pollutant	You must meet this emission limitation [2]	Using this averaging time [3]	And determining compliance using this method [3]
Cadmium	0.004 milligrams per dry standard cubic meter.	3-run average (1 hour minimum sample time per run).	Performance test (Method 29 of appendix A of this part).
Carbon monoxide	157 parts per million by dry volume	3-run average (1 hour minimum sample time per run).	Performance test (Method 10, 10A, or 10B, of appendix A of this part).
Dioxins/furans (toxic equivalency basis).	0.41 nanograms per dry standard cubic meter.	3-run average (1 hour minimum sample time per run).	Performance test (Method 23 of appendix A of this part).
Hydrogen chloride	62 parts per million by dry volume	3-run average (For Method 26, collect a minimum volume of 120 liters per run. For Method 26A, collect a minimum volume of 1 dry standard cubic meter per run).	Performance test (Method 26 or 26A at 40 CFR part 60, appendix A–8).
Lead	0.04 milligrams per dry standard cubic meter.	3-run average (1 hour minimum sample time per run).	Performance test (Method 29 of appendix A of this part).
Mercury	0.47 milligrams per dry standard cubic meter.	3-run average (1 hour minimum sample time per run).	Performance test (Method 29 or 30B at 40 CFR part 60, appendix A–8) or ASTM D6784–02 (Reapproved 2008).[4]
Opacity	10 percent	Three 1-hour blocks consisting of ten 6-minute average opacity values.	Performance test (Method 9 at 40 CFR part 60, appendix A–4).
Nitrogen oxides	388 parts per million by dry volume	3-run average (1 hour minimum sample time per run).	Performance test (Methods 7 or 7E at 40 CFR part 60, appendix A–4).
Particulate matter	70 milligrams per dry standard cubic meter	3-run average (1 hour minimum sample time per run).	Performance test (Method 5 or 29 of appendix A of this part).
Sulfur dioxide	20 parts per million by dry volume	3-run average (1 hour minimum sample time per run).	Performance test (Method 6 or 6c of appendix A of this part).

[1] Applies only to incinerators subject to the CISWI standards through a state plan or the Federal plan prior to June 4, 2010. The date specified in the state plan can be no later than 3 years after the effective date of approval of a revised state plan or February 7, 2018.

[2] All emission limitations (except for opacity) are measured at 7 percent oxygen, dry basis at standard conditions.

[3] In lieu of performance testing, you may use a CEMS or, for mercury, an integrated sorbent trap monitoring system, to demonstrate initial and continuing compliance with an emissions limit, as long as you comply with the CEMS or integrated sorbent trap monitoring system requirements applicable to the specific pollutant in § 60.2710 and § 60.2730. As prescribed in § 60.2710(u), if you use a CEMS or integrated sorbent trap monitoring system to demonstrate compliance with an emissions limit, your averaging time is a 30-day rolling average of 1-hour arithmetic average emission concentrations.

[4] Incorporated by reference, *see* § 60.17.

TABLE 3 TO SUBPART DDDD OF PART 60—MODEL RULE—OPERATING LIMITS FOR WET SCRUBBERS

For these operating	You must	And monitor using these minimum frequencies		
		Data measurement	Data recording	Averaging time
Charge rate	Maximum charge rate	Continuous	Every hour	Daily (batch units). 3-hour rolling (continuous and intermittent units).[1]
Pressure drop across the wet scrubber or amperage to wet scrubber.	Minimum pressure drop or amperage	Continuous	Every 15 minutes	3-hour rolling.[1]
Scrubber liquor flow rate	Minimum flow rate	Continuous	Every 15 minutes	3-hour rolling.[1]
Scrubber liquor pH	Minimum pH	Continuous	Every 15 minutes	3-hour rolling.[1]

[1] Calculated each hour as the average of the previous 3 operating hours.

TABLE 4 TO SUBPART DDDD OF PART 60—MODEL RULE—TOXIC EQUIVALENCY FACTORS

Dioxin/furan isomer	Toxic equivalency factor
2,3,7,8-tetrachlorinated dibenzo-p-dioxin	1
1,2,3,7,8-pentachlorinated dibenzo-p-dioxin	0.5
1,2,3,4,7,8-hexachlorinated dibenzo-p-dioxin	0.1
1,2,3,7,8,9-hexachlorinated dibenzo-p-dioxin	0.1
1,2,3,6,7,8-hexachlorinated dibenzo-p-dioxin	0.1
1,2,3,4,6,7,8-heptachlorinated dibenzo-p-dioxin	0.01
octachlorinated dibenzo-p-dioxin	0.001
2,3,7,8-tetrachlorinated dibenzofuran	0.1
2,3,4,7,8-pentachlorinated dibenzofuran	0.5
1,2,3,7,8-pentachlorinated dibenzofuran	0.05
1,2,3,4,7,8-hexachlorinated dibenzofuran	0.1
1,2,3,6,7,8-hexachlorinated dibenzofuran	0.1
1,2,3,7,8,9-hexachlorinated dibenzofuran	0.1
2,3,4,6,7,8-hexachlorinated dibenzofuran	0.1
1,2,3,4,6,7,8-heptachlorinated dibenzofuran	0.01
1,2,3,4,7,8,9-heptachlorinated dibenzofuran	0.01
octachlorinated dibenzofuran	0.001

TABLE 5 TO SUBPART DDDD OF PART 60—MODEL RULE—SUMMARY OF REPORTING REQUIREMENTS [1]

Report	Due date	Contents	Reference
Waste Management Plan.	No later than the date specified in table 1 for submittal of the final control plan.	• Waste management plan	§ 60.2755.
Initial Test Report	No later than 60 days following the initial performance test.	• Complete test report for the initial performance test	§ 60.2760.
		• The values for the site-specific operating limits	
		• Installation of bag leak detection systems for fabric filters	
Annual report	No later than 12 months following the submission of the initial test report. Subsequent reports are to be submitted no more than 12 months following the previous report.	• Name and address	§§ 60.2765 and 60.2770.
		• Statement and signature by responsible official	
		• Date of report	
		• Values for the operating limits	
		• Highest recorded 3-hour average and the lowest 3-hour average, as applicable, (or 30-day average, if applicable) for each operating parameter recorded for the calendar year being reported.	
		• If a performance test was conducted during the reporting period, the results of the test.	
		• If a performance test was not conducted during the reporting period, a statement that the requirements of § 60.2720(a) were met.	
		• Documentation of periods when all qualified CISWI operators were unavailable for more than 8 hours but less than 2 weeks.	
		• If you are conducting performance tests once every 3 years consistent with § 60.2720(a), the date of the last 2 performance tests, a comparison of the emission level you achieved in the last 2 performance tests to the 75 percent emission limit threshold required in § 60.2720(a) and a statement as to whether there have been any operational changes since the last performance test that could increase emissions.	
Emission limitation or operating limit deviation report.	By August 1 of that year for data collected during the first half of the calendar year. By February 1 of the following year for data collected during the second half of the calendar year.	• Dates and times of deviation	§ 60.2775 and 60.2780.
		• Averaged and recorded data for those dates	
		• Duration and causes of each deviation and the corrective actions taken	
		• Copy of operating limit monitoring data and any test reports	
		• Dates, times and causes for monitor downtime incidents	
Qualified Operator Deviation Notification.	Within 10 days of deviation	• Statement of cause of deviation	§ 60.2785(a)(1).
		• Description of efforts to have an accessible qualified operator	
		• The date a qualified operator will be accessible	
Qualified Operator Deviation Status Report.	Every 4 weeks following deviation	• Description of efforts to have an accessible qualified operator	§ 60.2785(a)(2).
		• The date a qualified operator will be accessible	
		• Request for approval to continue operation	
Qualified Operator Deviation Notification of Resumed Operation.	Prior to resuming operation	• Notification that you are resuming operation	§ 60.2785(b)

[1] This table is only a summary, *see* the referenced sections of the rule for the complete requirements.

TABLE 6 TO SUBPART DDDD OF PART 60—MODEL RULE—EMISSION LIMITATIONS THAT APPLY TO INCINERATORS ON AND AFTER

[Date to be specified in state plan] [1]

For the air pollutant	You must meet this emission limitation [2]	Using this averaging time [3]	And determining compliance using this method [3]
Cadmium	0.0026 milligrams per dry standard cubic meter.	3-run average (collect a minimum volume of 2 dry standard cubic meters).	Performance test (Method 29 at 40 CFR part 60, appendix A–8). Use ICPMS for the analytical finish.
Carbon monoxide	17 parts per million dry volume	3-run average (1 hour minimum sample time per run).	Performance test (Method 10 at 40 CFR part 60, appendix A–4).
Dioxins/furans (total mass basis)	4.6 nanograms per dry standard cubic meter.	3-run average (collect a minimum volume of 2 dry standard cubic meters).	Performance test (Method 23 at 40 CFR part 60, appendix A–7).
Dioxins/furans (toxic equivalency basis).	0.13 nanograms per dry standard cubic meter.	3-run average (collect a minimum volume of 2 dry standard cubic meters).	Performance test (Method 23 at 40 CFR part 60, appendix A–7).
Hydrogen chloride	29 parts per million dry volume	3-run average (For Method 26, collect a minimum volume of 60 liters per run. For Method 26A, collect a minimum volume of 1 dry standard cubic meter per run).	Performance test (Method 26 or 26A at 40 CFR part 60, appendix A–8).
Lead	0.015 milligrams per dry standard cubic meter.	3-run average (collect a minimum volume of 2 dry standard cubic meters).	Performance test (Method 29 at 40 CFR part 60, appendix A–8). Use ICPMS for the analytical finish.

TABLE 6 TO SUBPART DDDD OF PART 60—MODEL RULE—EMISSION LIMITATIONS THAT APPLY TO INCINERATORS ON AND AFTER—Continued

[Date to be specified in state plan] [1]

For the air pollutant	You must meet this emission limitation [2]	Using this averaging time [3]	And determining compliance using this method [3]
Mercury	0.0048 milligrams per dry standard cubic meter.	3-run average (For Method 29 an ASTM D6784–02 (Reapproved 2008),[4] collect a minimum volume of 2 dry standard cubic meters per run. For Method 30B, collect a minimum sample as specified in Method 30B at 40 CFR part 60, appendix A).	Performance test (Method 29 or 30B at 40 CFR part 60, appendix A–8) or ASTM D6784–02 (Reapproved 2008).[4]
Nitrogen oxides	53 parts per million dry volume	3-run average (for Method 7E, 1 hour minimum sample time per run).	Performance test (Method 7 or 7E at 40 CFR part 60, appendix A–4).
Particulate matter filterable	34 milligrams per dry standard cubic meter.	3-run average (collect a minimum volume of 1 dry standard cubic meter).	Performance test (Method 5 or 29 at 40 CFR part 60, appendix A–3 or appendix A–8).
Sulfur dioxide	11 parts per million dry volume	3-run average (1 hour minimum sample time per run).	Performance test (Method 6 or 6c at 40 CFR part 60, appendix A–4).
Fugitive ash	Visible emissions for no more than 5% of the hourly observation period.	Three 1-hour observation periods	Visible emission test (Method 22 at 40 CFR part 60, appendix A–7).

[1] The date specified in the state plan can be no later than 3 years after the effective date of approval of a revised state plan or February 7, 2018.

[2] All emission limitations are measured at 7 percent oxygen, dry basis at standard conditions. For dioxins/furans, you must meet either the total mass basis limit or the toxic equivalency basis limit.

[3] In lieu of performance testing, you may use a CEMS or, for mercury, an integrated sorbent trap monitoring system, to demonstrate initial and continuing compliance with an emissions limit, as long as you comply with the CEMS or integrated sorbent trap monitoring system requirements applicable to the specific pollutant in § 60.2710 and § 60.2730. As prescribed in § 60.2710(u), if you use a CEMS or integrated sorbent trap monitoring system to demonstrate compliance with an emissions limit, your averaging time is a 30-day rolling average of 1-hour arithmetic average emission concentrations.

[4] Incorporated by reference, *see* § 60.17.

TABLE 7 TO SUBPART DDDD OF PART 60—MODEL RULE—EMISSION LIMITATIONS THAT APPLY TO ENERGY RECOVERY UNITS AFTER MAY 20, 2011

[Date to be specified in state plan] [1]

For the air pollutant	You must meet this emission limitation [2]		Using this averaging time [3]	And determining compliance using this method [3]
	Liquid/Gas	Solids		
Cadmium	0.023 milligrams per dry standard cubic meter.	Biomass—0.0014 milligrams per dry standard cubic meter. Coal—0.0017 milligrams per dry standard cubic meter.	3-run average (collect a minimum volume of 2 dry standard cubic meters).	Performance test (Method 29 at 40 CFR part 60, appendix A–8). Use ICPMS for the analytical finish.
Carbon monoxide	35 parts per million dry volume.	Biomass—260 parts per million dry volume. Coal—95 parts per million dry volume.	3-run average (1 hour minimum sample time per run).	Performance test (Method 10 at 40 CFR part 60, appendix A–4).
Dioxins/furans (total mass basis).	2.9 nanograms per dry standard cubic meter.	Biomass—0.52 nanograms per dry standard cubic meter. Coal—5.1 nanograms per dry standard cubic meter.	3-run average (collect a minimum volume of 4 dry standard cubic meter).	Performance test (Method 23 at 40 CFR part 60, appendix A–7).
Dioxins/furans (toxic equivalency basis).	0.32 nanograms per dry standard cubic meter.	Biomass—0.12 nanograms per dry standard cubic meter. Coal—0.075 nanograms per dry standard cubic meter.	3-run average (collect a minimum volume of 4 dry standard cubic meters).	Performance test (Method 23 at 40 CFR part 60, appendix A–7).
Hydrogen chloride	14 parts per million dry volume.	Biomass—0.20 parts per million dry volume. Coal—58 parts per million dry volume.	3-run average (for Method 26, collect a minimum of 120 liters; for Method 26A, collect a minimum volume of 1 dry standard cubic meter).	Performance test (Method 26 or 26A at 40 CFR part 60, appendix A–8).
Lead	0.096 milligrams per dry standard cubic meter.	Biomass—0.014 milligrams per dry standard cubic meter. Coal—0.057 milligrams per dry standard cubic meter.	3-run average (collect a minimum volume of 2 dry standard cubic meters).	Performance test (Method 29 at 40 CFR part 60, appendix A–8). Use ICPMS for the analytical finish.
Mercury	0.0024 milligrams per dry standard cubic meter.	Biomass—0.0022 milligrams per dry standard cubic meter. Coal—0.013 milligrams per dry standard cubic meter.	3-run average (For Method 29 and ASTM D6784–02 (Reapproved 2008),[4] collect a minimum volume of 2 dry standard cubic meters per run. For Method 30B, collect a minimum sample as specified in Method 30B at 40 CFR part 60, appendix A).	Performance test (Method 29 or 30B at 40 CFR part 60, appendix A–8) or ASTM D6784–02 (Reapproved 2008).[4]
Nitrogen oxides	76 parts per million dry volume.	Biomass—290 parts per million dry volume. Coal—460 parts per million dry volume.	3-run average (for Method 7E, 1 hour minimum sample time per run).	Performance test (Method 7 or 7E at 40 CFR part 60, appendix A–4).

TABLE 7 TO SUBPART DDDD OF PART 60—MODEL RULE—EMISSION LIMITATIONS THAT APPLY TO ENERGY RECOVERY UNITS AFTER MAY 20, 2011—Continued

[Date to be specified in state plan] [1]

For the air pollutant	You must meet this emission limitation [2]		Using this averaging time [3]	And determining compliance using this method [3]
	Liquid/Gas	Solids		
Particulate matter filterable	110 milligrams per dry standard cubic meter.	Biomass—11 milligrams per dry standard cubic meter. Coal—130 milligrams per dry standard cubic meter.	3-run average (collect a minimum volume of 1 dry standard cubic meter).	Performance test (Method 5 or 29 at 40 CFR part 60, appendix A–3 or appendix A–8) if the unit has an annual average heat input rate less than or equal to 250 MMBtu/hr; or PM CPMS (as specified in §60.2710(x)) if the unit has an annual average heat input rate greater than 250 MMBtu/hr.
Sulfur dioxide	720 parts per million dry volume.	Biomass—7.3 parts per million dry volume. Coal—850 parts per million dry volume.	3-run average (1 hour minimum sample time per run).	Performance test (Method 6 or 6c at 40 CFR part 60, appendix A–4).
Fugitive ash	Visible emissions for no more than 5 percent of the hourly observation period.	Visible emissions for no more than 5 percent of the hourly observation period.	Three 1-hour observation periods	Visible emission test (Method 22 at 40 CFR part 60, appendix A–7).

[1] The date specified in the state plan can be no later than 3 years after the effective date of approval of a revised state plan or February 7, 2018.

[2] All emission limitations (except for opacity) are measured at 7 percent oxygen, dry basis at standard conditions. For dioxins/furans, you must meet either the total mass basis limit or the toxic equivalency basis limit.

[3] In lieu of performance testing, you may use a CEMS or, for mercury, an integrated sorbent trap monitoring system, to demonstrate initial and continuing compliance with an emissions limit, as long as you comply with the CEMS or integrated sorbent trap monitoring system requirements applicable to the specific pollutant in §60.2710 and §60.2730. As prescribed in §60.2710(u), if you use a CEMS or integrated sorbent trap monitoring system to demonstrate compliance with an emissions limit, your averaging time is a 30-day rolling average of 1-hour arithmetic average emission concentrations.

[4] Incorporated by reference, *see* §60.17.

TABLE 8 TO SUBPART DDDD OF PART 60—MODEL RULE—EMISSION LIMITATIONS THAT APPLY TO WASTE-BURNING KILNS AFTER MAY 20, 2011

[Date to be specified in state plan.] [1]

For the air pollutant	You must meet this emission limitation [2]	Using this averaging time [3]	And determining compliance using this method [3 4]
Cadmium	0.0014 milligrams per dry standard cubic meter.	3-run average (collect a minimum volume of 2 dry standard cubic meters).	Performance test (Method 29 at 40 CFR part 60, appendix A–8).
Carbon monoxide	110 (long kilns)/790 (preheater/precalciner) parts per million dry volume.	3-run average (1 hour minimum sample time per run).	Performance test (Method 10 at 40 CFR part 60, appendix A–4).
Dioxins/furans (total mass basis)	1.3 nanograms per dry standard cubic meter.	3-run average (collect a minimum volume of 4 dry standard cubic meters).	Performance test (Method 23 at 40 CFR part 60, appendix A–7).
Dioxins/furans (toxic equivalency basis).	0.075 nanograms per dry standard cubic meter.	3-run average (collect a minimum volume of 4 dry standard cubic meters).	Performance test (Method 23 at 40 CFR part 60, appendix A–7).
Hydrogen chloride	3.0 parts per million dry volume	3-run average (collect a minimum volume of 1 dry standard cubic meter), or 30-day rolling average if HCl CEMS is being used.	If a wet scrubber or dry scrubber is used, performance test (Method 321 at 40 CFR part 63, appendix A of this part). If a wet scrubber or dry scrubber is not used, HCl CEMS as specified in §60.2710(j).
Lead	0.014 milligrams per dry standard cubic meter.	3-run average (collect a minimum volume of 2 dry standard cubic meters).	Performance test (Method 29 at 40 CFR part 60, appendix A–8).
Mercury	0.011 milligrams per dry standard cubic meter. Or 58 pounds/million tons of clinker.	30-day rolling average	Mercury CEMS or integrated sorbent trap monitoring system (performance specification 12A or 12B, respectively, of appendix B and procedure 5 of appendix F of this part), as specified in §60.2710(j).
Nitrogen oxides	630 parts per million dry volume.	3-run average (for Method 7E, 1 hour minimum sample time per run).	Performance test (Method 7 or 7E at 40 CFR part 60, appendix A–4).
Particulate matter filterable	13.5 milligrams per dry standard cubic meter.	30-day rolling average	PM CPMS (as specified in §60.2710(x)).
Sulfur dioxide	600 parts per million dry volume.	3-run average (for Method 6, collect a minimum of 20 liters; for Method 6C, 1 hour minimum sample time per run).	Performance test (Method 6 or 6c at 40 CFR part 60, appendix A–4).

[1] The date specified in the state plan can be no later than 3 years after the effective date of approval of a revised state plan or February 7, 2018.

[2] All emission limitations are measured at 7 percent oxygen (except for CEMS and integrated sorbent trap monitoring system data during startup and shutdown), dry basis at standard conditions. For dioxins/furans, you must meet either the total mass basis limit or the toxic equivalency basis limit.

[3] In lieu of performance testing, you may use a CEMS or, for mercury, an integrated sorbent trap monitoring system, to demonstrate initial and continuing compliance with an emissions limit, as long as you comply with the CEMS or integrated sorbent trap monitoring system requirements applicable to the specific pollutant in §60.2710 and §60.2730. As prescribed in §60.2710(u), if you use a CEMS or integrated sorbent trap monitoring system to demonstrate compliance with an emissions limit, your averaging time is a 30-day rolling average of 1-hour arithmetic average emission concentrations.

[4] Alkali bypass and in-line coal mill stacks are subject to performance testing only, as specified in 60.2710(y)(3). They are not subject to the CEMS, integrated sorbent trap monitoring system, or CPMS requirements that otherwise may apply to the main kiln exhaust.

TABLE 9 TO SUBPART DDDD OF PART 60—MODEL RULE—EMISSION LIMITATIONS THAT APPLY TO SMALL, REMOTE INCINERATORS AFTER MAY 20, 2011

[Date to be specified in state plan] [1]

For the air pollutant	You must meet this emission limitation"[2]	Using this averaging time [3]	And determining compliance using this method [3]
Cadmium	0.95 milligrams per dry standard cubic meter.	3-run average (collect a minimum volume of 1 dry standard cubic meters per run).	Performance test (Method 29 at 40 CFR part 60, appendix A–8).
Carbon monoxide	64 parts per million dry volume	3-run average (1 hour minimum sample time per run).	Performance test (Method 10 at 40 CFR part 60, appendix A–4).
Dioxins/furans (total mass basis)	4,400 nanograms per dry standard cubic meter.	3-run average (collect a minimum volume of 1 dry standard cubic meters per run).	Performance test (Method 23 at 40 CFR part 60, appendix A–7).
Dioxins/furans (toxic equivalency basis).	180 nanograms per dry standard cubic meter.	3-run average (collect a minimum volume of 1 dry standard cubic meters).	Performance test (Method 23 at 40 CFR part 60, appendix A–7).
Fugitive ash	Visible emissions for no more than 5 percent of the hourly observation period.	Three 1-hour observation periods	Visible emissions test (Method 22 at 40 CFR part 60, appendix A–7).
Hydrogen chloride	300 parts per million dry volume.	3-run average (For Method 26, collect a minimum volume of 120 liters per run. For Method 26A, collect a minimum volume of 1 dry standard cubic meter per run).	Performance test (Method 26 or 26A at 40 CFR part 60, appendix A–8).
Lead	2.1 milligrams per dry standard cubic meter.	3-run average (collect a minimum volume of 1 dry standard cubic meters).	Performance test (Method 29 at 40 CFR part 60, appendix A–8). Use ICPMS for the analytical finish.
Mercury	0.0053 milligrams per dry standard cubic meter.	3-run average (For Method 29 and ASTM D6784–02 (Reapproved 2008),[3] collect a minimum volume of 2 dry standard cubic meters per run. For Method 30B, collect a minimum sample as specified in Method 30B at 40 CFR part 60, appendix A).	Performance test (Method 29 or 30B at 40 CFR part 60, appendix A–8) or ASTM D6784–02 (Reapproved 2008).[4]
Nitrogen oxides	190 parts per million dry volume.	3-run average (for Method 7E, 1 hour minimum sample time per run).	Performance test (Method 7 or 7E at 40 CFR part 60, appendix A–4).
Particulate matter (filterable)	270 milligrams per dry standard cubic meter.	3-run average (collect a minimum volume of 1 dry standard cubic meters).	Performance test (Method 5 or 29 at 40 CFR part 60, appendix A–3 or appendix A–8).
Sulfur dioxide	150 parts per million dry volume.	3-run average (for Method 6, collect a minimum of 20 liters per run; for Method 6C, 1 hour minimum sample time per run).	Performance test (Method 6 or 6c at 40 CFR part 60, appendix A–4).

[1] The date specified in the state plan can be no later than 3 years after the effective date of approval of a revised state plan or February 7, 2018.

[2] All emission limitations (except for opacity) are measured at 7 percent oxygen, dry basis at standard conditions. For dioxins/furans, you must meet either the total mass basis limit or the toxic equivalency basis limit.

[3] In lieu of performance testing, you may use a CEMS or, for mercury, an integrated sorbent trap monitoring system, to demonstrate initial and continuing compliance with an emissions limit, as long as you comply with the CEMS or integrated sorbent trap monitoring system requirements applicable to the specific pollutant in § 60.2710 and § 60.2730. As prescribed in § 60.2710(u), if you use a CEMS or integrated sorbent trap monitoring system to demonstrate compliance with an emissions limit, your averaging time is a 30-day rolling average of 1-hour arithmetic average emission concentrations.

[4] Incorporated by reference, *see* § 60.17.

[FR Doc. 2018–12164 Filed 6–14–18; 8:45 am]

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FEDERAL REGISTER

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Part III

Department of Homeland Security

Department of Defense

General Services Administration

National Aeronautics and Space Administration

48 CFR Chapter 1
Federal Acquisition Regulations; Interim Rules

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Chapter 1

[Docket No. FAR 2018–0001, Sequence No. 3]

Federal Acquisition Regulation: Federal Acquisition Circular 2005–99; Introduction

AGENCY: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Summary presentation of interim rules.

SUMMARY: This document summarizes the Federal Acquisition Regulation (FAR) rules agreed to by the Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (Councils) in this Federal Acquisition Circular (FAC) 2005–99. A companion document, the *Small Entity Compliance Guide* (SECG), follows this FAC. The FAC, including the SECG, is available via the internet at *http://www.regulations.gov.*

DATES: For effective dates see the separate documents, which follow.

FOR FURTHER INFORMATION CONTACT: The analyst whose name appears in the table below in relation to the FAR case. Please cite FAC 2005–99 and the specific FAR case number. For information pertaining to status or publication schedules, contact the Regulatory Secretariat Division at 202–501–4755.

RULES LISTED IN FAC 2005–99

Item	Subject	FAR case	Analyst
I	Use of Products and Services of Kaspersky Lab (Interim)	2018–010	Francis.
II	Violations of Arms Control Treaties or Agreements with the United States (Interim)	2017–018	Davis.

SUPPLEMENTARY INFORMATION: Summaries for each FAR rule follow. For the actual revisions and/or amendments made by these rules, refer to the specific item numbers and subjects set forth in the documents following these item summaries. FAC 2005–99 amends the FAR as follows:

Item I—Use of Products and Services of Kaspersky Lab (FAR Case 2018–010)

This interim rule amends the Federal Acquisition Regulation (FAR) to implement section 1634 of Division A of the National Defense Authorization Act (NDAA) for Fiscal Year (FY) 2018 (Pub. L. 115–91). Section 1634 of this law prohibits the Federal Government's use on or after October 1, 2018, of hardware, software, and services developed or provided, in whole or in part, by Kaspersky Lab or related entities.

To implement section 1634, the clause at 52.204–23 prohibits contractors from providing any hardware, software, or services developed or provided by Kaspersky Lab or its related entities, or using any such hardware, software, or services in the development of data or deliverables first produced in the performance of the contract. The contractor must also report any such hardware, software, or services discovered during contract performance; this requirement flows down to subcontractors.

This rule applies to all acquisitions, including acquisitions at or below the simplified acquisition threshold and to acquisitions of commercial items, including commercially available off-the-shelf items. It may have a significant economic impact on a substantial number of small entities.

This interim rule is being implemented as a national security measure to protect Government information and information systems.

Item II—Violations of Arms Control Treaties or Agreements With the United States (FAR Case 2017–018)

This interim rule amends the Federal Acquisition Regulation (FAR) to implement section 1290 of the National Defense Authorization Act for Fiscal Year 2017 (Pub. L. 114–328, codified at 22 U.S.C. 2593e), which addresses measures against persons involved in activities that violate arms control treaties or agreements with the United States. The interim rule adds a certification provision in each solicitation for the acquisition of products or services (including construction) that exceeds the simplified acquisition threshold, except for solicitations for the acquisition of commercial items.

This interim rule will not have a significant economic impact on a substantial number of small entities.

Dated: June 7, 2018.

William F. Clark,

Director, Office of Government-wide Acquisition Policy, Office of Acquisition Policy, Office of Government-wide Policy.

Federal Acquisition Circular (FAC) 2005–99 is issued under the authority of the Secretary of Defense, the Administrator of General Services, and the Administrator for the National Aeronautics and Space Administration.

Unless otherwise specified, all Federal Acquisition Regulation (FAR) and other directive material contained in FAC 2005–99 is effective June 15, 2018 except for item I, which is effective July 16, 2018.

Dated: June 11, 2018.

Linda W. Neilson,

Deputy Director, Defense Procurement and Acquisition Policy (Defense Acquisition Regulations System).

Dated: June 8, 2018.

Jeffrey A. Koses,

Senior Procurement Executive/Deputy CAO, Office of Acquisition Policy, U.S. General Services Administration.

Dated: June 11, 2018.

Monica Y. Manning,

Assistant Administrator, Office of Procurement National Aeronautics and Space Administration.

[FR Doc. 2018–12845 Filed 6–14–18; 8:45 am]

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DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 1, 4, 13, 39, and 52

[FAC 2005–99; FAR Case 2018–010; Item I; Docket 2018–0010, Sequence 1]

RIN 9000–AN64

Federal Acquisition Regulation; Use of Products and Services of Kaspersky Lab

AGENCY: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Interim rule.

SUMMARY: DoD, GSA, and NASA are issuing an interim rule amending the Federal Acquisition Regulation (FAR) to implement a section of the National Defense Authorization Act for Fiscal Year 2018.

DATES:

Effective Date: July 16, 2018.

Applicability Dates:

• Contracting officers shall include the clause at FAR 52.204–23, Prohibition on Contracting for Hardware, Software, and Services Developed or Provided by Kaspersky Lab or Other Covered Entities—

• In solicitations issued on or after July 16, 2018, and resultant contracts; and

• In solicitations issued before July 16, 2018, provided award of the resulting contract(s) occurs on or after July 16, 2018.

• Contracting officers shall modify, in accordance with FAR 1.108(d)(3), existing indefinite-delivery contracts to include the FAR clause for future orders, prior to placing any further orders on or after July 16, 2018.

• If modifying an existing contract to extend the period of performance by more than 6 months, contracting officers should include the clause in accordance with 1.108(d).

Comment Date: Interested parties should submit written comments to the Regulatory Secretariat on or before August 14, 2018 to be considered in the formulation of a final rule.

ADDRESSES: Submit comments identified by FAC 2005–99, FAR Case 2018–010, by any of the following methods:

• *Regulations.gov: http://www.regulations.gov.* Submit comments via the Federal eRulemaking portal by searching for ''FAR Case 2018–010''. Select the link ''Submit a Comment'' that corresponds with ''FAR Case 2018–010.'' Follow the instructions provided at the ''Submit a Comment'' screen. Please include your name, company name (if any), and ''FAR Case 2018–010'' on your attached document.

• *Mail:* General Services Administration, Regulatory Secretariat (MVCB), ATTN: Lois Mandell, 1800 F Street NW, 2nd Floor, Washington, DC 20405–0001.

Instructions: Please submit comments only and cite FAC 2005–99, FAR Case 2018–010, in all correspondence related to this case. All comments received will be posted without change to *http://www.regulations.gov,* including any personal and/or business confidential information provided.

FOR FURTHER INFORMATION CONTACT: Ms. Camara Francis, Procurement Analyst, at 202–550–0935, for clarification of content. For information pertaining to status or publication schedules, contact the Regulatory Secretariat at 202–501–4755. Please cite FAC 2005–99, FAR Case 2018–010.

SUPPLEMENTARY INFORMATION:

I. Background

This interim rule revises the FAR to implement section 1634 of Division A of the National Defense Authorization Act (NDAA) for Fiscal Year (FY) 2018 (Pub. L. 115–91). Section 1634 of this law prohibits the use of hardware, software, and services of Kaspersky Lab and its related entities by the Federal Government on or after October 1, 2018.

Implementation of this rule in the FAR should not impact or impair any other planned or ongoing efforts agencies may undertake to implement section 1634 of Division A of the NDAA for FY 2018, including consideration by agencies of the presence of hardware, software, or services developed or provided by Kaspersky Lab as a technical evaluation factor in the source selection process.

II. Discussion and Analysis

This rule amends FAR part 4, adding a new subpart 4.20, Prohibition on Contracting for Hardware, Software, and Services Developed or Provided by Kaspersky Lab, with a corresponding new contract clause at 52.204–23, Prohibition on Contracting for Hardware, Software, and Services Developed or Provided by Kaspersky Lab and Other Covered Entities. The rule also adds text in subpart 13.2, Actions at or Below the Micro-Purchase Threshold, to address section 1634 with regard to micro-purchases.

To implement section 1634, the clause at 52.204–23 prohibits contractors from providing any hardware, software, or services developed or provided by Kaspersky Lab or its related entities, or using any such hardware, software, or services in the development of data or deliverables first produced in the performance of the contract. The contractor must also report any such hardware, software, or services discovered during contract performance; this requirement flows down to subcontractors. For clarity, the rule defines ''covered entity'' and ''covered article.'' A covered entity includes the entities described in section 1634. A covered article includes hardware, software, or services that the Federal Government will use on or after October 1, 2018.

As the Government considers additional actions to implement section 1634, DoD, GSA, and NASA especially welcome input on steps that the Government could take to better identify and reduce the burden on contractors related to identifying covered articles. For example:

• Is the prohibition scoped appropriately to protect the Government by including situations in which covered articles may be used in the development of data or deliverables first produced during contract performance, for example, under a systems development contract?

• Are the Government's analysis and estimates in sections VI and VII, including the estimate that 5 percent of contractors would be required to submit reports in accordance with the clause, reasonable? How could these estimates be improved?

• If the Government were to consider establishing a list to publicly share information regarding products identified as meeting the definition of a covered article (*i.e.,* excluded products), including those offered by third parties:

• What protocols should the Government apply prior to placing a product on the excluded list (*e.g.,* who should be reaching out, and to whom)?

• Should different protocols apply depending on whether the product is made by the original equipment manufacturer, sold by a reseller, or customized by a firm?

• When is it appropriate to leave a product on the excluded list indefinitely (*e.g.,* to provide notice for those who have previously acquired the product)?

• Are there steps that the Government can take to avoid inappropriately affecting the producer's interests (*e.g.,* allowing the firm to demonstrate that there is a new version

of the product that is free from concern and annotating the list accordingly)?

III. Applicability to Contracts at or Below the Simplified Acquisition Threshold and for Commercial Items, Including Commercially Available Off-the-Shelf Items

This rule adds a new contract clause at 52.204–23, Prohibition on Contracting for Hardware, Software, and Services Developed or Provided by Kaspersky Lab and Other Covered Entities, in order to implement section 1634 of the NDAA for FY 2018. Section 1634 of this law prohibits the use of hardware, software, and services developed or provided by Kaspersky Lab and related entities by the Federal Government on or after October 1, 2018.

A. Applicability to Contracts at or Below the Simplified Acquisition Threshold

41 U.S.C. 1905 governs the applicability of laws to acquisitions at or below the simplified acquisition threshold (SAT). Section 1905 generally limits the applicability of new laws when agencies are making acquisitions at or below the SAT, but provides that such acquisitions will not be exempt from a provision of law if: (i) The law contains criminal or civil penalties; (ii) the law specifically refers to 41 U.S.C. 1905 and states that the law applies to contracts and subcontracts in amounts not greater than the SAT; or (iii) the FAR Council makes a written determination and finding that it would not be in the best interest of the Federal Government to exempt contracts and subcontracts in amounts not greater than the SAT from the provision of law.

B. Applicability to Contracts for the Acquisition of Commercial Items, Including Commercially Available Off-the-Shelf Items

41 U.S.C. 1906 governs the applicability of laws to contracts for the acquisition of commercial items, and is intended to limit the applicability of laws to contracts for the acquisition of commercial items. Section 1906 provides that if a provision of law contains criminal or civil penalties, or if the FAR Council makes a written determination that it is not in the best interest of the Federal Government to exempt commercial item contracts, the provision of law will apply to contracts for the acquisition of commercial items.

Finally, 41 U.S.C. 1907 states that acquisitions of commercially available off-the-shelf (COTS) items will be exempt from a provision of law unless the law (i) contains criminal or civil penalties; (ii) specifically refers to 41 U.S.C. 1907 and states that the law applies to acquisitions of COTS items; (iii) concerns authorities or responsibilities under the Small Business Act (15 U.S.C. 644) or bid protest procedures developed under the authority of 31 U.S.C. 3551 *et seq.,* 10 U.S.C. 2305(e) and (f), or 41 U.S.C. 3706 and 3707; or (iv) the Administrator for Federal Procurement Policy makes a written determination and finding that it would not be in the best interest of the Federal Government to exempt contracts for the procurement of COTS items from the provision of law.

C. Determinations

The FAR Council has determined that it is in the best interest of the Government to apply the rule to contracts at or below the SAT and for the acquisition of commercial items. The Administrator for Federal Procurement Policy has determined that it is in the best interest of the Government to apply this rule to contracts for the acquisition of COTS items.

While the law does not specifically address acquisitions of commercial items, including COTS items, there is an unacceptable level of risk for the Government in buying hardware, software, or services developed or provided in whole or in part by Kaspersky Lab. This level of risk is not alleviated by the fact that the item being acquired has been sold or offered for sale to the general public, either in the same form or a modified form as sold to the Government (*i.e.,* that it is a commercial item or COTS item), nor by the small size of the purchase (*i.e.,* at or below the SAT). As a result, agencies may face increased exposure for violating the law and unknowingly acquiring a covered article absent coverage of these types of acquisitions by this rule.

IV. Executive Orders 12866 and 13563

Executive Orders (E.O.s) 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, distributive impacts, and equity). E.O. 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This rule has been designated a ''significant regulatory action'' under Executive Order 12866. Accordingly, the Office of Management and Budget (OMB) has reviewed this rule. This rule is not a major rule under 5 U.S.C. 804.

V. Executive Order 13771

This rule is not subject to the requirements of E.O. 13771 because the rule is issued with respect to a national security function of the United States.

VI. Regulatory Flexibility Act

The change may have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act 5 U.S.C. 601 *et seq.* The Initial Regulatory Flexibility Analysis (IRFA) is summarized as follows:

The objective of the rule is to prescribe appropriate policies and procedures to enable agencies to determine and ensure that they are not purchasing products and services of Kaspersky Lab and its related entities for use by the Government on or after October 1, 2018. The legal basis for the rule is section 1634 of the NDAA for FY 2018, which prohibits Government use of such products on or after that date.

Data from the Federal Procurement Data System (FPDS) for FY 2017 has been used as the basis for estimating the number of contractors that may be affected by this rule. Approximately 97,632 unique entities received new awards in Fiscal Year (FY) 2017. Of these entities, 72,447 (74 percent) unique small entities received awards during 2017. It is estimated that the reports required by this rule will be submitted by 5 percent of contractors, or 3,623 small entities.

The rule requires contractors and subcontractors that are subject to the clause to report to the contracting officer, or for DoD, to the website listed in the clause, any discovery of a covered article during the course of contract performance.

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

Because of the nature of the prohibition enacted by section 1634, it is not possible to establish different compliance or reporting requirements or timetables that take into account the resources available to small entities or to exempt small entities from coverage of the rule, or any part thereof. DoD, GSA, and NASA were unable to identify any alternatives that would reduce the burden on small entities and still meet the objectives of section 1634.

The Regulatory Secretariat has submitted a copy of the IRFA to the Chief Counsel for Advocacy of the Small Business Administration. A copy of the IRFA may be obtained from the Regulatory Secretariat. DoD, GSA, and NASA invite comments from small business concerns and other interested parties on the expected impact of this rule on small entities.

DoD, GSA, and NASA will also consider comments from small entities concerning the existing regulations in subparts affected by this rule in accordance with 5 U.S.C. 610. Interested

parties must submit such comments separately and should cite 5 U.S.C. 610 (FAR Case 2018–010) in correspondence.

VII. Paperwork Reduction Act

The Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) (PRA) provides that an agency generally cannot conduct or sponsor a collection of information, and no person is required to respond to nor be subject to a penalty for failure to comply with a collection of information, unless that collection has obtained Office of Management and Budget (OMB) approval and displays a currently valid OMB Control Number.

DoD, GSA, and NASA requested and OMB authorized emergency processing of an information collection involved in this rule, as OMB Control Number 9000–0197, consistent with 5 CFR 1320.13. DoD, GSA, and NASA have determined the following conditions have been met:

a. The collection of information is needed prior to the expiration of time periods normally associated with a routine submission for review under the provisions of the Paperwork Reduction Act, in view of the deadline for this provision of the NDAA which was signed into law in December 2017 and requires action before the prohibition goes into effect on October 1, 2018.

b. The collection of information is essential to the mission of the agencies to ensure the Federal Government does not purchase prohibited articles, and can respond appropriately if any such articles are not identified until after delivery or use.

c. The use of normal clearance procedures would prevent the collection of information from contractors, for national security purposes, as discussed in section VIII of this preamble.

Passage of the omnibus appropriations bill and the availability of additional funding for FY 18 has increased agency purchasing activity, and the information to be collected is necessary to ensure that this purchasing is done responsibly and consistent with national security.

Moreover, DoD, GSA, and NASA cannot comply with the normal clearance procedures because public harm is reasonably likely to result if current clearance procedures are followed. Not only would agencies be more likely to purchase and install prohibited items, but even if such items were identified prior to the October 1 date, agencies would incur substantial additional costs replacing such items, as well as additional administrative costs for reprocurement.

DoD, GSA, and NASA intend to provide separate 60-day notice in the **Federal Register** requesting public comment on the information collection contained within this rule.

Agency: DoD, GSA, and NASA.

Type of Information Collection: New Collection.

Title of Collection: Use of Products and Services of Kaspersky Lab.

Affected Public: Private Sector—Business.

Total Estimated Number of Respondents: 4,882.

Average Responses per Respondents: 5.

Total Estimated Number of Responses: 24,410.

Average Time per Response: 1.5 hour.

Total Annual Time Burden: 36,615.

OMB Control Number: 9000–0197.

The public reporting burden for this collection of information consists of reports of identified covered articles during contract performance as required by 52.204–23. Reports are estimated to average 1.5 hour per response, including the time for reviewing definitions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the report.

The subsequent 60-day notice published by DoD, GSA, and NASA will invite public comments.

VIII. Determination To Issue an Interim Rule

A determination has been made under the authority of the Secretary of Defense (DoD), Administrator of General Services (GSA), and the Administrator of the National Aeronautics and Space Administration (NASA) that urgent and compelling reasons exist to promulgate this interim rule without prior opportunity for public comment. It is critical that the FAR is immediately revised to include the requirements of the law, which prohibits the Federal Government from using hardware, software, or services of Kaspersky Lab and its related entities on or after October 1, 2018.

Although this prohibition does not apply until October 1, 2018, agencies and contractors must begin to take steps immediately to meet this deadline. In this regard, covered articles include hardware, software, and services acquired before October 1, 2018, that the Federal Government will use on or after October 1, 2018. Because so many IT products and services are used for more than a few months, it is critical that contractors be placed on notice as soon as possible of this prohibition so that agencies can ensure that they comply with the law and avoid acquisitions of covered articles that the Government will continue to use on or after October 1, 2018. Pursuant to 41 U.S.C. 1707 and FAR 1.501–3(b), DoD, GSA, and NASA will consider public comments received in response to this interim rule in the formation of the final rule.

List of Subject in 48 CFR Parts 1, 4, 13, 39, and 52

Government procurement.

Dated: June 7, 2018.

William F. Clark,

Director, Office of Governmentwide Acquisition Policy, Office of Acquisition Policy, Office of Governmentwide Policy.

Therefore, DoD, GSA, and NASA amend 48 CFR parts 1, 4, 13, 39, and 52 as set forth below:

■ 1. The authority citation for 48 CFR parts 1, 4, 13, 39, and 52 continues to read as follows:

Authority: 40 U.S.C. 121(c); 10 U.S.C. chapter 137; and 51 U.S.C. 20113.

PART 1—FEDERAL ACQUISITION REGULATIONS SYSTEM

1.106 [Amended]

■ 2. Amend section 1.106 by adding to the table, in numerical sequence, FAR segment ''52.204–23'' and its corresponding OMB control number ''9000–0197''.

PART 4—ADMINISTRATIVE MATTERS

■ 3. Add subpart 4.20 to read as follows:

SUBPART 4.20—PROHIBITION ON CONTRACTING FOR HARDWARE, SOFTWARE, AND SERVICES DEVELOPED OR PROVIDED BY KASPERSKY LAB

Sec.

SUBPART 4.20—PROHIBITION ON CONTRACTING FOR HARDWARE, SOFTWARE, AND SERVICES DEVELOPED OR PROVIDED BY KASPERSKY LAB

4.2001 Definitions

As used in this subpart—

Covered article means any hardware, software, or service that—

(1) Is developed or provided by a covered entity;

(2) Includes any hardware, software, or service developed or provided in whole or in part by a covered entity; or

(3) Contains components using any hardware or software developed in whole or in part by a covered entity.

Covered entity means—

(1) Kaspersky Lab;
(2) Any successor entity to Kaspersky Lab;
(3) Any entity that controls, is controlled by, or is under common control with Kaspersky Lab; or
(4) Any entity of which Kaspersky Lab has a majority ownership.

4.2002 Prohibition.

Section 1634 of Division A of the National Defense Authorization Act for Fiscal Year 2018 (Pub. L. 115–91) prohibits Government use on or after October 1, 2018, of any hardware, software, or services developed or provided, in whole or in part, by a covered entity. Contractors are prohibited from—

(a) Providing any covered article that the Government will use on or after October 1, 2018; and

(b) Using any covered article on or after October 1, 2018, in the development of data or deliverables first produced in the performance of the contract.

4.2003 Notification.

When a contractor provides notification pursuant to 52.204–23, follow agency procedures.

4.2004 Contract clause.

The contracting officer shall insert the clause at 52.204–23, Prohibition on Contracting for Hardware, Software, and Services Developed or Provided by Kaspersky Lab and Other Covered Entities, in all solicitations and contracts.

PART 13—SIMPLIFIED ACQUISITION PROCEDURES

■ 4. Amend section 13.201 by adding paragraph (i) to read as follows:

13.201 General.

* * * * *

(i) Do not purchase any hardware, software, or services developed or provided by Kaspersky Lab that the Government will use on or after October 1, 2018. (See 4.2002.)

PART 39—ACQUISITION OF INFORMATION TECHNOLOGY

■ 5. Amend section 39.101 by adding paragraph (e) to read as follows:

39.101 Policy.

* * * * *

(e) Contracting officers shall not purchase any hardware, software, or services developed or provided by Kaspersky Lab that the Government will use on or after October 1, 2018. (See 4.2002.)

PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

■ 6. Add section 52.204–23 to read as follows:

52.204–23 Prohibition on Contracting for Hardware, Software, and Services Developed or Provided by Kaspersky Lab and Other Covered Entities.

As prescribed in 4.2004, insert the following clause:

Prohibition on Contracting for Hardware, Software, and Services Developed or Provided by Kaspersky Lab and Other Covered Entities (Jul 2018)

(a) *Definitions.* As used in this clause—

Covered article means any hardware, software, or service that—

(1) Is developed or provided by a covered entity;

(2) Includes any hardware, software, or service developed or provided in whole or in part by a covered entity; or

(3) Contains components using any hardware or software developed in whole or in part by a covered entity.

Covered entity means—

(1) Kaspersky Lab;

(2) Any successor entity to Kaspersky Lab;

(3) Any entity that controls, is controlled by, or is under common control with Kaspersky Lab; or

(4) Any entity of which Kaspersky Lab has a majority ownership.

(b) *Prohibition.* Section 1634 of Division A of the National Defense Authorization Act for Fiscal Year 2018 (Pub. L. 115–91) prohibits Government use of any covered article. The Contractor is prohibited from—

(1) Providing any covered article that the Government will use on or after October 1, 2018; and

(2) Using any covered article on or after October 1, 2018, in the development of data or deliverables first produced in the performance of the contract.

(c) *Reporting requirement.* (1) In the event the Contractor identifies a covered article provided to the Government during contract performance, or the Contractor is notified of such by a subcontractor at any tier or any other source, the Contractor shall report, in writing, to the Contracting Officer or, in the case of the Department of Defense, to the website at *https://dibnet.dod.mil.* For indefinite delivery contracts, the Contractor shall report to the Contracting Officer for the indefinite delivery contract and the Contracting Officer(s) for any affected order or, in the case of the Department of Defense, identify both the indefinite delivery contract and any affected orders in the report provided at *https://dibnet.dod.mil.*

(2) The Contractor shall report the following information pursuant to paragraph (c)(1) of this clause:

(i) Within 1 business day from the date of such identification or notification: The contract number; the order number(s), if applicable; supplier name; brand; model number (Original Equipment Manufacturer (OEM) number, manufacturer part number, or wholesaler number); item description; and any readily available information about mitigation actions undertaken or recommended.

(ii) Within 10 business days of submitting the report pursuant to paragraph (c)(1) of this clause: Any further available information about mitigation actions undertaken or recommended. In addition, the Contractor shall describe the efforts it undertook to prevent use or submission of a covered article, any reasons that led to the use or submission of the covered article, and any additional efforts that will be incorporated to prevent future use or submission of covered articles.

(d) *Subcontracts.* The Contractor shall insert the substance of this clause, including this paragraph (d), in all subcontracts, including subcontracts for the acquisition of commercial items.

(End of clause)

■ 7. Amend section 52.212–5 by—
■ a. Revising the date of the clause;
■ b. Redesignating paragraphs (a)(2) through (4) as paragraphs (a)(3) through (5), respectively, and adding a new paragraph (a)(2);
■ c. Redesignating paragraphs (e)(1)(iii) through (xxi) as paragraphs (e)(1)(iv) through (xxii), respectively, and adding a new paragraph (e)(1)(iii); and
■ d. In Alternate II:
■ i. Revising the date of the alternate; and
■ ii. Redesignating paragraphs (e)(1)(ii)(C) through (S) as paragraphs (e)(1)(ii)(D) through (T), respectively, and adding a new paragraph (e)(1)(ii)(C).

The revisions and additions read as follows:

52.212–5 Contract Terms and Conditions Required To Implement Statutes or Executive Orders—Commercial Items.

* * * * *

Contract Terms and Conditions Required To Implement Statutes or Executive Orders—Commercial Items (Jul 2018)

* * * * *

(a) * * *

____ (2) 52.204–23, Prohibition on Contracting for Hardware, Software, and Services Developed or Provided by Kaspersky Lab and Other Covered Entities (Jul 2018) (Section 1634 of Pub. L. 115–91).

* * * * *

(e)(1) * * *

(iii) 52.204–23, Prohibition on Contracting for Hardware, Software, and Services Developed or Provided by Kaspersky Lab and Other Covered Entities (Jul 2018) (Section 1634 of Pub. L. 115–91).

* * * * *

Alternate II (Jul 2018). * * *

* * * * *

(e)(1) * * *

(ii) * * *

(C) 52.204–23, Prohibition on Contracting for Hardware, Software, and Services

Developed or Provided by Kaspersky Lab and Other Covered Entities (Jul 2018) (Section 1634 of Pub. L. 115–91).

* * * * *

■ 8. Amend section 52.213–4 by—

■ a. Revising the date of the clause; and

■ b. Redesignating paragraphs (a)(1)(ii) through (vii) as paragraphs (a)(1)(iii) through (viii), respectively, and adding a new paragraph (a)(1)(ii).

The revision and addition read as follows:

52.213–4 Terms and Conditions—Simplified Acquisitions (Other Than Commercial Items).

* * * * *

Terms and Conditions—Simplified Acquisitions (Other than Commercial Items) (Jul 2018)

(a) * * *

(1) * * *

(ii) 52.204–23, Prohibition on Contracting for Hardware, Software, and Services Developed or Provided by Kaspersky Lab and Other Covered Entities (Jul 2018) (Section 1634 of Pub. L. 115–91).

* * * * *

■ 9. Amend section 52.244–6 by—

■ a. Revising the date of the clause;

■ b. Redesignating paragraphs (c)(1)(iv) through (xviii) as paragraphs (c)(1)(v) through (xix), respectively, and adding a new paragraph (c)(1)(iv).

The revision and addition read as follows:

52.244–6 Subcontracts for Commercial Items.

* * * * *

Subcontracts for Commercial Items (Jul 2018)

* * * * *

(c)(1) * * *

(iv) 52.204–23, Prohibition on Contracting for Hardware, Software, and Services Developed or Provided by Kaspersky Lab and Other Covered Entities (Jul 2018) (Section 1634 of Pub. L. 115–91).

* * * * *

[FR Doc. 2018–12847 Filed 6–14–18; 8:45 am]

BILLING CODE 6820–EP–P

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 1, 9, 12, 13, and 52

[FAC 2005–99; FAR Case 2017–018; Item II; Docket No. 2017–0018, Sequence No. 1]

RIN 9000–AN57

Federal Acquisition Regulation: Violations of Arms Control Treaties or Agreements With the United States

AGENCY: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Interim rule.

SUMMARY: DoD, GSA, and NASA are issuing an interim rule amending the Federal Acquisition Regulation (FAR) to implement a section of the National Defense Authorization Act for Fiscal Year 2017 that addresses measures against persons involved in activities that violate arms control treaties or agreements with the United States.

DATES:

Effective: June 15, 2018.

Comment Date: Interested parties should submit written comments to the Regulatory Secretariat Division at one of the addresses shown below on or before August 14, 2018 to be considered in the formation of the final rule.

ADDRESSES: Submit comments in response to FAC 2005–99, FAR Case 2017–018, by any of the following methods:

• *Regulations.gov: http://www.regulations.gov.* Submit comments via the Federal eRulemaking portal by searching for ''FAR Case 2017–018.'' Select the link ''Comment Now'' that corresponds with ''FAR Case 2017–018.'' Follow the instructions provided on the screen. Please include your name, company name (if any), and ''FAR Case 2017–018'' on your attached document.

• *Mail:* General Services Administration, Regulatory Secretariat Division (MVCB), ATTN: Ms. Lois Mandell, 1800 F Street NW, 2nd Floor, Washington, DC 20405.

Instructions: Please submit comments only and cite FAC 2005–99, FAR Case 2017–018, in all correspondence related to this case. All comments received will be posted without change to *http://www.regulations.gov,* including any personal and/or business confidential information provided. To confirm receipt of your comment(s), please check *www.regulations.gov,* approximately two to three days after submission to verify posting (except allow 30 days for posting of comments submitted by mail).

FOR FURTHER INFORMATION CONTACT: Ms. Cecelia L. Davis, Procurement Analyst, at 202–219–0202 for clarification of content. For information pertaining to status or publication schedules, contact the Regulatory Secretariat Division at 202–501–4755. Please cite FAC 2005–99, FAR Case 2017–018.

SUPPLEMENTARY INFORMATION:

I. Background

This interim rule amends the FAR to implement a section of the National Defense Authorization Act (NDAA) for Fiscal Year 2017 that addresses measures against persons involved in activities that violate arms control treaties or agreements with the United States. This rule amends FAR part 9, Contractor Qualifications, and adds a provision at FAR 52.209–13 to implement section 1290 of the National Defense Authorization Act for Fiscal Year 2017 (Pub. L. 114–328), codified at 22 U.S.C. 2593e.

The President submits annually to Congress a report prepared by the Secretary of State with the concurrence of the Director of Central Intelligence and in consultation with the Secretary of Defense, the Secretary of Energy, and the Chairman of the Joint Chiefs of Staff, on the status of United States policy and actions with respect to arms control, nonproliferation, and disarmament, pursuant to section 403 of the Arms Control and Disarmament Act (22 U.S.C. 2593a). In this report, the Secretary of State assesses adherence to and compliance with arms control, nonproliferation, and disarmament agreements and commitments by the United States and other countries. This report is submitted in unclassified form, with classified annexes, as appropriate. The Department of State's most recent unclassified report submitted in April 2018 to Congress is available at *https://www.state.gov/t/avc/rls/rpt/.*

The Secretary of the Treasury is required to submit to the appropriate Congressional committees a report, consistent with the protection of intelligence sources and methods, identifying every person with respect to whom there is credible information indicating that the person is—

• An individual who is a citizen, national, or permanent resident of, or an entity organized under the laws of, a noncompliant country; and

• Has engaged in any activity that contributed to or is a significant factor in the President's or the Secretary of State's determination that such country is noncompliant.

The Secretary of the Treasury also identifies any person that has provided material support for such non-compliance to a person engaged in the noncompliant activities. This information will be posted, as appropriate and consistent with the protection of intelligence sources and methods, as an exclusion record in the System for Award Management (SAM) database. If the contractor is on the SAM Exclusions list, the contractor may not be awarded contracts, including those under the simplified acquisition threshold (SAT) or for commercial items (see FAR 9.405 and 17.207), and contracts may not be renewed or extended.

With some exceptions, the head of any executive agency is prohibited from entering into, renewing, or extending a contract for the procurement of products or services from any person so identified in a report under subsection (a) of 22 U.S.C. 2593e.

II. Discussion and Analysis

This interim rule amends the FAR to add a new section, FAR 9.109, to address the prohibition on contracting with an entity involved in activities that violate arms control treaties or agreements with the United States. In addition to citation of the statute (22 U.S.C. 2593e) and the contracting prohibition therein, FAR 9.109 includes—

• The statutory exception from the contracting prohibition for the procurement of products or services along a major route of supply to a zone of active combat or a major contingency operation;

• Discussion of offeror certification and the remedies for submission of a false certification; and

• Prescription for use of the certification provision in each solicitation for the acquisition of products or services (including construction) that exceeds the SAT, other than solicitations for the acquisition of commercial items.

The interim rule includes a provision at FAR 52.209–13, Violation of Arms Control Treaties or Agreements—Certification, to implement the statutory requirement for a certification from each offeror that the offeror, and any entity owned or controlled by the offeror, has not engaged in any activity that contributed to or is a significant factor in the President's or the Secretary of State's determination that such country is not in full compliance with its obligations undertaken in all arms control, nonproliferation, and disarmament agreements or commitments to which the United States is a participating state (subsection (a)(1)(A)(ii) of 22 U.S.C. 2593e). The provision also provides procedures to assist offerors in using the Secretary of State report as necessary to complete the certification. Initially, in this interim rule, this certification will not be included in the annual representations and certifications, because implementation considerations that will ensure minimum burden to prospective contractors are in development. The certification is not required for acquisitions under the SAT or for acquisition of commercial items, but if a contractor's activities related to violations of arms control treaties results in the contractor being added to the SAM Exclusions list, the contractor may not be awarded contracts, including those under the SAT or for commercial items. The rule also establishes that the remedies for rendering a false certification are debarment or suspension for not less than 2 years or termination of any contract resulting from the false certification.

The Government will not consider the offer of an offeror that has not provided a certification in paragraph (b)(1) of the provision at 52.209–13, unless the offeror provides with its offer information that the President of the United States has waived application under 22 U.S.C. 2593e(d) or (e) or determined under 22 U.S.C. 2593e(g)(2) that the entity has ceased all activities for which measures were imposed under 22 U.S.C. 2593e(b).

III. Applicability to Contracts at or Below the Simplified Acquisition Threshold and for Commercial Items, Including Commercially Available Off-the-Shelf Items

Consistent with 41 U.S.C. 1905–1907, DoD, GSA, and NASA do not intend to apply the certification required by 22 U.S.C. 2593e to contracts at or below the SAT, or to contracts for the acquisition of commercial items, including commercially available off-the-shelf (COTS) items. However, when acquiring products or services (including construction) the Government is still prohibited from contracting with entities listed as excluded in the System for Award Management database.

A. Applicability to Contracts at or Below the Simplified Acquisition Threshold.

41 U.S.C. 1905 governs the applicability of laws to contracts or subcontracts in amounts not greater than the SAT. It is intended to limit the applicability of laws to such contracts or subcontracts. 41 U.S.C. 1905 provides that if a provision of law contains criminal or civil penalties, or if the FAR Council makes a written determination that it is not in the best interest of the Federal Government to exempt contracts or subcontracts at or below the SAT, the law will apply to them. This law does not contain criminal or civil penalties and the FAR Council does not intend to make a written determination. Therefore, the certification required by this rule will only be included in solicitations that exceed the SAT.

B. Applicability to Contracts for the Acquisition of Commercial Items, Including COTS Items

41 U.S.C. 1906 governs the applicability of laws to contracts and subcontracts for the acquisition of commercial items, and is intended to limit the applicability of laws to contracts and subcontracts for the acquisition of commercial items. 41 U.S.C. 1906 provides that if a provision of law contains criminal or civil penalties, or if the FAR Council makes a written determination that it is not in the best interest of the Federal Government to exempt commercial item contracts, the provision of law will apply to contracts and subcontracts for the acquisition of commercial items. Likewise, 41 U.S.C. 1907 governs the applicability of laws to COTS items, and provides the Administrator for Federal Procurement Policy with the decision authority to determine that it is in the best interest of the Federal Government to apply a provision of law to acquisitions of COTS items. The FAR Council and the Administrator for Federal Procurement Policy do not intend to make such determinations, and the certification required by the statute will not be included in contracts and subcontracts for the acquisitions of commercial items, including COTS items.

IV. Executive Orders 12866 and 13563

Executive Orders (E.O.s) 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, distributive impacts, and equity). E.O. 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This is a significant

regulatory action and, therefore, was subject to review under section 6(b) of E.O. 12866, Regulatory Planning and Review, dated September 30, 1993. This rule is not a major rule under 5 U.S.C. 804.

V. Executive Order 13771

This interim rule is not subject to E.O. 13771, Reducing Regulation and Controlling Regulatory Costs, because this rule is issued with respect to a national security function of the United States. See section 4(a) of E.O. 13771.

VI. Regulatory Flexibility Act

DoD, GSA, and NASA do not expect this rule to have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.* Nevertheless, an Initial Regulatory Flexibility Analysis (IRFA) has been performed, and is summarized as follows:

This rule implements section 1290 of the National Defense Authorization Act for Fiscal Year 2017, codified at 22 U.S.C. 2593e.

The objective of the rule is to prohibit award to offerors that violate arms control treaties or agreements with the United States, or own or control entities that do so; and terminate contractors, and suspend or debar offerors and contractors that have provided false certifications regarding such violations. The statutes which are the legal basis for the FAR are 40 U.S.C. 121(c), 10 U.S.C. Chapter 137, and 51 U.S.C. 20113.

Using Federal Procurement Data System (FPDS) data for FY 2016, this rule will apply to 7,616 small entities that are required to fill out the required certification.

This rule will require certification from each offeror that submits an offer in response to a Government solicitation that exceeds the simplified acquisition threshold (SAT) and is not for the acquisition of a commercial item, including commercially available off-the-shelf (COTS) items. Initially, in this interim rule, this certification will not be included in the annual representations and certifications, because implementation considerations that will ensure minimum burden to prospective contractors are in development.

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

DoD, GSA, and NASA considered whether to apply the certification provision to contracts at or below the SAT and to the acquisition of commercial items, including COTS items, or to exempt such acquisitions in accordance with 41 U.S.C. 1905–1907. DoD, GSA, and NASA did not sign determinations that the provision should apply to contracts at or below the SAT and to the acquisition of commercial items, including COTS items, thus minimizing the impact on small business to the extent permitted by law.

The Regulatory Secretariat Division has submitted a copy of the IRFA to the Chief Counsel for Advocacy of the Small Business Administration. A copy of the IRFA may be obtained from the Regulatory Secretariat Division. DoD, GSA, and NASA invite comments from small business concerns and other interested parties on the expected impact of this rule on small entities.

DoD, GSA, and NASA will also consider comments from small entities concerning the existing regulations in subparts affected by the rule in accordance with 5 U.S.C. 610. Interested parties must submit such comments separately and should cite 5 U.S.C. 610 (FAR Case 2017–018), in correspondence.

VII. Paperwork Reduction Act

The Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) (PRA) provides that an agency generally cannot conduct or sponsor a collection of information, and no person is required to respond to nor be subject to a penalty for failure to comply with a collection of information, unless that collection has obtained Office of Management and Budget (OMB) approval and displays a currently valid OMB Control Number.

DoD, GSA, and NASA requested and OMB authorized emergency processing of an information collection involved in this rule, as OMB Control Number 9000–0198, consistent with 5 CFR 1320.13. DoD, GSA, and NASA have determined the following conditions have been met:

a. The collection of information is needed prior to the expiration of time periods normally associated with a routine submission for review under the provisions of the Paperwork Reduction Act.

b. The collection of information is essential to the mission of the agencies to ensure the Federal Government does not award contracts to offerors, and any entity owned or controlled by the offeror that has engaged in any activity that violates arms control treaties or agreements with the United States.

c. The use of normal clearance procedures would prevent the collection of information from contractors, for national security purposes, as discussed in Section VIII of this preamble.

Section 1290 of Public Law 114–328 (codified at 22 U.S.C. 2593e) went into effect on December 23, 2016. The implementation of this FAR case will protect against doing business with entities that engage in any activity that contributed to or is a significant factor in a country's failure to comply with arms control treaties or agreements with the United States. This action is necessary because of statutory requirements relating to a national security function of the United States.

Moreover, DoD, GSA, and NASA cannot comply with the normal clearance procedures because public harm is reasonably likely to result if current clearance procedures are followed.

DoD, GSA, and NASA intend to provide separate 60-day notice in the **Federal Register** requesting public comment on the information collections contained within this rule.

Some numbers below are rounded.

Agency: DoD, GSA, and NASA.

Type of Information Collection: New Collection.

Title of Collection: Violations of Arms Control Treaties or Agreements with the United States.

Affected Public: Private Sector—Business.

Total Estimated Number of Respondents: 11,634.

Average Responses per Respondents: 8.6.

Total Estimated Number of Responses: 99,796.

Preparation Hours per Response: .4 hours.

Total Annual Time Burden: 40,478.

OMB Control Number: 9000–0198.

The public reporting burden for this collection of information consists of a certification that the offeror and no entity owned or controlled by the offeror has engaged in any activity that contributes to the violation of arms control treaties or agreements with the United States. Public reporting burden for this collection of information is estimated to average .4 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection information.

In the subsequent 60 day notice published by DoD, GSA, and NASA will invite public comments.

VIII. Determination To Issue an Interim Rule

A determination has been made under the authority of the Secretary of Defense (DoD), the Administrator of General Services (GSA), and the Administrator of the National Aeronautics and Space Administration (NASA) that urgent and compelling reasons exist to promulgate this interim rule without prior opportunity for public comment. This action is necessary because of statutory requirements relating to a national security function of the United States. Section 1290 of Public Law 114–328 (codified at 22 U.S.C. 2593e) went into effect on December 23, 2016. The implementation of this FAR case will protect against doing business with

entities that engage in any activity that contributed to or is a significant factor in a country's failure to comply with arms control treaties or agreements with the United States. Arms control, nonproliferation, and disarmament agreements can limit or reduce threats to the security of the United States and our allies, contributing to transparency and stability on a global and regional scale. Failure of participating countries to comply with the obligations and adhere to the commitments they have undertaken can present serious national security challenges. Therefore, robust compliance enforcement is a critical aspect of U.S. national security planning. However, pursuant to 41 U.S.C. 1707 and FAR 1.501–3(b), DoD, GSA, and NASA will consider public comments received in response to this interim rule in the formation of the final rule.

List of Subjects in 48 CFR Parts 1, 9, 12, 13, and 52

Government procurement.

Dated: June 7, 2018.

William F. Clark,

Director, Office of Government-wide Acquisition Policy, Office of Acquisition Policy, Office of Government-wide Policy.

Therefore, DoD, GSA, and NASA amend 48 CFR parts 1, 9, 12, 13, and 52 as set forth below:

■ 1. The authority citation for 48 CFR parts 1, 9, 12, 13, and 52 continues to read as follows:

Authority: 40 U.S.C. 121(c); 10 U.S.C. chapter 137; and 51 U.S.C. 20113.

PART 1—FEDERAL ACQUISITION REGULATION SYSTEM

1.106 [Amended]

■ 2. Amend section 1.106, in the table following the introductory text, by adding in numerical sequence, FAR segment ''52.209–13'' and its corresponding OMB control number ''9000–0198''.

PART 9—CONTRACTOR QUALIFICATIONS

■ 3. Add sections 9.109, 9.109–1, 9.109–2, 9.109–3, 9.109–4, and 9.109–5 to read as follows:

9.109 Prohibition on contracting with an entity involved in activities that violate arms control treaties or agreements with the United States.

9.109–1 Authority.

This section implements 22 U.S.C. 2593e.

9.109–2 Prohibition.

Contracting officers shall not award, renew, or extend a contract for the procurement of products or services with an entity identified as excluded in the System for Award Management database, specifically for this subpart, on the basis of involvement in activities that violate arms control treaties or agreements with the United States.

9.109–3 Exception.

The prohibition in 9.109–2 does not apply to contracts for the procurement of products or services along a major route of supply to a zone of active combat or major contingency operation, as specified in statute or by the cognizant Combatant Commander, in consultation with the Chief of Mission. As of May 10, 2018, countries along the major route of supply to support operations in Afghanistan are Afghanistan, Georgia, the Kyrgyz Republic, Pakistan, the Republic of Armenia, the Republic of Azerbaijan, the Republic of Kazakhstan, the Republic of Tajikistan, the Republic of Uzbekistan, and Turkmenistan.

9.109–4 Certification by the offeror.

(a) In order to be eligible for contract award, an offeror is required to—

(1)(i) Certify that it does not engage and has not engaged in any activity that contributed to or was a significant factor in the President's or Secretary of State's determination that a foreign country is in violation of its obligations undertaken in any arms control, nonproliferation, or disarmament agreement to which the United States is a party, or is not adhering to its arms control, nonproliferation, or disarmament commitments in which the United States is a participating state. The determinations are described in the most recent unclassified annual report provided to Congress pursuant to section 403 of the Arms Control and Disarmament Act (22 U.S.C. 2593a). The report is available via the internet at *https://www.state.gov/t/avc/rls/rpt/*; and

(ii) Similarly certify with regard to any entity owned or controlled by the offeror; or

(2) Provide with its offer information that the President of the United States has—

(i) Waived application under 22 U.S.C. 2593e(d) or (e); or

(ii) Determined under 22 U.S.C. 2593e(g)(2) that the entity has ceased all activities for which measures were imposed under 22 U.S.C. 2593e(b).

(b) If certifying in accordance with 52.209–13(b)(1), the Offeror is required to submit the certification with the offer. It is not included in the annual representations and certifications in the System for Award Management database.

(c) The contracting officer may rely on an offeror's certification unless the contracting officer has reason to question the certification.

(d) An offeror that falsely certifies under 52.209–13 will be subject to such remedies as suspension or debarment for a period of not less than 2 years, subject to the procedures set forth in subpart 9.4 (including 9.406–1 or 9.407–1), or termination of any contract resulting from the false certification.

9.109–5 Solicitation provision.

Unless the exception at 9.109–3 applies, the contracting officer shall include the provision at 52.209–13, Violation of Arms Control Treaties or Agreements—Certification, in each solicitation for the acquisition of products or services (including construction) that exceeds the simplified acquisition threshold, other than solicitations for the acquisition of commercial items.

■ 4. Amend section 9.405 by adding a sentence to the end of paragraph (b) to read as follows:

9.405 Effect of listing.

* * * * *

(b) * * * In addition, agencies shall not extend contracts with contractors that have been declared ineligible pursuant to 22 U.S.C. 2593e.

* * * * *

■ 5. Amend section 9.406–4 by revising paragraphs (a)(1)(i) and (ii) and adding paragraph (a)(1)(iii) to read as follows:

9.406–4 Period of debarment.

(a)(1) * * *

(i) Debarment for violation of the provisions of 41 U.S.C. chapter 81, Drug-Free Workplace (see 23.506) may be for a period not to exceed 5 years;

(ii) Debarments under 9.406–2(b)(2) shall be for 1 year unless extended pursuant to paragraph (b) of this section; and

(iii) Debarments pursued as a remedy under 9.109–4(d), for a false certification regarding violations of arms control treaties or agreements with the United States, shall be for a period of not less than 2 years.

* * * * *

PART 12—ACQUISITION OF COMMERCIAL ITEMS

■ 6. Amend section 12.503 by—

■ a. Redesignating paragraphs (b)(1) through (3) as paragraphs (b)(2) through (4), respectively; and

■ b. Adding a new paragraph (b)(1) to read as follows:

12.503 Applicability of certain laws to Executive agency contracts for the acquisition of commercial items.

* * * * *

(b) * * *

(1) 22 U.S.C. 2593e, Requirement for a certification under Measures Against Persons Involved in Activities that Violate Arms Control Treaties or Agreements with the United States (see 9.109).

* * * * *

PART 13—SIMPLIFIED ACQUISITION PROCEDURES

■ 7. Amend section 13.005 by adding paragraph (a)(11) to read as follows:

13.005 List of laws inapplicable to contracts and subcontracts at or below the simplified acquisition threshold.

(a) * * *

(11) 22 U.S.C. 2593e (Measures Against Persons Involved in Activities that Violate Arms Control Treaties or Agreements with the United States). (The requirement at 22 U.S.C. 2593e(c)(3)(B) to provide a certification does not apply).

* * * * *

PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

■ 8. Add section 52.209–13 to read as follows:

52.209–13 Violation of Arms Control Treaties or Agreements—Certification.

As prescribed in 9.109–5, insert the following provision:

Violation of Arms Control Treaties or Agreements—Certification (JUN 2018)

(a) This provision does not apply to acquisitions below the simplified acquisition threshold or to acquisitions of commercial items as defined at FAR 2.101.

(b) *Certification. [Offeror shall check either (1) or (2).]*

____ (1) The Offeror certifies that—

(i) It does not engage and has not engaged in any activity that contributed to or was a significant factor in the President's or Secretary of State's determination that a foreign country is in violation of its obligations undertaken in any arms control, nonproliferation, or disarmament agreement to which the United States is a party, or is not adhering to its arms control, nonproliferation, or disarmament commitments in which the United States is a participating state. The determinations are described in the most recent unclassified annual report provided to Congress pursuant to section 403 of the Arms Control and Disarmament Act (22 U.S.C. 2593a). The report is available via the internet at *https://www.state.gov/t/avc/rls/rpt/;* and

(ii) No entity owned or controlled by the Offeror has engaged in any activity that contributed to or was a significant factor in the President's or Secretary of State's determination that a foreign country is in violation of its obligations undertaken in any arms control, nonproliferation, or disarmament agreement to which the United States is a party, or is not adhering to its arms control, nonproliferation, or disarmament commitments in which the United States is a participating state. The determinations are described in the most recent unclassified annual report provided to Congress pursuant to section 403 of the Arms Control and Disarmament Act (22 U.S.C. 2593a). The report is available via the internet at *https://www.state.gov/t/avc/rls/rpt/;* or

____ (2) The Offeror is providing separate information with its offer in accordance with paragraph (d)(2) of this provision.

(c) Procedures for reviewing the annual unclassified report (see paragraph (b)(1) of this provision). For clarity, references to the report in this section refer to the entirety of the annual unclassified report, including any separate reports that are incorporated by reference into the annual unclassified report.

(1) Check the table of contents of the annual unclassified report and the country section headings of the reports incorporated by reference to identify the foreign countries listed there. Determine whether the Offeror or any person owned or controlled by the Offeror may have engaged in any activity related to one or more of such foreign countries.

(2) If there may have been such activity, review all findings in the report associated with those foreign countries to determine whether or not each such foreign country was determined to be in violation of its obligations undertaken in an arms control, nonproliferation, or disarmament agreement to which the United States is a party, or to be not adhering to its arms control, nonproliferation, or disarmament commitments in which the United States is a participating state. For clarity, in the annual report an explicit certification of non-compliance is equivalent to a determination of violation. However, the following statements in the annual report are not equivalent to a determination of violation:

(i) An inability to certify compliance.

(ii) An inability to conclude compliance.

(iii) A statement about compliance concerns.

(3) If so, determine whether the Offeror or any person owned or controlled by the Offeror has engaged in any activity that contributed to or is a significant factor in the determination in the report that one or more of these foreign countries is in violation of its obligations undertaken in an arms control, nonproliferation, or disarmament agreement to which the United States is a party, or is not adhering to its arms control, nonproliferation, or disarmament commitments in which the United States is a participating state. Review the narrative for any such findings reflecting a determination of violation or non-adherence related to those foreign countries in the report, including the finding itself, and to the extent necessary, the conduct giving rise to the compliance or adherence concerns, the analysis of compliance or adherence concerns, and efforts to resolve compliance or adherence concerns.

(4) The Offeror may submit any questions with regard to this report by email to *NDAA1290Cert@state.gov.* To the extent feasible, the Department of State will respond to such email inquiries within 3 business days.

(d) Do not submit an offer unless—

(1) A certification is provided in paragraph (b)(1) of this provision and submitted with the offer; or

(2) In accordance with paragraph (b)(2) of this provision, the Offeror provides with its offer information that the President of the United States has—

(i) Waived application under U.S.C. 2593e(d) or (e); or

(ii) Determined under 22 U.S.C. 2593e(g)(2) that the entity has ceased all activities for which measures were imposed under 22 U.S.C.2593e(b).

(e) *Remedies.* The certification in paragraph (b)(1) of this provision is a material representation of fact upon which reliance was placed when making award. If it is later determined that the Offeror knowingly submitted a false certification, in addition to other remedies available to the Government, such as suspension or debarment, the Contracting Officer may terminate any contract resulting from the false certification.

(End of provision)

[FR Doc. 2018–12848 Filed 6–14–18; 8:45 am]

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DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Chapter 1

[Docket No. FAR 2018–0001, Sequence No. 3]

Federal Acquisition Regulation: Federal Acquisition Circular 2005–99; Small Entity Compliance Guide

AGENCY: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Small Entity Compliance Guide.

SUMMARY: This document is issued under the joint authority of DoD, GSA, and NASA. This *Small Entity Compliance Guide* has been prepared consistent with section 212 of the Small Business Regulatory Enforcement Fairness Act of 1996. It consists of a summary of the rules appearing in Federal Acquisition Circular (FAC) 2005–99, which amends the Federal

Acquisition Regulation (FAR). An asterisk (*) next to a rule indicates that a regulatory flexibility analysis has been prepared. Interested parties may obtain further information regarding these rules by referring to FAC 2005–99, which precedes this document. These documents are also available via the internet at *http://www.regulations.gov.*

DATES: June 15, 2018.

FOR FURTHER INFORMATION CONTACT: For clarification of content, contact the analyst whose name appears in the table below. Please cite FAC 2005–99 and the FAR case number. For information pertaining to status or publication schedules, contact the Regulatory Secretariat Division at 202–501–4755.

RULES LISTED IN FAC 2005–99

Item	Subject	FAR case	Analyst
*I	Use of Products and Services of Kaspersky Lab (Interim)	2018–010	Francis.
*II	Violations of Arms Control Treaties or Agreements with the United States (Interim)	2017–018	Davis.

SUPPLEMENTARY INFORMATION: Summaries for each FAR rule follow. For the actual revisions and/or amendments made by these rules, refer to the specific item numbers and subjects set forth in the documents following these item summaries. FAC 2005–99 amends the FAR as follows:

Item I—Use of Products and Services of Kaspersky Lab (FAR Case 2018–010)

This interim rule amends the Federal Acquisition Regulation (FAR) to implement section 1634 of Division A of the National Defense Authorization Act (NDAA) for Fiscal Year (FY) 2018 (Pub. L. 115–91). Section 1634 of this law prohibits the Federal Government's use on or after October 1, 2018, of hardware, software, and services developed or provided, in whole or in part, by Kaspersky Lab or related entities.

To implement section 1634, the clause at 52.204–23 prohibits contractors from providing any hardware, software, or services developed or provided by Kaspersky Lab or its related entities, or using any such hardware, software, or services in the development of data or deliverables first produced in the performance of the contract. The contractor must also report any such hardware, software, or services discovered during contract performance; this requirement flows down to subcontractors.

This rule applies to all acquisitions, including acquisitions at or below the simplified acquisition threshold and to acquisitions of commercial items, including commercially available off-the-shelf items. It may have a significant economic impact on a substantial number of small entities.

This interim rule is being implemented as a national security measure to protect Government information and information systems.

Item II—Violations of Arms Control Treaties or Agreements With the United States (FAR Case 2017–018)

This interim rule amends the Federal Acquisition Regulation (FAR) to implement section 1290 of the National Defense Authorization Act for Fiscal Year 2017 (Pub. L. 114–328, codified at 22 U.S.C. 2593e), which addresses measures against persons involved in activities that violate arms control treaties or agreements with the United States. The interim rule adds a certification provision in each solicitation for the acquisition of products or services (including construction) that exceeds the simplified acquisition threshold, except for solicitations for the acquisition of commercial items.

This interim rule will not have a significant economic impact on a substantial number of small entities.

Dated: June 7, 2018.

William F. Clark,

Director, Office of Government-wide Acquisition Policy, Office of Acquisition Policy, Office of Government-wide Policy.

[FR Doc. 2018–12849 Filed 6–14–18; 8:45 am]

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FEDERAL REGISTER PAGES AND DATE, JUNE

CFR PARTS AFFECTED DURING JUNE

At the end of each month the Office of the Federal Register publishes separately a List of CFR Sections Affected (LSA), which lists parts and sections affected by documents published since the revision date of each title.

240.....26891
242.....26788
270.....26788, 26891
274.....26891

18 CFR

40.....27505
401.....26354
420.....26354

19 CFR

12.....27380
113.....27380
122.....27380
141.....27380
178.....27380
192.....27380

20 CFR

725.....27690

Proposed Rules:

401.....27728

21 CFR

74.....26356
101.....27894
862.....25910
866.....25910, 27699
876 .....25910, 27702, 27895
878.....26575
880.....25910
884.....25910
888.....26577

Proposed Rules:

3.....26392
892.....25598
1100.....26617, 26618
1130.....26619
1140.....26617, 26618
1143.....26617, 26618
1308.....27520

24 CFR

1.....26359
8.....26359
16.....26359
40.....26359

25 CFR

Proposed Rules:

543.....26620

26 CFR

1.....26580

Proposed Rules:

1.....27302

29 CFR

4022.....27898
4044.....27898

Proposed Rules:

1910.....25536

32 CFR

65.....26840
149.....27704
287.....27290
290.....26840
538.....26841
706.....26210
806.....26361

33 CFR

100 .....25366, 25561, 25563, 26361
117 .....25369, 25370, 25566, 26364, 26365, 26593, 26841, 27704
155.....26212
165 .....25370, 25371, 25373, 25566, 25568, 25570, 25575, 25577, 25579, 26365, 26367, 26842, 26844, 27290, 27511, 27513, 27704, 27706, 27707, 27709, 27899

Proposed Rules:

110.....27932
117.....27730

36 CFR

1.....26594
4.....26594

37 CFR

202.....25375

Proposed Rules:

201.....26229

38 CFR

17.....25915

39 CFR

Proposed Rules:

265.....27933
266.....27933
3050.....26392, 27523

40 CFR

52 .....25375, 25378, 25920, 25922, 26221, 26222, 26596, 26597, 26598, 26599, 27901, 27910
60.....25382, 25936
61.....25382, 25936
62.....26599
63.....25382, 25936
70.....26599
81.....25390, 25776
180 .....25936, 25944, 26369, 27711
372.....27291

Proposed Rules:

Ch. 1.....27524
50.....26752
52 .....25604, 25608, 25615, 25617, 25975, 25977, 25979, 25981, 26912, 27732, 27734, 27738, 27936, 27937, 27938
60.....28068
62.....25633, 25983
80.....27740
81.....25422
180.....27743, 27744
271.....25986, 26917
272.....25986
300.....25635
721.....26922

42 CFR

10.....25943
405.....27912
414.....25947
417.....27912
422.....27912
423.....27912
460.....27912
498.....27912
510.....26604

Proposed Rules:

59.....25502

44 CFR

64.....27915

Proposed Rules:

67.....27745, 27746

46 CFR

401.....26162
404.....26162

Proposed Rules:

10.....26933
11.....26933
15.....26933

47 CFR

54.....27515
73.....25949

Proposed Rules:

1.....26396, 27846
27.....26396
54.....27528, 27746
64.....27746
73.....27537
74.....26229

48 CFR

Ch. 1.....28140, 28149
1.....28141, 28145
4.....28141
9.....28145
12.....28145
13.....28141, 28145
39.....28141
52.....28141, 28145
222.....26846
237.....26846
252.....26846

Proposed Rules:

15.....27303
3019.....25638
3052.....25638

49 CFR

373.....26374
390.....26846
391.....26846
395.....26374, 26377

Proposed Rules:

Ch. III.....26942

50 CFR

17.....25392
20.....25738
622.....27297, 27300
648.....27713
655.....27716
660.....25581
679.....27518

Proposed Rules:

17.....26623
20.....27836
300.....27305
660.....26640
679.....26237
697.....27747

LIST OF PUBLIC LAWS

Note: No public bills which have become law were received by the Office of the Federal Register for inclusion in today's **List of Public Laws**.

Last List June 8, 2018

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