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Contents

Federal Register

Vol. 75, No. 83

Friday, April 30, 2010

Agricultural Marketing Service
PROPOSED RULES
United States Standards for Grades of Potatoes, 22707–22710

Agriculture Department
See Agricultural Marketing Service
See Forest Service
See National Institute of Food and Agriculture

Army Department
See Engineers Corps

Blind or Severely Disabled, Committee for Purchase From Peo
See Committee for Purchase From People Who Are Blind or Severely Disabled

Centers for Disease Control and Prevention
NOTICES
Meetings:
Disease, Disability, and Injury Prevention and Control Special Emphasis Panel, 22815–22816
Disease, Disability, and Injury Prevention and Control Special Emphasis Panel (SEP), 22815
Healthcare Infection Control Practices Advisory Committee (HICPAC), 22816–22817
Statement of Organization, Functions, and Delegations of Authority, 22821–22829

Centers for Medicare & Medicaid Services
RULES
Medicaid Program:
State Flexibility for Medicaid Benefit, 23068–23104
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals, 22810–22811
Medicare Program:
Inpatient Psychiatric Facilities Prospective Payment System Payment; Update for Rate Year Beginning July 1, 2010 (RY 2011), 23106–23149

Civil Rights Commission
NOTICES
Meetings:
Kentucky Advisory Committee, 22737

Coast Guard
RULES
Safety Zones:
APBA National Tour, Parker, AZ, 22697–22699
PROPOSED RULES
Drawbridge Operation Regulation:
Chambers Creek, Steilacoom, WA, Schedule Change, 22724–22725
NOTICES
Environmental Impact Statements; Availability, etc.:
U.S. Coast Guard Pacific Area Operations (Districts 11 and 13), 22829–22831

Commerce Department
See International Trade Administration
See National Oceanic and Atmospheric Administration

Committee for Purchase From People Who Are Blind or Severely Disabled
NOTICES
Procurement List; Additions and Deletions, 22744–22746

Consumer Product Safety Commission
NOTICES
Requirements for Accreditation of Third Party Conformity Assessment Bodies to Assess Conformity, etc.:
Third Party Testing for Certain Children's Products, 22746–22749

Defense Acquisition Regulations System
RULES
Defense Federal Acquisition Regulation Supplement:
Service Contract Surveillance, 22706
PROPOSED RULES
Defense Federal Acquisition Regulation Supplement:
Government-Assigned Serial Number Marking, 22727–22728
Reporting of Government Property Lost, Stolen, Damaged, or Destroyed, 22729–22731
Defense Federal Acquisition Regulation Supplement:
Award-Fee Contracts, 22728–22729

Defense Department
See Defense Acquisition Regulations System
See Engineers Corps
See Navy Department
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals, 22749–22751
Agency Information Collection Activities; Proposals, Submissions, and Approvals:
American Recovery and Reinvestment Act – Quarterly Reporting for Prime Contractors, 22805
American Recovery and Reinvestment Act; One-time Reporting Requirements for First-tier Subcontractors, 22805
American Recovery and Reinvestment Act; One-time Reporting, Compensation Requirements, 22804–22805
American Recovery and Reinvestment Act—One-time Reporting Requirements for Prime Contractors, 22805
Charter Renewal:
Chief of Engineers Environmental Advisory Board, 22754
Defense Advisory Committee on Military Personnel Testing, 22751–22752
Defense Science Board, 22753–22754
Department of Defense Board of Actuaries, 22754–22756
Department of Defense Wage Committee, 22752–22753
Federal Advisory Committee; Army Education Advisory Committee, 22757
Federal Advisory Committee; United States Army Science Board, 22756–22757

Drug Enforcement Administration
NOTICES
Application:
Importer of Controlled Substances, 22844

Manufacturer of Controlled Substances, 22844

Education Department
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals, 22759–22760
Applications for New Awards (FY 2010):
Disability Rehabilitation Research Projects—Transition to Employment, 22760–22763
Underground Railroad Educational and Cultural Program, 22763–22767
Final Priority:
Disability and Rehabilitation Research Projects and Centers Program, etc., 22767–22769

Election Assistance Commission
NOTICES
Meetings; Sunshine Act, 22769–22770

Employee Benefits Security Administration
NOTICES
Prohibited Transaction Exemptions and Grants of Individual Exemptions:
Putnam Fiduciary Trust Co.; UBS Financial Services Inc. and Affiliates; Subaru of America, Inc. (Subaru), 22847–22852
Proposed Exemptions:
D–11456, PNC Financial Services Group, Inc.; and D–11602, State Street Bank and Trust Company, et al., 22853–22863

Employment and Training Administration
NOTICES
Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance:
Norgren Automation Solutions, Erie Engineering and Automation Division, Clinton Township, MI, 22846

Energy Department
See Federal Energy Regulatory Commission
NOTICES
National Electric Transmission Congestion Study, 22770

Engineers Corps
NOTICES
Environmental Impact Statements; Availability, etc.:
Dam Safety Assurance Program Modification Report for the Martis Creek Dam Project, Nevada County, CA, 22758–22759
US 17 and Market Street Corridor in Northern New Hanover and Southern Pender Counties, NC, 22758

Environmental Protection Agency
RULES
Control of Emissions from New Marine Compression-Ignition Engines at or Above 30 Liters per Cylinder, 22896–23065
Mandatory Reporting of Greenhouse Gases:
Minor Harmonizing Changes to General Provisions; Withdrawal, 22699
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals:
Engine Emission Defect Information Reports and Voluntary Emission Recall Reports, 22776–22778
Environmental Impact Statements; Availability, etc.:
Weekly Receipt, 22778–22779
Meetings:
FIFRA Scientific Advisory Panel, 22779–22785
Proposed Administrative Settlement Agreements and Opportunity for Public Comment:
Chemical Leaman Tank Lines, Inc. Superfund Site located in Logan Township, Gloucester County, NJ, 22785–22786
Proposed Consent Decrees:
Clean Air Act Citizen Suit, 22786–22787
Proposed Settlement Agreement, Clean Air Act Citizen Suit, 22787–22788
Registration Review Proposed Decisions; Availability:
Garlic Oil and Capsaicin, 22788–22790
Science Advisory Board Staff Office:
Request for Nominations of Candidates for EPA's Advisory Council on Clean Air Compliance Analysis, et al., 22790–22792

Executive Office of the President
See Management and Budget Office
See Presidential Documents

Federal Aviation Administration
RULES
Airworthiness Directives:
General Electric Co. (GE) CF34–1A, CF34–3A, and CF34–3B Series Turbofan Engines; Correction, 22693
Turbomeca Makila 2A Turboshaft Engines, 22693–22695
Establishments of Class E Airspace:
Bonners Ferry, ID, 22695–22696
PROPOSED RULES
Airworthiness Directives:
BAE SYSTEMS (Operations) Limited Model BAe 146 100A and 200A Series Airplanes, 22710–22712
Proposed Establishments of Class D Airspace:
San Marcos, TX, 22712–22713
NOTICES
Meetings:
Air Traffic Procedures Advisory Committee, 22892–22893

Federal Communications Commission
NOTICES
Closed Auction of Broadcast Construction Permits Scheduled for July 20, 2010:
Filing Requirements, Minimum Opening Bids, Upfront Payments, and Other Procedures (Auction 88), 22792–22804

Federal Deposit Insurance Corporation
NOTICES
Update Listing of Financial Institutions in Liquidation, 22804

Federal Emergency Management Agency
RULES
Final Flood Elevation Determinations, 22699–22706

Federal Energy Regulatory Commission
NOTICES
Availability of Environmental Assessment:
Gary E. Hall and Rita Hall, 22770–22771
Combined Filings, 22771–22772
Complaints:
Cargill Power Markets, LLC v. Public Service Co. of New Mexico, 22772–22773
Filings:
PJM Interconnection, L.L.C., 22773
Petition of Declaratory Order:
Southwest Power Pool, Inc., et al., 22773–22774
Records Governing Off-the-Record Communications, 22774

Requesting Questions And Comments On Other Federal Agency Cost Submissions For Fiscal Year 2009:
Review of Cost Submittals by Other Federal Agencies for Administering Part I of Federal Power Act, 22774–22775
Scoping Meeting and Solicting Scoping Comments for an Original Application for License:
Copper Valley Electric Association, 22775–22776
Supplemental Notice that Initial Market-Based Rate Filing Includes Request for Blanket Section 204 Authorization:
511 Plaza Energy, LLC, 22776

Federal Highway Administration
NOTICES
Environmental Impact Statements; Availability, etc.:
Proposed Transportation Improvement Project; Salt Lake County, UT, 22892

Federal Reserve System
NOTICES
Formations of, Acquisitions by, and Mergers of Bank Holding Companies, 22804

Fish and Wildlife Service
PROPOSED RULES
Meetings:
Western Interior Alaska Federal Subsistence Regional Advisory Council, 22725
NOTICES
Draft Comprehensive Conservation Plan and Environmental Assessment; Availability:
Lake Wales Ridge National Wildlife Refuge, Highlands and Polk Counties, FL, 22832–22835
Endangered and Threatened Wildlife and Plants:
Permits, Santa Cruz County, CA, 22835–22836
Environmental Impact Statements; Availability, etc.:
Cape Romain National Wildlife Refuge, Charleston County, SC, 22838–22840

Food and Drug Administration
PROPOSED RULES
Implementation of Sanitary Food Transportation Act (of 2005), 22713–22723
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals:
Guidance for Industry on How to Submit a Notice of Intent to Slaughter for Human Food Purposes, etc., 22812
Guidance for Industry on Tobacco Health Document Submission:
Availability; Correction, 22812–22813
Guidance for Industry:
Nucleic Acid Testing (NAT) for Human Immunodeficiency Virus Type 1 (HIV–1) and Hepatitis C Virus (HCV), etc., 22814–22815
Requalification Method for Reentry of Blood Donors Deferred Because of Reactive Test Results, etc., 22813–22814
Impact of Dissolvable Tobacco Use on Public Health; Request for Comments, 22815
Meetings:
Emerging Infectious Diseases; Evaluation to Implementation for Transfusion and Transplantation Safety, etc., 22817–22818
Public Hearing:
Considerations Regarding Food and Drug Administration Review and Regulation of Articles, etc., 22819–22821

Forest Service
PROPOSED RULES
Meetings:
Western Interior Alaska Federal Subsistence Regional Advisory Council, 22725
NOTICES
Meetings:
Wrangell–Petersburg Resource Advisory Committee, 22736

General Services Administration
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals:
American Recovery and Reinvestment Act – Quarterly Reporting for Prime Contractors, 22805
American Recovery and Reinvestment Act; One-time Reporting Requirements for First-tier Subcontractors, 22805
American Recovery and Reinvestment Act; One-time Reporting, Compensation Requirements, 22804–22805
American Recovery and Reinvestment Act—One-time Reporting Requirements for Prime Contractors, 22805
Federal Travel Regulations:
Relocation Allowances; Standard Data Dictionary for Collection of Transaction-Level Data, etc., 22805–22806

Health and Human Services Department
See Centers for Disease Control and Prevention
See Centers for Medicare & Medicaid Services
See Food and Drug Administration
See National Institutes of Health
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals, 22806–22807
Implementation of Section 5001 of the American Recovery and Reinvestment Act of 2009:
Adjustments to the Second Quarter of Fiscal Year 2010 Federal Medical Assistance Percentage Rates, etc., 22807–22809
Mandatory Guidelines for Federal Workplace Drug Testing Programs, 22809–22810

Homeland Security Department
See Coast Guard
See Federal Emergency Management Agency

Housing and Urban Development Department
NOTICES
Federal Property Suitable as Facilities to Assist the Homeless, 22831–22832

Interior Department
See Fish and Wildlife Service
See Land Management Bureau
See Surface Mining Reclamation and Enforcement Office

International Trade Administration
NOTICES
Extension of Time Limit for the Preliminary Results:
First Antidumping Duty Administrative Review of Steel Wire Hangers from the People's Republic of China, 22739–22740
Initiation of Antidumping Duty New Shipper Review:
Raw Flexible Magnets from the People's Republic of China, 22740–22741

Initiation of Countervailing Duty New Shipper Review:
Raw Flexible Magnets from the People's Republic of China, 22741–22742
Rescission of New Shipper Review:
New Pneumatic Off-the-Road Tires from the People's Republic of China, 22742–22743
Subsidy Programs Provided by Countries Exporting Softwood Lumber, et al. to the United States, 22743–22744

International Trade Commission
NOTICES
Commission Determination to Review-In-Part a Final Submission on Violation of Section 337, etc.:
Cetain Adjustable Keyboard Support Systems and Components Thereof, 22840–22842
Determinations:
Polyethylene Retail Carrier Bags from Indonesia, Taiwan and Vietnam, 22842–22843

Justice Department
See Drug Enforcement Administration
See Justice Programs Office
NOTICES
Lodging of Consent Decree Under the Comprehensive Environmental Response, Compensation and Liability Act, 22843

Justice Programs Office
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals:
Revision, 22843–22844

Labor Department
See Employee Benefits Security Administration
See Employment and Training Administration
See Mine Safety and Health Administration
See Occupational Safety and Health Administration

Land Management Bureau
NOTICES
Environmental Impact Statements; Availability, etc.:
Eastern Washington and San Juan Planning Area, WA; Intent to Prepare Resource Management Plan, 22836–22837
Genesis Project, Eureka County, NV, 22838
Proposed Reinstatements of Terminated Oil and Gas Leases:
Wyoming, 22840

Management and Budget Office
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals, 22863

Mine Safety and Health Administration
NOTICES
Petition for Modification, 22846–22847

National Aeronautics and Space Administration
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals:
American Recovery and Reinvestment Act – Quarterly Reporting for Prime Contractors, 22805
American Recovery and Reinvestment Act; One-time Reporting Requirements for First-tier Subcontractors, 22805
American Recovery and Reinvestment Act; One-time Reporting, Compensation Requirements, 22804–22805
American Recovery and Reinvestment Act—One-time Reporting Requirements for Prime Contractors, 22805

National Institute of Food and Agriculture
NOTICES
Request for Applications for the Veterinary Medicine Loan Repayment Program, 22736–22737

National Institutes of Health
NOTICES
Meetings:
Center for Scientific Review, 22815–22816, 22818–22819
National Institute of Environmental Health Sciences, 22818
National Institute of Mental Health, 22816
National Institute of Neurological Disorders and Stroke, 22818

National Oceanic and Atmospheric Administration
PROPOSED RULES
Implementation of Fish and Fish Product Import Provisions of the Marine Mammal Protection Act, 22731–22735
NOTICES
Availability of a Final Damage Assessment and Restoration Plan:
Environmental Assessment for Natural Resource Injuries, etc., 22737–22738
Endangered and Threatened Species:
Take of Anadromous Fish, 22738–22739

National Science Foundation
NOTICES
Meetings:
Astronomy and Astrophysics Advisory Committee, 22863
Permit Applications Received Under Antarctic Conservation Act of 1978 (P.L. 95–541), 22863–22864

Navy Department
RULES
Certifications and Exemptions under 1972 International Regulations for Preventing Collisions at Sea, 22696–22697

Nuclear Regulatory Commission
NOTICES
Confirmatory Order:
CAN USA, Inc.; Harvey, LA, 22864–22868
Withdrawal of Regulatory Guide, 22868–22869

Occupational Safety and Health Administration
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals:
Construction Fall Protection Systems Criteria and Practices and Training Requirements; Extension, 22844–22846

Office of Management and Budget
See Management and Budget Office

Pension Benefit Guaranty Corporation
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals:
Reconsideration of Initial Determinations, 22869–22870

Personnel Management Office
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals, 22870–22871
Meetings:
National Council on Federal Labor–Management Relations, 22871

Postal Service
PROPOSED RULES
Express Mail Next Day Delivery Postage Refund Amendment, 22725–22727

Presidential Documents
PROCLAMATIONS
Special Observances:
Death of Dorothy Height (Proc. 8504), 22691

Securities and Exchange Commission
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals, 22874
Applications:
Claymore Exchange-Traded Fund Trust 3, et al., 22874–22881
Self-Regulatory Organizations; Proposed Rule Changes:
International Securities Exchange, LLC, 22889–22890
NASDAQ OMX PHLX, Inc., 22881–22884
NYSE Amex LLC, 22886–22887
NYSE Arca, Inc., 22884–22886
The NASDAQ Stock Market LLC, 22887–22889

Small Business Administration
NOTICES
Disaster Declaration:
California, 22872
Connecticut, 22871–22872
Massachusetts, 22874
Nebraska, 22873
North Dakota, 22872–22873
Rhode Island, 22873 22872
West Virginia, 22871

State Department
NOTICES
Environmental Impact Statements; Availability, etc.:
Extension of Public Comment Period for the Proposed Keystone XL Pipeline Project, 22890

Surface Mining Reclamation and Enforcement Office
PROPOSED RULES
Environmental Impact Statements; Availability, etc.:
Stream Protection Rule, 22723–22724

Transportation Department
See Federal Aviation Administration
See Federal Highway Administration
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals, 22890–22891
Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits Filed Under Subpart B, 22891–22892
Aviation Proceedings; Agreements, 22892

Treasury Department
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals, 22893

Separate Parts In This Issue

Part II
Environmental Protection Agency, 22896–23065

Part III
Health and Human Services Department, Centers for Medicare & Medicaid Services, 23068–23104

Part IV
Health and Human Services Department, Centers for Medicare & Medicaid Services, 23106–23149

Reader Aids

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

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CFR PARTS AFFECTED IN THIS ISSUE

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

3 CFR

Proclamations:
8504.....22691

7 CFR

Proposed Rules:
51.....22707

14 CFR
39 (2 documents) 22693
71.....22695

Proposed Rules:
39.....22710
71.....22712

21 CFR

Proposed Rules:
1.....22713

30 CFR

Proposed Rules:
780.....22723
784.....22723
816.....22723
817.....22723

32 CFR
706.....22696

33 CFR
165.....22697

Proposed Rules:
117.....22724

36 CFR

Proposed Rules:
242.....22725

39 CFR

Proposed Rules:
111.....22725

40 CFR
80.....22896
85.....22896
86.....22896
94.....22896
98.....22699
1027.....22896
1033.....22896
1039.....22896
1042.....22896
1043.....22896
1045.....22896
1048.....22896
1051.....22896
1054.....22896
1060.....22896
1065.....22896
1068.....22896

42 CFR
440.....23068

44 CFR
67.....22699

48 CFR
201.....22706
237.....22706
246.....22706

Proposed Rules:
211.....22727
216.....22728
245.....22729
252 (3 documents) 22727, 22728, 22729

50 CFR

Proposed Rules:
100.....22725
216.....22731

Federal Register
Vol. 75, No. 83
Friday, April 30, 2010

Presidential Documents

Title 3—

The President

Proclamation 8504 of April 26, 2010

Death of Dorothy Height

By the President of the United States of America

A Proclamation

As a mark of respect for the memory of Dorothy Height, I hereby order, by the authority vested in me by the Constitution and the laws of the United States of America, that, on the day of her interment, the flag of the United States shall be flown at half-staff at the White House and upon all public buildings and grounds, at all military posts and naval stations, and on all naval vessels of the Federal Government in the District of Columbia and throughout the United States and its Territories and possessions until sunset on such day. I further direct that the flag shall be flown at half-staff for the same period at all United States embassies, legations, consular offices, and other facilities abroad, including all military facilities and naval vessels and stations.

IN WITNESS WHEREOF, I have hereunto set my hand this twenty-sixth day of April, in the year of our Lord two thousand ten, and of the Independence of the United States of America the two hundred and thirty-fourth.



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Filed 4–29–10; 8:45 am]
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Rules and Regulations

Federal Register
Vol. 75, No. 83
Friday, April 30, 2010

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–2009–0328; Directorate Identifier 2008–NE–44–AD; Amendment 39–16161; AD 2010–01–04]

RIN 2120–AA64

Airworthiness Directives; General Electric Company (GE) CF34–1A, CF34–3A, and CF34–3B Series Turbofan Engines; Correction

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; correction.

SUMMARY: The FAA is correcting airworthiness directive (AD) 2010–01–04, which published in the **Federal Register.** That AD applies to GE CF34–1A, CF34–3A, and CF34–3B series turbofan engines. The docket number is incorrect in all three of its locations. This document corrects those references. In all other respects, the original document remains the same.

DATES: Effective April 30, 2010.

FOR FURTHER INFORMATION CONTACT: John Frost, Aerospace Engineer, Engine Certification Office, FAA, Engine & Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803; phone: (781) 238–7756; fax: (781) 238–7199.

SUPPLEMENTARY INFORMATION: On January 8, 2010 (75 FR 1017), we published a final rule AD, FR Doc. E9–31274, in the **Federal Register.** That AD applies to GE CF34–1A, CF34–3A, and CF34–3B series turbofan engines. We need to make the following correction:

§ 39.13 [Corrected]

On page 1017, in the first column, under 14 CFR Part 39, "Docket No. FAA–2008–0328" is corrected to read "Docket No. FAA–2009–0328".

On page 1018, in the first column, under Comments Invited, starting in the ninth line, "Docket No. FAA–2008–0328" is corrected to read "Docket No. FAA–2009–0328".

On page 1018, in the third column, under § 39.13 [Amended], starting in the eighth line, "Docket No. FAA–2008–0328" is corrected to read "Docket No. FAA–2009–0328".

Issued in Burlington, Massachusetts, on April 23, 2010.

Peter A. White,

Assistant Manager, Engine and Propeller Directorate, Aircraft Certification Service.

[FR Doc. 2010–9962 Filed 4–29–10; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2010–0411; Directorate Identifier 2010–NE–19–AD; Amendment 39–16278; AD 2010–09–13]

RIN 2120–AA64

Airworthiness Directives; Turbomeca Makila 2A Turboshaft Engines

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; request for comments.

SUMMARY: We are adopting a new airworthiness directive (AD) for the products listed above. This AD results from mandatory continuing airworthiness information (MCAI) issued by an aviation authority of another country to identify and correct an unsafe condition on an aviation product. The MCAI describes the unsafe condition as:

Some digital engine control units (DECUs) used to control MAKILA 2A and MAKILA 2A1 engines have an ambient pressure (P0) sensor with a measurement accuracy that may be outside the range required for satisfactory functioning of the engines throughout the entire operating envelope. In certain extreme flight conditions, the lack of P0 measurement accuracy could potentially cause an engine flameout if the engine is operating on a replacement fuel.

The issue is limited to a batch of 24 DECUs, of which 23 are known to be still in service. Since 01 January 2010, any such DECU returned to an approved repair centre has had its P0 sensor checked and replaced as necessary.

We are issuing this AD to prevent an uncommanded engine in-flight shutdown which could result in a forced autorotation landing or accident.

DATES: This AD becomes effective May 17, 2010.

We must receive comments on this AD by June 1, 2010.

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

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov* and follow the instructions for sending your comments electronically.
- *Mail:* U.S. Department of Transportation, 1200 New Jersey Avenue, SE., West Building Ground Floor, Room W12–140, Washington, DC 20590–0001.
- *Hand Delivery:* Deliver to Mail address above between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.
- *Fax:* (202) 493–2251.

Examining the AD Docket

You may examine the AD docket on the Internet at *http://www.regulations.gov;* or in person at the Docket Operations office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this AD, the regulatory evaluation, any comments received, and other information. The street address for the Docket Operations office (telephone (800) 647–5527) is the same as the Mail address provided in the **ADDRESSES** section. Comments will be available in the AD docket shortly after receipt.

FOR FURTHER INFORMATION CONTACT: Kevin Dickert, Aerospace Engineer, Engine Certification Office, FAA, Engine & Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803; e-mail: *kevin.dickert@faa.gov;* telephone (781) 238–7117; fax (781) 238–7199.

SUPPLEMENTARY INFORMATION:

Discussion

The European Aviation Safety Agency (EASA), which is the Technical Agent for the Member States of the European Community, has issued AD 2010–0068–E (corrected), dated April 13, 2010 (referred to after this as "the MCAI"), to correct an unsafe condition for the specified products. The MCAI states:

Some DECUs used to control MAKILA 2A and MAKILA 2A1 engines have an ambient pressure (P0) sensor with a measurement accuracy that may be outside the range

required for satisfactory functioning of the engines throughout the entire operating envelope. In certain extreme flight conditions, the lack of P0 measurement accuracy could potentially cause an engine flameout if the engine is operating on a replacement fuel.

The issue is limited to a batch of 24 DECUs, of which 23 are known to be still in service. Since 01 January 2010, any such DECU returned to an approved repair centre has had its P0 sensor checked and replaced as necessary.

You may obtain further information by examining the MCAI in the AD docket.

FAA's Determination and Requirements of This AD

This product has been approved by the aviation authority of France and is approved for operation in the United States. Pursuant to our bilateral agreement with France, they have notified us of the unsafe condition described in the MCAI and service information referenced above. We are issuing this AD because we evaluated all information provided by EASA, and determined the unsafe condition exists and is likely to exist or develop on other products of the same type design. This AD requires replacement of certain S/N DECUs within 75 flight hours after the effective date of this AD.

Differences Between the AD and the MCAI or Service Information

We have required different actions in this AD from those in the MCAI and service information in order to follow FAA policies. These differences are described in a separate paragraph of the AD. These requirements take precedence over the actions in the MCAI.

FAA's Determination of the Effective Date

Since no domestic operators use this product, notice and opportunity for public comment before issuing this AD are unnecessary. Therefore, we are adopting this regulation immediately.

Comments Invited

This AD is a final rule that involves requirements affecting flight safety, and we did not precede it by notice and opportunity for public comment. We invite you to send any written relevant data, views, or arguments about this AD. Send your comments to an address listed under the **ADDRESSES** section. Include "Docket No. FAA–2010–0411; Directorate Identifier 2010–NE–19–AD" at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this AD. We will consider all comments received by the closing date and may amend this AD 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 with FAA personnel concerning this AD. Using the search function of the Web site, anyone can find and read the comments in any of our dockets, including, if provided, the name of the individual who sent the comment (or signed the comment on behalf of an association, business, labor union, etc.). You may review the DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477–78).

Authority for This Rulemaking

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

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

Regulatory Findings

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

For the reasons discussed above, I certify this AD:

1. Is not a "significant regulatory action" under Executive Order 12866;

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

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

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

■ 2. The FAA amends § 39.13 by adding the following new AD:

2010–09–13 Turbomeca: Amendment 39–16278.; Docket No. FAA–2010–0411; Directorate Identifier 2010–NE–19–AD.

Effective Date

(a) This airworthiness directive (AD) becomes effective May 17, 2010.

Affected ADs

(b) None.

Applicability

(c) This AD applies to Turbomeca Makila 2A turboshaft engines with any of the following serial number (S/N) digital engine control units (DECUs) installed, if the DECU has not been returned to an approved repair center since January 1, 2010.

S/N 93	S/N 165	S/N 193	S/N 234
S/N 115	S/N 167	S/N 201	S/N 242
S/N 138	S/N 171	S/N 215	S/N 296
S/N 149	S/N 174	S/N 216	S/N 303
S/N 151	S/N 176	S/N 218	S/N 308
S/N 156	S/N 189	S/N 231	—

These engines are installed on, but not limited to, Eurocopter France EC 225LP helicopters.

Reason

(d) Some DECUs used to control MAKILA 2A and MAKILA 2A1 engines have an ambient pressure (P0) sensor with a measurement accuracy that may be outside the range required for satisfactory functioning of the engines throughout the entire operating envelope. In certain extreme flight conditions, the lack of P0 measurement accuracy could potentially cause an engine flameout if the engine is operating on a replacement fuel.

The issue is limited to a batch of 24 DECUs, of which 23 are known to be still in service. Since 01 January 2010, any such DECU returned to an approved repair centre has had its P0 sensor checked and replaced as necessary.

Actions and Compliance

(e) Unless already done, within 75 flight hours after the effective date of this AD, replace the S/N DECUs listed in applicability paragraph (c) of this AD:

(1) With a DECU having a S/N not listed in paragraph (c); or

(2) With a DECU having a S/N listed in paragraph (c), that has been returned to an approved repair center since January 1, 2010.

FAA AD Differences

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

(1) EASA AD 2010–0068–E (corrected), dated April 13, 2010, requires, for helicopters having two affected DECUs, that one of the DECUs be replaced before the next flight, and the other DECU be replaced within 75 flight hours after the effective date of the AD.

(2) This AD requires all affected DECUs be replaced within 75 flight hours after the effective date of this AD.

(3) Although EASA AD 2010–0068–E (corrected), dated April 13, 2010, also applies to the Makila 2A1 engine, this AD does not apply to that model because it has no U.S. type certificate.

Alternative Methods of Compliance (AMOCS)

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

Related Information

(h) Refer to MCAI EASA Airworthiness Directive 2010–0068–E (corrected), dated April 13, 2010, and Turbomeca Alert Mandatory Service Bulletin No. A298 73 2815, Version A, dated March 18, 2010, for related information. Contact Turbomeca, 40220 Tarnos, France; telephone 33 05 59 74 40 00, fax 33 05 59 74 45 15, for a copy of this service information.

(i) Contact Kevin Dickert, Aerospace Engineer, Engine Certification Office, FAA, Engine & Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803; e-mail: *kevin.dickert@faa.gov;* telephone (781) 238–7117; fax (781) 238–7199, for more information about this AD.

Material Incorporated by Reference

(j) None.

Issued in Burlington, Massachusetts, on April 23, 2010.

Peter A. White,

Assistant Manager, Engine and Propeller Directorate, Aircraft Certification Service.

[FR Doc. 2010–9963 Filed 4–29–10; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2009–1002; Airspace Docket No. 09–ANM–18]

Establishment of Class E Airspace; Bonners Ferry, ID

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action will establish Class E airspace at Bonners Ferry, ID, to accommodate aircraft using a new Area Navigation (RNAV) Global Positioning System (GPS) Standard Instrument Approach Procedure (SIAP) at Boundary County Airport. This will improve the safety and management of Instrument Flight Rules (IFR) operations at the airport.

DATES: Effective date, 0901 UTC, July 29, 2010. The Director of the Federal Register approves this incorporation by reference action under 1 CFR part 51, subject to the annual revision of FAA Order 7400.9 and publication of conforming amendments.

FOR FURTHER INFORMATION CONTACT: Eldon Taylor, Federal Aviation Administration, Operations Support Group, Western Service Center, 1601 Lind Avenue, SW., Renton, WA 98057; telephone (425) 203–4537.

SUPPLEMENTARY INFORMATION:

History

On November 13, 2009, the FAA published in the **Federal Register** a notice of proposed rulemaking to amend controlled airspace at Bonners Ferry, ID (74 FR 58570). Interested parties were invited to participate in this rulemaking effort by submitting written comments on the proposal to the FAA. No comments were received.

Class E airspace designations are published in paragraph 6005 of FAA Order 7400.9T signed August 27, 2009, and effective September 15, 2009, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designations listed in this document will be published subsequently in that Order.

The Rule

This action amends Title 14 Code of Federal Regulations (14 CFR) part 71 by establishing Class E airspace extending upward from 700 feet above the surface, at Boundary County Airport, to accommodate IFR aircraft executing new RNAV GPS SIAPs at the airport. This action is necessary for the safety and management of IFR operations.

The FAA has determined this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, this regulation: (1) Is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the U.S. Code. Subtitle 1, section 106 discusses the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority. This rulemaking is promulgated under the authority described in subtitle VII, part A, subpart I, section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority as it establishes additional controlled airspace at Boundary County Airport, Bonners Ferry, ID.

List of Subjects in 14 CFR Part 71

Airspace, incorporation by reference, Navigation (air).

Adoption of the Amendment

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

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

■ 1. The authority citation for 14 CFR part 71 continues to read as follows:

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

§ 71.1 [Amended]

■ 2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9T, Airspace Designations and Reporting Points, signed August 27, 2009, and effective September 15, 2009, is amended as follows:

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

* * * * *

ANM WA E5 Bonners Ferry, ID [New]

Boundary County Airport, ID
(Lat. 48°43′34″ N., long. 116°17′43″ W.)

That airspace extending upward from 700 feet above the surface within a 5-mile radius of Boundary County Airport, Bonners Ferry, ID.

Issued in Seattle, Washington, on April 20, 2010.

Clark Desing,

Manager, Operations Support Group, Western Service Center.

[FR Doc. 2010–10044 Filed 4–29–10; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF DEFENSE

Department of the Navy

32 CFR Part 706

Certifications and Exemptions Under the International Regulations for Preventing Collisions at Sea, 1972

AGENCY: Department of the Navy, DoD.

ACTION: Final rule.

SUMMARY: The Department of the Navy is amending its certifications and exemptions under the International Regulations for Preventing Collisions at Sea, 1972 (72 COLREGS), to reflect that the Deputy Assistant Judge Advocate General (Admiralty and Maritime Law) has determined that USS MISSOURI (SSN 780) is a vessel of the Navy which, due to its special construction and purpose, cannot fully comply with certain provisions of the 72 COLREGS without interfering with its special function as a naval ship. The intended effect of this rule is to warn mariners in waters where 72 COLREGS apply.

DATES: This rule is effective April 30, 2010 and is applicable beginning April 21, 2010.

FOR FURTHER INFORMATION CONTACT: Lieutenant Commander Ted Cook, (Admiralty and Maritime Law), Office of the Judge Advocate General, Department of the Navy, 1322 Patterson Ave., SE., Suite 3000, Washington Navy Yard, DC 20374–5066, telephone 202–685–5040.

SUPPLEMENTARY INFORMATION: Pursuant to the authority granted in 33 U.S.C. 1605, the Department of the Navy amends 32 CFR Part 706.

This amendment provides notice that the Deputy Assistant Judge Advocate General (Admiralty and Maritime Law), under authority delegated by the Secretary of the Navy, has certified that USS MISSOURI (SSN 780) is a vessel of the Navy which, due to its special construction and purpose, cannot fully comply with the following specific provisions of 72 COLREGS without interfering with its special function as a naval ship: Annex I, paragraph 2(a)(i), pertaining to the height placement of the masthead light above the hull; Annex I, paragraph 2(k), pertaining to the height and relative positions of the anchor lights; Annex I, paragraph 3(b), pertaining to the location of the sidelights; and Rule 21(c), pertaining to the location and arc of visibility of the sternlight. The Deputy Assistant Judge Advocate General (Admiralty and Maritime Law) has also certified that the lights involved are located in closest possible compliance with the applicable 72 COLREGS requirements.

Moreover, it has been determined, in accordance with 32 CFR Parts 296 and 701, that publication of this amendment for public comment prior to adoption is impracticable, unnecessary, and contrary to public interest since it is based on technical findings that the placement of lights on this vessel in a manner differently from that prescribed herein will adversely affect the vessel's ability to perform its military functions.

List of Subjects in 32 CFR Part 706

Marine safety, Navigation (water), and Vessels.

■ For the reasons set forth in the preamble, the Navy amends part 706 of title 32 of the Code of Federal Regulations as follows:

PART 706—CERTIFICATIONS AND EXEMPTIONS UNDER THE INTERNATIONAL REGULATIONS FOR PREVENTING COLLISIONS AT SEA, 1972

■ 1. The authority citation for part 706 continues to read as follows:

Authority: 33 U.S.C. 1605.

■ 2. Section 706.2 is amended as follows:

■ A. In Table One by adding, in alpha numerical order, by vessel number, an entry for USS MISSOURI (SSN 780); and

■ B. In Table Three by adding, in alpha numerical order, by vessel number, an entry for USS MISSOURI (SSN 780).

The additions read as follows:

§ 706.2 Certifications of the Secretary of the Navy under Executive Order 11964 and 33 U.S.C. 1605.

* * * * *

TABLE ONE

Vessel	Number	Distance in meters of forward masthead light below minimum required height. § 2(a)(i), Annex I
* * * *	*	* *
USS MISSOURI	SSN 780	2.76
* * * *	*	* *

* * * * *

TABLE THREE

Vessel	Number	Masthead lights arc of visibility; rule 21(a)	Side lights arc of visibility; rule 21(b)	Stern light arc of visibility; rule 21(c)	Side lights distance inboard of ship's sides in meters 3(b) annex 1	Stern light, distance forward of stern in meters; rule 21(c)	Forward anchor light, height above hull in meters; 2(K) annex 1	Anchor lights relationship of aft light to forward light in meters 2(K) annex 1
*	*	*	*	*	*	*	*	
USS MISSOURI	SSN 780	.	.	210.5°	4.37	11.05	2.8	0.30 below.
*	*	*	*	*	*	*	*	

* * * * *

Approved: April 21, 2010.

M. Robb Hyde,

Commander, JAGC, U.S. Navy, Deputy Assistant Judge Advocate, General, Admiralty and Maritime Law.

[FR Doc. 2010–10169 Filed 4–29–10; 8:45 am]

BILLING CODE 3810–FF–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket No. USCG–2009–1110]

RIN 1625–AA00

Safety Zone; APBA National Tour, Parker, AZ

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary safety zone within the Lake Moolvalya region of the navigable waters of the Colorado River in Parker, Arizona for the APBA National Tour. This temporary safety zone is necessary to provide for the safety of the participants, crew, spectators, participating vessels, and other vessels and users of the waterway. Persons and vessels are prohibited from entering into, transiting through, or anchoring within this safety zone unless authorized by the Captain of the Port or his designated representative.

DATES: This rule is effective 6 a.m. on April 30, 2010 through 6 p.m. on May 2, 2010.

ADDRESSES: Documents indicated in this preamble as being available in the docket are part of docket USCG–2009–1110 and are available online by going to *http://www.regulations.gov,* inserting USCG–2009–1110 in the "Keyword" box, and then clicking "Search." They are also available for inspection or copying at the Docket Management Facility (M–30), U.S. Department of Transportation, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: If you have questions on this temporary rule, call or e-mail Petty Officer Shane Jackson, Waterways Management, U.S. Coast Guard Sector San Diego, Coast Guard; telephone 619–278–7267, e-mail *Shane.E.Jackson@uscg.mil.* If you have questions on viewing the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone 202–366–9826.

SUPPLEMENTARY INFORMATION:

Regulatory Information

The Coast Guard is issuing this temporary final rule without prior notice and opportunity to comment pursuant to authority under section 4(a) of the Administrative Procedure Act (APA) (5 U.S.C. 553(b)). This provision authorizes an agency to issue a rule without prior notice and opportunity to comment when the agency for good cause finds that those procedures are "impracticable, unnecessary, or contrary to the public interest." Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing a notice of proposed rulemaking (NPRM) with respect to this rule because immediate action is necessary to ensure the safety of vessels, spectators, participants, and others in the vicinity of the marine event on the dates and times this rule will be in effect and delay would be contrary to the public interest.

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** because delaying the effective date would be contrary to the public interest, since immediate action is needed to ensure the public's safety.

Background and Purpose

RPM Racing Enterprises is sponsoring the APBA National Tour, which is held in Parker, Arizona. This temporary safety zone is necessary to provide for the safety of the participants, crew, spectators, sponsor vessels, and other users and vessels of the waterway. This event involves powerboats racing along a circular course. The size of the boats vary from ten to 16 feet in length. Approximately 150 boats will be participating in this event. The sponsor will provide two patrol and rescue boats and two river closure boats.

Discussion of Rule

The Coast Guard is establishing a safety zone that will be enforced from 6 a.m. to 6 p.m. on April 30, 2010 through May 2, 2010. This safety zone is necessary to provide for the safety of the crews, spectators, participants, and other vessels and users of the waterway. Persons and vessels will be prohibited from entering into, transiting through, or anchoring with this safety zone unless authorized by the Captain of the Port, or his designated representative. The limits of this temporary safety zone are the portion of the Colorado River from Headgate Dam to 0.5 miles north of Blue Water Marina, Parker, Arizona.

Regulatory Analyses

We developed this rule after considering numerous statutes and executive orders related to rulemaking. Below we summarize our analyses based on 13 of these statutes or executive orders.

Regulatory Planning and Review

This rule is not a significant regulatory action under section 3(f) of Executive Order 12866, Regulatory Planning and Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order.

We expect the economic impact of this proposed rule to be so minimal that a full Regulatory Evaluation is unnecessary. This determination is based on the size and location of the safety zone. The safety zone encompasses only a small section of the river, and will only be enforced during the hours of 6 a.m. through 6 p.m. during the effective period of the safety zone. Commercial vessels will not be

hindered by the safety zone. Recreational vessels will not be allowed to transit through the established safety zone during the specified times unless authorized to do so from the Captain of the Port or his designated representative.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), we have considered whether this rule would have a significant economic impact on a substantial number of small entities. The term "small entities" comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

The Coast Guard certifies under 5 U.S.C. 605(b) that this proposed rule would not have a significant economic impact on a substantial number of small entities.

This rule will affect the following entities, some of which might be small entities: The owners or operators of vessels intending to transit or anchor in a portion of the Colorado River from 6 a.m. to 6 p.m. on April 30, 2010 through May 2, 2010.

This safety zone would not have a significant economic impact on a substantial number of small entities for the following reasons. Although the safety zone would apply to the entire width of the river, traffic would be allowed to pass through the zone with the permission of the Coast Guard patrol commander. Furthermore, traffic can pass through the zone during periods when the Coast Guard is not enforcing the safety zone. Before the effective period, the Coast Guard will publish a local notice to mariners (LNM).

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we offer to assist small entities in understanding the rule so that they can better evaluate its effects on them and participate in the rulemaking process.

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.

Collection of Information

This rule calls for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

Federalism

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

Unfunded Mandates Reform Act

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

Taking of Private Property

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

Civil Justice Reform

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

Protection of Children

We have analyzed this rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and does not create an environmental risk to health or risk to safety that may disproportionately affect children.

Indian Tribal Governments

This rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it 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.

Energy Effects

We have analyzed this rule under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. We have determined that it is not a "significant energy action" under that order because it is not a "significant regulatory action" under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy. The Administrator of the Office of Information and Regulatory Affairs has not designated it as a significant energy action. Therefore, it does not require a Statement of Energy Effects under Executive Order 13211.

Technical Standards

The National Technology Transfer and Advancement Act (NTTAA) (15 U.S.C. 272 *note*) directs agencies to use voluntary consensus standards in their regulatory activities unless the agency provides Congress, through the Office of Management and Budget, with an explanation of why using these standards would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (*e.g.,* specifications of materials, performance, design, or operation; test methods; sampling procedures; and related management systems practices) that are developed or adopted by voluntary consensus standards bodies.

This rule does not use technical standards. Therefore, we did not consider the use of voluntary consensus standards.

Environment

We have analyzed this rule under Department of Homeland Security Management Directive 5100.1 and Commandant Instruction M16475.lD, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f), and have concluded this action is one of a category of actions which do not individually or cumulatively have a significant effect on the human environment. This rule is categorically excluded, under figure 2–1, paragraph (34)(g), of the Instruction. This rule involves the establishment of a safety zone.

An environmental analysis checklist and a categorical exclusion determination are available in the docket where indicated under **ADDRESSES**.

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. 1226, 1231; 46 U.S.C. Chapter 701, 3306, 3703; 50 U.S.C. 191, 195; 33 CFR 1.05–1, 6.04–1, 6.04–6, and 160.5; Pub. L. 107–295, 116 Stat. 2064; Department of Homeland Security Delegation No. 0170.1.

■ 2. Add a new temporary zone § 165.T11–295 to read as follows:

§ 165.T11–295 Safety zone; APBA National Tour; Parker, AZ.

(a) *Location.* The limits of this temporary safety zone are the portion of the Colorado River from Headgate Dam to 0.5 miles north of the Bluewater Marine in Parker, Arizona.

(b) *Enforcement Period.* This section will be enforced from 6 a.m. to 6 p.m. on April 30, 2010 through May 2, 2010. If the event concludes prior to the scheduled termination time, the Captain of the Port will cease enforcement of this safety zone and will announce that fact via Broadcast Notice to Mariners.

(c) *Definitions.* The following definition applies to this section: *designated representative,* means any commissioned, warrant, and petty officers of the Coast Guard on board Coast Guard, Coast Guard Auxiliary, and local, state, and Federal law enforcement vessels who have been authorized to act on the behalf of the Captain of the Port.

(d) *Regulations.* (1) Entry into, transit through or anchoring within this safety zone is prohibited unless authorized by the Captain of the Port of San Diego or his designated on-scene representative.

(2) Mariners requesting permission to transit through the safety zone may request authorization to do so from the Patrol Commander. The Patrol Commander may be contacted on VHF–FM Channel 83.

(3) All persons and vessels shall comply with the instructions of the Coast Guard Captain of the Port or the designated representative.

(4) Upon being hailed by U.S. Coast Guard patrol personnel by siren, radio, flashing light, or other means, the operator of a vessel shall proceed as directed.

(5) The Coast Guard may be assisted by other Federal, state, or local agencies.

Dated: April 14, 2010.

T.H. Farris,

Captain, U.S. Coast Guard, Captain of the Port San Diego.

[FR Doc. 2010–10207 Filed 4–29–10; 8:45 am]

BILLING CODE 9110–04–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 98

[EPA–HQ–OAR–2008–0508; FRL–9143–5]

RIN 2060–AQ15

Mandatory Reporting of Greenhouse Gases: Minor Harmonizing Changes to the General Provisions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Withdrawal of direct final rule.

SUMMARY: Because EPA received comments which could be construed as adverse, we are withdrawing the direct final rule to amend the general provisions for the Mandatory Greenhouse Gas (GHG) Reporting Rule, published on March 16, 2010.

DATES: Effective April 30, 2010, EPA withdraws the direct final rule published at 75 FR 12451 on March 16, 2010.

FOR FURTHER INFORMATION CONTACT: Carole Cook, Climate Change Division, Office of Atmospheric Programs (MC–6207J), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (202) 343–9263; fax number: (202) 343–2342; e-mail address: *GHGReportingRule@epa.gov.*

SUPPLEMENTARY INFORMATION: On March 16, 2010, we published a direct final rule (75 FR 12451) and a parallel proposal (75 FR 12489) amending the general provisions for the GHG Reporting Rule. These amendments were issued as a direct final rule, along with a parallel proposal to be used as the basis for final action in the event EPA received any adverse comments on the direct final amendments. Because EPA received comments which could be construed as adverse, we are withdrawing the direct final rule to amend the general provisions for the Mandatory GHG Reporting Rule, published on March 16, 2010. We stated in that direct final rule that if we received adverse comment by April 15, 2010, the direct final rule would not take effect and we would publish a timely withdrawal in the **Federal Register.** We subsequently received comments that could be construed as adverse on that direct final rule. We will address those comments in a subsequent final action based on the parallel proposal published on March 16, 2010 (75 FR 12489). As stated in the direct final rule and the parallel proposed rule, we will not institute a second comment period on this action.

List of Subjects in 40 CFR Part 98

Environmental protection, Administrative practice and procedure, Greenhouse gases, Suppliers, Reporting and recordkeeping requirements.

Dated: April 23, 2010.

Gina McCarthy,

Assistant Administrator for Office of Air and Radiation.

■ Accordingly, the amendments to the rule published in the **Federal Register** on March 16, 2010 (75 FR 12451) are withdrawn as of April 30, 2010.

[FR Doc. 2010–10147 Filed 4–29–10; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

44 CFR Part 67

[Docket ID FEMA–2010–0003]

Final Flood Elevation Determinations

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Final rule.

SUMMARY: Base (1% annual-chance) Flood Elevations (BFEs) and modified BFEs are made final for the communities listed below. The BFEs and modified BFEs are the basis for the floodplain management measures that each community is required either to adopt or to show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

DATES: The date of issuance of the Flood Insurance Rate Map (FIRM) showing BFEs and modified BFEs for each community. This date may be obtained by contacting the office where the maps are available for inspection as indicated in the table below.

ADDRESSES: The final BFEs for each community are available for inspection

at the office of the Chief Executive Officer of each community. The respective addresses are listed in the table below.

FOR FURTHER INFORMATION CONTACT: Kevin C. Long, Acting Chief, Engineering Management Branch, Mitigation Directorate, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472, (202) 646–2820, or (e-mail) *kevin.long@dhs.gov.*

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency (FEMA) makes the final determinations listed below for the modified BFEs for each community listed. These modified elevations have been published in newspapers of local circulation and ninety (90) days have elapsed since that publication. The Deputy Federal Insurance and Mitigation Administrator has resolved any appeals resulting from this notification.

This final rule is issued in accordance with section 110 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and 44 CFR part 67. FEMA has developed criteria for floodplain management in floodprone areas in accordance with 44 CFR part 60.

Interested lessees and owners of real property are encouraged to review the proof Flood Insurance Study and FIRM available at the address cited below for each community. The BFEs and modified BFEs are made final in the communities listed below. Elevations at selected locations in each community are shown.

National Environmental Policy Act. This final rule is categorically excluded from the requirements of 44 CFR part 10, Environmental Consideration. An environmental impact assessment has not been prepared.

Regulatory Flexibility Act. As flood elevation determinations are not within the scope of the Regulatory Flexibility Act, 5 U.S.C. 601–612, a regulatory flexibility analysis is not required.

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 final rule involves no policies that have federalism implications under Executive Order 13132.

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

List of Subjects in 44 CFR Part 67

Administrative practice and procedure, Flood insurance, Reporting and recordkeeping requirements.

■ Accordingly, 44 CFR part 67 is amended as follows:

PART 67—[AMENDED]

■ 1. The authority citation for part 67 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.

§ 67.11 [Amended]

■ 2. The tables published under the authority of § 67.11 are amended as follows:

Flooding source(s)	Location of referenced elevation	*Elevation in feet (NGVD) +Elevation in feet (NAVD) #Depth in feet above ground ∧Elevation in meters (MSL) modified	Communities affected
Lamar County, Alabama, and Incorporated Areas Docket No.: FEMA–B–1041			
Driver Creek	Approximately 3,318 feet upstream of the confluence with Luxapallila Creek.	+261	Unincorporated Areas of Lamar County.
	Approximately 3,810 feet upstream of the confluence with Luxapallila Creek.	+265	

* National Geodetic Vertical Datum.
+ North American Vertical Datum.
# Depth in feet above ground.
∧ Mean Sea Level, rounded to the nearest 0.1 meter.

ADDRESSES

Unincorporated Areas of Lamar County

Maps are available for inspection at 44690 Highway 17, Vernon, AL 35592.

Madison County, Florida, and Incorporated Areas Docket No.: FEMA–B–1017			
Norton Creek	Approximately 2.1 miles upstream of the confluence with the Withlacoochee River.	+69	Town of Lee, Unincorporated Areas of Madison County.
	Approximately 0.1 mile upstream of County Road 53	+91	

* National Geodetic Vertical Datum.
+ North American Vertical Datum.
# Depth in feet above ground.
∧ Mean Sea Level, rounded to the nearest 0.1 meter.

ADDRESSES

Town of Lee

Maps are available for inspection at the Town Hall, 286 Northeast County Road 255, Lee, FL 32059.

Unincorporated Areas of Madison County

Maps are available for inspection at the Madison County Annex Building, 229 Southwest Pinckney Street, Suite 219, Madison, FL 32340.

Flooding source(s)	Location of referenced elevation	*Elevation in feet (NGVD) +Elevation in feet (NAVD) #Depth in feet above ground ^Elevation in meters (MSL) modified	Communities affected
Jackson County, Michigan (All Jurisdictions) Docket No.: FEMA–B–1007			
Grand River	At the downstream side of Maple Grove Road	+909	Township of Rives.
	Approximately 0.5 mile upstream of Maple Grove Road	+910	
Grand River	At the upstream side of High Street	+935	City of Jackson, Township of Leoni, Township of Napoleon, Township of Summit.
	Approximately 1,400 feet upstream of Porbert Road	+942	
North Branch Grand River	At the confluence with the Grand River	+935	Township of Leoni.
	At the downstream side of 5th Street	+936	
North Branch Kalamazoo River	Approximately 0.6 mile upstream of North Main Street	+988	Township of Concord.
	Approximately 1 mile upstream of North Main Street	+988	
Vineyard Lake	Entire shoreline	+970	Township of Norvell, Township of Columbia.

* National Geodetic Vertical Datum.
+ North American Vertical Datum.
# Depth in feet above ground.
^ Mean Sea Level, rounded to the nearest 0.1 meter.

ADDRESSES

City of Jackson
Maps are available for inspection at 161 West Michigan Avenue, Jackson, MI 49201.

Township of Columbia
Maps are available for inspection at 8500 Jefferson Road, Brooklyn, MI 49230.

Township of Concord
Maps are available for inspection at 402 South Main Street, Concord, MI 49237.

Township of Leoni
Maps are available for inspection at 913 5th Street, Michigan Center, MI 49254.

Township of Napoleon
Maps are available for inspection at 6755 Brooklyn Road, Napoleon, MI 49261.

Township of Norvell
Maps are available for inspection at 106 East Commercial Street, Norvell, MI 49263.

Township of Rives
Maps are available for inspection at 106 Main Street, Jackson, MI 49201.

Township of Summit
Maps are available for inspection at 2121 Ferguson Road, Jackson, MI 49201.

St. Clair County, Michigan (All Jurisdictions) Docket No.: FEMA–B–1016			
Beaubien Creek	At the confluence with Lake St. Clair	+579	Township of Clay, Township of Cottrellville, Township of Ira.
	At the upstream side of Mayer Road	+579	
Belle River	At the confluence with the St. Clair River	+581	City of Marine City, City of Marysville.
	Approximately 475 feet upstream of Broadway Street	+581	
Belle River	At the upstream side of Bordman Road	+699	Township of Riley.
	Approximately 550 feet upstream of Bordman Road	+701	
Black River	At the confluence with the St. Clair River	+583	City of Port Huron.
	At the upstream side of 7th Street	+583	
Lake Huron	Entire shoreline	+584	Township of Burtchville.
Lake St. Clair	Entire shoreline	+579	Township of Clay, Township of Ira.
Lester Bammel Drain	At the confluence with the St. Clair River	+581	Township of Cottrellville.
	Approximately 175 feet downstream of Paradise Boulevard.	+581	
Marine City Drain	At the confluence with the St. Clair River	+580	Township of Clay, City of Algonac.
	At the boundary with Algonac State Park	+580	
Meldrum Creek	At the confluence with Swan Creek	+579	Township of Ira.
	Approximately 1,500 feet upstream of the confluence with Swan Creek.	+579	
Middle Channel St. Clair River	At the confluence with Lake St. Clair	+579	Township of Clay.

Flooding source(s)	Location of referenced elevation	*Elevation in feet (NGVD) +Elevation in feet (NAVD) #Depth in feet above ground ∧Elevation in meters (MSL) modified	Communities affected
	At the diversion from North Channel St. Clair River	+579	
North Channel St. Clair River	At the confluence with Lake St. Clair	+579	Township of Clay, City of Algonac.
	At the diversion from South Channel St. Clair River	+580	
Pine River	At the confluence with the St. Clair River	+582	City of St. Clair.
	Approximately 0.3 mile upstream of South Riverside Avenue.	+582	
Robbins Drain	At the confluence with the St. Clair River	+580	Township of Cottrellville.
	Approximately 500 feet downstream of Nautical Lane	+580	
Robbins Drain Outlet	At the confluence with the St. Clair River	+581	Township of Cottrellville.
	At the confluence with Robbins Drain	+581	
South Channel/St. Clair River	At the confluence with Lake St. Clair	+579	City of Algonac, City of Marine City, City of Marysville, City of Port Huron, City of St. Clair, Township of Clay, Township of Cottrellville, Township of East China, Township of St. Clair.
	At Dunn Paper Gage	+584	
Swan Creek	At the confluence with Lake St. Clair	+579	Township of Casco, Township of Ira.
	At the downstream side of Arnold Road	+590	
	At the downstream side of Marine City Highway	+603	
	At the upstream side of Marine City Highway	+603	

* National Geodetic Vertical Datum.
+ North American Vertical Datum.
# Depth in feet above ground.
∧ Mean Sea Level, rounded to the nearest 0.1 meter.

ADDRESSES

City of Algonac
Maps are available for inspection at 805 St. Clair Drive, Algonac, MI 48001.

City of Marine City
Maps are available for inspection at 303 South Water Street, Marine City, MI 48039.

City of Marysville
Maps are available for inspection at 1111 Delaware Avenue, Marysville, MI 48040.

City of Port Huron
Maps are available for inspection at 100 McMorran Boulevard, Port Huron, MI 48060.

City of St. Clair
Maps are available for inspection at 547 North Carney Drive, St. Clair, MI 48079.

Township of Burtchville
Maps are available for inspection at 4000 Burtch Road, Lakeport, MI 48059.

Township of Casco
Maps are available for inspection at 4512 Meldrum Road, Casco, MI 48064.

Township of Clay
Maps are available for inspection at 4710 Pointe Tremble Road, Algonac, MI 48001.

Township of Cottrellville
Maps are available for inspection at 7008 Marsh Road, Cottrellville, MI 48039.

Township of East China
Maps are available for inspection at 5111 River Road, East China, MI 48054.

Township of Ira
Maps are available for inspection at 7085 Meldrum Road, Fair Haven, MI 48023.

Township of Riley
Maps are available for inspection at 13042 Belle River Road, Riley, MI 48041.

Township of St. Clair
Maps are available for inspection at 1539 South Bartlett Road, St. Clair, MI 48079.

McDonald County, Missouri, and Incorporated Areas
Docket No.: FEMA–B–1043

Beaver Branch	Just downstream of Main Street		+884	City of Anderson, Unincorporated Areas of McDonald County.

Flooding source(s)	Location of referenced elevation	*Elevation in feet (NGVD) +Elevation in feet (NAVD) #Depth in feet above ground ∧Elevation in meters (MSL) modified	Communities affected
	Approximately 1.14 mile upstream of Sellers Street	+931	
Indian Creek	Approximately 1.15 mile downstream of the confluence with Wild Creek.	+868	City of Anderson, Unincorporated Areas of McDonald County.
	Approximately 2.79 miles upstream of U.S. Route 71	+923	
Sugar Tree Branch	Just downstream of East Street	+888	City of Anderson, Unincorporated Areas of McDonald County.
	Approximately 1,785 feet upstream of Missouri Route F	+948	
Wild Creek	Approximately 700 feet downstream of Missouri Route 59	+878	City of Anderson, Unincorporated Areas of McDonald County.
	Approximately 410 feet upstream of Missouri Route 76	+1002	

* National Geodetic Vertical Datum.
+ North American Vertical Datum.
# Depth in feet above ground.
∧ Mean Sea Level, rounded to the nearest 0.1 meter.

ADDRESSES

City of Anderson
Maps are available for inspection at 201 West Beaver Street, Anderson, MO 64831.

Unincorporated Aeas of McDonald County
Maps are available for inspection at 602 Main Street, Pineville, MO 64856.

Douglas County, Nebraska, and Incorporated Areas
Docket No.: FEMA–B–7759

Hell Creek	Approximately 50 feet upstream of Harrison Street	+1052	Village of Boystown, City of Omaha.
	At I Street	+1098	
	Just upstream of Pacific Street	+1166	
North Branch West Papillion Creek.	Approximately 250 feet upstream of Blondo Street	+1117	Unincorporated Areas of Douglas County, City of Omaha
	At Ida Street	+1165	
	At North 186th Street	+1191	
West Papillion Creek	Approximately 1,200 feet upstream of I–80	+1045	City of Omaha.
	At U.S. Route 6 (West Dodge Road)	+1106	
	At Nebraska Highway 64 (West Maple Road)	+1182	

* National Geodetic Vertical Datum.
+ North American Vertical Datum.
# Depth in feet above ground.
∧ Mean Sea Level, rounded to the nearest 0.1 meter.

ADDRESSES

City of Omaha
Maps are available for inspection at City Hall, 1819 Farnam Street, Omaha, NE 68183.

Unincorporated Areas of Douglas County
Maps are available for inspection at the Douglas County Courthouse, 3015 Menke Circle, Omaha, NE 68134.

Village of Boystown
Maps are available for inspection at Village of Boys Town, 14100 Crawford Street, Boys Town, NE 68010.

Sarpy County, Nebraska, and Incorporated Areas
Docket No.: FEMA–B–7759

Hell Creek	Approximately 100 feet downstream of Burlington Northern Santa Fe Railroad.	+1038	City of La Vista.
	Approximately 150 feet upstream of Burlington Northern Santa Fe Railroad.	+1039	
	Approximately 50 feet downstream of Harrison Street	+1049	
Midland Creek	Approximately 700 feet downstream of Cedarville Drive	+1011	City of Papillion, Unincorporated Areas of Sarpy County.
	Approximately 450 feet downstream of Nebraska Highway 370.	+1018	

Flooding source(s)	Location of referenced elevation	*Elevation in feet (NGVD) +Elevation in feet (NAVD) #Depth in feet above ground ∧Elevation in meters (MSL) modified	Communities affected
South Papillion Creek	Approximately 300 feet upstream of Giles Street	+1036	City of Papillion, City of La Vista.
	At South 168th Street	+1100	
	Approximately 300 feet upstream of South 204th Street	+1177	
Unnamed Tributary of South Papillion Creek.	Approximately 1,000 feet upstream of the confluence with South Papillion Creek.	+1042	Unincorporated Areas of Sarpy County, City of La Vista, City of Papillion.
	At Cornhuskers Road	+1056	
	At Nebraska Highway 370	+1104	
Walnut Creek	At West Lincoln Street	+1023	City of Papillion.
	Approximately 150 feet upstream of Nebraska Highway 370.	+1043	
West Papillion Creek (with levees).	Just downstream of South 48th Street	+999	City of Bellevue, City of La Vista, City of Papillion.
	Just upstream of South 66th Street	+1007	
	At I–80	+1043	
West Papillion Creek (without left levee).	Just downstream of South 48th Street	+999	City of Bellevue, City of La Vista, City of Papillion.
	Just upstream of South 66th Street	+1008	
	Just upstream of Washington Street	+1015	
West Papillion Creek (without right levee).	Just downstream of South 48th Street	+999	City of Bellevue, City of La Vista, City of Papillion.
	Just upstream of South 66th Street	+1008	
	Just upstream of Washington Street	+1014	

* National Geodetic Vertical Datum.
+ North American Vertical Datum.
# Depth in feet above ground.
∧ Mean Sea Level, rounded to the nearest 0.1 meter.

ADDRESSES

City of Bellevue
Maps are available for inspection at 210 West Mission Avenue, Bellevue, NE 68005.

City of La Vista
Maps are available for inspection at 8116 Park View Boulevard, La Vista, NE 68128.

City of Papillion
Maps are available for inspection at 122 East 3rd Street, Papillion, NE 68046.

Unincorporated Areas of Sarpy County
Maps are available for inspection at the Sarpy County Courthouse, 1210 Golden Gate Drive, Papillion, NE 68046

Clinton County, Ohio, and Incorporated Areas Docket No.: FEMA–B–1022

Lytle Creek	Approximately 500 feet upstream of railroad	+1007	City of Wilmington.
	Approximately 20 feet upstream of 4C Bicentennial Trail	+1020	
Lytle Creek	Approximately 1,700 feet downstream of Nelson Avenue	+966	Unincorporated Areas of Clinton County.
	Approximately 1,000 feet downstream of Nelson Avenue	+971	
	Approximately 20 feet upstream of 4C Bicentennial Trail	+1020	
	Approximately 800 feet upstream of 4C Bicentennial Trail	+1021	
Mary's Fork	Just upstream of CSX Conrail	+1043	Unincorporated Areas of Clinton County.
	Just downstream of Howard Street	+1046	
Stonelick Creek	Approximately 1,600 feet downstream of State Highway 123.	+956	Unincorporated Areas of Clinton County.
	Approximately 1,200 feet downstream of State Highway 123.	+957	
Stonelick Creek	Approximately 3,400 feet downstream of Westboro Road	+971	Village of Blanchester.
	Approximately 2,000 feet downstream of Westboro Road	+974	
	Approximately 1,800 feet downstream of Westboro Road	+974	
	Approximately 1,700 feet downstream of Westboro Road	+975	
Wilson Creek	Approximately 1,800 feet downstream of Polk Road	+1036	Unincorporated Areas of Clinton County.
	Approximately 1,200 feet upstream of Polk Road	+1039	

* National Geodetic Vertical Datum.
+ North American Vertical Datum.

Flooding source(s)	Location of referenced elevation	*Elevation in feet (NGVD) +Elevation in feet (NAVD) #Depth in feet above ground ∧Elevation in meters (MSL) modified	Communities affected

Depth in feet above ground.
∧ Mean Sea Level, rounded to the nearest 0.1 meter.

ADDRESSES

City of Wilmington
Maps are available for inspection at 69 North South Street, Wilmington, OH 45177.

Unincorporated Areas of Clinton County
Maps are available for inspection at 1326 Fife Avenue, Wilmington, OH 45177.

Village of Blanchester
Maps are available for inspection at 318 East Main Street, Blanchester, OH 45107.

Buffalo County, Wisconsin, and Incorporated Areas
Docket No.: FEMA–B–1013

Buffalo River	Approximately 7,700 feet downstream of the Eau Claire Street bridge.	+777	Unincorporated Areas of Buffalo County.
	Approximately 7,000 feet downstream of the Eau Claire Street bridge.	+777	
Mississippi River	Approximately 4.8 miles downstream of State Highway 54	+657	City of Alma, City of Buffalo, City of Fountain City, Unincorporated Areas of Buffalo County, Village of Cochrane, Village of Nelson.
	Approximately 2.1 miles upstream of State Highway 25	+680	
Peeso Creek	Approximately 3,400 feet upstream of the Washington Street Bridge.	+822	Unincorporated Areas of Buffalo County.
	Approximately 4,200 feet upstream of the Washington Street Bridge.	+825	

* National Geodetic Vertical Datum.
+ North American Vertical Datum.
# Depth in feet above ground.
∧ Mean Sea Level, rounded to the nearest 0.1 meter.

ADDRESSES

City of Alma
Maps are available for inspection at City Hall, 314 North Main Street, Alma, WI 54610.

City of Buffalo
Maps are available for inspection at the Municipal Building, 245 East 10th Street, Buffalo City, WI 54622.

City of Fountain City
Maps are available for inspection at City Hall, 42 North Main Street, Fountain City, WI 54629.

Unincorporated Areas of Buffalo County
Maps are available for inspection at the Buffalo County Courthouse, 407 South 2nd Street, Alma, WI 54610.

Village of Cochrane
Maps are available for inspection at the Village Hall, 102 East 5th Street, Cochrane, WI 54622.

Village of Nelson
Maps are available for inspection at the Village Hall, 105 South Main Street, Nelson, WI 54756.

(Catalog of Federal Domestic Assistance No. 97.022, "Flood Insurance.")

Dated: April 23, 2010.

Sandra K. Knight,

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

[FR Doc. 2010–10053 Filed 4–29–10; 8:45 am]

BILLING CODE 9110–12–P

DEPARTMENT OF DEFENSE

Defense Acquisition Regulations System

48 CFR Parts 201, 237, and 246

RIN 0750–AG49

Defense Federal Acquisition Regulation Supplement; Service Contract Surveillance (DFARS Case 2008–D032)

AGENCY: Defense Acquisition Regulations System, Department of Defense (DoD).

ACTION: Final rule.

SUMMARY: DoD is issuing a final rule amending the Defense Federal Acquisition Regulation Supplement (DFARS) to ensure that the requirement for a quality assurance surveillance plan is addressed for each contract with a dollar value above the simplified acquisition threshold, and that contracts for services have appropriate performance management or surveillance plans prepared for the work being performed under the contract.

DATES: Effective Date: April 30, 2010.

FOR FURTHER INFORMATION CONTACT: Ms. Mary Overstreet, Defense Acquisition Regulations System, OUSD(AT&L)DPAP(DARS), 3060 Defense Pentagon, Room 3B855, Washington, DC 20301–3060. Telephone 703–602–0311; facsimile 703–602–0350. Please cite DFARS Case 2008–D032.

SUPPLEMENTARY INFORMATION:

A. Background

The DoD improvement plan for the GAO High Risk Area—Contract Management, includes a commitment from DoD to clarify and/or enhance the DFARS to ensure that appropriate surveillance plans are included in contracts for services. This rule amends the DFARS to ensure that quality assurance surveillance plans are prepared in conjunction with the statement of work or statement of objectives, and included in solicitations and contracts for services to facilitate assessments of contractor performance. Additionally, the requirement for a quality assurance surveillance plan shall be addressed and documented in the contract file for each contract with a dollar value above the simplified acquisition threshold.

DoD is issuing this rule as a final rule because this rule does not have a significant effect beyond the internal operating procedures of DoD and does not have a significant cost or administrative impact on contractors or offerors. Therefore, public comment is not required in accordance with 41 U.S.C. 418b(a).

B. Regulatory Flexibility Act

The Regulatory Flexibility Act does not apply to this rule. This final rule does not constitute a significant DFARS revision within the meaning of FAR 1.501 and public comment is not required in accordance with 41 U.S.C. 418b(a).

C. Paperwork Reduction Act

The Paperwork Reduction Act (Pub. L. 96–511) does not apply because the rule does not impose additional information collection requirements that require the approval of the Office of Management and Budget under 44 U.S.C. 3501, et seq.

List of Subjects in 48 CFR Parts 201, 237, and 246

Government procurement.

Ynette R. Shelkin,

Editor, Defense Acquisition Regulations System.

■ Therefore, 48 CFR parts 201, 237, and 246 are amended as follows:

■ 1. The authority citation for 48 CFR parts 201, 237, and 246 continues to read as follows:

Authority: 41 U.S.C. 421 and 48 CFR chapter 1.

PART 201—FEDERAL ACQUISITION REGULATIONS SYSTEM

■ 2. Section 201.602–2 is amended by revising paragraph (1) to read as follows:

201.602–2 Responsibilities.

(1) Follow the procedures at PGI 201.602–2 regarding designation, assignment, and responsibilities of a contracting officer's representative (COR).

* * * * *

PART 237—SERVICE CONTRACTING

■ 3. Section 237.172 is added to read as follows:

237.172 Service Contracts Surveillance.

Ensure that quality assurance surveillance plans are prepared in conjunction with the preparation of the statement of work or statement of objectives for solicitations and contracts for services. These plans should be tailored to address the performance risks inherent in the specific contract type and the work effort addressed by the contract. (See FAR Subpart 46.4.) Retain quality assurance surveillance plans in the official contract file. See *https://sam.dau.mil,* Step Four—Requirements Definition, for examples of quality assurance surveillance plans.

PART 246—QUALITY ASSURANCE

■ 4. Section 246.401 is added to read as follows:

246.401 General.

The requirement for a quality assurance surveillance plan shall be addressed and documented in the contract file for each contract except for those awarded using simplified acquisition procedures. For contracts for services, the contracting officer should prepare a quality assurance surveillance plan to facilitate assessment of contractor performance, see 237.172. For contracts for supplies, the contracting officer should address the need for a quality assurance surveillance plan.

[FR Doc. 2010–9884 Filed 4–29–10; 8:45 am]

BILLING CODE 5001–08–P

Proposed Rules

Federal Register
Vol. 75, No. 83
Friday, April 30, 2010

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

Agricultural Marketing Service

7 CFR Part 51

[Doc. No. AMS–FV–08–0023]

United States Standards for Grades of Potatoes

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: This proposed rule would revise the United States Standards for Grades of Potatoes which were issued under the Agricultural Marketing Act of 1946. The Agricultural Marketing Service (AMS) is proposing to amend the similar varietal characteristic requirement to allow mixed colors and/or types of potatoes when designated as a mixed or specialty pack.

Additionally, AMS is proposing to add restrictive tolerances for permanent defects in the en route/at destination tolerances, and also remove the unneeded definition for injury and clarify the scoring guide for sprouts.

AMS also proposes to add table numbers to the definitions of "Damage," "Serious Damage," and "External Defects," amend table headings, replace omitted language in the definition for bruising, and amend language in the tolerance section to ensure soft rot tolerances are applied correctly.

The purpose of this revision is to update and revise the standards to more accurately represent today's marketing practices and to clarify existing language.

DATES: Comments must be received by June 1, 2010.

ADDRESSES: Interested persons are invited to submit written comments concerning this proposal. Comments must be sent to the Standardization and Training Section, Fresh Products Branch, Fruit and Vegetable Programs, Agricultural Marketing Service, U.S. Department of Agriculture, National Training and Development Center, Riverside Business Park, 100 Riverside Parkway, Suite 101, Fredericksburg, VA 22406; Fax (540) 361–1199, or on the web at: *www.regulations.gov*. Comments should make reference to the date and page number of this issue of the **Federal Register** and will be made available for public inspection in the above office during regular business hours. Comments can also be viewed on the *www.regulations.gov* Web site. The current United States Standards for Grades of Potatoes, along with the proposed changes, will be available either through the address cited above or by accessing the AMS, Fresh Products Branch Web site at: *http://www.ams.usda.gov/freshinspection.*

FOR FURTHER INFORMATION CONTACT: Dr. Carl Newell, at the above address or call (540) 361–1120.

SUPPLEMENTARY INFORMATION:

Executive Order 12866 and 12988

The Office of Management and Budget has waived the review process required by Executive Order 12866 for this action. This rule has been reviewed under Executive Order 12988, Civil Justice Reform. This action is not intended to have retroactive effect. There are no administrative procedures which must be exhausted prior to any judicial challenge to the provisions of the rule.

Regulatory Flexibility Act and Paperwork Reduction Act

Pursuant to the requirements set forth in the Regulatory Flexibility Act (RFA) (5 U.S.C. 601–612) and in the Paperwork Reduction Act (PRA), AMS has considered the economic impact of the proposed actions on small entities. The purpose of the RFA is to fit regulatory actions to the scale of businesses subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Accordingly, AMS has prepared this initial regulatory flexibility analysis. Interested parties are invited to submit information on the regulatory and informational impacts of these actions on small businesses.

This rule revises the U.S. Standards for Grades of Potatoes that were issued under the Agricultural Marketing Act of 1946 (7 U.S.C. 1621–1627). Standards issued under the 1946 Act are voluntary.

Small agricultural service firms, which include handlers and importers, have been defined by the Small Business Administration (SBA) (13 CFR 121.201) as those having annual receipts of less than $7,000,000, and small agricultural producers are defined as those having annual receipts of less than $750,000. Using annual data from the National Agricultural Statistics Service (NASS), the average potato crop value for 2006–2008 was $3.482 billion. Dividing that figure by 15,014 farms yields an average potato crop value per farm of just under $232,000. Since this is well under the SBA threshold of annual receipts of $750,000, it can be concluded that the majority of these producers may be classified as small entities. Furthermore, there are approximately 180 handlers of potatoes and approximately 168 importers of potatoes that may be classified as small entities and may be affected by this rule.

Additional evidence comes from examining the Agricultural Census acreage breakdown closely. Out of a total of 15,014 potato farms in 2007, 19 percent were less than 10 acres and 66 percent were less than 100 acres. An estimate of the number of acres that it would take to produce a crop valued at $750,000 can be made by dividing the 2006–08 average crop value of $3.482 billion by the three-year average bearing acres of 1.097 million, yielding an average potato revenue per acre estimate of $3,174. Dividing $750,000 by $3,174 shows that farms with 236 acres received at least the average price in 2006–08 producing crops valued at $750,000 or more, and would therefore be considered large potato farms under the SBA definition. Looking at farm numbers for additional census size categories shows that 11,718 potato farms (78 percent) are under 220 acres and 11,994 (80 percent) are less than 260 acres. Since a farm with 236 acres of potatoes falls within this range, it can be concluded that the proportion of small potato farms under the SBA definition is between 78 and 80 percent of all U.S. potato farms.

The effects of this rule are not expected to be disproportionately greater or smaller for small handlers, producers, or importers than for larger entities. The proposed changes are to amend the similar varietal characteristic requirement, add restrictive tolerances for permanent defects in the enroute/at

destination tolerances, remove the definition for injury, and clarify the scoring guides for sprouts. Additionally, AMS proposes to add table numbers to the definitions of "Damage," "Serious Damage," and "External Defects," amend table headings, replace omitted language in the definition for bruising, and amend the tolerance section to ensure soft rot tolerances are applied correctly. These proposed actions would make the standard more consistent and uniform with marketing trends and practices. These proposed actions will not impose any additional reporting or recordkeeping requirements on either small or large potato producers, handlers, or importers.

USDA has not identified any Federal rules that duplicate, overlap, or conflict with this rule. However, there are marketing programs which regulate the handling of potatoes under 7 CFR parts 945–948 and 953. Potatoes under a marketing order have to meet certain requirements set forth in the grade standards. In addition, potatoes are subject to section 8e import requirements under the Agricultural Marketing Act of 1937, as amended (7 U.S.C. 601–674) which requires imported potatoes to meet grade, size, and quality under the applicable marketing order.

Alternatives to this proposed rule (7 CFR part 980) were considered, including the option to issue the rule. However, the need for revision has increased as a result of changing market characteristics, and the proposal represents input from the potato industry.

Background and Proposed Rule

A proposed rule was published in the September 22, 2006, **Federal Register** (71 FR 55356), seeking comments on possible revisions to the United States Standards for Grades of Potatoes. During the comment period, a comment was received requesting AMS give consideration to allow packing of mixed varieties in the U.S. No. 1 grade. While this change was not in the scope of that rulemaking, AMS believed the suggestion should be considered separately at a later time. AMS agrees that inserting language into the standard to allow mixed colors and/or types of potatoes when designated as a mixed or specialty pack would reflect current marketing practices. Upon further evaluation, AMS also believes that this revision should be applied to the U.S. No. 2 grade as well due to changes in the marketing of potatoes. This proposal would revise § 51.1541 (a) and § 51.1543 (a) concerning similar varietal characteristics by inserting "except when designated as a mixed or specialty pack" into the proposed standard to allow for mixed colors and/or types of potatoes when designated as a mixed or specialty pack.

In addition, a March 21, 2008, rule (73 FR 15054 as corrected at 73 FR 70885) finalized the September 26, 2006, proposed rule by adding en route/at destination tolerances to the U.S. No. 1 and U.S. No. 2 grades. However, restrictive tolerances for permanent defects implemented in those en route/at destination tolerances were not included. These restrictive tolerances are necessary to ensure that additional permanent defects are not allowed en route or at destination than that allowed at shipping point. Therefore, this proposal would revise § 51.1546 (a)(1 (ii) by adding "*Provided,* That included in this tolerance not more than a total of 8 percent shall be allowed for permanent defects: *And provided further,* the following percentages shall be allowed for the defects listed:" and revise § 51.1546 (a)(3)(ii) by adding "*Provided,* That included in this tolerance not more than a total of 10 percent shall be allowed for permanent defects: *And provided further,* the following percentages shall be allowed for the defects listed:" Further, this proposal would revise § 51.1546 (a)(1)(ii)(A) by adding "including therein not more than 5 percent for permanent external defects;" § 51.1546 (a)(1)(ii)(B) by adding "including therein not more than 5 percent for permanent internal defects; and" § 51.1546 (a)(3)(ii)(A) by adding "including therein not more than 6 percent for permanent external defects;" and revise § 51.1546 (a)(3)(ii)(B) by adding "including therein not more than 6 percent for permanent internal defects; and"

Additionally, the U.S. Extra No. 1 grade for potatoes was removed from the standard and therefore the definition for injury in the U.S. Standards for Grades of Potatoes is no longer needed. Therefore, AMS proposes to remove the definition for injury from § 51.1559 and reclassify § 51.1559 as "[Reserved]."

AMS also has determined that the current scoring guide for sprouts needs further clarity. Accordingly, AMS proposes to revise the language to help ensure that the scoring guide for sprouts is not interpreted incorrectly. The proposed rule would revise the scoring guide for damage by sprouts in Table III as follows: "When more than 5 percent of the potatoes in any lot have any sprout more than ¼ inch in length at shipping point, more than ½ inch in length at destination; or have numerous individual and/or clusters of sprouts which detract from the appearance of the potato." Similarly, AMS would revise the scoring guide for serious damage by sprouts in Table III as follows: "When more than 10 percent of the potatoes in any lot have any sprout more than ½ inch in length at shipping point; more than 1 inch in length at destination; or have numerous individual and/or clusters of sprouts that seriously detract from the appearance of the potato. Serious damage by sprouts shall only be scored against the U.S. Commercial and U.S. No. 2 grades."

Further, AMS proposes to add the following language to ensure proper application of soft rot tolerances in the applicable tolerance sections:

§ 51.1546 (a)(1)(i)(B): "5 percent for internal defects; and"

§ 51.1546 (a)(1)(i)(C): "Not more than a total of 1 percent for potatoes which are frozen or affected by soft rot or wet breakdown. See § 51.1547."

§ 51.1546 (a)(1)(ii)(C): "Not more than a total of 2 percent for potatoes which are frozen or affected by soft rot or wet breakdown. See § 51.1547."

§ 51.1546 (a)(2)(iii) and § 51.1546 (a)(3)(i)(B): "6 percent for internal defects; and"

§ 51.1546 (a)(2)(iv) and § 51.1546 (a)(3)(i)(C): "Not more than a total of 1 percent for potatoes which are frozen or affected by soft rot or wet breakdown. See § 51.1547."

§ 51.1546 (a)(3)(ii)(C): "Not more than 2 percent for potatoes which are frozen or affected by soft rot or wet breakdown. See § 51.1547."

AMS also proposes for clarity to add table numbers, amend table headings, and replace omitted language in sections: § 51.1546 (a)(2)(iii); § 51.1560; § 51.1561; § 51.1564; and § 51.1565.

A 30-day period is provided for interested persons to comment. This period is deemed appropriate in order to implement these changes, if adopted, as soon as possible to reflect current marketing practices. Accordingly, AMS proposes to amend the United States Standards for Grades of Potatoes as follows:

List of Subjects in 7 CFR Part 51

Agricultural commodities, Food grades and standards, Fruits, Nuts, Reporting and recordkeeping requirements, Trees, Vegetables.

For reasons set forth in the preamble, 7 CFR part 51 is proposed to be amended as follows:

PART 51—[AMENDED]

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

Authority: 7 U.S.C. 1621–1627.

2. In § 51.1541, paragraph (a) is revised to read as follows:

§ 51.1541 U.S. No. 1.

* * * * *

(a) Similar varietal characteristics, except when designated as a mixed or specialty pack;

* * * * *

3. In § 51.1543, paragraph (a) is revised to read as follows:

§ 51.1543 U.S. No. 2.

* * * * *

(a) Similar varietal characteristics, except when designated as a mixed or specialty pack;

* * * * *

4. In § 51.1546, paragraph (a) is revised to read as follows:

§ 51.1546 Tolerances.

* * * * *

(a) For defects—(1) U.S. No. 1. (i) At Shipping Point: A total of 8 percent for potatoes in any lot which fail to meet the requirements for the grade: *Provided,* That included in this tolerance not more than the following percentages shall be allowed for the defects listed:

(A) 5 percent for external defects;

(B) 5 percent for internal defects; and

(C) Not more than a total of 1 percent for potatoes which are frozen or affected by soft rot or wet breakdown. See § 51.1547.

(ii) En route or at Destination: A total of 10 percent for potatoes in any lot which fail to meet the requirements for the grade: *Provided,* That included in this tolerance not more than a total of 8 percent shall be allowed for permanent defects: *And provided further,* the following percentages shall be allowed for the defects listed:

(A) 7 percent for external defects, including therein not more than 5 percent for permanent external defects;

(B) 7 percent for internal defects, including therein not more than 5 percent for permanent internal defects; and

(C) Not more than a total of 2 percent for potatoes which are frozen or affected by soft rot or wet breakdown. See § 51.1547.

(2) U.S. Commercial: A total of 20 percent for potatoes in any lot which fail to meet the requirements for the grade: *Provided,* That included in this tolerance not more than the following percentages shall be allowed for the defects listed:

(i) 10 percent for potatoes which fail to meet the requirements for U.S. No. 2 grade, including therein not more than:

(ii) 6 percent for external defects;

(iii) 6 percent for internal defects; and

(iv) Not more than a total of 1 percent for potatoes which are frozen or affected by soft rot or wet breakdown. See § 51.1547.

(3) U.S. No. 2. (i) At Shipping Point: A total of 10 percent for potatoes in any lot which fail to meet the requirements for the grade: *Provided,* That included in this tolerance not more than the following percentages shall be allowed for the defects listed:

(A) 6 percent for external defects;

(B) 6 percent for internal defects; and

(C) Not more than a total of 1 percent for potatoes which are frozen or affected by soft rot or wet breakdown. See § 51.1547.

(ii) En route or at Destination: A total of 12 percent for potatoes in any lot which fail to meet the requirements for the grade: *Provided,* That included in this tolerance not more than a total of 10 percent shall be allowed for permanent defects: *And provided further,* the following percentages shall be allowed for the defects listed:

(A) 8 percent for external defects, including therein not more than 6 percent for permanent external defects;

(B) 8 percent for internal defects, including therein not more than 6 percent for permanent internal defects; and

(C) Not more than a total of 2 percent for potatoes which are frozen or affected by soft rot or wet breakdown. See § 51.1547.

* * * * *

§ 51.1559 [Removed and Reserved]

5. Section 51.1559 is removed and reserved.

6. Section 51.1560 is revised to read as follows:

§ 51.1560 Damage.

"*Damage*" means any defect, or any combination of defects, which materially detracts from the edible or marketing quality, or the internal or external appearance of the potato, or any external defect which cannot be removed without a loss of more than 5 percent of the total weight of the potato. See Tables III, IV, V and VI in § 511564 and Table VII in § 51.1565.

7. Section 51.1561 is revised to read as follows:

§ 51.1561 Serious damage.

"*Serious damage*" means any defect, or any combination of defects, which seriously detracts from the edible or marketing quality, or the internal or external appearance of the potato, or any external defect which cannot be removed without a loss of more than 10 percent of the total weight of the potato. See Tables III, IV, V and VI in § 51.1564 and Table VII in § 51.1565.

8. Section 51.1564 is amended by:

A. Amending the introductory text by removing the reference "Table III", and by adding the reference "Tables III, IV, V and VI", in its place;

B. Amending Table III by revising the column headings; and

C. Amending Table III by revising the entries for "Bruises (Not including pressure bruise and sunken discolored areas)" and "Sprouts".

Revisions and addition read as follows.

§ 51.1564 External defects.

* * * * *

TABLE III—EXTERNAL DEFECTS

Defects	Damage	Serious damage [1]
*	*	*
Bruises (Not including pressure bruise and sunken discolored areas).	When removal causes a loss of more than 5 percent of the total weight of the potato or when the area affected is more than 5 percent of the surface in the aggregate (i.e. ¾ inch on a 2½ inch or 6 oz. potato). Correspondingly lesser or greater areas in smaller or larger potatoes.	When removal causes a loss of more than 10 percent of the total weight of the potato or when the area affected is more than 10 percent of the surface in the aggregate (i.e. 1¼ inches on a 2½ inch or 6 oz. potato). Correspondingly lesser or greater areas in smaller or larger potatoes.

TABLE III—EXTERNAL DEFECTS—Continued

Defects	Damage	Serious damage [1]
* * * * * * *		
Sprouts	When more than 5 percent of the potatoes in any lot have any sprout more than ¼ inch in length at shipping point; more than ½ inch in length at destination; or have numerous individual and/or clusters of sprouts which materially detract from the appearance of the potato.	When more than 10 percent of the potatoes in any lot have any sprout more than ½ inch in length at shipping point; more than 1 inch in length at destination; or have numerous individual and/or clusters of sprouts which seriously detract from the appearance of the potato. Serious damage by sprouts shall only be scored against the U.S. Commercial and U.S. No. 2 grades.
* * * * * * *		

[1] The following defects are considered serious damage when present in any degree: 1. Freezing. 2. Late blight. 3. Ring rot. 4. Southern bacterial wilt. 5. Soft rot. 6. Wet breakdown.

§ 51.1565 [Amended]

9. Section 51.1565 is amended by:

A. Amending the introductory text by removing the reference "Table IV", and by adding the reference "Table VII", in its place; and

B. Amending Table VII, by removing the column heading "Damage Maximum allowed" and adding the heading "Damage Maximum Allowed" in its place, and by removing the column heading "Serious Maximum allowed", and by adding the column heading "Serious Damage Maximum Allowed" in its place.

Dated: April 22, 2010.

David R. Shipman,

Acting Administrator, Agricultural Marketing Service.

[FR Doc. 2010–9822 Filed 4–29–10; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2010–0434; Directorate Identifier 2009–NM–221–AD]

RIN 2120–AA64

Airworthiness Directives; BAE Systems (Operations) Limited Model BAe 146–100A and –200A Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: We propose to adopt a new airworthiness directive (AD) for the products listed above. This proposed AD results from mandatory continuing airworthiness information (MCAI) originated by an aviation authority of another country to identify and correct an unsafe condition on an aviation product. The MCAI describes the unsafe condition as:

> The operation of the airbrake lever in the "airbrakes out" to "lift spoiler" range has been the subject of two occurrence reports. The lift spoilers on the BAe 146 and Avro 146–RJ aeroplanes have been designed to deploy on landing to provide aerodynamic braking and to dump lift to ensure that the wheel brakes can provide the necessary speed reduction.
>
> * * * * *
>
> The effects of deceleration and landing inertia loads can cause uncommanded movement of the airbrake selector lever from the "lift spoiler" position to the "airbrakes out" position, causing the lift spoilers to retract during the landing roll. This condition, if not corrected, would increase the landing distance, possibly resulting in a runway overrun and consequent injury to aeroplane occupants.
>
> * * * * *

The proposed AD would require actions that are intended to address the unsafe condition described in the MCAI.

DATES: We must receive comments on this proposed AD by June 14, 2010.

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

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov*. Follow the instructions for submitting comments.
- *Fax:* (202) 493–2251.
- *Mail:* U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590.
- *Hand Delivery:* U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–40, 1200 New Jersey Avenue, SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

For service information identified in this proposed AD, contact BAE Systems Regional Aircraft, 13850 McLearen Road, Herndon, Virginia 20171; telephone 703–736–1080; e-mail *raebusiness@baesystems.com;* Internet *http://www.baesystems.com/Businesses/RegionalAircraft/index.htm.* You may review copies of the referenced service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington. For information on the availability of this material at the FAA, call 425–227–1221.

Examining the AD Docket

You may examine the AD docket on the Internet at *http://www.regulations.gov;* or in person at the Docket Operations office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this proposed AD, the regulatory evaluation, any comments received, and other information. The street address for the Docket Operations office (telephone (800) 647–5527) is in the **ADDRESSES** section. Comments will be available in the AD docket shortly after receipt.

FOR FURTHER INFORMATION CONTACT: Todd Thompson, Aerospace Engineer, International Branch, ANM–116, Transport Airplane Directorate, FAA, 1601 Lind Avenue, SW., Renton, Washington 98057–3356; telephone (425) 227–1175; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to send any written relevant data, views, or arguments about this proposed AD. Send your comments to an address listed under the **ADDRESSES** section. Include "Docket No. FAA–2010–0434; Directorate Identifier 2009–NM–221–AD" at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this proposed AD. We will consider all comments received by the closing date and may amend this proposed AD based on those comments.

We have lengthened the 30-day comment period for proposed ADs that address MCAI originated by aviation

authorities of other countries to provide adequate time for interested parties to submit comments. The comment period for these proposed ADs is now typically 45 days, which is consistent with the comment period for domestic transport ADs.

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

Discussion

The European Aviation Safety Agency (EASA), which is the Technical Agent for the Member States of the European Community, has issued EASA Airworthiness Directive 2009–0206, dated September 30, 2009 (referred to after this as "the MCAI"), to correct an unsafe condition for the specified products. The MCAI states:

> The operation of the airbrake lever in the "airbrakes out" to "lift spoiler" range has been the subject of two occurrence reports. The lift spoilers on the BAe 146 and Avro 146–RJ aeroplanes have been designed to deploy on landing to provide aerodynamic braking and to dump lift to ensure that the wheel brakes can provide the necessary speed reduction.
>
> A review of the changing operational profile of the aeroplane type concluded that its proven short field performance has increasingly been exploited in recent years by a number of operators worldwide. Frequently, these short field operations are conducted from airports that are located in mountainous terrain or in close proximity to bodies of water, leaving fewer margins for error, e.g. landing long or at (too) high speed.
>
> The effects of deceleration and landing inertia loads can cause uncommanded movement of the airbrake selector lever from the "lift spoiler" position to the "airbrakes out" position, causing the lift spoilers to retract during the landing roll. This condition, if not corrected, would increase the landing distance, possibly resulting in a runway overrun and consequent injury to aeroplane occupants.
>
> On certain BAe 146 aeroplanes, without modifications HCM00889A and B or modifications HCM00889A and C incorporated, negligible force is required to move the airbrake lever back to the "airbrakes out" position. From 1988 onwards, modifications were introduced on the production line to incorporate a modified friction baulking device such that a force of 12 lbs must be applied to move the airbrake lever from the "lift spoiler" position to the "airbrakes out" position. These modifications were also made available as an optional in-service retrofit.
>
> For the reasons described above, this AD requires the modification of the airbrake lever detent mechanism.

You may obtain further information by examining the MCAI in the AD docket.

Relevant Service Information

British Aerospace has issued 146 Modification Service Bulletin 27–73–00889A&B, Revision 4, dated June 15, 1990. The actions described in this service information are intended to correct the unsafe condition identified in the MCAI.

FAA's Determination and Requirements of This Proposed AD

This product has been approved by the aviation authority of another country, and is approved for operation in the United States. Pursuant to our bilateral agreement with the State of Design Authority, we have been notified of the unsafe condition described in the MCAI and service information referenced above. We are proposing this AD because we evaluated all pertinent information and determined an unsafe condition exists and is likely to exist or develop on other products of the same type design.

Differences Between This AD and the MCAI or Service Information

We have reviewed the MCAI and related service information and, in general, agree with their substance. But we might have found it necessary to use different words from those in the MCAI to ensure the AD is clear for U.S. operators and is enforceable. In making these changes, we do not intend to differ substantively from the information provided in the MCAI and related service information.

We might also have proposed different actions in this AD from those in the MCAI in order to follow FAA policies. Any such differences are highlighted in a NOTE within the proposed AD.

Costs of Compliance

Based on the service information, we estimate that this proposed AD would affect about 1 product of U.S. registry. We also estimate that it would take about 11 work-hours per product to comply with the basic requirements of this proposed AD. The average labor rate is $85 per work-hour. Required parts would cost about $7,000 per product. Where the service information lists required parts costs that are covered under warranty, we have assumed that there will be no charge for these costs. As we do not control warranty coverage for affected parties, some parties may incur costs higher than estimated here. Based on these figures, we estimate the cost of the proposed AD on U.S. operators to be $7,935 per product.

Authority for This Rulemaking

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

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

Regulatory Findings

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

For the reasons discussed above, I certify this proposed regulation:

1. Is not a "significant regulatory action" under Executive Order 12866;

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

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

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

List of Subjects in 14 CFR Part 39

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

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

2. The FAA amends § 39.13 by adding the following new AD:

BAE Systems (Operations) Limited: Docket No. FAA–2010–0434; Directorate Identifier 2009–NM–221–AD.

Comments Due Date

(a) We must receive comments by June 14, 2010.

Affected ADs

(b) None.

Applicability

(c) This AD applies to BAE Systems (Operations) Limited Model BAe 146–100A and –200A series airplanes, certificated in any category, serial numbers as listed in British Aerospace 146 Modification Service Bulletin 27–73–00889A&B, Revision 4, dated June 15, 1990.

Subject

(d) Air Transport Association (ATA) of America Code 27: Flight Controls.

Reason

(e) The mandatory continuing airworthiness information (MCAI) states:

The operation of the airbrake lever in the "airbrakes out" to "lift spoiler" range has been the subject of two occurrence reports. The lift spoilers on the BAe 146 and Avro 146–RJ aeroplanes have been designed to deploy on landing to provide aerodynamic braking and to dump lift to ensure that the wheel brakes can provide the necessary speed reduction.

A review of the changing operational profile of the aeroplane type concluded that its proven short field performance has increasingly been exploited in recent years by a number of operators worldwide. Frequently, these short field operations are conducted from airports that are located in mountainous terrain or in close proximity to bodies of water, leaving fewer margins for error, *e.g.* landing long or at (too) high speed.

The effects of deceleration and landing inertia loads can cause uncommanded movement of the airbrake selector lever from the "lift spoiler" position to the "airbrakes out" position, causing the lift spoilers to retract during the landing roll. This condition, if not corrected, would increase the landing distance, possibly resulting in a runway overrun and consequent injury to aeroplane occupants.

On certain BAe 146 aeroplanes, without modifications HCM00889A and B or modifications HCM00889A and C incorporated, negligible force is required to move the airbrake lever back to the "airbrakes out" position. From 1988 onwards, modifications were introduced on the production line to incorporate a modified friction baulking device such that a force of 12 lbs must be applied to move the airbrake lever from the "lift spoiler" position to the "airbrakes out" position. These modifications were also made available as an optional in-service retrofit.

For the reasons described above, this AD requires the modification of the airbrake lever detent mechanism.

Compliance

(f) You are responsible for having the actions required by this AD performed within the compliance times specified, unless the actions have already been done.

Actions

(g) Do the following actions.

(1) Within 12 months after the effective date of this AD, modify the airbrake lever detent mechanism, in accordance with the Accomplishment Instructions of British Aerospace 146 Modification Service Bulletin 27–73–00889A&B, Revision 4, dated June 15, 1990.

(2) Modifying the airbrake lever detent mechanism is also acceptable for compliance with paragraph (g)(1) of this AD, if done before the effective date of this AD in accordance with the Accomplishment Instructions of British Aerospace 146 Modification Service Bulletin 27–73–00889A&B, Revision 3, dated August 1, 1989.

FAA AD Differences

Note 1: This AD differs from the MCAI and/or service information as follows: While European Aviation Safety Agency (EASA) AD 2009–0206, dated September 30, 2009, considers Revision 0, 1, or 2 of British Aerospace 146 Modification Service Bulletin 27–73–00889A&B as an acceptable method of compliance, this AD does not. However, operators may request for approval of an alternative method of compliance in accordance with the procedures specified in paragraph (h)(1) of this AD.

Other FAA AD Provisions

(h) The following provisions also apply to this AD:

(1) *Alternative Methods of Compliance (AMOCs):* The Manager, International Branch, ANM–116, Transport Airplane Directorate, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. Send information to ATTN: Todd Thompson, Aerospace Engineer, International Branch, ANM–116, Transport Airplane Directorate, FAA, 1601 Lind Avenue, SW., Renton, Washington 98057–3356; telephone (425) 227–1175; fax (425) 227–1149. Before using any approved AMOC on any airplane to which the AMOC applies, notify your principal maintenance inspector (PMI) or principal avionics inspector (PAI), as appropriate, or lacking a principal inspector, your local Flight Standards District Office. The AMOC approval letter must specifically reference this AD.

(2) *Airworthy Product:* For any requirement in this AD to obtain corrective actions from a manufacturer or other source, use these actions if they are FAA-approved. Corrective actions are considered FAA-approved if they are approved by the State of Design Authority (or their delegated agent). You are required to assure the product is airworthy before it is returned to service.

(3) *Reporting Requirements:* For any reporting requirement in this AD, under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), the Office of Management and Budget (OMB) has approved the information collection requirements and has assigned OMB Control Number 2120–0056.

Related Information

(i) Refer to MCAI EASA Airworthiness Directive 2009–0206, dated September 30, 2009; and British Aerospace 146 Modification Service Bulletin 27–73–00889A&B, Revision 4, dated June 15, 1990; for related information.

Issued in Renton, Washington, on April 23, 2010.

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2010–10111 Filed 4–29–10; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2010–0406; Airspace Docket No. 10–ASW–8]

Proposed Establishment of Class D Airspace; San Marcos, TX

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This action proposes to establish Class D airspace at San Marcos, TX. Establishment of an air traffic control tower has made controlled airspace necessary at San Marcos Municipal Airport. The FAA is taking this action to enhance the safety and management of Instrument Flight Rules (IFR) operations for the airport.

DATES: 0901 UTC. Comments must be received on or before June 14, 2010.

ADDRESSES: Send comments on this proposal to the U.S. Department of Transportation, Docket Operations, 1200 New Jersey Avenue, SE., West Building Ground Floor, Room W12–140, Washington, DC 20590–0001. You must identify the docket number FAA–2010–0406/Airspace Docket No. 10–ASW–8, at the beginning of your comments. You may also submit comments through the Internet at *http://www.regulations.gov.* You may review the public docket containing the proposal, any comments received, and any final disposition in person in the Dockets Office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Docket Office (telephone 1–800–647–5527), is on the ground floor of the building at the above address.

FOR FURTHER INFORMATION CONTACT: Scott Enander, Central Service Center, Operations Support Group, Federal

Aviation Administration, Southwest Region, 2601 Meacham Blvd., Fort Worth, TX 76137; telephone: (817) 321–7716.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments, as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify both docket numbers and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. FAA–2010–0406/Airspace Docket No. 10–ASW–8." The postcard will be date/time stamped and returned to the commenter.

Availability of NPRMs

An electronic copy of this document may be downloaded through the Internet at *http://www.regulations.gov.* Recently published rulemaking documents can also be accessed through the FAA's Web page at *http://www.faa.gov/airports_airtraffic/air_traffic/publications/airspace_amendments/.*

You may review the public docket containing the proposal, any comments received and any final disposition in person in the Dockets Office (*see* **ADDRESSES** section for address and phone number) between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. An informal docket may also be examined during normal business hours at the office of the Central Service Center, 2601 Meacham Blvd., Fort Worth, TX 76137.

Persons interested in being placed on a mailing list for future NPRMs should contact the FAA's Office of Rulemaking (202) 267–9677, to request a copy of Advisory Circular No. 11–2A, Notice of Proposed Rulemaking Distribution System, which describes the application procedure.

The Proposal

This action proposes to amend Title 14, Code of Federal Regulations (14 CFR), Part 71 by establishing Class D airspace at San Marcos Municipal Airport, San Marcos, TX. An air traffic control tower established at the airport has made controlled airspace necessary for the safety and management of IFR operations.

Class D airspace areas are published in Paragraph 5000 of FAA Order 7400.9T, signed August 27, 2009 and effective September 15, 2009, which is incorporated by reference in 14 CFR 71.1. The Class D airspace designation listed in this document would be published subsequently in the Order.

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

The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the U.S. Code. Subtitle 1, Section 106 describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority. This rulemaking is promulgated under the authority described in Subtitle VII, Part A, Subpart I, Section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority as it would establish controlled airspace at San Marcos Municipal Airport, San Marcos, TX.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (Air).

The Proposed Amendment

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

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

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

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

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of FAA Order 7400.9T, Airspace Designations and Reporting Points, signed August 27, 2009, and effective September 15, 2009, is amended as follows:

Paragraph 5000 Class D Airspace.

* * * * *

AGL TX D San Marcos Municipal Airport, TX [New]

San Marcos Municipal Airport, TX
(Lat. 29°53′34″ N., long. 97°51′47″ W.)

That airspace extending upward from the surface to and including 3,100 feet MSL within a 4.2-mile radius of San Marcos Municipal Airport, and within 1 mile each side of the 313° bearing from the airport extending from the 4.2-mile radius to 4.6 miles northwest of the airport. This Class D airspace area is effective during the specific dates and times established in advance by a Notice to Airmen. The effective dates and times will thereafter be continuously published in the Airport/Facility Directory.

Issued in Fort Worth, TX on April 19, 2010.

Anthony D. Roetzel,

Manager, Operations Support Group, ATO Central Service Center.

[FR Doc. 2010–10039 Filed 4–29–10; 8:45 am]

BILLING CODE 4901–13–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 1

[Docket No. FDA–2010–N–0013]

RIN 0910–AG52

Implementation of Sanitary Food Transportation Act of 2005

AGENCY: Food and Drug Administration, HHS.

ACTION: Advance notice of proposed rulemaking.

SUMMARY: The Food and Drug Administration (FDA) is issuing an advance notice of proposed rulemaking (ANPRM) to request data and information on the food transportation industry and its practices. FDA also is

requesting data and information on the contamination of transported foods and any associated outbreaks. FDA is taking this action as part of its implementation of the Sanitary Food Transportation Act of 2005 (2005 SFTA), which requires the Secretary of Health and Human Services (HHS) to issue regulations setting forth sanitary transportation practices to be followed by shippers, carriers by motor vehicle or rail vehicle, receivers, and others engaged in food transport. This action is also part of a larger agency effort to focus on prevention of food safety problems throughout the food chain. The regulations would address the risks to human or animal health associated with the transportation of food.

DATES: Submit electronic or written comments by August 30, 2010.

ADDRESSES: You may submit comments, identified by Docket No. FDA–2010–N–0013, by any of the following methods:

Electronic Submissions

Submit electronic comments in the following way:

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

Written Submissions

Submit written submissions in the following ways:

- FAX: 301–827–6870.
- Mail/Hand delivery/Courier [For paper, disk, or CD–ROM submissions]: Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852.

Instructions: All submissions received must include the agency name and docket number for this rulemaking. All comments received may be posted without change to *http://www.regulations.gov*, including any personal information provided. For additional information on submitting comments, see the "Comments" heading of the **SUPPLEMENTARY INFORMATION** section of this document.

Docket: For access to the docket to read background documents or comments received, go to *http://www.regulations.gov* and insert the docket number, found in brackets in the heading of this document, into the "Search" box and follow the prompts and/or go to the Division of Dockets Management, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852.

FOR FURTHER INFORMATION CONTACT:

Regarding the provisions with respect to human food: Michael Kashtock, Center for Food Safety and Applied Nutrition (HFS–317), Food and Drug Administration, 5100 Paint Branch Pkwy., College Park, MD 20740–3835, 301–436–2022.

Regarding the provisions with respect to food for animals: Shannon Jordre, Center for Veterinary Medicine (HFV–235), Food and Drug Administration, 7519 Standish Pl., Rockville, MD 20855, 240–276–9229.

SUPPLEMENTARY INFORMATION:

I. Background

FDA is issuing this ANPRM as part of its implementation of the 2005 SFTA, which requires the Secretary of HHS to issue regulations setting forth sanitary transportation practices to be followed by shippers, carriers by motor vehicle or rail vehicle, receivers, and others engaged in food transport. Food is defined by section 201(f) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 321(f)) as "articles used for food or drink for man or other animals, chewing gum, and articles used for components of any such article." FDA notes that "food" includes live animals intended for food use and food such as meat and poultry during transport outside of official U.S. Department of Agriculture (USDA) establishments.[1] [2] This ANPRM is also part of a larger agency effort to focus on prevention of food safety problems throughout the food chain; preventing harm to consumers is the primary principle described in the Key Findings of the President's Food Safety Working Group (Ref. 3). The regulations would address the risks to human or animal health associated with the transportation of food.

A. Risk for Foodborne Illness Associated With Transportation of Food

Over the past few decades, there have been persistent concerns about the potential that food might become contaminated during transportation; however, only a limited number of such events have been documented. In this section, we discuss the events we are aware of, in chronologic order. The first two events described in the following paragraphs involved contamination of food for animals; the remainder concerned food for humans.

In 1974, an incident involving contamination of a component of food for animals in a rail car occurred. This case, which FDA investigated after receiving reports of several sickened dogs, involved corn gluten used in dog food. The corn gluten was determined to have been transported in a rail car that had been previously used to transport lead monoxide. Samples taken of the dog food in which the corn gluten was used revealed that it was contaminated with lead monoxide at levels ranging up to 28,000 parts per million. A Class I recall was issued for the dog food and other food for animals manufactured at the same plant within the same time period. Additionally, FDA successfully prosecuted the carrier involved in this incident. See *United States* v. *Penn Central Transportation Co.* (S.D. Ill 1978) (Refs. 4 and 5).

In 1989, soybean hulls used as a component in animal feed were contaminated by barium carbonate, a chemical used in rat poison and paint, when they were transported in a rail car that had previously been used to transport the chemical (Refs. 6 and 7). The soybean hulls were incorporated into bulk dairy cow feeds distributed to farms in Louisiana and Texas. The contamination resulted in the deaths of dairy cows in herds from both Louisiana and Texas, and high levels of barium carbonate were detected in milk from two of the affected herds by the State of Louisiana. The manufacturer of the animal feed voluntarily recalled implicated feeds.

During the late 1980s, there were a number of press reports that some trucks that hauled garbage from the New York/New Jersey area to Midwestern landfills were used subsequently to carry meat, poultry, and produce (Ref. 8). An investigation by the U.S. General Accounting Office (GAO, now called the Government Accountability Office) found only limited, anecdotal information about food being transported in trucks that previously carried garbage, the types of trucks doing so, and the foodstuffs carried (Ref. 8). However, in its report (the 1990 GAO report), GAO concluded that long-distance transport of garbage was clearly on the increase. GAO also concluded that long-distance transport of garbage primarily originated in certain northeastern communities that generate more garbage than they can dispose of locally. In these communities, the quantity of consumer goods, including food, arriving by truck exceeded the quantity of goods leaving, and garbage had become a paying trucking

[1] With regard to the latter, FDA notes that, to prevent duplication of effort, its compliance policy is to inform the USDA's Food Safety and Inspection Service (FSIS) when an apparent violation is encountered involving a meat or poultry product that has left a USDA inspected establishment (Ref. 1). FDA will not normally initiate action involving such products unless USDA does not wish to do so. As FDA moves forward to implement the SFTA, FDA intends to consult with FSIS to harmonize new regulations with current regulations as practicable.

[2] USDA's Food Safety and Inspection Service (FSIS) has issued guidelines entitled "FSIS Safety and Security Guidelines for the Transportation and Distribution of Meat, Poultry, and Egg Products" (Ref. 2).

commodity on what might otherwise be an empty return trip (Ref. 8). GAO concluded that the extent to which the same trucks might subsequently carry food could not be determined at the time of the report because federal regulations did not require that type of recordkeeping.

In 1994, a large multi-state outbreak of salmonellosis was associated with an ice cream mix that became contaminated during transport in tanker trucks that had previously hauled raw liquid eggs (Ref. 9). Public health officials who analyzed data and information associated with 150 confirmed cases of salmonellosis in the State of Minnesota concluded that the outbreak may have affected more than 29,000 persons in Minnesota and more than 224,000 persons nationwide (Ref. 9).

In July 1999, an outbreak of *Salmonella* Muenchen occurred in 15 States and 2 Canadian provinces with more than 300 cases reported (66 FR 6138 at 6172, January 19, 2001). The product was fresh orange juice, a portion of which was imported. Several serotypes of *Salmonella* were isolated from tanker truckloads of juice tested at the United States/Mexican border. In such circumstances, there is a potential that *Salmonella* from one contaminated shipment could contaminate future shipments.

In 2007, the Motor Carrier Division of the Michigan State Police reported 22 cases of illegal and unsafe food transport on Michigan highways during 2006 (Ref. 10). The report listed findings such as:

- Raw poultry hanging from the roof inside the cargo area of a truck, with juices dripping onto open boxes of produce below, and with juices from the raw poultry dripping out onto the pavement from under the rear cargo box doors. The food was being transported in an unrefrigerated truck with an internal temperature greater than 70° F;
- Truck(s) with no refrigeration unit;
- Truck(s) with the refrigeration unit turned off or not working; and
- Truck(s) with a working refrigeration unit that was not set at the correct temperature.

As with the 1999 transport of contaminated orange juice in tanker truckloads, recent outbreaks of foodborne disease demonstrate the possibility of contaminated foods being widely transported, which could lead to cross-contamination between shipments. For example, in 2009, peanut butter and peanut paste were confirmed as the source of a large multi-state outbreak caused by *Salmonella* Typhimurium (74 FR 10598, March 11, 2009). These peanut-derived products were manufactured by two facilities owned by a single firm and distributed through various channels (Refs. 11 and 12). The firm recalled a large number of its products, including products distributed in 1,700–pound tanker containers, because the products had the potential to be contaminated with *Salmonella* (Ref. 13).

B. Sanitary Food Transportation Act of 1990 and Associated Actions by the U.S. Department of Transportation

After receiving the 1990 GAO report, Congress enacted the Sanitary Food Transportation Act of 1990 (1990 SFTA) (49 U.S.C. 5701 *et seq.* (2000), amended by Public Law 109–59 (2005)). The 1990 SFTA directed the U.S. Department of Transportation (DOT) to prescribe regulations regarding the transportation of food and food additives (including food and food additives intended for consumption by animals) in motor vehicles and rail vehicles that are used to transport nonfood products that would make the food or food additives unsafe to humans or animals.[3] In essence, the 1990 SFTA directed DOT to establish regulations to prevent food or food additives transported in tank trucks, rail tank cars, or cargo tanks (tank vehicles) from being contaminated by nonfood products that are simultaneously or previously transported in those tank vehicles. Section 5704(b) of the 1990 SFTA specifically directed DOT to publish a list of acceptable nonfood products that DOT (in consultation with the Secretaries of the USDA, U.S. Department of Health and Human Services (HHS), and the Administrator of the Environmental Protection Agency) determined would not make food or food additives unsafe to humans or animals because of transportation of the nonfood products in a tank vehicle used to transport food or food additives.

On May 21, 1993, DOT's Research and Special Programs Administration (RSPA) issued a notice of proposed rulemaking (the 1993 NPRM) (58 FR 29698) that would restrict a cargo tank, tank car, or portable tank to carrying either food products or nonfood products. Under the 1993 NPRM, a cargo tank, tank car, or portable tank that carried food products would have been prohibited from carrying nonfood products. In the 1993 NPRM, RSPA stated that it had not identified any nonfood products that were acceptable to be carried in a tank vehicle that carries food products and, therefore, was not issuing a list of acceptable nonfood products within the meaning of section 5704(b) of the 1990 SFTA. For motor and rail vehicles other than tank vehicles, RSPA also proposed to forbid the transportation of food products in the same vehicle as poisons, infectious substances, hazardous wastes, or solid wastes (i.e., "unacceptable nonfood products"). However, such vehicles would be allowed to carry unacceptable nonfood products before or after they carried food products, provided the vehicles were free of any contaminating residues.

Subsequent to the publication of the 1993 NPRM, in a report issued on March 27, 1998, DOT's Office of the Inspector General (DOT/OIG) found that (1) DOT did not have the expertise to implement the 1990 SFTA, (2) performing food inspections could be incompatible with significant aspects of DOT's safety inspection operations, and (3) FDA had the requisite expertise, capability, and a directly related primary mission for regulating food safety (Ref. 14). DOT/OIG concluded that HHS/FDA should have primary responsibility for food transportation safety (Ref. 14).

Comments to the 1993 NPRM generally opposed its proposed provisions and recommended that DOT defer to FDA and USDA on food safety issues (69 FR 76423, December 21, 2004). In light of both these comments and the 1998 report of DOT/OIG, RSPA issued a supplemental notice of proposed rulemaking (69 FR 76423, December 21, 2004) (the 2004 SNPRM). Under the 2004 SNPRM, RSPA's regulations would reference requirements and recommendations, established by USDA or FDA, applying to persons who transport (or offer for transportation) food or food products by motor vehicle or rail car.

RSPA did not issue a final rule based on the 2004 SNPRM. Following the enactment of the 2005 SFTA (see discussion in section I.D of this document), which amended the 1990 SFTA and directed HHS (and, by delegation, FDA) to issue regulations prescribing sanitary transportation practices to ensure the safe transportation of food, DOT's Pipeline and Hazardous Materials Safety Administration (formerly RSPA) withdrew both the 1993 NPRM and the 2004 SNPRM (70 FR 76228, December 23, 2005).

[3] The 1990 SFTA also directed DOT to prescribe regulations regarding the transportation of cosmetics, devices, or drugs in motor vehicles and rail vehicles that are used to transport nonfood products that would make the cosmetics, devices, or drugs unsafe to humans. We do not discuss those provisions in this document.

C. The 1996 Joint ANPRM

In 1996, FDA and FSIS jointly issued an advance notice of proposed rulemaking (61 FR 59372, November 22, 1996) (the 1996 joint ANPRM). FDA and FSIS issued the 1996 joint ANPRM in part to address FDA's safety concerns regarding the transportation of food raised by a 1994 outbreak of salmonellosis involving ice cream mix that became contaminated during transport in tanker trucks that had previously hauled raw liquid eggs (Ref. 9). In the 1996 joint ANPRM, FDA and FSIS requested comments and information about approaches FDA and FSIS might take, under existing legal authorities, to foster food safety improvements that may be needed in the transportation and storage of potentially hazardous foods.[4]

FDA took no subsequent action on the 1996 joint ANPRM. Data and information received in response to the 1996 joint ANPRM are now more than 10 years old.

D. The 2005 SFTA

In 2005, Congress passed the 2005 SFTA, Public Law 109–59, 119 Stat. 1911, which:

- Requires the Secretary of HHS to issue regulations setting forth sanitary transportation practices to be followed by shippers, carriers by motor vehicle or rail vehicle, receivers, and others engaged in food transport; and
- Requires the Secretary of DOT, in consultation with the Secretaries of HHS and USDA, to establish procedures for transportation safety inspections for the purpose of identifying suspected incidents of contamination or adulteration of a food.[5]

1. Our Responsibilities Under Section 416 of the Act

The statutory authority in section 416 of the act extends to broader aspects of the sanitary transportation of food than the statutory authority in the 1990 SFTA, which was primarily directed toward preventing the contamination of food products by previously hauled nonfood products. The authority in section 416 of the act places a statutory obligation upon HHS (and, by delegation, to FDA) to issue regulations establishing requirements for the food transportation industry to use sanitary transportation practices to ensure that food is not transported under conditions that may render food adulterated. We describe key provisions of section 416 of the act in the following bulleted paragraphs.

- Section 416(b) (21 U.S.C. 350e(b)) requires us to establish regulations requiring shippers, carriers by motor vehicle or rail vehicle, receivers, and other persons engaged in the transportation[6] of food to use sanitary transportation practices prescribed by us to ensure that food is not transported under conditions that may render the food adulterated.
- Section 416(c) (21 U.S.C. 350e(c)) addresses the content of the regulations to be established under section 416(b).
  - Section 416(c)(1) (21 U.S.C. 350e(c)(1)) requires these regulations to prescribe such practices as we determine to be appropriate relating to: (A) sanitation; (B) packaging, isolation, and other protective measures; (C) limitations on the use of vehicles; (D) information to be disclosed (to a carrier by a person arranging for the transportation of food, and to a manufacturer or other person that arranges for the transportation of food by a carrier; or furnishes a tank vehicle or bulk vehicle[7] for the transportation of food); and (E) recordkeeping.
  - Section 416(c)(2) (21 U.S.C. 350e(c)(2)) requires these regulations to include: (A) a list of nonfood products that we determine may, if shipped in a bulk vehicle, render adulterated food that is subsequently transported in the same vehicle; and (B) a list of nonfood products that we determine may, if shipped in a motor vehicle or rail vehicle (other than a tank vehicle or bulk vehicle), render adulterated food that is simultaneously or subsequently transported in the same vehicle.
- Section 416(d) (21 U.S.C. 350e(d)) provides that we may waive any requirement under section 416, with respect to any class of persons, vehicles, food, or nonfood products, if we determine that the waiver (A) will not result in the transportation of food under conditions that would be unsafe for human or animal health; and (B) will not be contrary to the public interest. We must publish in the **Federal Register** any waiver and the reasons for the waiver.
- Section 416(e) (21 U.S.C. 350e(e)) provides that State or local requirements concerning transportation of food are preempted if: (A) complying with both the State or local requirement and section 416, or a regulation prescribed under section 416, is not possible; or (B) the State or local requirement as applied or enforced is an obstacle to accomplishing and carrying out section 416 or a regulation prescribed under section 416.

2. Amendments to Sections 301, 402, and 703 of the Act

The 2005 SFTA also amended the act to add or revise provisions as follows:

- Sections 402(i) and 301(hh) (21 U.S.C. 342(i) and 331(hh)): Section 402(i) provides that a food shall be deemed adulterated if it is transported or offered for transport by a shipper, carrier by motor vehicle or rail vehicle, receiver, or any other person engaged in the transportation of food under conditions that are not in compliance with regulations issued under section 416 of the act. Under section 301(hh), the failure (or the causing thereof) by a shipper, carrier by motor vehicle or rail vehicle, receiver, or any other person engaged in the transportation of food to comply with the sanitary transportation practices prescribed by us under section 416 is a prohibited act subject to the sanctions and penalties provided in Chapter III of the act.
- Sections 703(b) and 301(e) (21 U.S.C. 373(b) and 331(e)): Section 703(b) requires any person subject to section 416 to permit a designated officer or employee who requests required records (i.e., records required to be kept in accordance with section 416(c)(1)(E)) to have access to all such records at reasonable times and to copy all such records. Under section 301(e), the refusal to permit access to or copying of any record as required by section 416, or the failure to establish or maintain any record required under section 416, or the refusal to permit access to or verification or copying of any such required record is a prohibited act subject to the sanctions and penalties provided in Chapter III of the act.

[4] As discussed in the 1996 joint ANPRM (61 FR 59372), potentially hazardous foods, including meat, poultry, eggs and egg products, fish, seafood, and dairy products, are those that are capable of supporting the rapid multiplication of microorganisms that cause foodborne illness. Currently, we generally use the term "Time/Temperature Control for Safety (TCS) Food" rather than "potentially hazardous food" and define a TCS food as a food that requires time/temperature control for safety to limit pathogenic microorganism growth or toxin formation (Ref. 14). Examples of TCS foods include the foods identified as potentially hazardous foods in the 1996 joint ANPRM, and plant foods such as raw seed sprouts and cut melons (Ref. 14).

[5] The procedures DOT would establish are outside the scope of this document. We intend to assist DOT as appropriate in developing DOT's procedures for these inspections.

[6] "Transportation" is defined by section 416(a)) of the act (21 U.S.C. 350e(a)) as "any movement in commerce by a motor vehicle or rail vehicle."

[7] "Bulk vehicle" is defined by section 416(a) of the act as "a tank truck, hopper truck, rail tank car, hopper car, cargo tank, portable tank, freight container, or hopper bin, and any other vehicle in which food is shipped in bulk, with the food coming into direct contact with the vehicle."

E. Our Current Regulations and Guidance Documents Addressing Transportation of Food

We have addressed the transportation of food in several regulations (in Title 21 of the Code of Federal Regulations (21 CFR)) and guidance documents that are limited in scope. We describe the most relevant regulations and guidance documents in table 1 of this document. The regulations DOT proposed in the 2004 SNPRM would have included a recommendation that each person who offers for transportation or transports food or food products by motor vehicle or rail car use guidance documents and materials issued by FDA and USDA, and specifically identified three of FDA's guidance documents that were then in effect: FDA Guidance on Bulk Transport of Juice Concentrates and Certain Shelf Stable Juices; FDA Guidance on Food Security Preventive Measures for Dairy Farms, Bulk Milk Transporters, Bulk Milk Transfer Stations, and Fluid Milk Processors; and FDA Guidance on Food Security Preventive Measures for Food Producers, Processors, and Transporters (i.e., the guidances in Refs. 16, 17, and 18).

TABLE 1.—FDA REGULATIONS AND GUIDANCES ADDRESSING THE TRANSPORTATION OF FOOD

Year & Reference*	Title	Type	Description	Circumstances
1976 (§ 225.65; 41 FR 52612 at 52618, November 30, 1976)	Current Good Manufacturing Practice for Medicated Feeds; Equipment Cleanout Procedures	Regulation	Requires adequate cleanout procedures for all equipment used in the manufacture or distribution of medicated feeds that are essential to avoiding unsafe contamination of feeds with drugs	Implemented requirements in section 501(a)(2)(B) of the act (21 U.S.C. 351(a)(2)(B))
1986; (§ 110.93 51 FR 22458, June 19, 1986)	Current Good Manufacturing Practice In Manufacturing, Packing, Or Holding Human Food; Warehousing and Distribution	Regulation	Requires that storage and transportation of finished food be under conditions that will protect food against physical, chemical, and microbial contamination as well as against deterioration of the food and the container	Issued as part of a broad revision to our current good manufacturing practice (CGMP) regulations for food
1997 (§§ 589.2000(c) through (e); 62 FR 30936, June 5, 1997), updated in 2008 (§§ 589.2000(c) through (e); 73 FR 22720, April 25, 2008) [Related Small Entity Compliance Guide (SECG) published in 1998 (Ref. 19)]	Listing of Specific Substances Prohibited From Use in Animal Food or Feed; Requirements for renderers; Requirements for protein blenders, feed manufacturers, and distributors; and Requirements for persons that intend to separate mammalian and nonmammalian materials	Regulation	Requires distributors of mammalian and nonmammalian materials for animal food to provide for measures to avoid commingling or cross-contamination of the materials	To provide animal feed protections by prohibiting the feeding of mammalian protein to ruminant animals
1998; (Ref. 20)	Guide to Minimize Microbial Food Safety Hazards for Fresh Fruits and Vegetables**	Guidance	Includes recommendations regarding microbial food safety hazards and good agricultural and management practices common to the growing, packing, and transporting of most fresh fruits and vegetables	Issued as part of the 1997 Presidential "Initiative to Ensure the Safety of Imported and Domestic Fruits and Vegetables" (Ref. 21)
2001; (§ 120.24(c)); 66 FR 6138 at 6172, January 19, 2001) [Related SECG published in 2003 (Ref. 22)]	Hazard Analysis And Critical Control Point (HACCP) Systems; Process Controls	Regulation	Requires that juice processors complete a 5-log pathogen reduction treatment and final product packaging within a single processing facility operating under CGMPs*** ("single facility requirement")	Added to the final rule to address comments expressing concern about the potential for recontamination or regrowth of surviving pathogens if individual treatments designed to achieve a 5-log reduction are separated by time or space

TABLE 1.—FDA REGULATIONS AND GUIDANCES ADDRESSING THE TRANSPORTATION OF FOOD—Continued

Year & Reference*	Title	Type	Description	Circumstances
2003; (Ref. 16)	Guidance on Bulk Transport of Juice Concentrates and Certain Shelf Stable Juices	Guidance	Provides industry with recommendations for appropriate control measures to use in the bulk transport of covered juice products to ensure that the products do not become contaminated or re-contaminated with microbial pathogens during bulk transport, and stated FDA's intent to consider the exercise of enforcement discretion with respect to the single facility requirement in § 120.24(c) provided that certain conditions are met.	Issued in response to a citizen petition requesting an exemption from the requirement in § 120.24(c) when certain products manufactured in one facility are sent to another facility for final packaging
2003 (updated 2007); (Ref. 17)	Dairy Farms, Bulk Milk Transporters, Bulk Milk Transfer Stations and Fluid Milk Processors: Food Security Preventive Measures Guidance	Guidance	Identifies the kinds of preventive measures operators of bulk milk transportation operations may take to minimize the risk that fluid milk under their control will be subject to tampering or other malicious, criminal, or terrorist actions	Issued in light of the potential for tampering or other malicious, criminal, or terrorist actions
2003 (updated 2007) (Ref. 18)	Food Producers, Processors, and Transporters: Food Security Preventive Measures Guidance	Guidance	Identifies the kinds of preventive measures operators of human or animal food establishments (including firms that distribute or transport food or food ingredients) may take to minimize the risk that food under their control will be subject to tampering or other malicious, criminal, or terrorist actions	Issued in light of the potential for tampering or other malicious, criminal, or terrorist actions
2004 (Ref. 19)	Guidance for Industry #122: Manufacture and Labeling of Raw Meat Foods for Companion and Captive Noncompanion Carnivores and Omnivores	Guidance	Provides guidance on transport of foods that contain raw meat, or other raw animal tissues, for consumption by dogs, cats, other companion or pet animals, and captive noncompanion animal carnivores and omnivores	Issued to address health risks when raw meat foods are used, particularly by pet owners
2004 (§ 1.352 and §§ 1.360 through 1.363; 69 FR 71562, December 9, 2004) [Related SECG published in 2004 (Ref. 24)]	Establishment, Maintenance, and Availability of Records: What information must transporters establish and maintain?; What are the record retention requirements?; What are the record availability requirements?; What records are excluded from this subpart?; What are the consequences of failing to establish or maintain records or make them available to FDA?	Regulation	Requires persons who transport food for humans and animals to establish and maintain records identifying the immediate previous source of all food received, and the immediate subsequent recipient of all food released, as well as certain other information related to the transported food; Sets forth the record retention and record availability requirements for transporters	Implementation of section 306 of the 2002 Bioterrorism Act, which directs the HHS Secretary to issue regulations requiring persons who manufacture, process, pack, transport, distribute, receive, hold, or import food for humans and animals to establish and maintain records identifying the immediate previous source of all food received, and the immediate subsequent recipient of all food released
2005 (revised 2006) (Ref. 25)	Notice from FDA to Growers, Food Manufacturers, Food Warehouse Managers, and Transporters of Food Products on Decontamination of Transport Vehicles	Guidance	Provides information and references that can be used for the decontamination of food transport vehicles that have been flooded or otherwise impacted by hurricanes, before being placed back in service to transport or store food	Developed following Hurricanes Katrina and Rita in August and September 2005

TABLE 1.—FDA REGULATIONS AND GUIDANCES ADDRESSING THE TRANSPORTATION OF FOOD—Continued

Year & Reference*	Title	Type	Description	Circumstances
2007 (Ref. 26)	Grade A Pasteurized Milk Ordinance, Appendix B, Milk Sampling, Hauling and Transportation	Model standard for voluntary adoption by State and local authorities	Sets forth training requirements, evaluation criteria, and standards to be met by bulk milk haulers and milk transporters	To facilitate the shipment and acceptance of milk and milk products of high sanitary quality in interstate and intrastate commerce
2008 (Ref. 27)	Guidance for Industry: Guide to Minimize Microbial Food Safety Hazards of Fresh-Cut Fruits and Vegetables	Guidance	Recommends practices for transporting fresh-cut produce under conditions that will protect the food against physical, chemical, and microbiological contamination	Part of recommendations to enhance the safety of fresh-cut produce by minimizing microbial food safety hazards
2008 (§ 589.2001(c); 73 FR 22720; April 25, 2008)	Cattle Materials Prohibited in Animal Food or Feed to Prevent the Transmission of Bovine Spongiform Encephalopathy	Regulation	Requires the use of dedicated equipment for handling and transporting cattle materials prohibited in animal feed	To provide an additional layer of animal feed protections by removing that material at highest risk for transmitting BSE through animal feed
2009 (21 CFR 118.1(b) and 118.4(e); 74 FR 33030, July 9, 2009)	Production, Storage, And Transportation Of Shell Eggs	Regulation	Establishes requirements for refrigeration of shell eggs during transportation	Part of a rule requiring measures to prevent *Salmonella Enteritidis* in shell eggs during production, storage, and transportation

* All section numbers cited in Table 1 refer to sections in 21 CFR.
** We have requested comments and scientific data to enable us to improve this guidance (73 FR 51306, September 2, 2008).
*** If a treated juice is transported to another facility for final packaging or blending and packaging operations, the entire 5-log reduction must be repeated (66 FR 6138 at 6172, January 19, 2001).

F. Current Industry Practices and Areas Where Food Is At Greatest Risk For Contamination

1. Interstate Food Transportation Assessment Project

In 2007, the Michigan Department of Agriculture released information obtained from its Interstate Food Transportation Assessment Project, conducted with the States of Michigan, Illinois, Indiana, and Ohio (Ref. 28). The purpose of the project was to determine the current state of food safety and food defense in the context of in-transit food in interstate commerce. The project identified several areas of concern in food transport that increase the likelihood of food contamination, such as improper refrigeration, transport of raw meat and poultry simultaneously or sequentially in trucks also used to carry fruit and vegetables, food products lacking label or source information, improper packaging, infestation with insects, insanitary storage (e.g., roof leaks and moldy walls, animal blood and food on bed floors), lack of security seals or locks, low driver awareness of safe food temperatures, and inadequate food safety training of drivers (Refs. 28 and 29). Most of the specific instances where food transportation problems were found involved smaller box trucks and transporters of ethnic food; there were "little or no areas of concern" identified with larger (semi-tractor trailer) trucks inspected during the survey (Ref. 28).

2. Report by Eastern Research Group, Inc.

The data and information we received in response to the 1996 joint ANPRM are now dated. To obtain more current data and information, we recently contracted with Eastern Research Group, Inc. (ERG) to undertake a study designed to characterize current baseline practices in the sectors involved in food transportation and to identify current areas where food is at risk for adulteration (Ref. 29). In 2009, ERG issued a report (the ERG report) with its findings (Ref. 29). The ERG report describes the results of a comprehensive literature review pertaining to food handling practices in the food transportation industry. The ERG report also presents the findings from an expert opinion elicitation study, which ERG conducted to identify the main problems that pose microbiological, chemical, and/or physical safety hazards to food during transportation and storage, and to determine the preventive controls needed to address each of the problems identified. The ERG report largely discusses its findings from the perspective of food intended for consumption by humans (e.g., raw seafood, meat, poultry, produce, eggs, and refrigerated foods that are ready-to-eat) but also reports some findings related to animal feed.

In its report, ERG provides an overview of the domestic food supply chain (Ref. 29). A manufacturing facility may be served by a tier of suppliers. These manufacturing facilities then serve distribution facilities, which eventually serve retailer outlets, including restaurant retail facilities that serve the end consumer. Some food manufacturers use third-party logistics providers to outsource transportation procurement, while others organize the transport of their goods internally. (A third-party logistics provider is a firm that provides outsourced or "third party" logistics services to companies for part or sometimes all of their supply chain management function.) In this complex system, risk associated with an undetected problem increases the further one moves back in the supply chain, because a problem that is introduced further back in the supply chain system can spread out to many distributors and retailers who serve consumers.

Through its literature review, ERG identified:

- Existing food transportation guidelines prepared by Federal agencies, foreign countries, international organizations, and trade associations;
- Three types of potential contamination that could arise during

transportation and storage (i.e., physical, chemical, and biological contamination) and risk factors during transportation and holding; and

• Best practices for food transportation and holding (i.e., temperature control, increased security and tracking, proper loading/unloading practices, monitoring and ensuring the sanitation and condition of transportation vehicles, good communication, employee awareness and training, and pest control programs).

Through its literature review and expert opinion elicitation study, ERG identified the following 15 problem areas where food may be at risk for physical, chemical, or biological contamination during transport and storage:

• Improper refrigeration or temperature control of food products (temperature abuse). This may be intentional (abuse or violation of practices by drivers, i.e., turning off refrigeration units) or unintentional (due, for example, to improper holding practices or shortages of appropriate shipping containers or vessels).

• Improper management of transportation units or storage facilities to preclude cross-contamination, including improper sanitation, backhauling hazardous materials, not maintaining tanker wash records, improper disposal of wastewater, and aluminum phosphide fumigation methods in railcar transit;

• Improper packing of transportation units or storage facilities, including incorrect use of packing materials and poor pallet quality;

• Improper loading practices, conditions, or equipment, including improper sanitation of loading equipment, not using dedicated units where appropriate, inappropriate loading patterns, and transporting mixed loads that increase the risk for cross-contamination;

• Improper unloading practices, conditions, or equipment, including improper sanitation of equipment and leaving raw materials on loading docks after hours;

• Lack of security for transportation units or storage facilities, including lack of or improper use of security seals and lack of security checks or records of transporters;

• Poor pest control in transportation units or storage facilities;

• Lack of driver/employee training and/or supervisor/manager/owner knowledge of food safety and/or security;

• Poor transportation unit design and construction;

• Inadequate preventive maintenance for transportation units or storage facilities, resulting in roof leaks, gaps in doors, and dripping condensation or ice accumulations;

• Poor employee hygiene;

• Inadequate policies for the safe and/or secure transport or storage of foods;

• Improper handling and tracking of rejected loads and salvaged, reworked, and returned products or products destined for disposal;

• Improper holding practices for food products awaiting shipment or inspection, including unattended product, delayed holding of product, shipping of product while in quarantine, and poor rotation and throughput; and

• Lack of traceability for food products during transportation and storage.

Through its literature review and expert opinion elicitation study, ERG identified the following seven preventive controls with the broadest applicability across all food sectors and modes of transport:

• Employee awareness and training;

• Management review of records;

• Good communication between shipper, transporter, and receiver;

• Appropriate loading procedures for transportation units;

• Appropriate unloading procedures for transportation units;

• Appropriate documentation accompanying each load (e.g., tanker wash record, seal numbers, temperature readings, time in-transit, and time on docks); and

• Appropriate packaging/packing of food products and transportation units (e.g., good quality pallets, correct use of packing materials).

II. Issues and Requests for Data and Information

As already noted, the data and information received in response to the 1996 joint ANPRM are dated and are of limited usefulness. The more recent data and information in the ERG report enhances our understanding of current baseline practices in the food transportation industry, problem areas that pose microbiological, chemical, and/or physical safety hazards to food during transportation and storage, and preventive controls that have the potential to address the problem areas.

The purpose of this document is to obtain data and information that would be more current and of greater relevance than the data and information we received in response to the 1996 joint ANPRM and to augment the more current information in the ERG report. Specifically, we request public comments containing data and information on the issues and questions listed in sections II.A through II.G of this document.

A. Issue 1: Firms Subject to the 2005 SFTA

We are seeking data and information about firms that are subject to the 2005 SFTA and the food for humans or animals that such firms transport. Firms subject to the 2005 SFTA include shippers, carriers by motor vehicle or rail vehicle, receivers, and any other person engaged in the transportation of food. These data and information will enhance our understanding of the characteristics of the firms that are providing food transportation services.

Question 1a. What types of vehicles or methods are used to transport food by motor vehicle or rail vehicle (e.g., bulk tank trucks, cargo tanks, and freight containers)?

Question 1b. How much food, and what percentage of food, is carried by each type of vehicle on an annual basis?

Question 1c. What are the amounts and percentages of foods that are transported completely enclosed by packaging, not completely enclosed by packaging (e.g., grain, some fresh produce items), or in bulk tanks (e.g., juices, oils)?

Question 1d. What proportion of vehicles is exclusively dedicated to transporting foods? What proportion of vehicles transport both food and nonfood products?

B. Issues 2 through 6: Current Practices Used By Firms Subject to the 2005 SFTA

We are seeking data or information on the specific sanitary transportation practices that must be prescribed under regulations we establish under section 416(c)(1) of the act.

1. Issue 2: Sanitation Practices

Question 2a. What industry standards exist for the cleaning of food transportation vehicles?

Question 2b. How are appropriate protocols established for cleaning vehicles (including bulk vehicles and nonbulk vehicles)?

Question 2c. How is the adequacy of cleaning vehicles (including bulk vehicles and nonbulk vehicles) assessed?

2. Issue 3: Packaging, Isolation, and Other Protective Measures

Question 3a. What procedures and practices are in place to prevent contamination of foods not completely enclosed by packaging during transport?

Question 3b. How are the physical integrity and physical security of a food

transport vehicle ensured during its run?

Question 3c. What operations associated with food transport (e.g., intermodal transfer and pumping food from transport tanks into receiving vessels at the destination) pose the greatest potential for contaminating food?

Question 3d. What procedures and practices are in place to ensure temperature control for TCS foods?

3. Issue 4: Limitations on the Use of Vehicles

Question 4a. What types of food products are typically transported simultaneously? What types of food products are typically transported sequentially?

Question 4b. Are there any industry standards or State or local restrictions on the simultaneous or sequential transport of different categories of food?

4. Issue 5: Information Sharing Among Parties Involved in the Transportation of Food

Through the 2005 SFTA, Congress provided express authority to specify the types of information that must be disclosed to carriers by persons arranging to transport food and to manufacturers or other persons that arrange for the transport of food or furnish a vehicle for the transportation of food. In our exercise of this authority, it is critical that we understand what sort of information exchange is feasible, practical, and/or desirable.

Question 5a. What types of information are currently disclosed to carriers by persons arranging to transport food? In what form is this information disclosed? What additional information would be useful or necessary to achieve the goals of the 2005 SFTA?

Question 5b. What types of information are currently disclosed to manufacturers or other persons that arrange for the transport of food by a carrier? In what form is this information disclosed? What additional information would be useful or necessary to achieve the goals of the 2005 SFTA?

Question 5c. What types of information are currently disclosed to manufacturers or other persons that furnish a tank vehicle or bulk vehicle for the transportation of food? In what form is this information disclosed? What additional information would be useful or necessary to achieve the goals of the 2005 SFTA?

5. Issue 6. Records Currently Kept By Firms Subject to the 2005 SFTA

Question 6a. What types of records are currently kept by persons arranging to transport food? What additional records would be useful or necessary to achieve the goals of the 2005 SFTA? How long should persons arranging to transport food keep applicable records?

Question 6b. What types of information are currently kept by shippers and by carriers by motor vehicle or rail vehicle? What additional records would be useful or necessary to achieve the goals of the 2005 SFTA? How long should shippers and carriers by motor vehicle or rail vehicle keep applicable records?

Question 6c. What types of records are currently kept by receivers of food? What additional records would be useful or necessary to achieve the goals of the 2005 SFTA? How long should persons who receive food keep applicable records?

C. Issue 7. Simultaneous or Subsequent Shipment of Nonfood Products in Vehicles Used to Transport Food

Question 7a. Are food products transported simultaneously or sequentially with nonfood products? If the answer to this question is yes, what nonfood products are commonly transported in vehicles that also transport food?

Question 7b. What nonfood products may, if shipped in a bulk vehicle, pose a risk of contamination to food that is subsequently transported in the same vehicle?

Question 7c. What nonfood products may, if shipped in a motor vehicle or rail vehicle (other than a tank vehicle or bulk vehicle), pose a risk of contamination to food that is simultaneously or subsequently transported in the same vehicle?

Question 7d. Are there any industry standards or State or local restrictions on the simultaneous or sequential transport of food and nonfood products?

D. Issue 8. Acceptable Reasons for Waiver of Requirements

Question 8. What reasons might exist for a waiver of any or all foreseeable requirements under section 416 with respect to any class of persons, vehicles, food, or nonfood products? For any such reason for waiver, identify and provide data and information that would support a possible determination that the waiver (A) will not result in the transportation of food under conditions that would be unsafe for human or animal health; and (B) will not be contrary to the public interest.

E. Issue 9. Federal Preemption of State and Local Food Transportation Requirements

Section 416(e) of the act, as amended by the 2005 SFTA, states that a requirement of a State or political subdivision of a State that concerns the transportation of food is preempted if it conflicts with or presents an obstacle to implementing the requirements of this section or a regulation prescribed under this section. FDA is seeking comments on existing requirements of a State or political subdivision of a State regarding the sanitary transportation of food. FDA intends to solicit further comments regarding this provision in the proposed rule.

Question 9. What States or political subdivisions of a State have requirements for the sanitary transportation of food and what are these requirements?

F. Issue 10. Risk for Foodborne Illness Associated With Transportation of Food

We have limited data and information about outbreaks of foodborne illness associated with transportation of food; see sections I.A and I.F of this document for a description of the data and information currently available to us. There are, however, a number of known areas where food is at risk for adulteration and reported instances of unsafe food transport (Refs. 10, 28, and 29). We are seeking data and information to enable us to focus our regulatory efforts in areas that present the greatest risk to public health.

Question 10a. What data or information are available on investigations that have shown a suspected or documented link between an outbreak of foodborne illness and the transport process?

Question 10b. What data or information are available in instances where food was suspected or documented of being contaminated during transport, even if the food was not implicated in an outbreak of foodborne illness?

Question 10c. What data or information are available from State or local authorities regarding compliance with or enforcement of State or local food transportation requirements?

Question 10d. What are the problem areas where food may be at greatest risk for physical, chemical, or biological contamination during transport?

G. Issue 11. Benefits and Costs

We are seeking data and information to enable us to estimate the benefits and costs of regulations implementing the 2005 SFTA and to estimate of the effects of regulatory options on small entities.

Question 11a. What is the size of carrier firms (e.g., based on annual revenue or on number of vehicles)?

Question 11b. What is the number of small entities that could be affected by regulations implementing the 2005 SFTA?

Question 11c. What steps could be taken to lessen the burden on small entities while still protecting the public health?

III. Comments

Interested persons may submit to the Division of Dockets Management (see **ADDRESSES**) electronic or written comments regarding this document. Submit a single copy of electronic comments or two paper copies of any mailed comments, except that individuals may submit one paper copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday.

IV. References

We have placed the following references on display in the Division of Dockets Management (see **ADDRESSES**). You may see them between 9 a.m. and 4 p.m., Monday through Friday. (FDA has verified the Web site addresses, but FDA is not responsible for any subsequent changes to the Web sites after this document publishes in the **Federal Register**.)

1. FDA, 2005, CPG Sec. 565.100 FDA Jurisdiction Over Meat and Poultry Products. Available at *http://www.fda.gov/ICECI/ComplianceManuals/CompliancePolicyGuidanceManual/ucm074588.htm*. Accessed and printed on February 18, 2010.

2. FSIS, 2005, FSIS Safety and Security Guidelines for the Transportation and Distribution of Meat, Poultry, and Egg Products. Accessed and printed on March 31, 2010.

3. Food Safety Working Group, 2009, Key Findings, Available at *http://www.foodsafetyworkinggroup.gov/ContentKeyFindings/HomeKeyFindings.htm*. Accessed and printed on January 22, 2010.

4. FDA, 1982, FDA Notice of Judgment No. 31, *FDA Consumer*, Vol. 16, No. 7, pp. 33–34.

5. FDA, 1975, Memorandum dated June 9, 1975, from Bureau of Veterinary Medicine to General Counsel regarding 026–137G, Doc 096–447H, Corn Gluten Meal, Veterinary.

6. Schneider, K., 1989, "Tainted Milk and Meat Raise Vigilance," *New York Times*, May 11, 1989, Available at *http://www.nytimes.com/1989/05/11/us/tainted-milk-and-meat-raise-vigilance.html*, Accessed and printed on July 24, 2009.

7. FDA, 1989, Memorandum dated November 15, 1989, from Case Guidance Branch, Division of Compliance, Center for Veterinary Medicine to New Orleans District Office Regarding Barium Carbonate Contamination, EIR 5/8–25/89, 89–559–371/382, Feeds and Ingredients.

8. U.S. Government Accounting Office, 1990, Report to Congressional Requesters, Truck Transport: Little is Known About Hauling Garbage and Food in the Same Vehicles, GAO/RCED–90–161, Available at *http://archive.gao.gov/d23t8/141739.pdf*, Accessed and printed on June 3, 2009.

9. Hennessy T.W., Hedberg, C.W., Slutsker, L. et al., 1996, "A National Outbreak of Salmonella Enteriditis Infections From Ice Cream," *New England Journal of Medicine*, Vol. 334, No. 20, pp. 1281–1286.

10. Motor Carrier Division, Michigan State Police, 2007, Commercial Motor Vehicle Enforcement Quarterly, Available at *http://www.michigan.gov/documents/msp/CMV_Quarterly_January_2007_205099_7.pdf*, Accessed and printed on May 28, 2009.

11. FDA, 2009, Recall of Products Containing Peanut Butter; Salmonella Typhimurium, Printed February 4, 2009.

12. FDA, 2009, Safety, FDA's Investigation, (Peanut Products Recall), Printed June 4, 2009.

13. Peanut Corporation of America, 2009, Press release, January 18, 2009, Available at *http://www.fda.gov/Safety/Recalls/ArchiveRecalls/2009/ucm128828.htm*, Accessed and printed on June 2, 2009.

14. U.S. Department of Transportation, Office of Inspector General, 1998, Audit Report, Review of Departmental Actions Concerning the Sanitary Food Transportation Act of 1990, Research and Special Programs Administration, TR–1998–100, Available at *http://www.oig.dot.gov/StreamFile?file=/data/pdfdocs/tr1998100.pdf*, Accessed and printed on June 3, 2009.

15. FDA, 2009, Food Code, Chapter 1, Purpose and Definitions, Available at *http://www.fda.gov/Food/FoodSafety/RetailFoodProtection/FoodCode/FoodCode2009/ucm186464.htm*, Accessed and printed on November 24, 2009.

16. FDA, 2003, Guidance on Bulk Transport of Juice Concentrates and Certain Shelf Stable Juices, Available at *http://www.fda.gov/Food/GuidanceComplianceRegulatoryInformation/GuidanceDocuments/default.htm*, Accessed and printed on June 4, 2009.

17. FDA, 2007, Dairy Farms, Bulk Milk Transporters, Bulk Milk Transfer Stations and Fluid Milk Processors: Food Security Preventive Measures Guidance, Available at *http://www.fda.gov/Food/GuidanceComplianceRegulatoryInformation/GuidanceDocuments/default.htm*, Accessed and printed on June 4, 2009.

18. FDA, 2007, Food Producers, Processors, and Transporters: Food Security Preventive Measures Guidance, Available at *http://www.fda.gov/Food/GuidanceComplianceRegulatoryInformation/GuidanceDocuments/default.htm*, Accessed and printed on June 4, 2009.

19. FDA, 1998, FDA Guidance for Industry #68, Small Entities Compliance Guide for Protein Blenders, Feed Manufacturers, and Distributors, Available at *http://www.fda.gov/downloads/AnimalVeterinary/GuidanceComplianceEnforcement/GuidanceforIndustry/UCM052382.pdf*, Accessed and printed on August 4, 2009.

20. FDA, 1998, Guide to Minimize Microbial Food Safety Hazards for Fresh Fruits and Vegetables, Available at *http://www.fda.gov/Food/GuidanceComplianceRegulatoryInformation/GuidanceDocuments/default.htm*, Accessed and printed on June 4, 2009.

21. The White House, Office of the Press Secretary, 1997, President Clinton Announces Initiative to Ensure the Safety of Imported and Domestic Fruits and Vegetables, Available at *http://clinton4.nara.gov/textonly/WH/New/html/19971002–8886.html*, Accessed and printed on November 30, 2009.

22. FDA, 2003, Guidance for Industry: Juice HACCP; Small Entity Compliance Guide, Available at *http://www.fda.gov/Food/GuidanceComplianceRegulatoryInformation/GuidanceDocuments/default.htm*, Accessed and printed on September 23, 2009.

23. FDA, 2004, Guidance for Industry #122, Manufacture and Labeling of Raw Meat Foods for Companion and Captive Noncompanion Carnivores and Omnivores, Available at *http://www.fda.gov/downloads/AnimalVeterinary/GuidanceComplianceEnforcement/GuidanceforIndustry/ucm052662.pdf*, Accessed and printed on August 4, 2009.

24. FDA, 2004, What You Need to Know About Establishment and Maintenance of Records, Available at *http://www.fda.gov/Food/GuidanceComplianceRegulatoryInformation/GuidanceDocuments/default.htm*, Accessed and printed on September 23, 2009.

25. FDA, 2006, A Notice from FDA to Growers, Food Manufacturers, Food Warehouse Managers, and Transporters of Food Products on Decontamination of Transport Vehicles, Available at *http://www.fda.gov/Food/GuidanceComplianceRegulatoryInformation/GuidanceDocuments/default.htm*, Accessed and printed on November 30, 2009.

26. Grade A Pasteurized Milk Ordinance, Appendix B—Milk Sampling, Hauling and Transportation, Available at *http://www.fda.gov/Food/FoodSafety/Product-SpecificInformation/MilkSafety/NationalConferenceonInterstateMilkShipmentsNCIMSModelDocuments/PasteurizedMilkOrdinance2007/ucm064241.htm*, Accessed and printed on July 13, 2009.

27. FDA, 2008, Guidance for Industry: Guide to Minimize Microbial Food Safety Hazards of Fresh-Cut Fruits and Vegetables, Available at *http://www.fda.gov/Food/GuidanceComplianceRegulatoryInformation/GuidanceDocuments/default.htm*, Accessed and printed on January 20, 2010.

28. Wojtala, G., 2007, Interstate Food Transportation Assessment Project. Presented at the June 16 through 20, 2007, Conference of the Association of Food and Drug Officials, Available at *http://www.michigan.gov/documents/mda/truckproj_224450_7.pdf*, Accessed and printed on May 28, 2009.

29. Eastern Research Group, Inc., 2009, Characteristics of Current Food Transportation and Holding Practices for Food Commodities, GSA MOBIS SIN 874–1, Contract No. GS–10F–0125P, Order No.

HHSF223200730236G, ERG Task No. 0193.16.001.001.

Dated: April 26, 2010.

Leslie Kux,

Acting Assistant Commissioner for Policy.

[FR Doc. 2010–10078 Filed 4–29–10; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Parts 780, 784, 816, and 817

RIN 1029–AC63

Stream Protection Rule; Environmental Impact Statement

AGENCY: Office of Surface Mining Reclamation and Enforcement, Interior.

ACTION: Proposed rule; notice of intent to prepare an environmental impact statement.

SUMMARY: We, the Office of Surface Mining Reclamation and Enforcement (OSM), intend to prepare an environmental impact statement (EIS) under section 102(2)(C) of the National Environmental Policy Act of 1969 (NEPA) to analyze the effects of potential rule revisions under the Surface Mining Control and Reclamation Act of 1977 (SMCRA or the Act) to improve protection of streams from the adverse impacts of surface coal mining operations. We are requesting comments for the purpose of determining the scope of the EIS.

DATES: To ensure consideration, we must receive your electronic or written comments on June 1, 2010.

ADDRESSES: You may submit comments by any of the following methods, although we request that you use electronic mail if possible:

- *Electronic mail:* Send your comments to *sra-eis@osmre.gov.*
- *Mail, hand-delivery, or courier:* Send your comments to Office of Surface Mining Reclamation and Enforcement, Administrative Record, Room 252–SIB, 1951 Constitution Avenue, NW., Washington, DC 20240.

FOR FURTHER INFORMATION CONTACT: John Craynon, Chief, Division of Regulatory Support, Office of Surface Mining Reclamation and Enforcement, 1951 Constitution Ave., NW., MS 202–SIB, Washington, DC 20240; Telephone 202–208–2866.

SUPPLEMENTARY INFORMATION:

Table of Contents

I. Why are we planning to revise our rules?
II. What is the proposed federal action?
III. How do I submit comments?
IV. How do I request to participate as a cooperating agency?

I. Why are we planning to revise our rules?

On December 12, 2008 (73 FR 75814–75885), we published a final rule modifying the circumstances under which mining activities may be conducted in or near perennial or intermittent streams. That rule, which this document refers to as the 2008 rule, took effect January 12, 2009. A total of nine organizations challenged the validity of the rule in two complaints filed on December 22, 2008, and January 16, 2009 (amended complaint filed February 17, 2009): *Coal River Mountain Watch, et al.* v. *Salazar,* No. 08–2212 (D.D.C.) ("*Coal River*") and *National Parks Conservation Ass'n* v. *Salazar,* No. 09–115 (D.D.C.) ("*NPCA*"). Under the terms of a settlement agreement signed by the parties on March 19, 2010, we agreed to use best efforts to sign a proposed rule by February 28, 2011, and a final rule by June 29, 2012. We also agreed to consult with the Fish and Wildlife Service pursuant to the Endangered Species Act, as appropriate, prior to signing the final action. On April 2, 2010, the court granted the parties' motion to hold the judicial proceedings in abeyance.

However, we had already embarked on that course following the change of Administrations on January 20, 2009. On June 11, 2009, the Secretary of the Department of the Interior, the Administrator of the U.S. Environmental Protection Agency (EPA), and the Acting Assistant Secretary of the Army (Civil Works) entered into a memorandum of understanding [1] (MOU) implementing an interagency action plan designed to significantly reduce the harmful environmental consequences of surface coal mining operations in six Appalachian states, while ensuring that future mining remains consistent with Federal law. Among other things, the MOU committed us to consider revisions to key provisions of our rules, including the 2008 rule and approximate original contour requirements, to better protect the environment and public health from the impacts of Appalachian surface coal mining.

Consequently, on November 30, 2009, we published an advance notice of proposed rulemaking (ANPRM) soliciting comments on ten potential rulemaking alternatives. *See* 74 FR 62664–62668. In addition, consistent with the MOU, we invited the public to identify other rules that we should revise. We also announced our intent to prepare a supplement to the EIS developed in connection with the 2008 rule.

We received approximately 32,750 comments during the 30-day comment period that closed December 30, 2009. After evaluating those and other comments, we determined that development of a comprehensive stream protection rule (one that is much broader in scope than the 2008 rule) would be the most appropriate and effective method of achieving the goals set forth in the MOU and the ANPRM. We believe that this holistic approach will better protect streams and related environmental values. The broader scope of the stream protection rule means that we will need to prepare a new environmental impact statement rather than the supplement to the 2008 EIS that we originally intended to prepare.

II. What is the proposed federal action?

The proposed Federal action consists of revisions to various provisions of our rules to improve protection of streams from the impacts of surface coal mining operations nationwide. We do not believe that it would be fair, appropriate, or scientifically valid to apply the new protections only in central Appalachia, as some commenters on the ANPRM advocated. Streams are ecologically significant regardless of the region in which they are located. Principal elements of the proposed action include—

- Adding more extensive and more specific permit application requirements concerning baseline data on hydrology, geology, and aquatic biology; the determination of the probable hydrologic consequences of mining; and the hydrologic reclamation plan; as well as more specific requirements for the cumulative hydrologic impact assessment.
- Defining the term "material damage to the hydrologic balance outside the permit area." This term is critically important because, under section 510(b)(3) of SMCRA, the regulatory authority may not approve a permit application unless the proposed operation has been designed to prevent material damage to the hydrologic balance outside the permit area. This term includes streams downstream of the mining operation.
- Revising the regulations governing mining activities in or near streams, including mining through streams.

[1] The MOU can be viewed online at *http://www.osmre.gov/resources/ref/mou/ASCM061109.pdf.*

- Adding more extensive and more specific monitoring requirements for surface water, groundwater, and aquatic biota during mining and reclamation.
- Establishing corrective action thresholds based on monitoring results.
- Revising the backfilling and grading rules, excess spoil rules, and approximate original contour restoration requirements to incorporate landform restoration principles and reduce discharges of total dissolved solids.
- Limiting variances and exceptions from approximate original contour restoration requirements.
- Requiring reforestation of previously wooded areas.
- Requiring that the regulatory authority coordinate the SMCRA permitting process with Clean Water Act permitting activities to the extent practicable.
- Codifying the financial assurance provisions of OSM's March 31, 1997, policy statement [2] on correcting, preventing, and controlling acid/toxic mine drainage and clarifying that those provisions apply to all long-term discharges of pollutants, not just pollutants for which effluent limitations exist.
- Updating the definitions of perennial, intermittent, and ephemeral streams.

We are in the process of developing alternatives for the proposed Federal action. Comments received in response to this notice will assist us in that process.

We will prepare a draft EIS after we complete the initial stages of scoping and identify which rulemaking alternatives will be analyzed in detail. Following release of the draft EIS, we anticipate publishing a notice of proposed rulemaking, unless we select an alternative that makes rulemaking unnecessary.

III. How do I submit comments?

Consistent with 43 CFR 46.235, we invite all interested persons, organizations, and agencies to provide comments, suggestions, and any other information relevant to the scope of the EIS, the scope of the proposed Federal action, potential alternatives for the proposed Federal action, and studies and impacts that the EIS should address. *See* **ADDRESSES** for the methods by which we will accept comments. We do not anticipate conducting any meetings dedicated to scoping.

Before including your address, phone number, e-mail address, or other personal identifying information in your comment, you should be aware that your entire comment, including your personal identifying information, may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so. Comments that we receive after the close of the comment period (*see* **DATES**) or sent to an address other than those listed in **ADDRESSES** may not be considered.

If you previously submitted comments in response to the ANPR, you do not need to resubmit them. We will consider all ANPR comments as part of this EIS scoping process.

IV. How do I request to participate as a cooperating agency?

Consistent with 43 CFR 46.225, we, the lead agency, invite eligible Federal, state, tribal, and local governmental entities to indicate whether they have an interest in being a cooperating agency in the preparation of the EIS. Qualified entities are those with jurisdiction by law, as defined in 40 CFR 1508.15, or special expertise, as defined in 40 CFR 1508.26. Potential cooperating agencies should consider their authority and capacity to assume the responsibilities of a cooperating agency and make the necessary resources available in a timely manner, as discussed in the document entitled "Factors for Determining Cooperating Agency Status," [3] which is Attachment 1 to the Council on Environmental Quality's January 30, 2002, Memorandum for the Heads of Federal Agencies: Cooperating Agencies in Implementing the Procedural Requirements of the National Environmental Policy Act. We will not be able to provide financial assistance to cooperating agencies.

If you have an interest in participating as a cooperating agency, please contact the person listed in **FOR FURTHER INFORMATION CONTACT** and identify those aspects of the EIS process in which you are interested in participating. The regulations at 43 CFR 46.230 and Items 4 through 6 in the document discussed in the preceding paragraph list the activities in which cooperating agencies may wish to participate.

Dated: April 16, 2010.

Sterling Rideout,

Assistant Director, Program Support.

[FR Doc. 2010–10091 Filed 4–29–10; 8:45 am]

BILLING CODE 4310–05–P

[2] See the document entitled "Acid Mine Drainage Policy" at *http://www.osmre.gov/guidance/significant_guidance.shtm.*

[3] See *http://ceq.hss.doe.gov/nepa/regs/cooperating/cooperatingagencymemofactors.html.*

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 117

[Docket No. USCG–2009–0890]

RIN 1625–AA09

Drawbridge Operation Regulation; Chambers Creek, Steilacoom, WA, Schedule Change

AGENCY: Coast Guard, DHS.

ACTION: Notice of proposed rulemaking; withdrawal.

SUMMARY: The Coast Guard is withdrawing its notice of proposed rulemaking (NPRM) concerning the drawbridge operation regulation for the Burlington Northern Santa Fe Railroad Bridge across Chambers Creek, mile 0.0, at Steilacoom, Washington, by which two-hour notice would have been required for openings from 3:30 p.m. to 7 a.m. every day. The NPRM is being withdrawn because of multiple objections to the proposed change from users of that waterway.

DATES: The notice of proposed rulemaking is withdrawn on April 30, 2010.

ADDRESSES: The docket for this withdrawn rulemaking is available for inspection or copying at the Docket Management Facility (M–30), U.S. Department of Transportation, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590–0001, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. You may also find this docket on the Internet by going to *http://www.regulations.gov,* inserting USCG–2009–0890 in the "Keyword" box and then clicking "Search".

FOR FURTHER INFORMATION CONTACT: If you have questions on this notice, call or e-mail Austin Pratt, Chief, Bridge Section, Waterways Management Branch, Thirteenth Coast Guard District; telephone 206–220–7282, e-mail address *william.a.pratt@uscg.mil.* If you have questions on viewing materials in the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone 202–366–9826.

SUPPLEMENTARY INFORMATION:

Background

On December 8, 2009, we published an NPRM entitled "Drawbridge Operation Regulation; Chambers Creek, Steilacoom, WA, Schedule Change" in the **Federal Register** (74 FR 64641). The

NPRM proposed to change current regulations so that Burlington Northern Railroad, the owner of the Chambers Creek Bridge, would only have been required to raise the draw of the bridge between 3:30 p.m. and 7 a.m. everyday if at least two hours of notice is provided. At all other times the draw would have been required to be raised on signal.

Withdrawal

The NPRM is being withdrawn because of multiple objections to the change from users of the waterway in question and, in particular, the clients of the marina upstream of the Chambers Creek Bridge. The primary point of objection was that 3:30 p.m. was too early in the day, especially in summer boating season, to require a two-hour notice. This would pertain mostly to vessels returning to moorage at the end of a day of boating.

The Coast Guard received a total of 17 written responses. At least seven boaters suggested that a two-hour notice outside daylight hours would be feasible or a seasonal change outside the peak boating season. A dozen respondents pointed out that the draw records cited in the NPRM did not cover the peak summer months of boating. These records were no longer available from the bridge owner. Seven responses also noted that boaters often group together for a single draw opening thereby reducing the number of openings that otherwise would have been tallied for single-vessel passages. Additionally, several comments noted that tide elevations are a significant factor at Chambers Creek. Many lower tides stop boat traffic altogether and would fail to coincide favorably with the proposed hours.

No less than eleven responses cited numerous failures of the bridge owner to operate according to the existing regulations. The chief violations were reported as the absence of drawtenders and unreasonable delays to openings. At least two boat owners observed that cell phone coverage is not adequate for telephone contact by vessels returning to moorage from popular boating locations in Puget Sound that are two hours travel time from the marina. Several comments were concerned with delayed access of fireboats in the event of a marina fire.

Authority

This action is taken under the authority of 33 U.S.C. 499; 33 CFR 1.05–1; Department of Homeland Security Delegation No. 0170.1.

Dated: April 8, 2010.

G.T. Blore,

Rear Admiral, U.S. Coast Guard, Commander, Thirteenth Coast Guard District.

[FR Doc. 2010–10076 Filed 4–29–10; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF AGRICULTURE

Forest Service

36 CFR Part 242

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 100

Western Interior Alaska Federal Subsistence Regional Advisory Council Meeting

AGENCY: Forest Service, Agriculture; Fish and Wildlife Service, Interior.

ACTION: Notice of meeting (teleconference).

SUMMARY: This document informs the public that the Western Interior Alaska Federal Subsistence Regional Advisory Council will hold a public meeting by teleconference on May 14, 2010. The public is invited to participate and to provide oral testimony.

DATES: May 14, 2010, at 11 a.m. For how to participate, please see **SUPPLEMENTARY INFORMATION** below.

FOR FURTHER INFORMATION CONTACT: Chair, Federal Subsistence Board, c/o U.S. Fish and Wildlife Service, Attention: Peter J. Probasco, Office of Subsistence Management, 1011 East Tudor Road, Anchorage, AK 99503, (907) 786–3888, or via e-mail at *subsistence@fws.gov.* For questions specific to National Forest System lands, please contact Steve Kessler, Subsistence Program Leader, USDA, Forest Service, 3301 C Street, Suite 202, Anchorage, AK 99503, (907) 743–9461, or via e-mail at *skessler@fs.fed.us.*

SUPPLEMENTARY INFORMATION: Under section 10(a)(2) of the Federal Advisory Committee Act (5 U.S.C. App.), this document announces a meeting of the Western Interior Alaska Federal Subsistence Regional Advisory Council. The Council will meet to discuss and form recommendations on fish and wildlife issues. This meeting is a follow-up to the Council's February 24–25, 2010, meeting. Completion of the agenda is dependent on the amount of time each item takes.

No preregistration is required and the public is invited to provide testimony. To participate, call toll free 1–877–931–8150; the passcode is 3168014.

Authority: 16 U.S.C. 3, 472, 551, 668dd, 3101–3126; 18 U.S.C. 3551–3586; 43 U.S.C. 1733.

Peter J. Probasco,

Acting Chair, Federal Subsistence Board.

Steve Kessler,

Subsistence Program Leader, USDA-Forest Service.

[FR Doc. 2010–10136 Filed 4–29–10; 8:45 am]

BILLING CODE 3410–11–P; 4310–55–P

POSTAL SERVICE

39 CFR Part 111

Express Mail Next Day Delivery Postage Refund Amendment

AGENCY: Postal Service™.

ACTION: Proposed rule.

SUMMARY: The Postal Service is proposing to revise the *Mailing Standards of the United States Postal Service, Domestic Mail Manual (DMM®)* 114.2, 414.3, and 604.9, to state the conditions for Express Mail® Next Day Delivery postage refunds when shipments are mailed each year during the time period of December 22 through December 25.

DATES: We must receive your comments on or before June 1, 2010.

ADDRESSES: Mail or deliver written comments to the Manager, Mailing Standards, U.S. Postal Service, 475 L'Enfant Plaza, SW., Room 3436, Washington, DC 20260–3436. You may inspect and photocopy all written comments at USPS® Headquarters Library, 475 L'Enfant Plaza, SW., 11th Floor N, Washington, DC, between 9 a.m. and 4 p.m., Monday through Friday. E-mail comments concerning the proposed rule, containing the name and address of the commenter, may be sent to: *MailingStandards@usps.gov,* with a subject line of "Express Mail Refunds." Faxed comments are not accepted.

FOR FURTHER INFORMATION CONTACT: Karen Key (202) 268–7492 or Carol A. Lunkins (202) 268–7262.

SUPPLEMENTARY INFORMATION: During the time period of December 22 through December 25, air transportation is subject to delay or cancellation.

Express Mail Next Day Delivery

Postage refunds will not be available for items mailed from December 22 through December 25 for Express Mail Next Day Delivery when those items are made available for pickup at the destination office, attempted for delivery, or delivered within two

business days. This proposed revision is consistent with industry standards.

However, Express Mail Next Day Delivery postage refunds will be authorized when items are not available for customer pickup at the destination office, or delivery to the addressee was not attempted within two business days. These refunds are subject to the standards for this service, unless the delay was caused by one of the situations in DMM 114.2.1, *Postage Not Refunded,* or DMM 414.3.0, *Postage Refunds.* Next Day Delivery may not be available at all times of deposit or between all Post Office™ facilities.

Express Mail Second Day Delivery

During the time period of December 22 through December 25, postage refunds for Express Mail Second Day Delivery shipments will be available for items not available for customer pickup at the destination office, or for which delivery to the addressee was not attempted on the second business day. These refunds are subject to the standards for this service, unless the delay was caused by one of the situations in DMM 114.2.1, *Postage Not Refunded,* or DMM 414.3.0, *Postage Refunds.*

Although we are exempt from the notice and comment requirements of the Administrative Procedure Act [5 U.S.C of 553 (b), (c)] regarding proposed rulemaking by 39 U.S.C. 410(a), we invite public comments on the following proposed revisions to *Mailing Standards of the United States Postal Service,* Domestic Mail Manual (DMM), incorporated by reference in the *Code of Federal Regulations.* See 39 CFR Part 111.1.

List of Subjects in 39 CFR Part 111

Administrative practice and procedure, Postal Service.

Accordingly, 39 CFR Part 111 is proposed to be amended as follows:

PART 111—[AMENDED]

1. The authority citation for 39 CFR part 111 continues to read as follows:

Authority: 5 U.S.C. 552(a); 39 U.S.C. 101, 401, 403, 404, 414, 416, 3001–3011, 3201–3219, 3403–3406, 3621, 3622, 3626, 3632, 3633, and 5001.

2. Revise the following sections of *Mailing Standards of the United States Postal Service,* Domestic Mail Manual (DMM), as follows:

Mailing Standards of the United States Postal Service, Domestic Mail Manual (DMM)

* * * * *

100 Retail Letters, Cards, Flats, and Parcels

* * * * *

110 Express Mail

* * * * *

114 Postage Payment Methods

* * * * *

2.0 Postage Refunds

[Delete the heading of 2.1 in its entirety and incorporate the introductory paragraph and remaining text into 2.0 as follows:]

Postage refunds may not be available if delivery was attempted within the times required for the specific service, or for any of the following reasons:

[Revise items a, b, and c of former 2.1, and add new items d through h as follows:]

a. The item was properly detained for law enforcement purposes.

b. The item was delayed due to strike or work stoppage.

c. The item was delayed because of an incorrect ZIP Code or address; forwarding or return service was provided after the item was made available for claim.

d. The shipment is available for delivery, but the addressee made a written request (*i.e.* Hold Mail request), that the shipment be held for a specific day(s).

e. The delivery employee discovers that the shipment is undeliverable as addressed before leaving on the delivery route.

f. If authorized by USPS Headquarters, and the delay was caused by governmental action beyond the control of USPS or air carriers; war, insurrection, or civil disturbance; delay or cancellation of flights; projected or scheduled transportation delays; breakdown of a substantial portion of USPS transportation network resulting from events or factors outside the control of USPS; or acts of God.

g. The shipment contained live animals and was delivered or delivery was attempted within three days of the date of mailing.

h. The Express Mail Next Day shipment was mailed December 22 through December 25 and was delivered or delivery was attempted within two business days of the date of mailing.

* * * * *

400 Commercial Parcels

* * * * *

410 Express Mail

* * * * *

414 Postage Payment and Documentation

* * * * *

3.0 Postage Refunds

Postage refunds may not be available if delivery was attempted within the times required for the specific service, or for any of the following reasons:

[Revise items a, b, c of 3.0, and add new items "d through h" as follows:]

a. The item was properly detained for law enforcement purposes.

b. The item was delayed due to strike or work stoppage.

c. The item was delayed because of an incorrect ZIP Code or address; forwarding or return service was provided after the item was made available for claim.

d. The shipment is available for delivery, but the addressee made a written request (*i.e.* Hold Mail request), that the shipment be held for a specific day(s).

e. The delivery employee discovers that the shipment is undeliverable as addressed before leaving on the delivery route.

f. If authorized by USPS Headquarters, and the delay was caused by governmental action beyond the control of USPS or air carriers; war, insurrection, or civil disturbance; delay or cancellation of flights; projected or scheduled transportation delays; breakdown of a substantial portion of USPS transportation network resulting from events or factors outside the control of USPS; or acts of God.

g. The shipment contained live animals and was delivered or delivery was attempted within three days of the date of mailing.

h. The Express Mail Next Day shipment was mailed December 22 through December 25 and was delivered or delivery was attempted within two business days of the date of mailing.

* * * * *

600 Basic Standards for All Mailing Services

* * * * *

604 Postage Payment Methods

* * * * *

9.0 Refunds and Exchanges

* * * * *

9.5 Express Mail Postage Refund

* * * * *

9.5.2 Conditions for Refund

[Revise the introductory paragraph of 9.5.2 as follows:]

A refund request must be made within 90 days after the date of mailing. Except as provided in 114.2.1 and 414.3.1, a mailer may file for a postage refund only under one of the following circumstances:

* * * * *

9.5.3 Refunds Not Given

[Revise 9.5.3 as follows:]

A postage refund will not be given if the guaranteed service was not provided due to any of the circumstances in 114.2.1 and 414.3.1.

* * * * *

We will publish an appropriate amendment to 39 CFR 111 if our proposal is adopted.

Stanley F. Mires,

Chief Counsel, Legislative.

[FR Doc. 2010–10028 Filed 4–29–10; 8:45 am]

BILLING CODE 7710–12–P

DEPARTMENT OF DEFENSE

Defense Acquisition Regulations System

48 CFR Parts 211 and 252

RIN 0750–AG55

Defense Federal Acquisition Regulation Supplement; Government-Assigned Serial Number Marking (DFARS Case 2008–D047)

AGENCY: Defense Acquisition Regulations System, Department of Defense (DoD).

ACTION: Proposed rule with request for comments.

SUMMARY: DoD proposes to amend the Defense Federal Acquisition Regulation Supplement (DFARS) to require contractors to apply Government-assigned serial numbers in human-readable format on major end items, when required by law, regulation, or military operational necessity.

DATES: Comments on the proposed rule should be submitted in writing to the address shown below on or before June 29, 2010, to be considered in the formation of the final rule.

ADDRESSES: You may submit comments, identified by DFARS Case 2008–D047, using any of the following methods:

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

E-mail: dfars@osd.mil. Include DFARS Case 2008–D047 in the subject line of the message.

Fax: 703–602–0350.

Mail: Defense Acquisition Regulations System, Attn: Ms. Mary Overstreet, OUSD(AT&L)DPAP(DARS), Room 3B855, 3060 Defense Pentagon, Washington, DC 20301–3060.

Comments received generally will be posted without change to *http://www.regulations.gov,* including any personal information provided.

FOR FURTHER INFORMATION CONTACT: Ms. Mary Overstreet, 703–602–0311.

SUPPLEMENTARY INFORMATION:

A. Background

DoD proposes to amend the DFARS 211.274 to require contractors to apply Government-assigned serial numbers, such as tail numbers/hull numbers and equipment registration, in human-readable format on major end items, when required by law, regulation, or military operational necessity. The rule establishes a standard DoD method of specifying Government-assigned serial numbers contractually, and requires the contractor to associate these serial numbers with the Unique Item Identifier (UII) assigned by the contractor and to register them in the DoD Item Unique Identification (IUID) Registry along with the UII. The rule also requires agreement between the Government and contractor prior to use of the serial numbers in constructing the end item UII.

Application of these Government serial numbers is a standard practice because crew members and maintenance technicians have to distinguish visually individual end items during operations. The serial numbers are applied at minimal cost typically by painting them on an exterior surface with a stencil resulting in a human-readable format. The rule eliminates any ambiguity between the UII and the use of the Government-assigned serial number.

The rule also proposes a new clause, Use of Government-Assigned Serial Numbers, in solicitations and contracts that contain the clause at 252.211–7003, Item Identification and Valuation, and that require the contractor to mark major end items under the terms and conditions of the contract. The Government-assigned method of serialization outlined in this proposed rule allows the Government to use its internal serialization as a data key to existing DoD property management, logistics, and maintenance systems.

This regulatory action was subject to review under section 6(b) of Executive Order 12866, Regulatory Planning and Review, dated September 30, 1993.

B. Regulatory Flexibility Act

DoD has prepared an initial regulatory flexibility analysis consistent with 5 U.S.C. 603. A copy of the analysis may be obtained from the point of contact specified herein. The analysis is summarized as follows:

This proposed rule is not expected 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.,* because any start-up costs that contractors will incur to comply with the rule are expected to be minimal, and should be offset by the reduced administrative costs that are expected to result from implementation of this rule. The objective of the rule is to improve the accountability and control of DoD assets. The proposed clause at 252.211–70XX, Use of Government-Assigned Serial Numbers, requires the Contractor to mark the Government-assigned serial numbers on those major end items as specified by line item in the Schedule, in accordance with the technical instructions for the placement and method of application identified in the terms and conditions of the contract, and to register the Government-assigned serial number along with the major end item's UII at the time of delivery in accordance with the provisions of the clause at DFARS 252.211–7003(d). Since DoD requires that the use of Government-assigned serial numbers be limited to satisfy requirements of law or regulation, or to facilitate the identification of major end items consistent with military operational requirements, *e.g.,* aircraft tail numbers or ship hull numbers in military operations, the number of small entities impacted by this rule is not expected to be substantial. At this time, DoD is unable to estimate the number of small entities to which this rule will apply. Therefore, DoD invites comments from small business and other interested parties on the expected impact of this rule on small entities.

DoD 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 (DFARS Case 2008–D047) in correspondence.

C. Paperwork Reduction Act

The Paperwork Reduction Act (Pub. L. 96–511) does not apply because the rule does not impose additional information collection requirements that

require the approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

List of Subjects in 48 CFR Parts 211 and 252

Government procurement.

Ynette R. Shelkin,

Editor, Defense Acquisition Regulations System.

Therefore, DoD proposes to amend 48 CFR parts 211 and 252 as follows:

1. The authority citation for 48 CFR parts 211 and 252 continues to read as follows:

Authority: 41 U.S.C. 421 and 48 CFR chapter 1.

PART 211—DESCRIBING AGENCY NEEDS

211.274–5 [Redesignated as 211.274–6]

2. Redesignate section 211.274–5 as 211.274–6.

3. Add section 211.274–5 to read as follows:

211.274–5 Policy for assignment of Government-assigned serial numbers.

It is DoD policy that contractors apply Government-assigned serial numbers, such as tail numbers/hull numbers and equipment registration numbers in human-readable format, on major end items when required by law, regulation, or military operational necessity. The latest version of MIL–STD–130, Marking of U.S. Military Property, shall be used for the marking of human-readable information.

4. In newly redesignated 211.274–6, add paragraph (c) to read as follows:

211.274–6 Contract clauses.

* * * * *

(c) Use the clause at 252.211–70XX, Use of Government-Assigned Serial Numbers, in solicitations and contracts that—

(1) Contain the clause at 252.211–7003, Item Identification and Valuation; and

(2) Require the contractor to mark major end items under the terms and conditions of the contract.

PART 252—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

252.211–7003 [Amended]

5. Amend section 252.211–7003 by removing "211.274–5" from the introductory text and adding in its place "211.274–6".

252.211–7007 [Amended]

5. Amend section 252.211–7007 by removing "211.274–5" from the introductory text and adding in its place "211.274–6".

6. Add section 252.211–70XX to read as follows:

252.211–70XX Use of Government-Assigned Serial Numbers.

As prescribed in 211.274–6(c), use the following clause:

USE OF GOVERNMENT–ASSIGNED SERIAL NUMBERS (DATE)

(a) *Definitions.* As used in this clause—

Government-assigned serial number means a combination of letters or numerals in a fixed human-readable information format (text) conveying information about a major end item, which is provided to a Contractor by the requiring activity with accompanying technical data instructions for marking the Government-assigned serial number on major end items to be delivered to the Government.

Major end item means a final combination of component parts and/or materials which is ready for its intended use and of such importance to operational readiness that review and control of inventory management functions (procurement, distribution, maintenance, disposal, and asset reporting) is required at all levels of life-cycle management. Major end items include aircraft; ships; boats; motorized wheeled, tracked, and towed vehicles for use on highway or rough terrain; weapon and missile end items; ammunition; and sets, assemblies, or end items having a major end item as a component.

Unique item identifier (UII) means a set of data elements permanently marked on an item that is globally unique and unambiguous and never changes in order to provide traceability of the item throughout its total life cycle. The term includes a concatenated UII or a DoD-recognized unique identification equivalent.

(b) The Contractor shall mark the Government-assigned serial numbers on those major end items as specified by line item in the Schedule, in accordance with the technical instructions for the placement and method of application identified in the terms and conditions of the contract.

(c) The Contractor shall register the Government-assigned serial number along with the major end item's UII at the time of delivery in accordance with the provisions of the clause at DFARS 252.211–7003(d).

(d) The Contractor shall establish the UII for major end items for use throughout the life of the major end item. The Contractor may elect, but is not required, to use the Government-assigned serial number to construct the UII.

(End of Clause)

[FR Doc. 2010–9889 Filed 4–29–10; 8:45 am]

BILLING CODE 5001–08–P

DEPARTMENT OF DEFENSE

Defense Acquisition Regulations System

48 CFR Parts 216 and 252

Defense Federal Acquisition Regulation Supplement Award-Fee Contracts (DFARS Case 2006–D021)

AGENCY: Defense Acquisition Regulations System, Department of Defense (DoD).

ACTION: Proposed rule with request for comments.

SUMMARY: DoD is proposing to amend the Defense Federal Acquisition Regulation Supplement (DFARS) to address award-fee contracts, including eliminating the use of provisional award-fee payments.

DATES: Comments on the proposed rule should be submitted to the address shown below on or before June 29, 2010, to be considered in the formation of the final rule.

ADDRESSES: You may submit comments, identified by DFARS Case 2006–D021, using any of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov*. Follow the instructions for submitting comments.
- *E-mail: dfars@osd.mil.* Include DFARS Case 2006–D021 in the subject line of the message.
- *Fax:* 703–602–0350.
- *Mail:* Defense Acquisition Regulations System, Attn: Mr. Mark Gomersall, OUSD(AT&L)DPAP(DARS), 3060 Defense Pentagon, Room 3B855, Washington, DC 20301–3060.

Comments received generally will be posted without change to *http://www.regulations.gov*, including any personal information provided.

FOR FURTHER INFORMATION CONTACT: Mr. Mark Gomersall, 703–602–0302.

SUPPLEMENTARY INFORMATION:

A. Background

This DFARS case proposes to revise guidance for award-fee evaluations and payments and to eliminate the use of provisional award-fee payments. One new clause is provided as part of this rule to detail the use of award fees. In addition, this rule incorporates DoD policy guidance on the use of objective criteria.

This rule was not subject to Office of Management and Budget review under Executive Order 12866, dated September 30, 1993.

B. Regulatory Flexibility Act

DoD does 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.* because most contracts awarded to small entities use simplified acquisition procedures or are awarded on a competitive fixed-price basis and do not utilize award-fee type incentives. Therefore, DoD has not performed an initial regulatory flexibility analysis. DoD invites comments from small business concerns and other interested parties on the expected impact of this rule on small entities.

DoD 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 (DFARS Case 2006–D021) in correspondence.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the rule does not impose any information collection requirements that require the approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

List of Subjects in 48 CFR Parts 216 and 252

Government procurement.

Ynette R. Shelkin,

Editor, Defense Acquisition Regulations System.

Therefore, DoD proposes to amend 48 CFR parts 216 and 252 as follows:

1. The authority citation for 48 CFR parts 216 and 252 continues to read as follows:

Authority: 41 U.S.C. 421 and 48 CFR chapter 1.

PART 216—TYPES OF CONTRACTS

2. Add sections 216.401 and 216.401–70 to read as follows:

216.401 General.

(e) Award-fee plans required in FAR 16.401(e) must be incorporated into all award-fee type contracts.

216.401–70 Objective criteria.

(1) Contracting officers will use objective criteria to the maximum extent possible to measure contract performance. Objective criteria are associated with cost-plus-incentive-fee and fixed-price incentive contracts.

(2) When objective criteria exist but the contracting officer determines that it is in the best interest of the Government also to incentivize subjective elements of performance, the most appropriate contract type is a multiple-incentive contract containing both objective incentives and subjective award-fee criteria (*i.e.,* cost-plus-incentive-fee/award-fee or fixed-price-incentive/award-fee).

(3) See PGI 216.401–70 for guidance on the use of award-fee contracts.

3. Revise section 216.405–2 to read as follows:

216.405–2 Cost-plus-award-fee contracts.

(1) *Award-fee pool.* The award-fee pool is the total available award fee for each evaluation period for the life of the contract. The contracting officer must perform an analysis of appropriate fee distribution to ensure at least 40% of the award fee is held for the final evaluation so that the award fee is appropriately distributed over all evaluation periods to incentivize the contractor throughout performance of the contract.

(2) *Award-fee evaluation and payments.* Award-fee payments other than payments resulting from the evaluation at the end of an award-fee period are prohibited. (This prohibition does not apply to base-fee payments.) The fee-determining official's rating for award-fee evaluations will be provided to the contractor within 45 calendar days of the end of the period being evaluated. The final award-fee payment will be consistent with the contracting officer's final evaluation of the contractor's overall performance against the cost, schedule, and performance outcomes specified in the award-fee plan.

(3) *Limitations.*

(i) The CPAF contract shall not be used—

(A) To avoid—

(*1*) Establishing cost-plus-fixed-fee contracts when the criteria for cost-plus-fixed-fee contracts apply; or

(*2*) Developing objective targets so a cost-plus-incentive-fee contract can be used; or

(B) For either engineering development or operational system development acquisitions that have specifications suitable for simultaneous research and development and production, except a CPAF contract may be used for individual engineering development or operational system development acquisitions ancillary to the development of a major weapon system or equipment, where—

(*1*) It is more advantageous; and

(*2*) The purpose of the acquisition is clearly to determine or solve specific problems associated with the major weapon system or equipment.

(ii) Do not apply the weighted guidelines method to CPAF contracts for either the base (fixed) fee or the award fee.

(iii) The base fee shall not exceed three percent of the estimated cost of the contract exclusive of the fee.

(4) See PGI 216.405–2 for guidance on the use of cost-plus-award-fee contracts.

4. Add section 216.406 to read as follows:

216.406 Contract clauses.

(e) Use the clause at 252.216–70XX, Award Fee, in solicitations and contracts when an award-fee contract is contemplated.

PART 252—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

5. Add section 252.216–70XX to read as follows:

252.216–70XX Award fee.

As prescribed in 216.406(e), insert the following clause:

AWARD FEE (DATE)

The Contractor may earn award fee from a minimum of zero dollars to the maximum amount stated in the award-fee plan in this contract. In no event will award fee be paid to the Contractor for any evaluation period in which the Government rates the Contractor's overall cost, schedule, and technical performance below satisfactory. The Government may unilaterally revise the award-fee plan prior to the beginning of any rating period in order to redirect Contractor emphasis.

(End of clause)

[FR Doc. 2010–9881 Filed 4–29–10; 8:45 am]

BILLING CODE 5001–08–P

DEPARTMENT OF DEFENSE

Defense Acquisition Regulations System

48 CFR Parts 245 and 252

RIN 0750–AG64

Defense Federal Acquisition Regulation Supplement; Reporting of Government Property Lost, Stolen, Damaged, or Destroyed (DFARS Case 2008–D049)

AGENCY: Defense Acquisition Regulations System, Department of Defense (DoD).

ACTION: Proposed rule with request for comments.

SUMMARY: DoD proposes to amend the Defense Federal Acquisition Regulation Supplement (DFARS) to require contractors to report loss, theft, damage, and destruction (LTDD) of Government property to the DCMA "eTools" application.

DATES: Comments on the proposed rule should be submitted in writing to the address shown below on or before June 29, 2010 to be considered in the formation of the final rule.

ADDRESSES: You may submit comments, identified by DFARS Case 2008–D049, using any of the following methods:

Federal eRulemaking Portal: http://www.regulations.gov.

Follow the instructions for submitting comments.

E-mail: dfars@osd.mil. Include DFARS Case 2008–D049 in the subject line of the message.

Fax: 703–602–0350.

Mail: Defense Acquisition Regulations System, Attn: Ms. Mary Overstreet, OUSD(AT&L)DPAP(DARS), 3060 Defense Pentagon, Room 3B855, Washington, DC 20301–3060.

Comments received generally will be posted without change to *http://www.regulations.gov*, including any personal information provided.

FOR FURTHER INFORMATION CONTACT: Ms. Mary Overstreet, 703–602–0311.

SUPPLEMENTARY INFORMATION:

A. Background

DoD is pursuing the migration from paper-based processes to greater use of automation. This proposed rule revises requirements for all DoD contractors to report the loss, theft, damage, and destruction (LTDD) of Government property to the DCMA "eTools" application.

B. Regulatory Flexibility Act

DoD has prepared an initial regulatory flexibility analysis consistent with 5 U.S.C. 603. A copy of the analysis may be obtained from the point of contact specified herein. The analysis is summarized as follows:

The objective of this rule is to provide DoD with a single repository of all LTDD data to improve accountability and control of DoD assets and contractor oversight.

The rule generally will apply to DoD contractors provided with Government-furnished property. The proposed clause at 252.245–70XX Reporting Loss, Theft, Damage, or Destruction of Government Property, requires the contractor to use the Defense Contract Management Agency "e-Tools" software application for reporting of loss, damage, or destruction of Government property, which can be accessed from the DCMA homepage External Web Access Management application at *http://www.dcma.mil.* This rule is not expected 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.,* because any start-up costs that contractors will incur to comply with the rule are expected to be minimal, and any such costs should be offset by the reduced administrative costs that are expected to result from implementation of this rule.

At this time, DoD is unable to estimate the number of small entities to which this rule will apply. Therefore, DoD invites comments from small business concerns and other interested parties on the expected impact of this rule on small entities.

DoD 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 (DFARS Case 2008–D049) in correspondence.

C. Paperwork Reduction Act

The information collection requirements under this proposed rule were formerly set forth under FAR 52.245–1(f)(vi), and have been approved by the Office of Management and Budget under Clearance Number 9000–0075. The requirements of this proposed rule are not expected to change significantly the burden hours approved under Clearance Number 9000–0075.

List of Subjects in 48 CFR Parts 245 and 252

Government procurement.

Ynette R. Shelkin,

Editor, Defense Acquisition Regulations System.

Therefore, DoD proposes to amend 48 CFR parts 245 and 252 as follows:

1. The authority citation for 48 CFR parts 245 and 252 continues to read as follows:

Authority: 41 U.S.C. 421 and 48 CFR chapter 1.

PART 245—GOVERNMENT PROPERTY

2. Amend section 245.102 by adding paragraph (4) to read as follows:

245.102 Policy.

* * * * *

(4) *Reporting of Government Property Lost, Damaged, Destroyed, or Stolen.*

(i) The Defense Contract Management Agency (DCMA) "e-Tools" software application shall be the DoD data repository for reporting of loss, theft, damage, or destruction of Government property in the possession of contractors. Reporting value shall be at acquisition cost. The "e-Tools" system can be accessed from the DCMA home page External Web Access Management application at *http://www.dcma.mil.*

(ii) Unless otherwise provided for in the contract, the requirements of paragraph (4)(i) of this section do not apply to normal and reasonable inventory adjustments of "low risk" consumable material such as common hardware, as agreed to by the contractor and Government Property Administrator. Such losses are typically a product of normal process variation.

(iii) Reporting requirements apply to losses outside such variation. For example, due to theft of; or when losses occur due to a failure to provide adequate storage or security, *e.g.,* failure to repair a leaky roof; or due to "acts of God," *e.g.,* tornado damages warehouse or stockroom.

(iv) The aforementioned reporting requirements in no way change the liability provisions or reporting requirements under the clauses at FAR 52.245–1, Government Property, or FAR 52.245–2, Government Property Installation Operation Services.

4. Amend section 245.107–70 by revising the section heading, redesignating the introductory text as paragraph (1), and adding paragraph (2) to read as follows:

245.107–70 Contract Clauses.

(1) Use the clause at 252.245–7000, Government-Furnished Mapping, Charting, and Geodesy Property, in solicitations and contracts when mapping, charting, and geodesy property is to be furnished.

(2) Use the clause at 252.245–70XX in solicitations and contracts that contain the clause at—

(i) FAR 52.245–1, Government Property; or

(ii) FAR 52.245–2, Government Property Installation Operation Services.

PART 252—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

5. Section 252.245–70XX is added to read as follows:

252.245–70XX Reporting Loss, Theft, Damage, or Destruction of Government Property.

As prescribed in 245.107–70, use the following clause:

REPORTING LOSS, THEFT, DAMAGE, OR DESTRUCTION OF GOVERNMENT PROPERTY (DATE)

(a) *Definitions.* As used in this clause—

Acquisition cost, for Government-furnished property, means the amount identified in the contract, or in the absence of such identification, the item's fair-market value.

Government property means all property owned or leased by the Government.

Government property includes both Government-furnished property and Contractor-acquired property. Government property consists of material, equipment, special tooling, special test equipment, and real property.

(b) *Policy for Contractor Reporting of Government Property Lost, Stolen, Damaged, or Destroyed.*

(1) The Contractor shall use the Defense Contract Management Agency (DCMA) "e-Tools" software application for reporting of loss, theft, damage, or destruction of Government property. Reporting value shall be at acquisition cost. The "e-Tools" system can be accessed from the DCMA home page External Web Access Management application at *http://www.dcma.mil.*

(2) Unless otherwise provided for in this contract, the requirements of paragraph (b)(1) of this clause do not apply to normal and reasonable inventory adjustments, *i.e.,* losses of "low risk" consumable material such as common hardware, as agreed to by the Contractor and the Government Property Administrator. Such losses are typically a product of normal process variation. The Contractor shall ensure that its property management system provides adequate management control measures, *e.g.,* statistical process controls, as a means of managing such variation.

(3) Reporting requirements apply to losses outside such variation. For example, due to theft of; or when losses occur due to a failure to provide adequate storage or security, *e.g.,* failure to repair a leaky roof; or due to "acts of God," *e.g.,* tornado damages warehouse or stockroom.

(4) The aforementioned reporting requirements in no way change the liability provisions or reporting requirements under the clauses at FAR 52.245–1, Government Property, or FAR 52.245–2, Government Property Installation Operation Services.

(End of clause)

[FR Doc. 2010–9890 Filed 4–29–10; 8:45 am]

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 216

Docket No. 0907301201–91203–01

RIN 0648–AY15

Implementation of Fish and Fish Product Import Provisions of the Marine Mammal Protection Act

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

ACTION: Advance notice of proposed rulemaking; request for comments.

SUMMARY: NMFS issues this advance notice of proposed rulemaking to announce that it is developing procedures to implement provisions of the Marine Mammal Protection Act for imports of fish and fish products. NMFS is seeking advance public comment on the development of these procedures and on the types of information to be considered in the process.

DATES: Written comments must be received by 5 p.m. on June 29, 2010.

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

(1) Electronic Submissions: Submit all electronic public comments via the Federal eRulemaking Portal at *http://www.regulations.gov*.

(2) Mail: Director, Office of International Affairs, Attn: MMPA Fish Import Provisions, NMFS, F/IA, 1315 East-West Highway, Silver Spring, MD 20910

(3) Fax: (301) 713–2313

All comments received are a part of the public record and will generally be posted to *http://www.regulations.gov* without change. All Personal Identifying Information (e.g., name, address) voluntarily submitted by the commenter may be publicly accessible. Do not submit Confidential Business Information or otherwise sensitive or protected information.

NMFS will accept anonymous comments (enter N/A in the required fields, if you wish to remain anonymous). Attachments to electronic comments will be accepted in Microsoft Word, Excel, WordPerfect, or Adobe portable document file (pdf) formats only.

FOR FURTHER INFORMATION CONTACT: Michael Simpkins at *Michael.Simpkins@noaa.gov* or 301–713–9090.

SUPPLEMENTARY INFORMATION:

Background

The Marine Mammal Protection Act (MMPA), 16 U.S.C. 1361–1423h, contains provisions addressing bycatch, or the incidental mortality and serious injury, of marine mammals in both domestic and foreign fisheries. With respect to foreign fisheries, section 101(a)(2) of the MMPA (16 U.S.C. 1371(a)(2)) states that "[t]he Secretary of the Treasury shall ban the importation of commercial fish or products from fish which have been caught with commercial fishing technology which results in the incidental kill or incidental serious injury of ocean mammals in excess of United States standards. For purposes of applying the preceding sentence, the Secretary [of Commerce]- (A) shall insist on reasonable proof from the government of any nation from which fish or fish products will be exported to the United States of the effects on ocean mammals of the commercial fishing technology in use for such fish or fish products exported from such nation to the United States."

This rulemaking would define the "United States standards" referred to in MMPA section 101(a)(2), along with any associated criteria by which the United States would assess foreign fisheries that supply fish and fish product imports to the United States (hereafter "import-supplying fisheries") with respect to marine mammal bycatch. The rule also would describe procedures for ensuring the established standards and their associated criteria are met, as well as procedures for developing recommendations regarding import prohibitions if those standards and associated criteria are not met. In defining the standards and associated criteria by which marine mammal bycatch in import-supplying fisheries would be evaluated, this rulemaking would consider U.S. statutory provisions and regulations applied to the management of incidental mortality and serious injury of marine mammals, including provisions of the MMPA, the Endangered Species Act (ESA), and the High Seas Driftnet Fishing Moratorium Protection Act (HSDFMPA).

This rulemaking also would recognize existing bilateral or multilateral arrangements to address marine mammal bycatch in foreign fisheries as well as the potential for such arrangements in the future. In the case of eastern tropical Pacific yellowfin tuna purse seine fisheries, marine mammal bycatch is covered by section 101(a)(2)(B) and Title III of the MMPA (16 U.S.C. 1371(a)(2)(B) & 1411–1417, respectively), which incorporate requirements adopted under the auspices of the Agreement on the International Dolphin Conservation Program (AIDCP).

U.S. Incidental Marine Mammal Mortality and Serious Injury Statutory Provisions

Section 2 of the MMPA describes several broad goals, including (1) maintaining the health and stability of the marine ecosystem; (2) retaining marine mammals as a significant functioning element in the ecosystem of which they are a part; and (3) ensuring that marine mammals can remain at or recover to their optimum sustainable population. The term "optimum sustainable population" is defined in section 3(9) (16 U.S.C. 1362(9), 50 CFR 216.3) of the MMPA as "the number of animals which will result in the maximum productivity of the

population or the species, keeping in mind the carrying capacity of the habitat and the health of the ecosystem of which they form a constituent element."

Sections 117 and 118 (16 U.S.C. 1386 and 1387) of the MMPA describe the current U.S. program for regulating bycatch in domestic commercial fisheries. The program includes (1) evaluating marine mammal stock status; (2) evaluating bycatch in commercial fisheries; (3) developing bycatch reduction measures and regulations following consultation with stakeholder-based take reduction teams; and (4) implementing emergency regulations when necessary.

MMPA section 118(f)(2) defines both short- and long-term goals for take reduction plans created by take reduction teams. The short-term goal is to reduce and maintain marine mammal bycatch below the potential biological removal level for a given stock. MMPA section 3(20) defines "potential biological removal" (PBR) 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." The long-term goal is to reduce bycatch "to insignificant levels approaching a zero mortality and serious injury rate," often referred to as the zero-mortality rate goal. MMPA section 118(f)(3) provides NMFS with discretion to prioritize and develop take reduction plans based on available funding. MMPA section 118(f)(2) provides additional discretion with respect to the long-term goal by requiring NMFS to take into account "the economics of the fishery, the availability of existing technology, and existing State or regional fishery management plans."

Section 118(g) of the MMPA empowers NMFS to prescribe emergency regulations to reduce marine mammal bycatch in a fishery if the Secretary of Commerce finds that such bycatch is having, or is likely to have, an immediate and significant adverse impact on a stock or species.

The ESA contains provisions that apply more broadly to any direct or incidental serious injury or mortality of species listed as endangered or threatened under the ESA. Specifically, section 7 of the ESA (16 U.S.C. 1536) requires Federal agencies to ensure that any action authorized, funded, or carried out by such agencies is not likely to jeopardize the continued existence of any species listed as endangered or threatened under the ESA, or any species proposed for such listing. If an action is determined to likely result in jeopardy to a species that has been listed or proposed to be listed under the ESA, the responsible Secretary (of Interior or Commerce) is required to develop reasonable and prudent alternatives, as necessary or appropriate, to mitigate such impact. If there is no reasonable and prudent alternative available, then section 7 of the ESA also provides that the Endangered Species Committee may decide whether to grant an exemption from the jeopardy prohibition.

Under section 610 of the HSDFMPA (16 U.S.C. 1826k), the Secretary of Commerce is required to identify nations whose fishing vessels engage in fishing activities or practices that result in bycatch of protected living marine resources (PLMRs), including marine mammals. In determining whether a nation's vessels have engaged in bycatch of a PLMR, the Secretary must determine whether the fishing activities in question result in bycatch of PLMRs in waters beyond any national jurisdiction or whether the bycatch involves stocks that are shared by the United States and occur beyond the exclusive economic zone of the United States. Such nations are identified if (1) the fishing activity in question occurred during the preceding calendar year; (2) the relevant international organizations for managing the fisheries or protecting the bycaught species have failed to implement effective measures to end or reduce such bycatch, or the nation is not a party or cooperating member of such organization; and (3) the nation has not adopted a regulatory program to reduce bycatch that is comparable to that of the United States, taking into account different conditions.

After a nation has been identified, the HSDFMPA requires that the Secretary, acting through the Secretary of State, notify and consult with the identified nation for the purpose of entering into treaties to protect the PLMRs in question. The HSDFMPA also authorizes the Secretary of Commerce to provide appropriate assistance to identified nations to assist those nations in qualifying for positive HSDFMPA certification, described below. Such assistance may include cooperative research, technology transfer, and assistance in designing and implementing fish harvesting plans.

Following consultation, an identified nation is certified positively only if it provides documentary evidence that the nation has adopted a regulatory program to conserve PLMRs that is comparable to that of the United States, taking into account different conditions, and also has established a management plan that will assist in gathering species-specific data to support international stock assessments and conservation efforts for PLMRs.

Failure by a nation to receive a positive certification under the HSDFMPA may result in denial of port privileges and prohibition of imports of some fish or fish products.

Possible Standards for Evaluating Marine Mammal Bycatch Associated with Fish and Fish Product Imports

NMFS is considering whether the statutory provisions described above rise to the level of "United States standards," and, if so, NMFS is considering several possible standards that could be used when evaluating marine mammal bycatch in import-supplying fisheries for the purposes of implementing MMPA section 101(a)(2). NMFS also is considering whether to use only one of these standards or a combination of two or more standards when evaluating marine mammal bycatch in import-supplying fisheries. The options under consideration as possible standards are described below.

Several possible standards that NMFS is considering are derived from the short- and long-term goals of take reduction plans developed under section 118(f)(2) of the MMPA. Specifically, NMFS is considering evaluating whether marine mammal bycatch in import-supplying fisheries is maintained at a level below PBR for impacted marine mammal stocks (option 1). Alternatively, NMFS is considering evaluating whether such bycatch has been reduced to insignificant levels approaching a zero mortality and serious injury rate to the extent feasible, taking into account different conditions (option 2). NMFS recognizes that these two goals have been met for many, but not all, U.S. domestic fisheries. Another alternative possible standard NMFS is considering is to evaluate whether marine mammal bycatch in import-supplying fisheries is maintained at levels below PBR or at levels comparable to those actually achieved in comparable U.S. fisheries, whichever is higher (option 3). With respect to all three of these possible standards, NMFS recognizes that section 118(f)(3) of the MMPA provides NMFS with discretion to prioritize and develop take reduction plans for domestic U.S. fisheries to achieve these goals subject to available funding.

NMFS also is considering possible standards derived from the population status goal described in MMPA section 2. Specifically, NMFS is considering evaluating whether marine mammal bycatch in import-supplying fisheries either causes the depletion of a marine

mammal stock below its optimum sustainable population or impedes the ability of a depleted stock to recover to its optimum sustainable population (option 4). Domestically, the United States manages marine mammal bycatch based on PBR levels to achieve the goal of allowing marine mammal stocks to reach or maintain their optimum sustainable populations. However, NMFS recognizes that foreign nations may have other approaches to achieving the same goal, and that some of these might be commensurate with the U.S. marine mammal bycatch management program.

NMFS also is considering possible standards derived from the trigger for emergency regulations in MMPA section 118(g). Specifically, NMFS is considering evaluating whether bycatch in import-supplying fisheries has, or is likely to have, an immediate and significant adverse impact on a marine mammal stock (option 5).

NMFS also is considering possible standards derived from the jeopardy criteria described in ESA section 7. Specifically, NMFS is considering evaluating whether bycatch in import-supplying fisheries is likely to jeopardize the continued existence of any endangered or threatened marine mammal species (option 6). For this option, NMFS is considering whether and how to apply such possible standards uniformly to bycatch of foreign or international marine mammal species that are endangered or threatened, but have not been evaluated or listed under the ESA. Alternatively, NMFS is considering evaluating more broadly whether bycatch by import-supplying fisheries is likely to jeopardize the continued existence of a marine mammal species (option 7).

NMFS also is considering possible standards derived from HSDFMPA section 610. Specifically, NMFS is considering evaluating whether marine mammal bycatch in a foreign nation's import-supplying fisheries is managed effectively by a relevant international fisheries management or conservation organization, or by the fishing nation itself (option 8). For this possible standard, NMFS would evaluate whether effective measures have been implemented by a relevant international fisheries management or conservation organization to which the nation is a party or cooperating member. If the relevant organization has not implemented effective measures, or the fishing nation is not a party or cooperating member of the organization, then NMFS would also evaluate whether the nation has adopted a regulatory program to reduce marine mammal bycatch that is comparable to that of the United States, taking into account different conditions.

Finally, NMFS is considering possible standards derived from regulations implemented to manage marine mammal bycatch in U.S. domestic fisheries. Specifically, NMFS is considering evaluating whether foreign nations that supply fish and fish product imports to the United States have implemented regulations to address marine mammal bycatch in the nations' import-supplying fisheries that are comparable to regulations implemented by the United States, taking into account different conditions (option 9). These U.S. domestic regulations are developed and applied on a regional and fishery-by-fishery basis, recognizing that different regional and fishery conditions bear on the effectiveness of the measures.

To the extent that the options described above are determined to rise to the level of "United States standards," NMFS anticipates selecting one or more of the possible standards described above to apply when evaluating marine mammal bycatch in a foreign nation's import-supplying fisheries and, in turn, to define those standards as "United States standards" for the purposes of section 101(a)(2)(A). NMFS intends to select clear standards and associated criteria that could be applied uniformly to all foreign fisheries that supply fish and fish product imports to the United States. NMFS also intends to select only standards and associated criteria that have been met by U.S. domestic fisheries.

NMFS requests comments on the standards to be used when evaluating foreign import-supplying fisheries, including any suggestions of other standards or associated criteria NMFS should consider or modifications of the standards suggested above; and whether to apply one or more standards.

Potential Procedures for Ensuring that U.S. Marine Mammal Bycatch Standards Are Met for Foreign Imports

NMFS is considering developing a process for evaluating bycatch in foreign import-supplying fisheries that would be consistent with both the U.S. process for managing domestic marine mammal bycatch, outlined in MMPA sections 117 and 118, and the process for assessing and certifying nations for bycatch of protected living marine resources, outlined in HSDFMPA section 610. In particular, NMFS is considering a process that would include (1) requesting that nations whose fisheries supply imports to the United States provide reasonable proof of the impact of those fisheries on marine mammals; (2) initiating consultation with nations who fail to provide such reasonable proof or whose import-supplying fisheries are known or likely to not meet U.S. marine mammal bycatch standards; (3) allowing some time for nations undergoing consultation to meet U.S. marine mammal bycatch standards by providing acceptable "reasonable proof" of the impacts of their import-supplying fisheries on marine mammals, by improving their assessment capabilities in order to provide such proof, or by implementing effective bycatch mitigation measures; and (4) recommending that the import of certain fish and fish products from a nation or fishery into the United States be prohibited if that nation or fishery fails to meet U.S. marine mammal bycatch standards after consultation.

With regard to (1) above, NMFS is considering defining "reasonable proof" as information that indicates that a nation's import-supplying fisheries meet U.S. marine mammal bycatch standards.

With respect to (2) above, NMFS is considering initiating consultation with nations to encourage each nation to take the necessary corrective action to meet the U.S. marine mammal bycatch standards. Such consultation would likely consider the efficacy of marine mammal bycatch measures adopted under multilateral agreements to which the nation is a party, as well as the nation's implementation of those measures. Such consultation also would likely identify different conditions that NMFS may consider when making decisions regarding foreign fisheries imports, including existing scientific capacity within the nation, differences in fishing practices, logistical and technical challenges to assessing status or bycatch of specific marine mammal stocks, and logistical and technical challenges to mitigating bycatch for some stocks or fisheries. As necessary, appropriate, and feasible, NMFS may provide capacity building, training, or technology transfer to address issues identified during consultation. Such consultation and capacity building would be consistent with the approach described in HSDFMPA section 610 for identifying and certifying nations for bycatch of protected living marine resources. Further, U.S. domestic consultations with take reduction teams also consider similar conditions, such as the quality of data available, logistical or technological challenges, and the feasibility of mitigation measures. NMFS also provides scientific support during domestic take reduction team consultations.

The time allotted in (3) above recognizes the need for some nations to improve their capacity to conduct suitable assessments, implement effective mitigation measures, or address unique challenges. NMFS is considering whether to include time to address these issues within the consultation period or to allow some time after consultation to assess the effectiveness of newly implemented measures before making import determinations. Both MMPA section 118(f) and HSDFMPA section 610 allow time for consultation before action is taken.

Finally, (4) refers to the implementation of import prohibitions themselves. NMFS would coordinate with other Federal agencies to make decisions regarding possible import prohibitions. NMFS also is considering whether and what kind of alternative procedures to establish for implementing import prohibitions on a shipment-by-shipment, shipper-by-shipper, or other basis if such imports were harvested by practices that do not result in marine mammal bycatch or were harvested by practices that are comparable to those of the United States. The HSDFMPA allows for the development of such alternative procedures.

NMFS is considering if and how intermediary nations should be addressed by the procedures under consideration. Intermediary nations are those that serve as intermediaries in re-exporting fish or fish products to the United States from the nation whose fisheries originally harvested the fish. With respect to yellowfin tuna harvested in the eastern tropical Pacific purse seine fisheries, section 101(a)(2)(D) of the MMPA requires that any intermediary nation certify and provide reasonable proof that "it has not imported, within the preceding six months, any yellowfin tuna or yellowfin tuna products that are subject to a direct ban on importation to the United States." NMFS is considering using a similar approach to ensure that imports from intermediary nations meet U.S. marine mammal bycatch standards.

NMFS is requesting comments on the procedures under consideration for ensuring that foreign fisheries imports meet U.S. marine mammal bycatch standards, including whether to apply one or more of the possible standards when evaluating import-supplying fisheries to make decisions regarding initiating consultation or banning imports, which standards to apply, and whether to apply different standards for making the decision to initiate consultation than are used to make the decision to ban imports. Further, NMFS is requesting comments on what issues and conditions should be considered during consultation and whether and what kind of alternative procedures should be established for implementing import prohibitions on a shipment-by-shipment or shipper-by-shipper basis. Finally, NMFS is requesting comments regarding if and how intermediary nations should be addressed by the procedures under consideration.

Petition for Rulemaking

On March 5, 2008, the U.S. Department of Commerce and other relevant Departments were petitioned to initiate rulemaking to ban importation of swordfish and swordfish products from countries that have not satisfied the MMPA section 101(a)(2) requirement. The petition for rulemaking under the Administrative Procedure Act was submitted by two nongovernmental organizations, the Center for Biological Diversity and the Turtle Island Restoration Network. The complete text of the petition is available via the internet at the following web address: *http://www.nmfs.noaa.gov/ia/*. Copies of this petition may also be obtained by contacting NMFS [*see ADDRESSES*].

On December 15, 2008, NMFS published a notification of receipt of the petition, with a January 29, 2009, deadline for comments (73 FR 75988). NMFS subsequently reopened the comment period from February 4 to March 23, 2009 (74 FR 6010, February 4, 2009).

Although the petition only requested action regarding imports of swordfish and swordfish products, the import provisions of MMPA section 101(a)(2) apply more broadly to imports from other foreign fisheries that use "commercial fishing technology which results in the incidental kill or incidental serious injury of ocean mammals in excess of United States standards". Therefore, this rulemaking would be broader in scope than the petition. Comments received on the petition were considered during the development of this advance notice of proposed rulemaking. Many of the comments were limited to the scope of the petition, but others are more broadly applicable. We have summarized all comments on the petition below.

Summary of Comments Received on Petition

NMFS received almost 45,000 comments on the petition during the two public comment periods, including comments from individual members of the public, environmental and industry groups, members of Congress, and swordfish exporting nations. The vast majority of public comments were submitted in association with mass comment campaigns by the Center for Biological Diversity and the Natural Resources Defense Council. NMFS developed this advance notice of proposed rulemaking in response to the comments received on the petition.

(1) *Support for the petition*—The vast majority of public comments supported the petition and recommended that NMFS implement the MMPA import provisions. Most of those comments recommended banning swordfish imports immediately, although a few comments recommended that NMFS request and evaluate information from nations before banning imports.

Some comments in support of the petition indicated that implementing the MMPA import provisions would (1) provide an incentive for foreign fisheries to implement bycatch reduction measures and data requirements similar to those of the United States; (2) provide added protection for marine mammals outside of U.S. waters; (3) level the "playing field" and protect U.S. fishers from unfair competition; and (4) ensure that U.S. consumers do not unwittingly contribute to the depletion of marine mammal populations as a result of poorly regulated fisheries. Several comments claimed that NMFS had failed to implement the MMPA import provisions and, thereby, had promoted the destruction of marine mammal populations and placed U.S. fishers at a significant competitive disadvantage. One comment suggested that NMFS did not need to develop regulations to implement a ban on swordfish imports because NMFS could "readily compare" foreign fishing operations to U.S. marine mammal bycatch standards.

(2) *Suggested alternative approaches to addressing international marine mammal bycatch*—Several comments suggested that working cooperatively with trading partners would be more effective than banning imports. Some of those comments suggested that the United States work to address international marine mammal bycatch through international organizations, such as regional fishery management organizations.

One comment suggested a capacity-building effort to bring about change in the fishing practices of trading partners. Another comment suggested developing a coalition of fish-importing companies in the United States to encourage suppliers in other countries to buy fish caught with "mammal safe" gear, which it suggested could be provided,

installed, and demonstrated by the U.S. government, industry, or non-governmental organization partners.

(3) *Possible standards*—A few comments pointed out the need to clearly define the "United States standards" regarding marine mammal bycatch in the context of section 101(a)(2) of the MMPA. Two comments recommended that NMFS consider the fisheries and fishing conditions of individual nations when evaluating those fisheries against U.S. marine mammal bycatch standards.

The majority of comments suggested that "United States Standards" should include consideration of the bycatch mitigation measures implemented by exporting nations. Comments suggested that foreign measures should be comparable to those used in U.S. fisheries, which include pingers (acoustic deterrents), net extenders, limits on longline length, time-area closures, safe handling and release training and equipment, and observer coverage.

Many comments suggested applying either the short- or long-term bycatch reduction goal of MMPA section 118 as a standard. The short-term goal specifies that bycatch should be reduced below a marine mammal stock's PBR level, while the long-term goal specifies that bycatch should be reduced to insignificant levels approaching a zero mortality and serious injury rate (sometimes referred to as the "zero mortality rate goal"). In contrast, one comment suggested that it would be inappropriate to hold exporting nations to the long-term goal until U.S. fisheries have achieved it. One comment recommended applying additional MMPA standards, including (1) maintaining the health and stability of the marine ecosystem; (2) recovering populations to, and maintaining them at, optimum sustainable populations; (3) ensuring that authorized take levels do not disadvantage affected stocks; and (4) requiring development of take reduction plans for fisheries that exceed a stock's PBR level. Several comments also pointed out that MMPA section 101(a)(2)(B) establishes standards for the eastern tropical Pacific purse seine fishery for tuna. Another comment suggested using the standards described in section 610 of the HSDFMPA.

(4) *Trade and economic issues*—Several comments discussed the relevance of the MMPA import provisions to intermediary nations. One comment recommended that NMFS apply the provisions to intermediary nations by requiring those nations to provide documentation as to how swordfish or swordfish products they export to the United States were harvested and what impact those fisheries had on marine mammals. Another comment suggested that harvesting nations should be responsible for issuing "mammal-free certifications" to vessels and that importers in intermediary nations should be required to obtain such "certifications" prior to landing fish at the nations' ports.

Numerous comments stated that a ban on swordfish imports would cause economic hardship for exporting nations. Another comment claimed that banning imports would financially harm importing companies in the United States because foreign harvesters would sell their fish to alternative markets.

Some comments voiced concern that implementing the MMPA import provisions could result in "unlawful barriers to international trade." Some comments suggested that any measures taken should not hamper trade in swordfish or any other fish caught by "proper fishing devices." A comment from one nation suggested that banning imports of swordfish would contradict the existing spirit of partnership and good relations with the United States. In contrast, one comment suggested that a ban on swordfish imports could be implemented in a manner consistent with the General Agreement on Tariffs and Trade and the World Trade Organization. That comment further suggested that NMFS is obligated to implement the MMPA import provisions, even if a ban on swordfish imports were found to be in conflict with international trade agreements.

(5) *Inaccuracies in petition and counter claims*—During its review of the petition, NMFS noted that the petition contained some factual errors. For example, some of the swordfish import amounts reported for Taiwan (referred to as China-Taipei in the petition), Mauritius, Mexico, New Zealand, and South Africa were incorrect. Corrections are available at *http://www.st.nmfs.noaa.gov/st1/trade/*.

NMFS also noted some discrepancies in the petition's description of the scope and timing of some U.S. fishery closures described in the petition. In particular, the description on page eleven of the petition underestimated the extent of longline closures in the Pacific, ignoring areas closed to longline fishing in Guam and the Northwestern and Main Hawaiian Islands. The description on page eight of the petition failed to recognize that the gillnet prohibition in the western Pacific fishery management area includes all U.S. EEZ waters around Hawaii, Guam, American Samoa, Commonwealth of the Northern Mariana Islands, and U.S. Pacific remote island areas. Further, the description on the same page of the timing of drift gillnet fishery closures on the U.S. west coast during El Niño events was incorrect; those closures are implemented from June 1 through August 31 when NMFS has forecasted or announced the occurrence of an El Niño event.

Several exporting nations offered counterclaims to those listed in the petition. Brazil noted that the petition claimed that Brazil expanded its longline fleet by leasing vessels from flag of convenience countries. In its comments, Brazil cited a law prohibiting vessels operating for Brazilian fishing companies from registering in other countries under flags of convenience. Taiwan provided comments questioning the validity of bycatch estimates for Taiwan fisheries in the petition. Taiwan argued that the estimates were derived using incorrect methods and data. Two nations commented that they believed there was no valid justification for the measures proposed by the petitioners.

A number of nations commented that their marine mammal protection programs were comparable to those of the United States. Those nations provided a variety of supporting information regarding their laws, regulations, and/or bycatch management measures.

One nation suggested that the provision of reasonable proof regarding the effects of fisheries on marine mammals is not a prior obligation of exporting nations, although the United States is entitled to request such information.

Classification

This advance notice of proposed rulemaking has been determined to be not significant for purposes of Executive Order 12866.

Dated: April 26, 2010.

Samuel D. Rauch III,

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

[FR Doc. 2010–10158 Filed 4–29–10; 8:45 am]

BILLING CODE 3510–22–S

Notices

Federal Register
Vol. 75, No. 83
Friday, April 30, 2010

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Forest Service

Wrangell-Petersburg Resource Advisory Committee

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The Wrangell-Petersburg Resource Advisory Committee will meet in Wrangell, Alaska. The committee is meeting as authorized under the Secure Rural Schools and Community Self-Determination Act (Pub. L. 110–343) and in compliance with the Federal Advisory Committee Act. The purpose of the meeting is to review project proposals and make project funding recommendations.

DATES: The meeting will be held Friday, May 7 from 9 a.m. to 5 p.m., and on Saturday, May 8th from 9 a.m. to 2 p.m.

ADDRESSES: The meeting will be held at the James and Elsie Nolan Center in Wrangell, Alaska. Written comments should be sent to Christopher Savage, Petersburg District Ranger, P.O. Box 1328, Petersburg, Alaska 99833, or Robert Dalrymple, Wrangell District Ranger, P.O. Box 50, Wrangell, AK 99929. Comments may also be sent via e-mail to *csavage@fs.fed.us,* or via facsimile to 907–772–5995.

All comments, including names and addresses when provided, are placed in the record and are available for public inspection and copying. The public may inspect comments received at the Petersburg Ranger District office at 12 North Nordic Drive or the Wrangell Ranger District office at 525 Bennett Street during regular office hours (Monday through Friday 8 a.m.–4:30 p.m.).

FOR FURTHER INFORMATION CONTACT: Christopher Savage, Petersburg District Ranger, P.O. Box 1328, Petersburg, Alaska, 99833, phone (907) 772–3871, e-mail *csavage@fs.fed.us,* or Robert Dalrymple, Wrangell District Ranger, P.O. Box 51, Wrangell, AK 99929, phone (907) 874–2323, e-mail *rdalrymple@fs.fed.us.*

Individuals who use telecommunication devices for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern Standard Time, Monday through Friday.

SUPPLEMENTARY INFORMATION: The meeting is open to the public. The following business will be conducted: evaluation of project proposals and recommendation of projects for funding. Persons who wish to bring related matters to the attention of the Committee may file written statements with the Committee staff before or after the meeting. A public input session will be provided beginning at 9 a.m. on May 8th. Individuals who made written requests by April 30th will have the opportunity to address the Committee at those sessions.

Dated: April 15, 2010.

Forrest Cole,

Forest Supervisor.

[FR Doc. 2010–9798 Filed 4–29–10; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

National Institute of Food and Agriculture

Notice of Request for Applications for the Veterinary Medicine Loan Repayment Program

AGENCY: National Institute of Food and Agriculture, USDA.

ACTION: Notice.

SUMMARY: The National Institute of Food and Agriculture (NIFA) is announcing the release of the Veterinary Medicine Loan Repayment Program (VMLRP) Request for Applications (RFA) at *http://www.nifa.usda.gov/vmlrp.*

DATES: The FY 2010 Veterinary Medicine Loan Repayment Program (VMLRP) application package has been made available at *http://www.nifa.usda.gov/vmlrp* and applications are due by Wednesday, June 30, 2010.

FOR FURTHER INFORMATION CONTACT: Gary Sherman, National Program Leader, Veterinary Science, National Institute of Food and Agriculture, U.S. Department of Agriculture, STOP 2220, 1400 Independence Avenue, SW., Washington, DC 20250–2220, Voice: 202–401–4952, Fax: 202–401–6156, E-mail: *gsherman@nifa.usda.gov.*

SUPPLEMENTARY INFORMATION: On October 1, 2009, all programs and authorities delegated to the Cooperative State Research, Education, and Extension Service (CSREES) were transferred to the NIFA per section 7511(f) of the Food, Conservation, and Energy Act of 2008 [Pub. L. 110–246].

Background and Purpose

In January 2003, the National Veterinary Medical Service Act (NVMSA) was passed into law adding section 1415A to the National Agricultural Research, Extension, and Teaching Policy Act of 1997 (NARETPA). This law established a new Veterinary Medicine Loan Repayment Program (7 U.S.C. 3151a) authorizing the Secretary of Agriculture to carry out a program of entering into agreements with veterinarians under which they agree to provide veterinary services in veterinarian shortage situations. In November 2005, the Agriculture, Rural Development, Food and Drug Administration, and Related Agencies Appropriations Act, 2006 (Pub. L. 109–97) appropriated $495,000 for CSREES to implement the VMLRP and represented the first time funds had been appropriated for this program.

In February 2007, the Revised Continuing Appropriations Resolution, 2007 (Pub. L. 110–5) appropriated an additional $495,000 to CSREES for support of the program, in December 2007, the Consolidated Appropriations Act, 2008 appropriated an additional $868,875 to CSREES for support of this program, and on March 11, 2009, the Omnibus Appropriations Act, 2009 (Pub. L. 111–8) was enacted, providing an additional $2,950,000, for the VMLRP. In October 2009, the President signed into law, Public Law 111–80, Agriculture, Rural Development, Food and Drug Administration, and Related Agencies Appropriations Act of 2010, which appropriated $4,800,000 for the VMLRP.

Section 7105 of the Food, Conservation, and Energy Act of 2008, Public Law 110–246, (FCEA) amended section 1415A to revise the determination of veterinarian shortage situations to consider (1) geographical

areas that the Secretary determines have a shortage of veterinarians; and (2) areas of veterinary practice that the Secretary determines have a shortage of veterinarians, such as food animal medicine, public health, epidemiology, and food safety. This section also added that priority should be given to agreements with veterinarians for the practice of food animal medicine in veterinarian shortage situations.

NARETPA section 1415A requires the Secretary, when determining the amount of repayment for a year of service by a veterinarian to consider the ability of USDA to maximize the number of agreements from the amounts appropriated and to provide an incentive to serve in veterinary service shortage areas with the greatest need. This section also provides that loan repayments may consist of payments of the principal and interest on government and commercial loans received by the individual for the attendance of the individual at an accredited college of veterinary medicine resulting in a degree of Doctor of Veterinary Medicine or the equivalent. This program is not authorized to provide repayments for any government or commercial loans incurred during the pursuit of another degree, such as an associate or bachelor degree. Loans eligible for repayment include educational loans made for one or more of the following: Loans for tuition expenses; other reasonable educational expenses, including fees, books, and laboratory expenses, incurred by the individual; and reasonable living expenses as determined by the Secretary. In addition, the Secretary is directed to make such additional payments to participants as the Secretary determines appropriate for the purpose of providing reimbursements to participants for individual tax liability resulting from participation in this program. Finally, this section requires USDA to promulgate regulations within 270 days of the enactment of FCEA (*i.e.,* June 18, 2008). The Secretary delegated the authority to carry out this program to NIFA.

The final rule was published in the **Federal Register** on April 19, 2010 [75 FR 20239–20248]. Based on comments received during the 60-day comment period upon publication of the interim rule [74 FR 32788–32798, July 9, 2009], NIFA reconsidered the policy regarding individuals who consolidated their veterinary school loans with other educational loans (*e.g.* undergraduate) and their eligibility to apply for the VMLRP. NIFA will allow these individuals to apply for and receive a VMLRP award; however, only the eligible portion of the consolidation will be repaid by the VMLRP. Furthermore, applicants with consolidated loans will be asked to provide a complete history of their student loans from the National Student Loan Database System (NSLDS), a central database for student aid operated by the U.S. Department of Education. The NSLDS Web site can be found at *http://www.nslds.ed.gov.* Individuals who consolidated their DVM loans with non-educational loans or loans belonging to an individual other than the applicant, such as a spouse or child, will continue to be ineligible for the VMLRP.

The estimated amount available for NIFA to support this program in FY 2010 is $9,216,000. The eligibility criteria for applicants and the application forms and associated instructions needed to apply for a VMLRP award can be viewed and downloaded from the VMLRP Web site at *http://www.nifa.usda.gov/vmlrp.*

Done in Washington, DC, this April 20, 2010.

Roger Beachy,

Director, National Institute of Food and Agriculture.

[FR Doc. 2010–10099 Filed 4–29–10; 8:45 am]

BILLING CODE 3410–22–P

COMMISSION ON CIVIL RIGHTS

Agenda and Notice of Public Meeting of the Kentucky Advisory Committee

Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights (Commission), and the Federal Advisory Committee Act (FACA), that a meeting of the Kentucky Advisory Committee (Committee) to the Commission will convene on Thursday, May 20, 2010 at 1 p.m. and adjourn at approximately 4 p.m. (EST) at Gardiner Hall, Room 310, University of Louisville, Louisville, KY. The purpose of the meeting is for the Committee to discuss its report on disparate discipline of minority youth by public school districts.

Members of the public are entitled to submit written comments. The comments must be received in the Southern Regional Office by June 20, 2010. The mailing address is Southern Regional Office, U.S. Commission on Civil Rights, 61 Forsyth Street, Suite 18T40, Atlanta, GA 30301. Persons wishing to e-mail their comments may do so to *pminarik@usccr.gov.* Persons that desire additional information should contact Peter Minarik, Regional Director, Southern Regional Office, at (404) 562–7000 (or for hearing impaired TDD (913) 551–1414).

Hearing-impaired persons who will attend the meeting and require the services of a sign language interpreter should contact the Regional Office at least ten (10) working days before the scheduled date of the meeting.

Records generated from this meeting may be inspected and reproduced at the Southern Regional Office, as they become available, both before and after the meeting. Persons interested in the work of this advisory committee are advised to go to the Commission's Web site, *http://www.usccr.gov*, or to contact the Southern Regional Office at the above e-mail or street address.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission and FACA.

Dated in Washington, DC, April 26, 2010.

Peter Minarik,

Acting Chief, Regional Programs Coordination Unit.

[FR Doc. 2010–10052 Filed 4–29–10; 8:45 am]

BILLING CODE 6335–01–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Final Damage Assessment and Restoration Plan for the Bayou Verdine and Calcasieu River

AGENCY: National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of availability.

SUMMARY: Notice is hereby given that a document entitled, "Final Damage Assessment and Restoration Plan and Environmental Assessment for the Bayou Verdine Site, Calcasieu Parish, Louisiana" (Final DARP/EA), has been approved by the State and Federal natural resource trustee agencies (the Trustees). The National Oceanic and Atmospheric Administration is the lead agency publishing this notice in the **Federal Register** on behalf of the United States Fish & Wildlife Service, acting on behalf of the U.S. Department of the Interior (USFWS/DOI); Louisiana Department of Environmental Quality (LDEQ), and Louisiana Department of Wildlife and Fisheries (LDWF). The Final DARRP/EA is now available to the public. The document describes the Trustees' assessment of natural resource injuries and resource services losses in the upper Calcasieu Estuary due to past releases of hazardous substances from two facilities situated in the upper

Calcasieu Estuary, in Calcasieu Parish, LA, that are presently owned and operated by ConocoPhillips Company and Sasol North America Inc. (collectively, the "potentially responsible parties" or PRPs). The Final DARP/EA identifies the restoration project that the Trustees have chosen for use to restore resources and services to compensate the public for assessed losses. The project selected by the Trustees—the Sabine Unit 99 Restoration Project—will create over 14 new acres of marsh, enhance the ecological functioning of approximately 247 acres of existing marsh, and increase the expected functional lifespan of these marshes. The restoration site is within the Sabine National Wildlife Refuge, within the Calcasieu Estuary.

FOR FURTHER INFORMATION CONTACT: For further information contact Jean Cowan, at (225) 578–7924 or e-mail: *Jean.Cowan@noaa.gov.* The Final DARP/EA is available for downloading at *http://www.darrp.noaa.gov* (by clicking on the document title in the Bayou Verdine announcement on that page). A copy may also be requested by sending a written request to Jean Cowan of NOAA by e-mail: *Jean.Cowan@noaa.gov* or by mail to: Jean Cowan, LSU Sea Grant Building, Room 124C, Baton Rouge, LA 70803.

SUPPLEMENTARY INFORMATION: Bayou Verdine is a shallow, sinuous bayou in the upper Calcasieu Estuary, southwest of the City of Westlake and slightly northwest of the City of Lake Charles, in Calcasieu Parish, LA. It originates in an agricultural area immediately north and northwest of petroleum facilities owned and operated by ConocoPhillips Company and Sasol North America Inc., and flows in a south-southeast direction through this industrialized segment before entering the Calcasieu River at Coon Island Loop. Historical operations at these two facilities have resulted in releases of hazardous substances, such as polynuclear aromatic hydrocarbons (PAHs), heavy metals, and other hazardous compounds, into Bayou Verdine and Coon Island Loop, within the Estuary.

The upper Calcasieu Estuary has been the focus of a number of past investigations related to contaminant releases and is the subject of several on-going response or corrective action planning processes under the direction or oversight of the U. S. Environmental Protection Agency (USEPA) and/or LDEQ. The most extensive effort to identify the nature and extent of hazardous substances present in the Estuary to date is the federal-lead Remedial Investigation (RI) of contaminants in sediments, surface water, and biota in the Calcasieu Estuary undertaken by the USEPA in 1999. Results from this investigation, combined with other relevant data and information, prompted the Trustees to pursue a natural resource damage assessment (NRDA) to determine and quantify resource injuries and losses in the Estuary attributable to hazardous substances from the PRPs' facilities, and to develop a restoration plan that would be sufficient to compensate for those losses.

The Trustees' decision to proceed with this NRDA was identified in a "Notice Of Intent To Perform Damage Assessment & Develop Restoration Plan for Natural Resources Injured by Hazardous Substances in Bayou Verdine & Coon Island Loop in Calcasieu Parish, Louisiana" published September 26, 2004, in the *American Press,* a newspaper of general circulation in Calcasieu Parish, LA. That notice also invited public input regarding potential restoration opportunities in the watershed that the Trustees could consider in developing an appropriate restoration plan. The public was also afforded an opportunity to review and comment on the Trustees' assessment and restoration plan when the plan was released as a Draft DARP/EA on March 27, 2009. 74 FR 13193 (March 26, 2009); *American Press,* March 27. 2009. The Trustees received no comments on the Draft DARP/EA during its 60-day public comment period. The PRPs were cooperatively involved in the NRDA process as well, consistent with 43 CFR 11.32.

The selected restoration project is expected to be implemented by the PRPs, under the Trustees' oversight, in accordance with the terms of a Consent Decree that will resolve the liability of these PRPs for natural resource damages due to past releases of hazardous substances attributable to these facilities.

In undertaking this NRDA and in releasing this Final DARP/EA, the Trustees are acting in accordance with their designation and authorities under Section 107(f) of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), 42 U.S.C. 9607(f), Section 311 of the Federal Water Pollution and Control Act (FWPCA), 33 U.S.C. 1321, Subpart G of the National Oil and Hazardous Substances Pollution Contingency Plan (NCP), 40 CFR 300.600–300.615, and regulations at 43 CFR part 11 which are applicable to natural resource damage assessments under CERCLA. The Trustees act on behalf of the public under these authorities to protect and restore natural resources injured or lost as a result of discharges or releases of hazardous substances.

Dated: April 21, 2010.

David G. Westerholm,

Director, Office of Response and Restoration, National Ocean Service, National Oceanic and Atmospheric Administration.

[FR Doc. 2010–10106 Filed 4–29–10; 8:45 am]

BILLING CODE 3510–JE–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XV81

Endangered and Threatened Species; Take of Anadromous Fish

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

ACTION: Applications for three new scientific research permits.

SUMMARY: Notice is hereby given that NMFS has received three scientific research permit application requests relating to Pacific salmon. The proposed research is intended to increase knowledge of species listed under the Endangered Species Act (ESA) and to help guide management and conservation efforts. The applications may be viewed online at: *https://apps.nmfs.noaa.gov/preview/preview__open__for__comment.cfm*

DATES: Comments or requests for a public hearing on the applications must be received at the appropriate address or fax number (see **ADDRESSES**) no later than 5 p.m. Pacific standard time on June 1, 2010.

ADDRESSES: Written comments on the applications should be sent to the Protected Resources Division, NMFS, 1201 NE Lloyd Blvd., Suite 1100, Portland, OR 97232–1274. Comments may also be sent via fax to 503–230–5441 or by e-mail to *nmfs.nwr.apps@noaa.gov*.

FOR FURTHER INFORMATION CONTACT: Garth Griffin, Portland, OR (ph.: 503–231–2005, Fax: 503–230–5441, e-mail: *Garth.Griffin@noaa.gov*). Permit application instructions are available from the address above, or online at *apps.nmfs.noaa.gov*.

SUPPLEMENTARY INFORMATION:

Species Covered in This Notice

The following listed species are covered in this notice:

Chinook salmon (*Oncorhynchus tshawytscha*): threatened Puget Sound (PS).

Steelhead (*O. mykiss*): threatened PS.

Coho salmon (*O. kisutch*): threatened Oregon Coast (OC).

Authority

Scientific research permits are issued in accordance with section 10(a)(1)(A) of the ESA (16 U.S.C. 1531 *et seq.*) and regulations governing listed fish and wildlife permits (50 CFR 222–226). NMFS issues permits based on findings that such permits: (1) are applied for in good faith; (2) if granted and exercised, would not operate to the disadvantage of the listed species that are the subject of the permit; and (3) are consistent with the purposes and policy of section 2 of the ESA. The authority to take listed species is subject to conditions set forth in the permits.

Anyone requesting a hearing on an application listed in this notice should set out the specific reasons why a hearing on that application would be appropriate (see **ADDRESSES**). Such hearings are held at the discretion of the Assistant Administrator for Fisheries, NMFS.

Applications Received

Permit 15205

The Center for the Historical Ecology of the Salish Sea (KWIAHT) is seeking a five-year permit to take juvenile PS Chinook salmon while conducting research in the San Juan Islands of Washington state. The research is designed to help assess juvenile habitat use in the San Juan Islands. The researchers would collect information on patterns of prey use, contaminant accumulation, and Chinook stock structure in the study area. The research would benefit the listed species by helping direct habitat protection (especially those habitats linked to prey abundance and bioaccumulation of toxicants). The KWIAHT would capture fish (using beach seines); measure them; check them for marks, tags, and parasites; collect stomach contents and fin tissue samples; and release them. The researchers do not intend to kill any of the fish being captured but a small number may die as an unintended result of the research activities.

Permit 15230

Forest and Channel Metrics, Inc., (FCM) is seeking a five-year permit to take juvenile PS Chinook salmon and PS steelhead while conducting research in the Tolt River basin a tributary to the Snoqualmie River in northwest Washington State. The research is part of the Seattle City Light Department's effort to enhance salmonid habitat in the basin and the department would cooperate in the sampling. The researchers would collect information on juvenile salmonid status and distribution at the river-reach scale during different seasons of the year. The research would benefit listed species by helping direct habitat mitigation and enhancement efforts. The FCM researchers would capture fish (using boat electrofishing, backpack electrofishing, and seine nets); collect weights, lengths, and scale samples; and release them. A portion of the PS steelhead would be tagged with passive integrated transponders (PIT-tags). The researchers do not intend to kill any of the fish being captured but a small number may die as an unintended result of the research activities.

Permit 15235

The Oregon State University Department of Fish and Wildlife (OSU) is requesting a five-year scientific research to take juvenile Oregon Coast coho salmon. The purpose of the project is to study the effects of dam removal on aquatic and riparian habitats and on the abundance and diversity of vertebrates, invertebrates, and macrophytes. The OSU researchers would assess ecosystem conditions above and below Gold Ray Dam before and after dam removal. They would also assess ecosystem conditions at randomly selected sites throughout the main stem of the Rogue River. The information gathered by this research would benefit listed salmonids by helping resource managers evaluate how dam removal affects aquatic species. The applicant proposes to use boat electrofishing equipment to capture fish in the Rogue River from river-mile 5 up to Lost Creek Dam. Listed fish would be enumerated, measured, evaluated for health conditions, and released. The applicant does not intend to kill any listed fish species, but a small number may die as an unintended result of the activities.

This notice is provided pursuant to section 10(c) of the ESA. NMFS will evaluate the applications, associated documents, and comments submitted to determine whether the applications meet the requirements of section 10(a) of the ESA and Federal regulations. The final permit decisions will not be made until after the end of the 30–day comment period. NMFS will publish notice of its final action in the **Federal Register**.

Dated: April 26, 2010.

Angela Somma,

Chief, Endangered Species Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 2010–10157 Filed 4–29–10; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–918]

First Antidumping Duty Administrative Review of Steel Wire Hangers From the People's Republic of China: Extension of Time Limit for the Preliminary Results

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

DATES: *Effective Date:* April 30, 2010.

FOR FURTHER INFORMATION CONTACT: Irene Gorelik, AD/CVD Operations, Office 9, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482–6905.

Background

On November 25, 2009, the Department of Commerce ("Department") initiated the first administrative review of the antidumping duty order on steel wire garment hangers from the People's Republic of China ("PRC"), covering the period March 25, 2008, through September 30, 2009. *See Initiation of Antidumping and Countervailing Duty Administrative Reviews,* 74 FR 61658 (November 25, 2009) ("*Initiation*"). The preliminary results of this administrative review were due no later than July 3, 2010.

On February 12, 2010, the Department exercised its discretion to toll the deadlines for all Import Administration cases by seven calendar days due to the February 5 through February 12, 2010, Federal Government closure. *See* "Memorandum to the Record from Ronald Lorentzen, DAS for Import Administration, regarding 'Tolling of Administrative Deadlines as a Result of the Government Closure During the Recent Snowstorm,'" dated February 12, 2010. As a result, the preliminary results of this administrative review are currently due on July 10, 2010.

On February 12, 2010, the Department selected two respondents for individual examination. *See* "Memorandum to James Doyle, Director, Office 9, Import Administration, from Josh Startup,

International Trade Compliance Analyst, Import Administration; First Administrative Review of Steel Wire Garment Hangers from the People's Republic of China: Selection of Respondents for Individual Review," dated February 12, 2010. Between March 2010 and April 2010, the selected respondents submitted responses to the Department's antidumping duty questionnaire, dated February 12, 2010.

Extension of Time Limit for the Preliminary Results

Section 751(a)(3)(A) of the Tariff Act of 1930, as amended ("the Act"), requires the Department to issue the preliminary results of an administrative review within 245 days after the last day of the anniversary month of an order for which a review is requested. If it is not practicable to complete the review within the time period, section 751(a)(3)(A) of the Act allows the Department to extend this deadline to 365 days.

The Department finds that it is not practicable to complete the preliminary results of this administrative review within the time period set forth in the *Initiation,* as tolled. Specifically, we determine that it is not practicable to complete the preliminary results of this administrative review within the original time limit because the respondent selection process was complicated due to the conflicting comments submitted by interesting parties, and the Department requires additional time to analyze questionnaire responses, issue supplemental questionnaires, and evaluate surrogate value submissions for purposes of the preliminary results.

Because the current deadline does not afford the Department adequate time to gather, analyze, request supplementary information, and review surrogate value information, the Department requires more time to complete the preliminary results. Therefore, in accordance with section 751(a)(3)(A) of the Act, the Department finds that it is not practicable to complete the preliminary results within the original time period and is extending the time limit for issuing the preliminary results by 120 days until November 8, 2010.[1] The final results continue to be due 120 days after the publication of the preliminary results.

This notice is published pursuant to sections 751(a)(3)(A) and 777(i) of the Act and 19 CFR 351.213(h)(2).

Dated: April 26, 2010.

Edward C. Yang,

Acting Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations.

[FR Doc. 2010–10182 Filed 4–29–10; 8:45 am]

BILLING CODE 3510–DS–P

[1] One hundred and twenty days from July 10, 2010, is November 7, 2010, which is a Sunday. However, Department practice dictates that where a deadline falls on a weekend, the appropriate deadline is the next business day. *See Notice of Clarification: Application of "Next Business Day" Rule for Administrative Determination Deadlines Pursuant to the Tariff Act of 1930, As Amended, 70 FR 24533 (May 10, 2005).*

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–922]

Raw Flexible Magnets From the People's Republic of China: Initiation of Antidumping Duty New Shipper Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: April 30, 2010.

SUMMARY: The Department of Commerce ("Department") has determined that a request for a new shipper review of the antidumping duty order on raw flexible magnets ("magnets") from the People's Republic of China ("PRC") meets the statutory and regulatory requirements for initiation. The period of review ("POR") for the new shipper review is September 1, 2009, through February 28, 2010.

FOR FURTHER INFORMATION CONTACT: Rebecca Pandolph or Zhulieta Willbrand, AD/CVD Operations, Office 4, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, DC 20230, telephone: (202) 482–3627, or (202) 482–3147, respectively.

SUPPLEMENTARY INFORMATION:

Background

The antidumping duty order on magnets from the PRC was published on September 17, 2008. *See Antidumping Duty Order: Raw Flexible Magnets from the People's Republic of China,* 73 FR 53847 (September 17, 2008). On March 29, 2010, pursuant to section 751(a)(2)(B)(i) of the Tariff Act of 1930, as amended (the "Act"), and 19 CFR 351.214(c), the Department received a timely request for a new shipper review from Jingzhou Meihou Flexible Magnet Company, Ltd. ("Jingzhou Meihou"). However, the company business proprietary version was not properly bracketed. The Department requested that Jingzhou Meihou resubmit the new shipper review request and noted that the resubmission would be considered timely for consideration of a new shipper review. *See* Memorandum to the File from Rebecca Pandolph, International Trade Compliance Analyst, AD/CVD Operations, Office 4, "Antidumping Duty Order on Raw Flexible Magnets from the People's Republic of China," dated April 5, 2010. On April 5, 2010, Jingzhou Meihou resubmitted its new shipper review request. Jingzhou Meihou certified that Jingzhou Meihou is both the exporter and producer of the subject merchandise upon which its request for a new shipper review was based. On April 23, 2010, Magnum Magnetics Corporation ("Petitioner") submitted comments regarding the request for new shipper review by Jingzhou Meihou. The Department is currently evaluating the comments submitted by Petitioner and will address the comments during the new shipper review.

Pursuant to section 751(a)(2)(B)(i)(I) of the Act and 19 CFR 351.214(b)(2)(i), Jingzhou Meihou certified that it did not export raw flexible magnets to the United States during the period of investigation ("POI"), *i.e.*, January 1, 2007 through June 30, 2007. Further, pursuant to section 751(a)(2)(B)(i)(II) of the Act and 19 CFR 351.214(b)(2)(iii)(A), Jingzhou Meihou certified that, since the initiation of the investigation, it has never been affiliated with any PRC exporter or producer who exported magnets to the United States during the POI, including those not individually examined during the investigation. As required by 19 CFR 351.214(b)(2)(iii)(B), Jingzhou Meihou, also certified that its export activities were not controlled by the central government of the PRC.

In addition to the certifications described above, pursuant to 19 CFR 351.214(b)(2)(iv), Jingzhou Meihou submitted documentation establishing the following: (1) the date on which Jingzhou Meihou first shipped magnets for export to the United States and the date on which the magnets were first entered, or withdrawn from warehouse, for consumption; (2) the volume of its first shipment;[1] and (3) the date of its first sale to an unaffiliated customer in the United States.

The Department conducted a U.S. Customs and Border Protection ("CBP") database query and confirmed that shipment of subject merchandise from Jingzhou Meihou had entered the United States for consumption and that liquidation of such entry had been

[1] Jingzhou Meihou made no subsequent shipments to the United States.

properly suspended for antidumping duties. The Department also confirmed by examining CBP data that Jingzhou Meihou's entry was made during the POR as specified by the Department's regulations. *See* 19 CFR 351.214(g)(1)(i)(B). After examining CBP data, the Department requested additional information from Jingzhou Meihou. *See* letter to Jingzhou Meihou regarding, "Request for Antidumping and Countervailing Duty New Shipper Review of Raw Flexible Magnets from the People's Republic of China," dated April 8, 2010. On April 12, 2010, Jingzhou Meihou submitted its response to the Department's request for additional information. *See* Jingzhou Meihou's letter regarding, "Request for More Information regarding Initiation of Antidumping and Countervailing Duty new Shipper Reviews of raw Flexible Magnets from the People's Republic of China," dated April 12, 2010.

Pursuant to 19 CFR 351.221(c)(1)(i), the Department will publish the notice of initiation of a new shipper review no later than the last day of the month following the anniversary month or semiannual anniversary month of the order. Thus, the deadline for publishing this notice of initiation is April 30, 2010.

Initiation of New Shipper Reviews

Pursuant to section 751(a)(2)(B) of the Act and 19 CFR 351.214(d)(1), the Department finds that Jingzhou Meihou meets the threshold requirements for initiation of a new shipper review of its shipment of magnets from the PRC. *See* Memorandum to the File through Abdelali Elouaradia, Director, AD/CVD Operations, Office 4: Initiation of AD New Shipper Review of Jingzhou Meihou.: Raw Flexible Magnets from the People's Republic of China, dated concurrently with this notice; and Jingzhou Meihou Checklist.

The POR for the new shipper review of Jingzhou Meihou is September 1, 2009, through February 28, 2010. *See* 19 CFR 351.214(g)(1)(i)(B). The Department intends to issue the preliminary results of this review no later than 180 days from the date of initiation, and the final results of this review no later than 270 days from the date of initiation. *See* section 751(a)(2)(B)(iv) of the Act.

It is the Department's usual practice, in cases involving non–market economy countries, to require that a company seeking to establish eligibility for an antidumping duty rate separate from the country–wide rate provide evidence of *de jure* and *de facto* absence of government control over the company's export activities. Accordingly, we will issue a questionnaire to Jingzhou Meihou, which will include a separate rate section. The review of Jingzhou Meihou will proceed if the response provides sufficient indication that Jingzhou Meihou is not subject to either *de jure* or *de facto* government control with respect to its exports of magnets.

We will instruct CBP to allow, at the option of the importer, the posting, until the completion of the review, of a bond or security in lieu of a cash deposit for certain entries of the subject merchandise from Jingzhou Meihou in accordance with section 751(a)(2)(B)(iii) of the Act and 19 CFR 351.214(e). Because Jingzhou Meihou certified that it both produces and exports the subject merchandise, the sales of which form the basis for its new shipper review request, we will instruct CBP to permit the use of a bond only for entries of subject merchandise which the respondent both produced and exported.

Interested parties requiring access to proprietary information in this new shipper review should submit applications for disclosure under administrative protective order in accordance with 19 CFR 351.305 and 351.306.

This initiation and notice are published in accordance with section 751(a)(2)(B) of the Act and 19 CFR 351.214 and 351.221(c)(1)(i).

Dated: April 26, 2010.

Edward C. Yang,

Acting Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations.

[FR Doc. 2010–10176 Filed 4–29–10; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

[C–570–923]

Raw Flexible Magnets From the People's Republic of China: Initiation of Countervailing Duty New Shipper Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: April 30, 2010.

SUMMARY: The Department of Commerce (the Department) has determined that a request for a new shipper review of the countervailing duty (CVD) order on raw flexible magnets (RFM) from the People's Republic of China (the PRC) meets the statutory and regulatory requirements for initiation. The period of review (POR) for the new shipper review is January 1, 2009, through February 28, 2010.

FOR FURTHER INFORMATION CONTACT: Kristen Johnson, AD/CVD Operations, Office 3, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230, telephone: (202) 482–4793.

SUPPLEMENTARY INFORMATION:

Background

The CVD order on RFM from the PRC was published on September 17, 2008. *See Raw Flexible Magnets from the People's Republic of China: Countervailing Duty Order*, 73 FR 53849 (September 17, 2008). On March 29, 2010, pursuant to section 751(a)(2)(B)(i) of the Tariff Act of 1930, as amended (the Act), and 19 CFR 351.214(c), the Department received a timely request for new shipper review from Jingzhou Meihou Flexible Magnet Company, Ltd. (Jingzhou Meihou). The company's business proprietary version, however, was not properly bracketed. The Department, therefore, rejected that submission and requested that Jingzhou Meihou resubmit the request, which would be considered timely for consideration of a new shipper review. *See* Memorandum to the File from Kristen Johnson, Trade Analyst, AD/CVD Operations, Office 3, regarding "Jingzhou Meihou's New Shipper Review Submission Rejected," dated April 1, 2010.[1] On April 5, 2010, Jingzhou Meihou resubmitted its new shipper review request. Jingzhou Meihou certified that it is both the exporter and producer of the subject merchandise upon which its request for a new shipper review is based. On April 23, 2010, Magnum Magnetics Corporation (Petitioner) submitted comments regarding the request for new shipper review by Jingzhou Meihou. The Department is currently evaluating the comments submitted by Petitioner and will address the comments during the new shipper review.

Pursuant to section 751(a)(2)(B)(i)(I) of the Act and 19 CFR 351.214(b)(2)(i), Jingzhou Meihou certified that it did not export RFM to the United States during the period of investigation (POI).[2] Further, pursuant to section 751(a)(2)(B)(i)(II) of the Act and 19 CFR 351.214(b)(2)(iii)(A), Jingzhou Meihou certified that, since the initiation of the investigation, it has never been affiliated with any PRC exporter or producer who exported RFM to the United States

[1] This public document and all other public Departmental documents are available on the public record located within the Central Records Unit (CRU), Room 1117 of the Commerce building.

[2] The CVD POI was January 1, 2006, through December 31, 2006.

during the POI, including those not individually examined during the investigation.

In addition to the certifications described above, pursuant to 19 CFR 351.214(b)(2)(iv), Jingzhou Meihou submitted documentation establishing the following: (1) the date on which Jingzhou Meihou first shipped RFM for export to the United States and the date on which the RFM were first entered, or withdrawn from warehouse, for consumption; (2) the volume of its first shipment;[3] and (3) the date of its first sale to an unaffiliated customer in the United States. Jingzhou Meihou also certified that, in accordance with 19 CFR 351.214(b)(2)(v), it has informed the Government of the People's Republic of China that it will be required to provide a full response to the Department's questionnaire.

The Department conducted a U.S. Customs and Border Protection (CBP) database query and confirmed that the shipment of subject merchandise from Jingzhou Meihou entered the United States for consumption and liquidation of such entry was properly suspended for countervailing duties. After examining the CBP data, the Department requested additional information from Jingzhou Meihou. *See* letter to Jingzhou Meihou regarding, "Request for Antidumping and Countervailing Duty New Shipper Review of Raw Flexible Magnets from the People's Republic of China," dated April 8, 2010. On April 12, 2010, Jingzhou Meihou submitted its response to the Department's request for additional information. *See* Jingzhou Meihou's letter regarding, "Request for More Information regarding Initiation of Antidumping and Countervailing Duty New Shipper Reviews of Raw Flexible Magnets from the People's Republic of China," dated April 12, 2010.

Initiation of New Shipper Review

Pursuant to section 751(a)(2)(B) of the Act and 19 CFR 351.214, the Department finds that Jingzhou Meihou meets the threshold requirements for initiation of a new shipper review of its shipment of RFM from the PRC. *See* Memorandum to the File through Melissa G. Skinner, Director, AD/CVD Operations, Office 3, from Kristen Johnson, Trade Analyst, AD/CVD Operations, Office 3, regarding "Initiation of CVD New Shipper Review of Jingzhou Meihou: Raw Flexible Magnets from the People's Republic of China," dated concurrently with this notice.

[3] This shipment constitutes the only shipment that Jingzhou Meihou has made to the United States.

The Department's regulations state, in 19 CFR 351.214(g)(2), that the POR for a CVD new shipper review will be the same period as that specified in 19 CFR 351.213.(e)(2), which states that the Department normally will cover entries of subject merchandise during the most recently completed calendar year. However, the Department noted in the *Preamble* to its Final Regulations that the regulations continue to "provide the Department with sufficient flexibility to resolve any problems that may arise by modifying the standard review period." *See Antidumping Duties; Countervailing Duties; Final Rule*, 62 FR 27320 (May 19, 1997) (*Preamble*). The Department's regulations permit a party to file a request for a new shipper review during the six month period preceding the anniversary month and the six month period preceding the semiannual anniversary month. If a calendar year standard is utilized, as noted in the Department's regulations, Jingzhou Meihou's entry would not be covered in the review. Therefore, the review period for this new shipper review will be January 1, 2009, through February 28, 2010.

Pursuant to 19 CFR 351.221(c)(1)(i), the Department will publish the notice of initiation of a new shipper review no later than the last day of the month following the anniversary month or semiannual anniversary month of the order. Thus, the deadline for publishing this notice of initiation is April 30, 2010.

The Department intends to issue the preliminary results of this review no later than 180 days after the date of initiation, and the final results of this review no later than 90 days after the date on which the preliminary results are issued. *See* 19 CFR 351.214(i).

We will instruct CBP to allow, at the option of the importer, the posting, until the completion of the review, of a bond or security in lieu of a cash deposit for certain entries of the subject merchandise from Jingzhou Meihou in accordance with section 751(a)(2)(B)(iii) of the Act and 19 CFR 351.214(e). Because Jingzhou Meihou certified that it both produces and exports the subject merchandise, the sales of which form the basis for its new shipper review request, we will instruct CBP to permit the use of a bond only for entries of subject merchandise which the respondent both produced and exported.

Interested parties requiring access to proprietary information in this new shipper review should submit applications for disclosure under administrative protective order in accordance with 19 CFR 351.305 and 351.306.

This initiation and notice are published in accordance with section 751(a)(2)(B) of the Act and 19 CFR 351.214 and 351.221(c)(1)(i).

Dated: April 22, 2010.

Edward C. Yang,

Acting Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations.

[FR Doc. 2010–10170 Filed 4–29–10; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–912]

New Pneumatic Off–the-Road Tires From the People's Republic of China: Rescission of New Shipper Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: April 30, 2010.

SUMMARY: In response to a request from Yituo Orient Good Friend Tyre Co., Ltd., ("OGF"), the Department of Commerce (the "Department") published on November 2, 2009, a **Federal Register** notice announcing the initiation of a new shipper review of the antidumping duty order on new pneumatic off–the-road tires ("OTR tires") from the People's Republic of China ("PRC") for the period February 20, 2008, through August 31, 2009. On March 22, 2010, OGF withdrew its request for a new shipper review. Therefore, we are rescinding this new shipper review with respect to OGF.

FOR FURTHER INFORMATION CONTACT: John Hollwitz or Charles Riggle, AD/CVD Operations, Office 8, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482–2336 and (202) 482–0650, respectively.

SUPPLEMENTARY INFORMATION:

Background

On September 30, 2009, the Department received a timely request from OGF in accordance with section 751(a)(2)(B)(i) of the Tariff Act of 1930, as amended (the "Act"), and 19 CFR 351.214(c), for a new shipper review of the antidumping duty order on OTR tires from the PRC. On November 2, 2009, the Department found that the request for review with respect to OGF met all of the regulatory requirements set forth in 19 CFR 351.214(b) and

initiated an antidumping duty new shipper review. *See New Pneumatic Off–the-Road Tires from the People's Republic of China: Initiation of New Shipper Review*, 74 FR 56575 ("*Initiation Notice*"). On March 22, 2009, OGF withdrew its request for a new shipper review. On April 12, 2010, we placed on the record and served to parties a memo stating that the Department intended to rescind the above–referenced new shipper review. We allowed parties to comment on the intended rescission by no later than April 19, 2010. *See* Memorandum to the File regarding: Withdrawal of Request for NSR from OGF, dated April 12, 2010. On April 14, 2010, the Department received a letter from Titan Tire Corporation ("Titan") stating that Titan had no objection to the Department's intended rescission of the new shipper review. *See* Letter from Titan regarding: Comments on Proposed Rescission of New Shipper Review, dated April 14, 2010.

Rescission of New Shipper Review

19 CFR 351.214(f)(1) provides that the Department may rescind a new shipper review if the party that requested the review withdraws its request for review within 60 days of the date of publication of the notice of initiation of the requested review. Although OGF withdrew its request after the 60–day deadline, we find it reasonable to extend the deadline because we have not yet committed significant resources to the OGF new shipper review (*e.g.*, we have not issued our preliminary results). Further, in this instance, no other company would be affected by a rescission, and we have received no objections from any party to OGF's withdrawal of its request for this new shipper review. Based upon the above, we are rescinding the new shipper review of the antidumping duty order on OTR tires from the PRC with respect to OGF. *See Hand Trucks and Certain Parts Thereof from the People's Republic of China: Notice of Rescission of Antidumping Duty New Shipper Review*, 74 FR 31911 (July 6, 2009) (rescinding new shipper review after 60–day deadline on same grounds). As the Department is rescinding this new shipper review, we are not calculating a company–specific rate for OGF, and OGF will remain part of the PRC entity.

Notifications

Because OGF remains part of the PRC entity, its entries may be under review in the ongoing administrative review. Accordingly, the Department will not order liquidation of entries for OGF. The Department intends to issue liquidation instructions for the PRC entity, which will cover any entries by OGF, 15 days after publication of the final results of the ongoing administrative review.

This notice serves as a final reminder to importers of their responsibility under 19 CFR 351.402(f)(2) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

This notice also serves as the only reminder to parties subject to administrative protective orders ("APO") of their responsibility concerning the return or destructions of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a). Timely written notification of the return/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.

We are issuing and publishing this determination and notice in accordance with section 777(i) of the Act and 19 CFR 351.214(f)(3).

Dated: April 26, 2010.

Edward C. Yang,

Acting Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations.

[FR Doc. 2010–10250 Filed 4–29–10; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

Subsidy Programs Provided by Countries Exporting Softwood Lumber and Softwood Lumber Products to the United States; Request for Comment

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: The Department of Commerce (Department) seeks public comment on any subsidies, including stumpage subsidies, provided by certain countries exporting softwood lumber or softwood lumber products to the United States during the period July 1 through December 31, 2009.

DATES: Comments must be submitted within thirty days after publication of this notice.

ADDRESSES: Written comments (original and six copies) should be sent to the Secretary of Commerce, Attn: James Terpstra, Import Administration, APO/Dockets Unit, Room 1870, U.S. Department of Commerce, 14th Street &Constitution Ave., NW., Washington, DC 20230.

FOR FURTHER INFORMATION CONTACT: James Terpstra, Import Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482–3965.

SUPPLEMENTARY INFORMATION:

Background

On June 18, 2008, Section 805 of Title VIII of the Tariff Act of 1930 (the Softwood Lumber Act of 2008) was enacted into law. Under this provision, the Secretary of Commerce is mandated to submit to the appropriate Congressional committees a report every 180 days on any subsidies provided by countries exporting softwood lumber or softwood lumber products to the United States, including stumpage subsidies.

The Department submitted its last subsidy report on December 15, 2009. As part of its newest report, the Department intends to include a list of subsidy programs identified with sufficient clarity by the public in response to this notice.

Request for Comment

Given the large number of countries that export softwood lumber and softwood lumber products to the United States, we are soliciting public comment only on subsidies provided by countries whose exports accounted for at least one percent of total U.S. imports of softwood lumber by quantity, as classified under Harmonized Tariff Schedule code 4407.1001 (which accounts for the vast majority of imports), during the period July 1 through December 31, 2009. Official U.S. import data published by the United States International Trade Commission Tariff and Trade DataWeb indicate that exports of softwood lumber from Canada and Chile each account for at least one percent of U.S. imports of softwood lumber products during that time period. We intend to rely on similar previous six-month periods to identify the countries subject to future reports on softwood lumber subsidies. For example, we will rely on U.S. imports of softwood lumber and softwood lumber products during the period January 1 through June 30, 2010, to select the countries subject to the next report.

Under U.S. trade law, a subsidy exists where a government authority: (i) provides a financial contribution; (ii) provides any form of income or price

support within the meaning of Article XVI of the GATT 1994; or (iii) makes a payment to a funding mechanism to provide a financial contribution to a person, or entrusts or directs a private entity to make a financial contribution, if providing the contribution would normally be vested in the government and the practice does not differ in substance from practices normally followed by governments, and a benefit is thereby conferred. *See* section 771(5)(B) of the of the Tariff Act of 1930, as amended.

Parties should include in their comments: (1) the country which provided the subsidy; (2) the name of the subsidy program; (3) a brief (3–4 sentence) description of the subsidy program; and (4) the government body or authority that provided the subsidy.

Submission of Comment

Persons wishing to comment should file a signed original and six copies of each set of comments by the date specified above. The Department will not accept comments accompanied by a request that a part or all of the material be treated confidentially due to business proprietary concerns or for any other reason. The Department will return such comments and materials to the persons submitting the comments and will not include them in its report on softwood lumber subsidies. The Department also requests submission of comments in electronic form to accompany the required paper copies. Comments filed in electronic form should be submitted on CD–ROM with the paper copies or by e–mail to the Webmaster below.

Comments received in electronic form will be made available to the public in Portable Document Format (PDF) on the Import Administration Web site at the following address: http://ia.ita.doc.gov. Any questions concerning file formatting, document conversion, access on the Internet, or other electronic filing issues should be addressed to Andrew Lee Beller, Import Administration Webmaster, at (202) 482–0866, e–mail address: webmaster–support@ita.doc.gov.

All comments and submissions should be mailed to James Terpstra, Import Administration; Subject: Softwood Lumber Subsidies Bi–Annual Report: Request for Comment; Room 1870, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC, 20230, by no later than 5 p.m., on the above–referenced deadline date.

Dated: April 23, 2010.

Edward C. Yang

Acting Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations

[FR Doc. 2010–10189 Filed 4–29–10; 8:45 am]

BILLING CODE 3510–DS–S

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 to the Procurement List products and a service to be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities, and to delete services previously furnished by such agencies.

Comments Must Be Received On Or Before: 5/31/2010.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, Jefferson Plaza 2, Suite 10800, 1421 Jefferson Davis Highway, Arlington, Virginia, 22202–3259.

FOR FURTHER INFORMATION OR TO SUBMIT COMMENTS CONTACT: Barry S. Lineback, Telephone: (703) 603–7740, Fax: (703) 603–0655, or e-mail *CMTEFedReg@AbilityOne.gov*.

SUPPLEMENTARY INFORMATION: This notice is published pursuant to 41 U.S.C 47(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.

Regulatory Flexibility Act Certification

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. If approved, the action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the products and service to the Government.

2. If approved, the action will result in authorizing small entities to furnish the products and 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. 46–48c) in connection with the products and service proposed for addition to the Procurement List.

Comments on this certification are invited. Commenters should identify the statement(s) underlying the certification on which they are providing additional information.

End of Certification

The following products and service are proposed for addition to the Procurement List for production by the nonprofit agencies listed:

Products

NSN: 8415–00–NIB–0810—Glove, Vinyl, Industrial/Non-Medical Grade, 100 Gloves/Box, Small.
NSN: 8415–00–NIB–0811—Glove, Vinyl, Industrial/Non-Medical Grade, 100 Gloves/Box, Medium.
NSN: 8415–00–NIB–0812—Glove, Vinyl, Industrial/Non-Medical Grade, 100 Gloves/Box, Large.
NSN: 8415–00–NIB–0813—Glove, Vinyl, Industrial/Non-Medical Grade, 100 Gloves/Box, XLarge.
NPA: Bosma Industries for the Blind, Inc., Indianapolis, IN.
Contracting Activity: Veterans Affairs, Department of, NAC, Hines, IL.
Coverage: C–List for 100% of the requirements for the Department of Veterans Affairs, NAC, Hines, IL.

Service

Service Type/Locations: Janitorial Services, Marine Corp Base Hawaii, Buildings 6036 and 6677; Hangers 103 and 104, Kaneohe Bay, HI.
NPA: Opportunities for the Retarded, Inc., Wahiawa, HI.
Contracting Activity: Dept of the Navy, NAVFAC Engineering Command Hawaii, Pearl Harbor, HI.

Deletions

Regulatory Flexibility Act Certification

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. If approved, the action will not result in additional reporting, recordkeeping or other compliance requirements for small entities.

2. If approved, the action may result in authorizing small entities to provide the services to the Government.

3. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the services proposed for deletion from the Procurement List.

End of Certification

The following services are proposed for deletion from the Procurement List:

Services

Service Types/Location: Grounds Maintenance, Janitorial/Custodial, U.S. Army Reserve Center, 4300 S. Treadway, Abilene, TX.
NPA: Abilene Goodwill Industries, Inc., Abilene, TX.
Contracting Activity: Dept of the Army, XR W6BB ACA Presidio of Monterey, Presidio of Monterey, CA.

Barry S. Lineback,

Director, Business Operations.

[FR Doc. 2010–10119 Filed 4–29–10; 8:45 am]

BILLING CODE 6353–01–P

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Procurement List Additions

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

ACTION: Additions to the Procurement List.

SUMMARY: This action adds to the Procurement List products and services to be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities.

DATES: *Effective Date:* 5/31/2010.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, Jefferson Plaza 2, Suite 10800, 1421 Jefferson Davis Highway, Arlington, Virginia 22202–3259.

FOR FURTHER INFORMATION CONTACT: Barry S. Lineback, Telephone: (703) 603–7740, Fax: (703) 603–0655, or e-mail *CMTEFedReg@AbilityOne.gov.*

SUPPLEMENTARY INFORMATION:

Additions

On 10/23/2009 (74 FR 54783–54784) and 3/5/2010 (75 FR 10223–10224), the Committee for Purchase From People Who Are Blind or Severely Disabled published notices of proposed additions to the Procurement List.

After consideration of the material presented to it concerning capability of qualified nonprofit agencies to provide the products and services and impact of the additions on the current or most recent contractors, the Committee has determined that the products and services listed below are suitable for procurement by the Federal Government under 41 U.S.C. 46–48c and 41 CFR 51–2.4.

Regulatory Flexibility Act Certification

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the products and services to the Government.

2. The action will result in authorizing small entities to furnish the products and services to the Government.

3. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the products and services proposed for addition to the Procurement List.

End of Certification

Accordingly, the following products and services are added to the Procurement List:

Products

Coast Guard Physical Fitness Uniform, Shirts X Small to XXX Large

NSN: 8465–00–NIB–0189—United States Coast Guard Tshirt, XSmall
NSN: 8465–00–NIB–0190—United States Coast Guard Tshirt, Small
NSN: 8465–00–NIB–0191—United States Coast Guard Tshirt, Medium
NSN: 8465–00–NIB–0192—United States Coast Guard Tshirt, Large
NSN: 8465–00–NIB–0193—United States Coast Guard Tshirt, XLarge
NSN: 8465–00–NIB–0194—United States Coast Guard Tshirt, XXLarge
NSN: 8465–00–NIB–0195—United States Coast Guard Tshirt, XXXLarge
NPA: The Arkansas Lighthouse for the Blind, Little Rock, AR

Coast Guard Physical Fitness Uniform, Trunks X Small to XXX Large

NSN: 8465–00–NIB–0196—United States Coast Guard Trunks XSmall
NSN: 8465–00–NIB–0197—United States Coast Guard Trunks Small
NSN: 8465–00–NIB–0198—United States Coast Guard Trunks Medium
NSN: 8465–00–NIB–0199—United States Coast Guard Trunks Large
NSN: 8465–00–NIB–0200—United States Coast Guard Trunks XLarge
NSN: 8465–00–NIB–0201—United States Coast Guard Trunks XXLarge
NSN: 8465–00–NIB–0202—United States Coast Guard Trunks XXXLarge
NPA: Assoc f/t Blind & Visually Impaired & Goodwill Ind. of Greater Rochester, Rochester, NY
Contracting Activity: DEPT OF HOMELAND SECURITY, U.S. COAST GUARD, WASHINGTON, DC
Coverage: C-List for 100% of the government requirements for the Department of Homeland Security, U.S. Coast Guard, Washington, DC.

Duster, Microfiber

NSN: 7920–00–NIB–0495—Mini Microfiber Duster
NSN: 7920–00–NIB–0496—Duster, Microfiber, Utility
NSN: 7920–00–NIB–0499—Replacement Sleeves for Microfiber Utility Duster
NPA: Industries for the Blind, Inc., West Allis, WI
Contracting Activity: FEDERAL ACQUISITION SERVICE, GSA/FAS SOUTHWEST SUPPLY CENTER (QSDAC), FORT WORTH, TX
Coverage: B-List for the broad government requirement as aggregated by the General Services Administration.

Safety Pins

NSN: 8315–00–787–7000—2.0″ with tapered points
NSN: 8315–00–787–8000—1.5″ with tapered points
NPA: Genesee County Chapter, NYSARC, Batavia, NY
Contracting Activity: FEDERAL ACQUISITION SERVICE, GSA/FAS SOUTHWEST SUPPLY CENTER (QSDAC), FORT WORTH, TX
Coverage: B-List for the broad government requirement as aggregated by the General Services Administration.

Services

Service Type/Location: Laundry Services, Alaska VA Healthcare System and Regional Office, Anchorage, AK
NPA: MQC Enterprises, Inc., Anchorage, AK
Contracting Activity: DEPARTMENT OF VETERANS AFFAIRS, NETWORK BUSINESS OFFICE (10N20VBO), VANCOUVER, WA

Service Type/Location: Landscape Maintenance, Veterans Affairs Northern California Healthcare System, 4951 Arroyo Road, Livermore, CA
NPA: Rubicon Programs, Inc., Richmond, CA
Contracting Activity: DEPARTMENT OF VETERANS AFFAIRS, VISN 21 CONSOLIDATED CONTRACTING ACTIVITY, MARE ISLAND, CA

Service Type/Location: Custodial and Grounds Maintenance Services, U.S. Courthouse, 525 Magoffin Ave., El Paso, TX
NPA: Training, Rehabilitation, & Development Institute, Inc., San Antonio, TX
Contracting Activity: GENERAL SERVICES ADMINISTRATION, PUBLIC BUILDINGS SERVICE, FORT WORTH, TX

Service Type/Location: Custodial Services, St. Louis Federal Complex, 4300 Goodfellow Boulevard, St Louis, MO
NPA: MGI Services Corporation, St. Louis,

MO
Contracting Activity: GENERAL SERVICES ADMINISTRATION, PUBLIC BUILDINGS SERVICE, ST. LOUIS, MO
Service Type/Location: Mail Services, DFAS Retirement & Annuity Section (Cleveland, OH), AWRC, 2762 Rand Road, Indianapolis, IN
NPA: Anthony Wayne Rehabilitation Ctr for Handicapped and Blind, Inc., Fort Wayne, IN
Contracting Activity: DEFENSE FINANCE AND ACCOUNTING SERVICE (DFAS), CONTRACT SERVICES DIRECTORATE, COLUMBUS, OH

Barry S. Lineback,

Director, Business Operations.

[FR Doc. 2010–10120 Filed 4–29–10; 8:45 am]

BILLING CODE 6353–01–P

CONSUMER PRODUCT SAFETY COMMISSION

[CPSC Docket No. CPSC–2010–0035]

Third Party Testing for Certain Children's Products; Notice of Requirements for Accreditation of Third Party Conformity Assessment Bodies To Assess Conformity With Part 1505 and/or § 1500.86(a)(5) of Title 16, Code of Federal Regulations

AGENCY: Consumer Product Safety Commission.

ACTION: Notice of requirements.

SUMMARY: The Consumer Product Safety Commission (CPSC or Commission) is issuing a notice of requirements that provides the criteria and process for Commission acceptance of accreditation of third party conformity assessment bodies for testing pursuant to specific CPSC regulations relating to electrically operated toys or other electrically operated articles intended for use by children, and/or clacker balls. The Commission is issuing this notice of requirements pursuant to section 14(a)(3)(B)(vi) of the Consumer Product Safety Act (CPSA) (15 U.S.C. 2063(a)(3)(B)(vi)).

DATES: *Effective Date:* The requirements for accreditation of third party conformity assessment bodies to assess conformity with 16 CFR part 1505 and/or 16 CFR 1500.86(a)(5) are effective upon publication of this notice in the **Federal Register.**

Comments in response to this notice of requirements should be submitted by June 1, 2010. Comments on this notice should be captioned "Notice of Requirements for Accreditation of Third Party Conformity Assessment Bodies to Assess Conformity With Part 1505 and/or § 1500.86(a)(5) of Title 16, Code of Federal Regulations."

ADDRESSES: You may submit comments, identified by Docket No. CPSC–2010–0035 by any of the following methods:

Electronic Submissions: Submit electronic comments in the following way: Federal eRulemaking Portal: *http://www.regulations.gov.* Follow the instructions for submitting comments. To ensure timely processing of comments, the Commission is no longer accepting comments submitted by electronic mail (e-mail) except through *http://www.regulations.gov.*

Written Submissions: Submit written submissions in the following ways: Mail/Hand delivery/Courier (for paper, disk, or CD–ROM submissions) preferably in five copies, to: Office of the Secretary, Consumer Product Safety Commission, Room 820, 4330 East West Highway, Bethesda, MD 20814; telephone (301) 504–7923.

Instructions: All submissions received must include the agency name and docket number for this notice. All comments received may be posted without change to *http://www.regulations.gov,* including any personal information provided. Do not submit confidential business information, trade secret information, or other sensitive or protected information (such as a social security number) electronically; if furnished at all, such information should be submitted in writing.

Docket: For access to the docket to read background documents or comments received, go to *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Robert "Jay" Howell, Assistant Executive Director for Hazard Identification and Reduction, U.S. Consumer Product Safety Commission, 4330 East West Highway, Bethesda, Maryland 20814; e-mail *rhowell@cpsc.gov.*

SUPPLEMENTARY INFORMATION:

I. Introduction

Section 14(a)(3)(B)(vi) of the CPSA, as added by section 102(a)(2) of the Consumer Product Safety Improvement Act of 2008 (CPSIA), Public Law 110–314, directs the CPSC to publish a notice of requirements for accreditation of third party conformity assessment bodies to assess children's products for conformity with "other children's product safety rules." Section 14(f)(1) of the CPSA defines "children's product safety rule" as "a consumer product safety rule under [the CPSA] or similar rule, regulation, standard, or ban under any other Act enforced by the Commission, including a rule declaring a consumer product to be a banned hazardous product or substance." Under section 14(a)(3)(A) of the CPSA, each manufacturer (including the importer) or private labeler of products subject to those regulations must have products that are manufactured more than 90 days after the **Federal Register** publication date of a notice of the requirements for accreditation, tested by a third party conformity assessment body accredited to do so, and must issue a certificate of compliance with the applicable regulations based on that testing. Section 14(a)(2) of the CPSA, as added by section 102(a)(2) of the CPSIA, requires that certification be based on testing of sufficient samples of the product, or samples that are identical in all material respects to the product. The Commission also emphasizes that, irrespective of certification, the product in question must comply with applicable CPSC requirements (see, e.g., section 14(h) of the CPSA, as added by section 102(b) of the CPSIA).

The Commission also is recognizing limited circumstances in which it will accept certifications based on product testing conducted before the third party conformity assessment body is accepted as accredited by the CPSC. The details regarding those limited circumstances can be found in part IV of this document below.

This notice provides the criteria and process for Commission acceptance of accreditation of third party conformity assessment bodies for testing pursuant to the following test methods:

- The test methods for electrically operated toys or other electrically operated articles intended for use by children at 16 CFR Part 1505, *Requirements for Electrically Operated Toys or Other Electrically Operated Articles Intended for Use By Children.*
- The test method for clacker balls at 16 CFR 1500.86(a)(5), *Exemptions From Classification as a Banned Toy or Other Banned Article for use by Children.*

Although section 14(a)(3)(B)(vi) of the CPSA directs the CPSC to publish a notice of requirements for accreditation of third party conformity assessment bodies to assess conformity with "all other children's product safety rules," this notice of requirements is limited to the test methods identified immediately above.

The CPSC also recognizes that section 14(a)(3)(B)(vi) of the CPSA is captioned as "All Other Children's Product Safety Rules," but the body of the statutory requirement refers only to "other children's product safety rules." Nevertheless, section 14(a)(3)(B)(vi) of the CPSA could be construed as requiring a notice of requirements for "all" other children's product safety rules, rather than a notice of

requirements for "some" or "certain" children's product safety rules. However, whether a particular rule represents a "children's product safety rule" may be subject to interpretation, and the Commission staff is continuing to evaluate which rules, regulations, standards, or bans are "children's product safety rules." The CPSC intends to issue additional notices of requirements for other rules which the Commission determines to be "children's product safety rules."

This notice of requirements applies to all third party conformity assessment bodies as described in section 14(f)(2) of the CPSA. Generally speaking, such third party conformity assessment bodies are: (1) Third party conformity assessment bodies that are not owned, managed, or controlled by a manufacturer or private labeler of a children's product to be tested by the third party conformity assessment body for certification purposes; (2) "firewalled" conformity assessment bodies (those that are owned, managed, or controlled by a manufacturer or private labeler of a children's product to be tested by the third party conformity assessment body for certification purposes and that seek accreditation under the additional statutory criteria for "firewalled" conformity assessment bodies); and (3) third party conformity assessment bodies owned or controlled, in whole or in part, by a government.

The Commission requires baseline accreditation of each category of third party conformity assessment body to the International Organization for Standardization (ISO)/International Electrotechnical Commission (IEC) Standard 17025:2005, "General Requirements for the Competence of Testing and Calibration Laboratories." The accreditation must be by an accreditation body that is a signatory to the International Laboratory Accreditation Cooperation-Mutual Recognition Arrangement (ILAC–MRA), and the scope of the accreditation must include testing for any of the test methods identified earlier in part I of this document for which the third party conformity assessment body seeks to be accredited.

(A description of the history and content of the ILAC–MRA approach and of the requirements of the ISO/IEC 17025:2005 laboratory accreditation standard is provided in the CPSC staff briefing memorandum "Third Party Conformity Assessment Body Accreditation Requirements for Testing Compliance with 16 CFR Part 1501 (Small Parts Regulations)," dated November 2008 and available on the CPSC's Web site at *http://www.cpsc.gov/library/foia/foia09/brief/smallparts.pdf*.)

The Commission has established an electronic accreditation registration and listing system that can be accessed via its Web site at *http://www.cpsc.gov/ABOUT/Cpsia/labaccred.html*.

The Commission notes that in the **Federal Register** of February 9, 2009 (74 FR 6396), the Commission announced a stay of enforcement of certain provisions of section 14(a) of the CPSA; the stay applied to the testing that would result from this notice of requirements. On December 28, 2009, the Commission published a notice in the **Federal Register** (74 FR 68588) revising the terms of the stay. One section of the December 28, 2009 notice addressed "Consumer Products or Children's Products Where the Commission Is Continuing the Stay of Enforcement Until Further Notice," due to factors such as pending rulemaking proceedings affecting the product or the absence of a notice of requirements. The testing requirements contained in the regulations at 16 CFR Part 1505 and 16 CFR 1500.86(a)(5) were included in that section of the December 28, 2009 notice. As the factor preventing the stay from being lifted in the December 28, 2009 notice with regard to testing and certifications related to 16 CFR part 1505 and/or 16 CFR 1500.86(a)(5) was the absence of a notice of requirements, publication of this notice has the effect of lifting the stay with regard to these CPSC regulations.

This notice of requirements is effective on April 30, 2010. Further, as the publication of this notice of requirements effectively lifts the stay of enforcement with regard to testing and certifications related to 16 CFR part 1505 and/or 16 CFR 1500.86(a)(5), each manufacturer (including the importer) or private labeler of a product subject to 16 CFR part 1505 and/or 16 CFR 1500.86(a)(5), must have any such product manufactured after July 29, 2010 tested by a third party conformity assessment body accredited to do so and must issue a certificate of compliance with 16 CFR part 1505 and/or 16 CFR 1500.86(a)(5) based on that testing.

This notice of requirements is exempt from the notice and comment rulemaking requirements of the Administrative Procedure Act, 5 U.S.C. 553 (see section 14(a)(3)(G) of the CPSA, as added by section 102(a)(2) of the CPSIA (15 U.S.C. 2063(a)(3)(G))).

II. Accreditation Requirements

A. Baseline Third Party Conformity Assessment Body Accreditation Requirements

For a third party conformity assessment body to be accredited to test children's products for conformity with the test methods identified earlier in part I of this document, it must be accredited by an ILAC–MRA signatory accrediting body, and the accreditation must be registered with, and accepted by, the Commission. A listing of ILAC–MRA signatory accrediting bodies is available on the Internet at *http://ilac.org/membersbycategory.html.* The accreditation must be to ISO Standard ISO/IEC 17025:2005, "General Requirements for the Competence of Testing and Calibration Laboratories," and the scope of the accreditation must expressly include testing to the test method for clacker balls included in 16 CFR 1500.86(a)(5), *Exemptions from classification as a banned toy or other banned article for use by children,* and/or the test methods for electrically operated toys or other electrically operated articles intended for use by children described in 16 CFR part 1505, *Requirements for Electrically Operated Toys or Other Electrically Operated Articles Intended for Use By Children.* A true copy, in English, of the accreditation and scope documents demonstrating compliance with these requirements must be registered with the Commission electronically. The additional requirements for accreditation of firewalled and governmental conformity assessment bodies are described in parts II.B and II.C of this document below.

The Commission will maintain on its web site an up-to-date listing of third party conformity assessment bodies whose accreditations it has accepted and the scope of each accreditation. Subject to the limited provisions for acceptance of "retrospective" testing noted in part IV below, once the Commission adds a third party conformity assessment body to that list, the third party conformity assessment body may commence testing of children's products to support certification by the manufacturer or private labeler of compliance with the test methods identified earlier in part I of this document.

B. Additional Accreditation Requirements for Firewalled Conformity Assessment Bodies

In addition to the baseline accreditation requirements in part II.A of this document above, firewalled conformity assessment bodies seeking

accredited status must submit to the Commission copies, in English, of their training documents showing how employees are trained to notify the Commission immediately and confidentially of any attempt by the manufacturer, private labeler, or other interested party to hide or exert undue influence over the third party conformity assessment body's test results. This additional requirement applies to any third party conformity assessment body in which a manufacturer or private labeler of a children's product to be tested by the third party conformity assessment body owns an interest of ten percent or more. While the Commission is not addressing common parentage of a third party conformity assessment body and a children's product manufacturer at this time, it will be vigilant to see if this issue needs to be addressed in the future.

As required by section 14(f)(2)(D) of the CPSA, the Commission must formally accept, by order, the accreditation application of a third party conformity assessment body before the third party conformity assessment body can become an accredited firewalled conformity assessment body.

C. Additional Accreditation Requirements for Governmental Conformity Assessment Bodies

In addition to the baseline accreditation requirements of part II.A of this document above, the CPSIA permits accreditation of a third party conformity assessment body owned or controlled, in whole or in part, by a government if:

- To the extent practicable, manufacturers or private labelers located in any nation are permitted to choose conformity assessment bodies that are not owned or controlled by the government of that nation;
- The third party conformity assessment body's testing results are not subject to undue influence by any other person, including another governmental entity;
- The third party conformity assessment body is not accorded more favorable treatment than other third party conformity assessment bodies in the same nation who have been accredited;
- The third party conformity assessment body's testing results are accorded no greater weight by other governmental authorities than those of other accredited third party conformity assessment bodies; and
- The third party conformity assessment body does not exercise undue influence over other governmental authorities on matters affecting its operations or on decisions by other governmental authorities controlling distribution of products based on outcomes of the third party conformity assessment body's conformity assessments.

The Commission will accept the accreditation of a governmental third party conformity assessment body if it meets the baseline accreditation requirements of part II.A of this document above and meets the additional conditions stated here. To obtain this assurance, CPSC staff will engage the governmental entities relevant to the accreditation request.

III. How Does a Third Party Conformity Assessment Body Apply for Acceptance of Its Accreditation?

The Commission has established an electronic accreditation acceptance and registration system accessed via the Commission's Internet site at *http://www.cpsc.gov/about/cpsia/labaccred.html.* The applicant provides, in English, basic identifying information concerning its location, the type of accreditation it is seeking, and electronic copies of its ILAC–MRA accreditation certificate and scope statement, and firewalled third party conformity assessment body training document(s), if relevant.

Commission staff will review the submission for accuracy and completeness. In the case of baseline third party conformity assessment bodies and government-owned or government-operated conformity assessment bodies, when that review and any necessary discussions with the applicant are satisfactorily completed, the third party conformity assessment body in question is added to the CPSC's list of accredited third party conformity assessment bodies at *http://www.cpsc.gov/about/cpsia/labaccred.html.* In the case of a firewalled conformity assessment body seeking accredited status, when the staff's review is complete, the staff transmits its recommendation on accreditation to the Commission for consideration. (A third party conformity assessment body that may ultimately seek acceptance as a firewalled third party conformity assessment body also can initially request acceptance as a third party conformity assessment body accredited for testing of children's products other than those of its owners.) If the Commission accepts a staff recommendation to accredit a firewalled conformity assessment body, the firewalled conformity assessment body will then be added to the CPSC's list of accredited third party conformity assessment bodies. In each case, the Commission will notify the third party conformity assessment body electronically of acceptance of its accreditation. All information to support an accreditation acceptance request must be provided in the English language.

Subject to the limited provisions for acceptance of "retrospective" testing noted in part IV of this document below, once the Commission adds a third party conformity assessment body to the list, the third party conformity assessment body may then begin testing of children's products to support certification of compliance with the regulations identified earlier in part I of this document for which it has been accredited.

IV. Limited Acceptance of Children's Product Certifications Based on Third Party Conformity Assessment Body Testing Prior to the Commission's Acceptance of Accreditation

The Commission will accept a certificate of compliance with the standards for clacker balls included in 16 CFR 1500.86(a)(5), *Exemptions from classification as a banned toy or other banned article for use by children,* and/or the standards for electrically operated toys or other electrically operated articles intended for use by children described in 16 CFR part 1505, *Requirements for Electrically Operated Toys or Other Electrically Operated Articles Intended for Use By Children,* based on testing performed by an accredited third party conformity assessment body (including a government-owned or -controlled conformity assessment body, and a firewalled conformity assessment body) prior to the Commission's acceptance of its accreditation if:

- At the time of product testing, the product was tested by a third party conformity assessment body that was ISO/IEC 17025 accredited by an ILAC–MRA member at the time of the test. For firewalled conformity assessment bodies, the firewalled conformity assessment body must be one that the Commission accredited by order at or before the time the product was tested, even though the order will not have included the test methods specified in this notice. If the third party conformity assessment body has not been accredited by a Commission order as a firewalled conformity assessment body, the Commission will not accept a certificate of compliance based on testing performed by the third party conformity assessment body before it is accredited, by Commission order, as a firewalled conformity assessment body.

• The third party conformity assessment body's application for testing using the test methods identified in this notice is accepted by the CPSC on or before June 29, 2010;

• The product was tested on or after April 30, 2010 with respect to the regulations identified in this notice.

• The accreditation scope in effect for the third party conformity assessment body at the time of testing expressly included testing to the regulations identified earlier in part I of this document;

• The test results show compliance with the applicable current standards and regulations; and

• The third party conformity assessment body's accreditation, including inclusion in its scope the standards described in part I of this notice, remains in effect through the effective date for mandatory third party testing and manufacturer/private labeler certification for conformity with 16 CFR part 1505 and/or 16 CFR 1500.86(a)(5).

Dated: April 21, 2010.

Todd A. Stevenson,

Secretary, Consumer Product Safety Commission.

[FR Doc. 2010–9842 Filed 4–29–10; 8:45 am]

BILLING CODE 6355–01–P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Docket No. DOD–2009–OS–0165]

Submission for OMB Review; Comment Request

ACTION: Notice.

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 (44 U.S.C. Chapter 35).

DATES: Consideration will be given to all comments received by June 1, 2010.

Title and OMB Number: Police Record Check; DD Form 369, OMB Number 0704–0007.

Type of Request: Extension.

Number of Respondents: 175,000.

Responses per Respondent: 1.

Annual Responses: 175,000.

Average Burden per Response: 27 minutes.

Annual Burden Hours: 78,750 hours.

Needs and Uses: This information collection requirement is necessary to obtain information about arrests and criminal records on applicants to the Armed Forces of the United States. The DD Form 369, Police Records Check, is used to identify any disqualifying history regarding arrests or convictions.

Affected Public: State, local, or tribal government.

Frequency: On occasion.

Respondent's Obligation: Required to obtain or retain benefits.

OMB Desk Officer: Ms. Jasmeet Seehra.

Written comments and recommendations on the proposed information collection should be sent to Ms. Seehra at the Office of Management and Budget, Desk Officer for DoD, Room 10236, New Executive Office Building, Washington, DC 20503.

You may also submit comments, identified by docket 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 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: Ms. Patricia Toppings.

Written requests for copies of the information collection proposal should be sent to Ms. Toppings at WHS/ESD/Information Management Division, 1777 North Kent Street, RPN, Suite 11000, Arlington, VA 22209–2133.

Dated: April 27, 2010.

Mitchell S. Bryman,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2010–10133 Filed 4–29–10; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Docket No. DoD–2009–OS–0190]

Submission for OMB Review; Comment Request

ACTION: Notice.

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 (44 U.S.C. Chapter 35).

DATES: Consideration will be given to all comments received by June 1, 2010.

Title and OMB Number: Application for a Review by the Physical Disability Board of Review of the Rating for a Medical Separation from the Armed Forces of the United States; DD Form 294; OMB Number 0704–0453.

Type of Request: Extension.

Number of Respondents: 1,800.

Responses per Respondent: 1.

Annual Responses: 1,800.

Average Burden per Response: 45 minutes.

Annual Burden Hours: 1,350 hours.

Needs and Uses: The information collection requirement is necessary to have former members who were separated from the armed forces from between September 11, 2001 and December 31, 2009 due to unfitness for duty due to a medical condition with a disability rating of 20 percent disabled or less; and were found to be not eligible for retirement request a review of that determinations in accordance with the provisions of 10 United States Code Section 1554a.

Affected Public: Individuals or households.

Frequency: On occasion.

Respondent's Obligation: Required to obtain or retain benefits.

OMB Desk Officer: Ms. Jasmeet Seehra.

Written comments and recommendations on the proposed information collection should be sent to Ms. Seehra at the Office of Management and Budget, Desk Officer for DoD, Room 10236, New Executive Office Building, Washington, DC 20503.

You may also submit comments, identified by docket 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 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: Ms. Patricia Toppings.

Written requests for copies of the information collection proposal should be sent to Ms. Toppings at WHS/ESD/Information Management Division, 1777 North Kent Street, RPN, Suite 11000, Arlington, VA 22209–2133.

Dated: April 27, 2010.

Mitchell S. Bryman,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2010–10132 Filed 4–29–10; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Docket No. DOD–2009–OS–0171]

Submission for OMB Review; Comment Request

ACTION: Notice.

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 (44 U.S.C. Chapter 35).

DATES: Consideration will be given to all comments received by June 1, 2010.

Title and OMB Number: Report of Medical History; DD Form 2807–1, Medical Prescreen of Medical History Report; DD Form 2807–2, OMB Number 0704–0413.

Type of Request: Extension.

Number of Respondents: 850,000.

Responses per Respondent: 1.

Annual Responses: 850,000.

Average Burden per Response: 9.5882 minutes (average).

Annual Burden Hours: 135,833 hours.

Needs and Uses: Title 10, U.S.C. chapter 31: Sections 504 and 505, and chapter 33, section 532, require applicants to meet accession medical standards prior to enlistment into the Armed Forces (including the Coast Guard). If applicants' medical history reveals a medical condition that does not meet the accession medical standards, they are medically disqualified for military entrance. These forms also will be used by all Service members not only in their initial medical examination but also for periodic medical examinations.

Affected Public: Individuals or households, not-for profit institutions.

Frequency: On occasion.

Respondent's Obligation: Required to obtain or retain benefits.

OMB Desk Officer: Ms. Jasmeet Seehra.

Written comments and recommendations on the proposed information collection should be sent to Ms. Seehra at the Office of Management and Budget, Desk Officer for DoD, Room 10236, New Executive Office Building, Washington, DC 20503.

You may also submit comments, identified by docket 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 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: Ms. Patricia Toppings.

Written requests for copies of the information collection proposal should be sent to Ms. Toppings at WHS/ESD/Information Management Division, 1777 North Kent Street, RPN, Suite 11000, Arlington, VA 22209–2133.

Dated: April 27, 2010.

Mitchell S. Bryman,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2010–10131 Filed 4–29–10; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Docket No. DOD–2009–OS–0164]

Submission for OMB Review; Comment Request

ACTION: Notice.

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 (44 U.S.C. Chapter 35).

DATES: Consideration will be given to all comments received by June 1, 2010.

Title and OMB Number: Record of Military Processing, Armed Forces of the United States; DD Form 1966, OMB Number 0704–0173.

Type of Request: Extension.

Number of Respondents: 510,000.

Responses per Respondent: 1.

Annual Responses: 510,000.

Average Burden per Response: 20 minutes.

Annual Burden Hours: 170,000 hours.

Needs and Uses: This information collection requirement is necessary to obtain data on individuals applying for enlistment in the Armed Forces of the United States to determine eligibility for enlistment. The information collected accompanies the applicant throughout the enlistment process. It also is used for establishing personal records on those who enlist.

Affected Public: Individuals or households.

Frequency: On occasion.

Respondent's Obligation: Required to obtain or retain benefits.

OMB Desk Officer: Ms. Jasmeet Seehra.

Written comments and recommendations on the proposed information collection should be sent to Ms. Seehra at the Office of Management and Budget, Desk Officer for DoD, Room 10236, New Executive Office Building, Washington, DC 20503.

You may also submit comments, identified by docket 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 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: Ms. Patricia Toppings.

Written requests for copies of the information collection proposal should be sent to Ms. Toppings at WHS/ESD/Information Management Division, 1777 North Kent Street, RPN, Suite 11000, Arlington, VA 22209–2133.

Dated: April 27, 2010.

Mitchell S. Bryman,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2010–10130 Filed 4–29–10; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Docket No. DoD–2009–OS–0102]

Submission for OMB Review; Comment Request

ACTION: Notice.

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 (44 U.S.C. Chapter 35).

DATES: Consideration will be given to all comments received by June 1, 2010.

Title and OMB Number: Application for Correction of Military Record Under the Provisions of Title 10, U.S. Code, Section 1552, DD Form 149, OMB Control Number 0704–0003.

Type of Request: Extension.

Number of Respondents: 33,000.

Responses per Respondent: 1.

Annual Responses: 33,000.

Average Burden per Response: 30 minutes.

Annual Burden Hours: 16,500 hours.

Needs and Uses: This information collection requirement is necessary for all Service personnel (current and former Service members) to apply to their respective Boards for Correction of Military Records (BCMR) for a correction of their military records under Title 10, United States Code 1552. The BCMRs of the Services are the highest administrative boards and appellate review authorities in the Services for the resolution of military personnel disputes. The Service Secretaries, acting through the BCMRs, have broad powers and are duty bound to correct records if an error or injustice exists. The range of issues includes, but is not limited to, awards, clemency petitions (of courts-martial sentences), disabilities, evaluation reports, home of record, memoranda of reprimands, promotions, retirements, separations, survivor benefit plans, and titling decisions by law enforcement authorities.

Information collection is needed to provide current and former Service members with a method through which to request correction of a military record and to provide the Services with the basic data needed to process the request.

Affected Public: Individuals or households.

Frequency: On occasion.

Respondent's Obligation: Required to obtain or retain benefits.

OMB Desk Officer: Ms. Jasmeet Seehra.

Written comments and recommendations on the proposed information collection should be sent to Ms. Seehra at the Office of Management and Budget, Desk Officer for DoD, Room 10236, New Executive Office Building, Washington, DC 20503.

You may also submit comments, identified by docket 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 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: Ms. Patricia Toppings.

Written requests for copies of the information collection proposal should be sent to Ms. Toppings at WHS/ESD/Information Management Division, 1777 North Kent Street, RPN, Suite 11000, Arlington, VA 22209–2133.

Dated: April 27, 2010.

Mitchell S. Bryman,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2010–10128 Filed 4–29–10; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of the Secretary

Federal Advisory Committee; Defense Advisory Committee on Military Personnel Testing; Charter Renewal

AGENCY: Department of Defense (DoD).

ACTION: Renewal of Federal advisory committee.

SUMMARY: Under the provisions of the Federal Advisory Committee Act of 1972, (5 U.S.C. Appendix), the Government in the Sunshine Act of 1976 (5 U.S.C. 552b), and 41 CFR 102–3.50, the Department of Defense gives notice that it is renewing the charter for the Defense Advisory Committee on Military Personnel Testing (hereafter referred to as the Committee).

FOR FURTHER INFORMATION CONTACT: Jim Freeman, Deputy Advisory Committee Management Officer for the Department of Defense, 703–601–6128.

SUPPLEMENTARY INFORMATION: The Committee is a discretionary Federal advisory committee that shall provide independent advice and recommendations to the Secretary of Defense, through the Under Secretary of Defense for Personnel and Readiness on matters pertaining to military personnel testing. The Committee shall review the calibration of personnel selection and classification tests to ensure the accuracy of resulting scores, review relevant validation studies to ensure that the tests have utility in predicting success in technical training and on the job, review ongoing testing research and development in support of the enlistment program, and make recommendations for improvements to make the testing process more responsible to the needs of the Department of Defense and the Military Services.

The Under Secretary of Defense for Personnel and Readiness may act upon the Committee's advice and recommendations.

The Committee shall be comprised of not more than seven members, who are eminent authorities in the fields of educational and psychological testing. Committee members shall be appointed by the Secretary of Defense, Committee members shall serve terms of three years on the Committee, with annual appointment renewals by the Secretary of Defense.

Committee members appointed by the Secretary of Defense, who are not full-time or permanent part-time Federal officers or employees, shall be appointed under the authority of 5 U.S.C. 3109, and serve as special government employees. In addition, all Committee members, with the exception of travel and per diem for official travel, shall serve without compensation.

The Under Secretary of Defense for Personnel and Readiness shall select the Committee's chairperson from the total membership.

With DoD approval, the Committee is authorized to establish subcommittees, as necessary and consistent with its mission. These subcommittees or working groups shall operate under the provisions of the Federal Advisory Committee Act of 1972, the Government in the Sunshine Act of 1976 (5 U.S.C. 552b), and other appropriate Federal statutes and regulations.

Such subcommittees or working groups shall not work independently of the chartered Committee, and shall report all their recommendations and advice to the Committee for full deliberation and discussion. Subcommittees or working groups have no authority to make decisions on behalf of the chartered Committee; nor can they report directly to the Department of Defense or any Federal officers or employees who are not Committee members.

Subcommittee members, who are not Committee members, shall be appointed in the same manner as the Committee members.

The Committee shall meet at the call of the Committee's Designated Federal Officer, in consultation with the Under Secretary of Defense for Personnel and Readiness and the Chairperson. The estimated number of Committee meetings is two per year.

The Designated Federal Officer, pursuant to DoD policy, shall be a full-time or permanent part-time DoD employee, and shall be appointed in accordance with established DoD

policies and procedures. In addition, the Designated Federal Officer is required to be in attendance at all meetings; however, in the absence of the Designated Federal Officer, the Alternate Designated Federal Officer shall attend the meeting.

Pursuant to 41 CFR 102–3.105(j) and 102–3.140, the public or interested organizations may submit written statements to the Advisory Committee on Military Personnel Testing's membership about the Committee's mission and functions. Written statements may be submitted at any time or in response to the stated agenda of planned meeting of Advisory Committee on Military Personnel Testing.

All written statements shall be submitted to the Designated Federal Officer for the Advisory Committee on Military Personnel Testing, and this individual will ensure that the written statements are provided to the membership for their consideration. Contact information for the Advisory Committee on Military Personnel Testing Designated Federal Officer can be obtained from the GSA's FACA Database—*https://www.fido.gov/facadatabase/public.asp*.

The Designated Federal Officer, pursuant to 41 CFR 102–3.150, will announce planned meetings of the Advisory Committee on Military Personnel Testing. The Designated Federal Officer, at that time, may provide additional guidance on the submission of written statements that are in response to the stated agenda for the planned meeting in question.

Dated: April 27, 2010.

Mitchell S. Bryman,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2010–10121 Filed 4–29–10; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of the Secretary

Federal Advisory Committee; Department of Defense Wage Committee; Charter Renewal

AGENCY: Department of Defense (DoD).

ACTION: Renewal of Federal advisory committee.

SUMMARY: Under the provisions of 5 CFR part 532, Public Law 92–392, the Federal Advisory Committee Act of 1972, (5 U.S.C. Appendix), the Government in the Sunshine Act of 1976 (5 U.S.C. 552b, as amended), and 41 CFR 102–3.50, the Department of Defense gives notice that it is renewing the charter for the Department of Defense Wage Committee (hereafter referred to as the Committee).

FOR FURTHER INFORMATION CONTACT: Jim Freeman, Deputy Advisory Committee Management Officer for the Department of Defense, 703–601–6128.

SUPPLEMENTARY INFORMATION: The Committee is a non-discretionary Federal advisory committee that shall provide independent advice and recommendations on matters relating to the conduct of wage surveys and the establishment of wage schedules for all appropriated fund and non-appropriated fund wage areas.

The Committee, under the provisions of 5 CFR 532.243, 532.209, 532.227 and Appendix A; the Federal Advisory Committee Act of 1972, Public Law 92–292; and the Office of Personnel Management Operating Manual, Federal Wage System, Appropriated and Non-Appropriated Fund, shall provide the Secretary of Defense through the Under Secretary of Defense for Personnel and Readiness, independent advice and recommendations on matters relating to the conduct of wage surveys and the establishment of wage schedules for all appropriated fund and non-appropriated fund wage areas of blue-collar employees within the Department of Defense.

The Under Secretary of Defense for Personnel and Readiness may act upon the Committee's advice and recommendations.

The Committee, consistent with 5 CFR 532.227, shall be composed of seven members appointed by the Secretary of Defense. All Committee member appointments shall be renewed on an annual basis by the Secretary of Defense.

Committee members, who are not full-time or permanent part-time federal officers or employees, shall be appointed as experts and consultants under the authority of 5 U.S.C. 3109, and serve as special government employees. With the exception of travel and per diem for official travel, Committee Members shall serve without compensation.

With DoD approval, the Committee is authorized to establish subcommittees, as necessary and consistent with its mission. These subcommittees or working groups shall operate under the provisions of the Federal Advisory Committee Act of 1972, the Government in the Sunshine Act of 1976 (5 U.S.C. 552b), and other appropriate Federal statutes and regulations.

Such subcommittees or workgroups shall not work independently of the chartered Committee, and shall report all their recommendations and advice to the Committee for full deliberation and discussion. Subcommittees or workgroups have no authority to make decisions on behalf of the chartered Committee; nor can they report directly to the Department of Defense or any Federal officers or employees who are not Committee members.

Subcommittee members, who are not Committee members, shall be appointed in the same manner as the Committee members.

The Committee shall meet at the call of the Committee's Designated Federal Officer, in consultation with the Chairperson. The estimated number of Committee meetings is fifty-two per year.

The Designated Federal Officer, pursuant to DoD policy, shall be a full-time or permanent part-time DoD employee, and shall be appointed in accordance with established DoD policies and procedures. In addition, the Designated Federal Officer is required to be in attendance at all meetings; however, in the absence of the Designated Federal Officer, the Alternate Designated Federal Officer shall attend the meeting.

Pursuant to 41 CFR 102–3.105(j) and 102–3.140, the public or interested organizations may submit written statements to the Department of Defense Wage Committee's membership about the Committee's mission and functions. Written statements may be submitted at any time or in response to the stated agenda of planned meeting of Department of Defense Wage Committee.

All written statements shall be submitted to the Designated Federal Officer for the Department of Defense Wage Committee, and this individual will ensure that the written statements are provided to the membership for their consideration. Contact information for the Department of Defense Wage Committee Designated Federal Officer can be obtained from the GSA's FACA Database—*https://www.fido.gov/facadatabase/public.asp.*

The Designated Federal Officer, pursuant to 41 CFR 102–3.150, will announce planned meetings of the Department of Defense Wage Committee. The Designated Federal Officer, at that time, may provide additional guidance on the submission of written statements that are in response to the stated agenda for the planned meeting in question.

Dated: April 27, 2010.

Mitchell S. Bryman,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2010–10127 Filed 4–29–10; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of the Secretary

Federal Advisory Committee; Defense Science Board; Charter Renewal

AGENCY: Department of Defense (DoD).

ACTION: Renewal of Federal advisory committee.

SUMMARY: Under the provisions of the Federal Advisory Committee Act of 1972, (5 U.S.C. Appendix), the Government in the Sunshine Act of 1976 (5 U.S.C. 552b), and 41 CFR 102–3.50, the Department of Defense gives notice that it is renewing the charter for the Defense Science Board (hereafter referred to as the Board).

FOR FURTHER INFORMATION CONTACT: Jim Freeman, Deputy Advisory Committee Management Officer for the Department of Defense, 703–601–6128.

SUPPLEMENTARY INFORMATION: The Board is a discretionary Federal advisory committee that shall provide independent advice and recommendations on matters relating to the Department of Defense's scientific and technical enterprise.

The Board shall provide the Secretary of Defense; the Deputy Secretary of Defense; the Under Secretary of Defense for Acquisition, Technology and Logistics; the Chairman of the Joint Chiefs of Staff and; as requested, other Office of the Secretary of Defense (OSD) Principal Staff Assistants, the Secretaries of the Military Departments, and the Commanders of the Combatant Commands, independent advice and recommendations on scientific, technical, manufacturing, acquisition process, and other matters of special interest to the Department of Defense.

The Board is not established to advise on individual DoD procurements, but instead shall be concerned with the pressing and complex technology problems facing the Department of Defense in such areas as research, engineering, and manufacturing, and will ensure the identification of new technologies and new applications of technology in those areas to strengthen national security.

No matter shall be assigned to the Board for its consideration that would require any Board Member to participate personally and substantially in the conduct of any specific procurement or place him or her in the position of acting as a contracting or procurement official.

The Under Secretary of Defense for Acquisition, Technology and Logistics shall be authorized to act upon the advice and recommendations of the Board.

The Board shall be composed of not more than 45 members and not more than 12 Senior Fellow members, who are eminent authorities in the fields of scientific, technical, manufacturing, acquisition process, and other matters of special interest to the Department of Defense.

The Board members shall be appointed by the Secretary of Defense, and their appointments will be renewed on an annual basis. Those members, who are not full-time or permanent part-time Federal officers or employees, shall be appointed as experts and consultants under the authority of 5 U.S.C. 3109, and serve as special government employees.

Members may be appointed for terms ranging from one to four years. Such appointments will normally be staggered among the Board membership to ensure an orderly turnover in the Board's overall composition on a periodic basis. With the exception of travel and per diem for official travel, they shall normally serve without compensation, unless the Secretary of Defense authorizes compensation for a particular member(s).

The Secretary of Defense, based upon the recommendation of the Under Secretary of Defense for Acquisition, Technology and Logistics, shall appoint the Board's Chairperson. The Under Secretary of Defense for Acquisition, Technology and Logistics shall appoint the Vice Chairperson. The Board Chairman and Vice Chairman shall serve two-year terms and, with the Secretary of Defense's approval, may serve additional terms.

The Secretary of Defense may invite other distinguished U.S. Government officers to serve as non-voting observers, and the Under Secretary of Defense for Acquisition, Technology and Logistics may invite chairpersons from other DoD-supported federal advisory committees to serve as non-voting observers.

The Under Secretary of Defense for Acquisition, Technology, and Logistics may appoint experts and consultants, with special expertise, to assist the Board on an ad hoc basis. These experts and consultants, if not full-time or part time government employees, shall be appointed under the authority of 5 U.S.C. 3109, shall serve as special government employees, shall be appointed on an intermittent basis to work specific Board-related efforts, and shall have no voting rights.

Non-voting observers and those non-voting experts and consultants appointed by the Under Secretary of Defense for Acquisition, Technology, and Logistics shall not count toward the Board's total membership.

With DoD approval, the Board is authorized to establish subcommittees, as necessary and consistent with its mission. These subcommittees or working groups shall operate under the provisions of the Federal Advisory Committee Act of 1972, the Government in the Sunshine Act of 1976 (5 U.S.C. 552b), and other appropriate Federal statutes and regulations.

Such subcommittees or workgroups shall not work independently of the chartered Board, and shall report all their recommendations and advice to the Board for full deliberation and discussion. Subcommittees or workgroups have no authority to make decisions on behalf of the chartered Board; nor can they report directly to the Department of Defense or any Federal officers or employees who are not Board members.

Subcommittee members, who are not Board members, shall be appointed in the same manner as the Board members.

The Board shall meet at the call of the Board's Designated Federal Officer, in consultation with the Chairperson. The estimated number of Board meetings is four per year.

The Designated Federal Officer, pursuant to DoD policy, shall be a full-time or permanent part-time DoD employee, and shall be appointed in accordance with established DoD policies and procedures. In addition, the Designated Federal Officer is required to be in attendance at all meetings; however, in the absence of the Designated Federal Officer, the Alternate Designated Federal Officer shall attend the meeting.

Pursuant to 41 CFR 102–3.105(j) and 102–3.140, the public or interested organizations may submit written statements to the Defense Science Board's 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 Defense Science Board.

All written statements shall be submitted to the Designated Federal Officer for the Defense Science Board, and this individual will ensure that the written statements are provided to the membership for their consideration. Contact information for the Defense

Science Board Designated Federal Officer can be obtained from the GSA's FACA Database—*https://www.fido.gov/facadatabase/public.asp.*

The Designated Federal Officer, pursuant to 41 CFR 102–3.150, will announce planned meetings of the Defense Science Board. The Designated Federal Officer, at that time, may provide additional guidance on the submission of written statements that are in response to the stated agenda for the planned meeting in question.

Dated: April 27, 2010.

Mitchell S. Bryman,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2010–10126 Filed 4–29–10; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of the Secretary

Federal Advisory Committee; Chief of Engineers Environmental Advisory Board; Charter Renewal

AGENCY: Department of Defense (DoD).

ACTION: Renewal of Federal advisory committee.

SUMMARY: Under the provisions of the Federal Advisory Committee Act of 1972, (5 U.S.C. Appendix), the Government in the Sunshine Act of 1976 (5 U.S.C. 552b), and 41 CFR 102–3.50, the Department of Defense gives notice that it is renewing the charter for the Chief of Engineers Environmental Advisory Board (hereafter referred to as the Board).

FOR FURTHER INFORMATION CONTACT: Jim Freeman, Deputy Advisory Committee Management Officer for the Department of Defense, 703–601–6128.

SUPPLEMENTARY INFORMATION: The Board is a discretionary Federal advisory committee that shall provide independent advice and recommendations to the Secretary of Defense, through the Secretary of the Army, Assistant Secretary of the Army (Civil Works), and the Chief of Engineers (U.S. Army Corps of Engineers) on matters relating to environmental issues facing the U.S. Army Corps of Engineers.

The Secretary of the Army may act upon the Board's advice and recommendations.

The Board shall be comprised of not more than ten members, who are eminent authorities in the fields of natural (*e.g.* biological, ecological), social (*e.g.* anthropologist, community planner) and related sciences.

Board Members appointed by the Secretary of Defense, who are not full-time Federal officers or employees, shall be appointed under the authority of 5 U.S.C. 3109, and serve as special government employees.

Board members shall be appointed for two-year terms by the Secretary of Defense, with annual reappointments, and shall serve no more than four consecutive years on the Board.

The Board membership shall elect the Board's Chairperson from the total membership.

Board members shall, with the exception of travel and per diem for official travel, serve without compensation.

With DoD approval, the Board is authorized to establish subcommittees, as necessary and consistent with its mission. These subcommittees or working groups shall operate under the provisions of the Federal Advisory Committee Act of 1972, the Government in the Sunshine Act of 1976 (5 U.S.C. 552b), and other appropriate Federal statutes and regulations.

Such subcommittees or workgroups shall not work independently of the chartered Board, and shall report all their recommendations and advice to the Board for full deliberation and discussion. Subcommittees or workgroups have no authority to make decisions on behalf of the chartered Board; nor can they report directly to the Department of Defense or any Federal officers or employees who are not Board members.

Subcommittee members, who are not Board members, shall be appointed in the same manner as the Board members.

The Board shall meet at the call of the Board's Designated Federal Officer, in consultation with the Chairperson. The estimated number of Board meetings is two per year.

The Designated Federal Officer, pursuant to DoD policy, shall be a full-time or permanent part-time DoD employee, and shall be appointed in accordance with established DoD policies and procedures. In addition, the Designated Federal Officer is required to be in attendance at all meetings; however, in the absence of the Designated Federal Officer, the Alternate Designated Federal Officer shall attend the meeting.

Pursuant to 41 CFR 102–3.105(j) and 102–3.140, the public or interested organizations may submit written statements to the Chief of Engineers Environmental Advisory Board's 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 Chief of Engineers Environmental Advisory Board.

All written statements shall be submitted to the Designated Federal Officer for the Chief of Engineers Environmental Advisory Board, and this individual will ensure that the written statements are provided to the membership for their consideration. Contact information for the Chief of Engineers Environmental Advisory Board Designated Federal Officer can be obtained from the GSA's FACA Database—*https://www.fido.gov/facadatabase/public.asp.*

The Designated Federal Officer, pursuant to 41 CFR 102–3.150, will announce planned meetings of the Chief of Engineers Environmental Advisory Board. The Designated Federal Officer, at that time, may provide additional guidance on the submission of written statements that are in response to the stated agenda for the planned meeting in question.

Dated: April 27, 2010.

Mitchell S. Bryman,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2010–10125 Filed 4–29–10; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of the Secretary

Federal Advisory Committee; Department of Defense Board of Actuaries; Charter Renewal

AGENCY: Department of Defense (DoD).

ACTION: Renewal of Federal advisory committee.

SUMMARY: Under the provisions of 10 U.S.C. 183, the Federal Advisory Committee Act of 1972, (5 U.S.C. Appendix), the Government in the Sunshine Act of 1976 (5 U.S.C. 552b, as amended), and 41 CFR 102–3.50, the Department of Defense gives notice that it is renewing the charter for the Department of Defense Board of Actuaries (hereafter referred to as the Board).

FOR FURTHER INFORMATION CONTACT: Jim Freeman, Deputy Advisory Committee Management Officer for the Department of Defense, 703–601–6128.

SUPPLEMENTARY INFORMATION: The Board is a non-discretionary Federal advisory committee that shall provide independent advice and recommendations on matters relating to the Department of Defense Military Retirement Fund, the Department of Defense Education Benefits Fund and

other funds as the Secretary of Defense shall specify. The Board shall:

a. Review valuations of the Department of Defense Military Retirement Fund in accordance with 10 U.S.C. 1465(c) and submit to the President and Congress, not less than once every four years, a report on the status of the Fund including such recommendations for modifications to the funding or amortization of that Fund as the Board considers appropriate and necessary to maintain that Fund on a sound actuarial basis;

b. Review valuations of the Department of Defense Education Benefits Fund in accordance with 10 U.S.C. 2006(e) and make recommendations to the President and Congress on such modifications to the funding or amortization of that Fund as the Board considers appropriate to maintain that Fund on a sound actuarial basis;

c. Review valuations of such other funds as the Secretary of Defense shall specify for purposes of 10 U.S.C. 183 and make recommendations to the President and Congress on such modifications to the funding or amortization of such funds as the Board considers appropriate to maintain such funds on a sound actuarial basis; and

d. Furnish advice and opinions on matters referred to the Board by the Secretary of Defense.

The Secretary of Defense shall ensure that the Board has access to such records regarding the Department of Defense Military Retirement Fund, the Department of Defense Education Benefits Fund, and other funds specified by the Secretary of Defense for purposes of 10 U.S.C. 183 as the Board shall require to determine the actuarial status of such funds.

The Under Secretary of Defense for Personnel and Readiness may act upon the Board's advice and recommendations.

The Board shall be comprised of not more than three members appointed by the Secretary of Defense from among qualified professional actuaries who are members of the Society of Actuaries. Board members shall be appointed by the Secretary of Defense, and their membership shall be renewed by the Secretary of Defense on an annual basis.

Each member of the Department of Defense Retirement Board of Actuaries or the Department of Defense Education Benefits Board of Actuaries, as of the date of enactment of section 906 of Public Law 110–181, shall serve as an initial member of the Department of Defense Board of Actuaries from that date until the date otherwise provided for the completion of such individual's term as a member of the Department of Defense Retirement Board of Actuaries or the Department of Defense Education Benefits Board of Actuaries, as the case may be, unless earlier removed by the Secretary of Defense.

Board members shall serve for a term of 15 years, except that a member of the Board appointed to fill a vacancy occurring before the end of the term for which the predecessor was appointed shall serve only until the end of such term. A member may serve after the end of the term until a successor has taken office. A member of the Board may be removed by the Secretary of Defense for misconduct or failure to perform functions vested in the Board, and for no other reason.

Board members shall not be re-appointed for successive terms. The Chairperson of the Board shall be designated by the Under Secretary of Defense for Personnel and Readiness, on behalf of the Secretary of Defense, for a five-year term.

Board members appointed by the Secretary of Defense, who are not full-time or permanent part-time Federal officers or employees, shall serve as Special Government Employees under the authority of 5 U.S.C. 3109 and shall, under the authority of 10 U.S.C. 2006, serve with compensation, to include travel and per diem for official travel. Specifically, a member of the Board who is not an employee of the United States is entitled to receive pay at the daily equivalent of the annual rate of basic pay of the highest rate of basic pay then currently being paid under the General Schedule of subchapter III of chapter 53 of title 5, United States Code, for each day the member is engaged in the performance of the duties of the Board. In addition, each member shall receive compensation for per diem and travel for official Board travel.

The Department of Defense shall provide non-voting technical advisors to assist the Board in execution of its duties. The following individuals shall designate one DoD employee from each fund under the Board's purview (the Department of Defense Military Retirement Fund, the Department of Defense Education Benefits Fund, and other funds specified by the Secretary of Defense for purposes of 10 U.S.C. 183) to serve as a non-voting advisor to assist the Board:

a. The Under Secretary of Defense (Comptroller)/Chief Financial Officer;

b. The Deputy Under Secretary of Defense for Military Personnel Policy;

c. The Assistant Secretary of Defense for Reserve Affairs; and

d. The Department of Defense General Counsel.

In addition, the Department of Defense Chief Actuary will serve as a non-voting advisor and the Executive Secretary for the Board.

With DoD approval, the Board is authorized to establish subcommittees, as necessary and consistent with its mission. These subcommittees or working groups shall operate under the provisions of the Federal Advisory Committee Act of 1972, the Government in the Sunshine Act of 1976 (5 U.S.C. 552b), and other appropriate Federal statutes and regulations.

Such subcommittees or workgroups shall not work independently of the chartered Board, and shall report all their recommendations and advice to the Board for full deliberation and discussion. Subcommittees or workgroups have no authority to make decisions on behalf of the chartered Committee; nor can they report directly to the Department of Defense or any Federal officers or employees who are not Board members.

Subcommittee members, who are not Board members, shall be appointed in the same manner as the Board members.

The Board shall meet at the call of the Board's Designated Federal Officer, in consultation with the Chairperson, and either the Secretary of Defense or the Under Secretary of Defense for Personnel and Readiness. The estimated number of Committee meetings is one per year.

The Designated Federal Officer, pursuant to DoD policy, shall be a full-time or permanent part-time DoD employee, and shall be appointed in accordance with established DoD policies and procedures. In addition, the Designated Federal Officer is required to be in attendance at all meetings; however, in the absence of the Designated Federal Officer, the Alternate Designated Federal Officer shall attend the meeting.

Pursuant to 41 CFR 102–3.105(j) and 102–3.140, the public or interested organizations may submit written statements to the Department of Defense Board of Actuaries' 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 Department of Defense Board of Actuaries.

All written statements shall be submitted to the Designated Federal Officer for the Department of Defense Board of Actuaries, and this individual will ensure that the written statements are provided to the membership for their consideration. Contact information for the Department of Defense Board of Actuaries Designated Federal Officer

can be obtained from the GSA's FACA Database—*https://www.fido.gov/facadatabase/public.asp.*

The Designated Federal Officer, pursuant to 41 CFR 102–3.150, will announce planned meetings of the Department of Defense Board of Actuaries. The Designated Federal Officer, at that time, may provide additional guidance on the submission of written statements that are in response to the stated agenda for the planned meeting in question.

Dated: April 27, 2010.

Mitchell S. Bryman,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2010–10124 Filed 4–29–10; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of the Secretary

Federal Advisory Committee; United States Army Science Board; Charter Renewal

AGENCY: Department of Defense (DoD).

ACTION: Renewal of Federal advisory committee.

SUMMARY: Under the provisions of the Federal Advisory Committee Act of 1972, (5 U.S.C. Appendix), the Government in the Sunshine Act of 1976 (5 U.S.C. 552b), and 41 CFR 102–3.50, the Department of Defense gives notice that it is renewing the charter for the United States Army Science Board (hereafter referred to as the Board).

FOR FURTHER INFORMATION CONTACT: Jim Freeman, Deputy Advisory Committee Management Officer for the Department of Defense, 703–601–6128.

SUPPLEMENTARY INFORMATION: The Board is a discretionary Federal advisory committee that shall provide independent advice and recommendations on matters relating to the Army's scientific, technical, manufacturing, acquisition, logistics, and business management functions, and other Department of the Army related matters as determined by the Secretary of the Army.

The Board shall provide independent advice and recommendations to the Secretary of Defense; the Secretary of the Army; the Under Secretary of the Army and Department of the Army Chief Management Officer; the Assistant Secretary of the Army for Acquisition, Logistics and Technology; and as requested, other Army organizations as determined by the Office of the Secretary of the Army.

The Board is not established to advice on individual DoD or Department of the Army procurements, but instead shall be concerned with the pressing and complex technology and business management issues facing the Department of the Army in the areas referenced above.

No matter shall be assigned to the Board for its consideration that would require any Board member to participate personally and substantially in the conduct of any specific procurement or place him or her in the position of acting as a contraction or procurement official.

The Board shall be composed of not more than 80 members who are eminent authorities in one or more of the following disciplines: Science, technology, manufacturing, acquisition, logistics, business management functions, and other matters of special interest to the Department of the Army.

Board members shall be appointed by the Secretary of Defense, and their appointments will be renewed on an annual basis. Those members, who are not full-time or permanent part-time federal officers or employees, shall be appointed as experts and consultants under the authority of 5 U.S.C. 3109, and shall serve as special government employees.

Generally, Board members will be approved by the appointing authority to serve on the Board for a term of three years with annual reappointments. Board members may be approved by the appointing authority to serve on the Board for an additional term with annual reappointments. Appointments normally, will be staggered among the Board membership to ensure balance and an orderly turnover of the Board's overall composition on a periodic basis.

The Secretary of the Army shall designate the Board's Chairperson and Vice Chairperson from the total Board membership. Unless otherwise extended by the Secretary of Defense, in consultation with the Secretary of the Army, the Board's Chairperson and Vice Chairperson shall serve two-year term limits.

With the exception of travel and per diem for official travel, Board members shall serve without compensation. The Secretary of the Army may authorize compensation for Board members when the circumstances warrant.

The Secretary of the Army, pursuant to DoD policies and procedures, may appoint, as deemed necessary, non-voting consultants to provide special expertise to the Board. However, no more than 41 experts and consultants may be appointed to advise the Board. These experts and consultants, if not full-time or part time government employees, shall be appointed under the authority of 5 U.S.C. 3109, shall serve as special government employees, shall be appointed on an intermittent basis to work specific Board-related efforts, shall have no voting rights whatsoever on the Board or any of its subcommittees, and shall not count toward the Board's total membership. Six of the 41 experts and consultants shall be designated "Senior Army Science Board Fellows", and shall be former Board members. All 41 experts and consultants shall serve terms of appointments as determined by the Secretary of the Army, and those appointments shall be renewed as appropriate.

With DoD approval, the Board is authorized to establish subcommittees, as necessary and consistent with its mission. These subcommittees or working groups shall operate under the provisions of the Federal Advisory Committee Act of 1972, the Government in the Sunshine Act of 1976 (5 U.S.C. 552b), and other appropriate Federal statutes and regulations.

Such subcommittees or workgroups shall not work independently of the chartered Board, and shall report all their recommendations and advice to the Board for full deliberation and discussion. Subcommittees or workgroups have no authority to make decisions on behalf of the chartered Board; nor can they report directly to the Department of Defense or any Federal officers or employees who are not Board members.

Subcommittee members, who are not Board members, shall be appointed in the same manner as the Board members.

The Board shall meet at the call of the Board's Designated Federal Officer, in consultation with the Chairperson. The estimated number of Board meetings is four per year.

The Designated Federal Officer and Alternate Designated Federal Officer, pursuant to DoD policy, shall be a full-time or permanent part-time DoD employee, and shall be appointed in accordance with established DoD policies and procedures. In addition, the Designated Federal Officer is required to be in attendance at all Committee and subcommittee meetings; however, in the absence of the Designated Federal Officer, the Alternate Designated Federal Officer shall attend the meeting.

Pursuant to 41 CFR 102–3.105(j) and 102–3.140, the public or interested organizations may submit written statements to the United States Army Science Board's 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 United States Army Science Board.

All written statements shall be submitted to the Designated Federal Officer for the United States Army Science Board, and this individual will ensure that the written statements are provided to the membership for their consideration. Contact information for the United States Army Science Board Designated Federal Officer can be obtained from the GSA's FACA Database—*https://www.fido.gov/facadatabase/public.asp.*

The Designated Federal Officer, pursuant to 41 CFR 102–3.150, will announce planned meetings of the United States Army Science Board. The Designated Federal Officer, at that time, may provide additional guidance on the submission of written statements that are in response to the stated agenda for the planned meeting in question.

Dated: April 27, 2010.

Mitchell S. Bryman,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2010–10122 Filed 4–29–10; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of the Secretary

Federal Advisory Committee; Army Education Advisory Committee; Charter Renewal

AGENCY: Department of Defense (DoD).

ACTION: Renewal of Federal advisory committee.

SUMMARY: Under the provisions of the Federal Advisory Committee Act of 1972, (5 U.S.C. Appendix), the Government in the Sunshine Act of 1976 (5 U.S.C. 552b), and 41 CFR 102–3.50, the Department of Defense gives notice that it is renewing the charter for the Army Education Advisory Committee (hereafter referred to as the Committee).

FOR FURTHER INFORMATION CONTACT: Jim Freeman, Deputy Advisory Committee Management Officer for the Department of Defense, 703–601–6128.

SUPPLEMENTARY INFORMATION: The Committee is a discretionary Federal advisory committee that shall provide the Secretary of Defense, through the Secretary of the Army and the Chief of Staff of the U.S. Army, independent advice and recommendations on matters pertaining to the educational, doctrinal, and research policies and activities of the U.S. Army's educational programs, to include the U.S. Army's joint professional military education programs, educational policies, school curriculums, educational philosophy and objectives, program effectiveness, facilities, staff and faculty, instructional methods and other aspects of the organization and management of these programs.

The Secretary of the Army may act upon the Committee's advice and recommendations.

The Committee shall be composed of not more than fifteen members, who are eminent authorities in the field of defense, management, leadership, and academia. Committee members shall be appointed by the Secretary of Defense, and their membership shall be renewed by the Secretary of Defense on an annual basis. Committee members shall, with the exception of travel and per diem for official travel, serve without compensation, unless otherwise authorized by the Secretary of the Army.

Committee members appointed by the Secretary of Defense, who are not full-time Federal officers or employees, shall be appointed under the authority of 5 U.S.C. 3109, and serve as special government employees.

The Assistant Secretary of the Army for Manpower and Reserve Affairs or designated representative will serve as the Committee Chairperson, and shall serve at the discretion of the Secretary of the Army or designated representative. The Secretary of Defense and the Secretary of the Army or designated representative may invite other distinguished Government officers to serve as non-voting observers of the Committee. The Secretary of the Army, pursuant to DoD policies and procedures, may appoint, as deemed necessary non-voting consultants to provide special expertise to the Committee. These consultants, if not full-time or part time government employees, shall be appointed under the authority of 5 U.S.C. 3109, shall serve as special government employees, shall be appointed on an intermittent basis to work specific Committee-related efforts, and shall have no voting rights.

With DoD approval, the Committee is authorized to establish subcommittees, as necessary and consistent with its mission. These subcommittees or working groups shall operate under the provisions of the Federal Advisory Committee Act of 1972, the Government in the Sunshine Act of 1976 (5 U.S.C. 552b), and other appropriate Federal statutes and regulations.

Such subcommittees or workgroups shall not work independently of the chartered Committee, and shall report all their recommendations and advice to the Committee for full deliberation and discussion. Subcommittees or workgroups have no authority to make decisions on behalf of the chartered Committee; nor can they report directly to the Department of Defense or any Federal officers or employees who are not Committee members.

Subcommittee members, who are not Committee members, shall be appointed in the same manner as the Committee members.

The Committee shall meet at the call of the Committee's Designated Federal Officer, in consultation with the Chairperson. The estimated number of Committee meetings is two per year.

The Designated Federal Officer and Alternate Designated Federal Officer, pursuant to DoD policy, shall be a full-time or permanent part-time DoD employee, and shall be appointed in accordance with established DoD policies and procedures. In addition, the Designated Federal Officer is required to be in attendance at all Committee and subcommittee meetings; however, in the absence of the Designated Federal Officer, the Alternate Designated Federal Officer shall attend the meeting.

Pursuant to 41 CFR 102–3.105(j) and 102–3.140, the public or interested organizations may submit written statements to the Army Education Advisory Committee's membership about the Committee's mission and functions. Written statements may be submitted at any time or in response to the stated agenda of planned meeting of the Army Education Advisory Committee.

All written statements shall be submitted to the Designated Federal Officer for the Army Education Advisory Committee, and this individual will ensure that the written statements are provided to the membership for their consideration. Contact information for the Army Education Advisory Committee Designated Federal Officer can be obtained from the GSA's FACA Database—*https://www.fido.gov/facadatabase/public.asp.*

The Designated Federal Officer, pursuant to 41 CFR 102–3.150, will announce planned meetings of the Army Education Advisory Committee. The Designated Federal Officer, at that time, may provide additional guidance on the submission of written statements that are in response to the stated agenda for the planned meeting in question.

Dated: April 27, 2010.

Mitchell S. Bryman,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2010–10123 Filed 4–29–10; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Department of the Army; Corps of Engineers

Intent To Prepare a Draft Environmental Impact Statement for Improvements to the U.S. 17 and Market Street (U.S. 17 Business) Corridor in Northern New Hanover and Southern Pender Counties, NC

AGENCY: Department of the Army, U.S. Army Corps of Engineers, DoD.

ACTION: Notice of Intent.

SUMMARY: The North Carolina Department of Transportation (NCDOT) has proposed improvements to the transportation system starting at Military Cutoff Road in New Hanover County and extending to a point north of Hampstead along U.S. 17, in Pender County, NC (TIP Projects U–4751 and R–3300). The NCDOT is currently considering alternatives for this project that will require authorization from the U.S. Army Corps of Engineers (USACE) pursuant to Section 404 of the Clean Water Act and/or Section 10 of the Rivers and Harbor Act). The USACE,Wilmington District, Regulatory Division and the NCDOT intend to prepare a joint environmental impact statement in accordance with regulations implementing the National Environmental Policy Act (NEPA) to evaluate and compare alternatives and to assess associated impacts.

ADDRESSES: Comments regarding the proposed action and the DEIS should be provided to both Mr. Brad Shaver, Regulatory Project Manager, Wilmington Regulatory Field Office, 69 Darlington Ave., Wilmington, NC 28403 and Ms. Olivia Farr, Project Development Engineer, North Carolina Department of Transportation, 1548 Mail Service Center, Raleigh, NC 27699–1548.

FOR FURTHER INFORMATION CONTACT: Questions about the proposed action and DEIS can be directed to Mr. Brad Shaver, Regulatory Project Manager, telephone: (910) 251–4611 or Ms. Olivia Farr, Project Development Engineer, telephone: (919) 733–7844, ext. 253.

SUPPLEMENTARY INFORMATION: The NCDOT proposes to make transportation improvements to the U.S. 17 and Market Street (U.S. 17 Business) corridor in northern New Hanover and southern Pender Counties. Two North Carolina Department of Transportation Improvement Program (TIPs U–4751 and R–3300) projects are being evaluated as part of the U.S. 17 Corridor Study.

The purpose of the U.S. 17 Corridor Study project is to improve the traffic carrying capacity and safety of the U.S. 17 and Market Street corridor in the project area. The project study area is roughly bounded on the west by I–40, on the north by the Northeast Cape Fear River, Holly Shelter Game Lands to the east, and Market Street and U.S. 17 to the south.

This project is being reviewed through the Merger 01 process designed to streamline the project development and permitting processes, agreed to by the USACE, North Carolina Department of Environment and Natural Resources (Division of Water Quality, Division of Coastal Management), Federal Highway Administration (for this project not applicable), and the North Carolina Department of Transportation and supported by other stakeholder agencies and local units of government. The other partnering agencies include: U.S. Environmental Protection Agency; U.S. Fish and Wildlife Service; N.C. Wildlife Resources Commission; N.C. Department of Cultural Resources; and the Wilmington Metropolitan Planning Organization. The Merger process provides a forum for appropriate agency representatives to discuss and reach consensus on ways to facilitate meeting the regulatory requirements of Section 404 of the Clean Water Act during the NEPA/State Environmental Policy Act (SEPA) scoping phase of transportation projects.

In 2006 the project was presented to Federal and State Resource and Regulatory Agencies to gain concurrence on the purpose and need for the project. The aforementioned purpose and need of the project was agreed upon by participating agencies in September of 2006. In January 2007, the project was again presented to participating agencies regarding the preliminary corridor screening process in an attempt to decide which alternatives would be carried forward for detailed analysis. In August of 2007, the alternatives to carry forward were decided. Since this time the Corps has been working closely with NCDOT and its representatives to identify jurisdictional resources within the alternatives carried forward. This effort should be completed sometime in Spring of 2010.

Citizen informational workshops were held for the U.S. 17 Corridor Study on April 23, 2007 in Hampstead and on April 24, 2007 in Wilmington. A total of 174 participants signed in at the workshops with 40 comment sheets during April 23 and 47 comments during April 24, 2007. Thirty-four citizens noted their support for the proposed Hampstead Bypass while six citizens voiced their opposition to the project.

NEPA/SEPA Preparation: Because the proposed project requires approvals from Federal and State agencies, a joint Federal and State EIS will be prepared. The U.S. Army Corps of Engineers will serve as the lead Federal agency for the process and the NCDOT will serve as the lead State agency. The EIS will serve to satisfy the Corps' NEPA requirements as well as the State of North Carolina's SEPA requirements. Upon completion and review of the Final EIS, the Corps will independently complete a Record of Decision (ROD) for the project.

The Wilmington District will periodically issue Public Notices soliciting public and agency comment on the proposed action and alternatives to the proposed action as they are developed.

Jefferson M. Ryscavage,

Colonel, U.S. Army, District Commander.

[FR Doc. 2010–10101 Filed 4–29–10; 8:45 am]

BILLING CODE 3720–58–P

DEPARTMENT OF DEFENSE

Department of the Army; U.S. Army Corps of Engineers

Notice of Intent To Prepare a Draft Environmental Impact Statement and Dam Safety Assurance Program Modification Report for the Martis Creek Dam Project, Nevada County, CA

AGENCY: Department of the Army, U.S. Army Corps of Engineers; DOD.

ACTION: Notice of Intent.

SUMMARY: Pursuant to the National Environmental Policy Act of 1969, as amended, the U.S. Army Corps of Engineers, Sacramento District (Corps) intends to prepare a draft Environmental Impact Statement (EIS) for the Federal action to remediate seismic, seepage, and hydrologic dam safety concerns at the Martis Creek Dam. Martis Creek Dam is located about two miles upstream of the confluence of Martis Creek and the Truckee River, and about three miles east of Truckee, in Nevada County, CA. The Truckee River flows through Reno, Nevada and into Pyramid Lake, NV. The proposed action is being conducted through the Corps' Dam Safety Assurance Program (DSAP) for the evaluation of existing dams.

ADDRESSES: Current and archival information regarding the Martis Creek DSAP Project can be obtained from the following Web site address: *http://www.spk.usace.army.mil/projects/civil/Martis_Creek/Index.html.* Questions or

comments regarding the Martis Creek DSAP Project may be submitted through this Web site, or written questions or comments can be submitted by mail to Ms. Mariah Garr, U.S. Army Corps of Engineers, Sacramento District, Attn: Planning Division (CESPK–PD–R), 1325 J. Street, Sacramento, CA 95814. Requests to be placed on a mailing list may also be submitted through the Web site or to the address provided.

FOR FURTHER INFORMATION CONTACT: Ms. Mariah Garr at (916) 557–7702, e-mail: *Mariah.M.Garr@usace.army.mil,* or by mail to (*see* **ADDRESSES**).

SUPPLEMENTARY INFORMATION:

1. *Background Information.* Based on the current engineering knowledge, the Corps has determined that the Martis Creek Dam has a high risk of failure due to significant existing seismic, seepage, and hydrologic issues. Compounding this risk is the large population downstream within the inundation zone, specifically the Reno-Sparks Metropolitan Area. An external peer review panel, commissioned by the Corps, confirmed that the Corps' Class I designation "Urgent and Compelling" is appropriate for the Martis Creek Dam for the following reasons:

a. Foundation and abutment seepage and piping.

b. The dam's drain blanket is not performing as intended;

c. The spillway is hydraulically inadequate;

d. The site is in a high seismic zone and it is probable that the dam and spillway are seismically inadequate;

e. High probability of structural failure, leading to potential life and economic loss.

The panel recommended short-term risk reductions measures, such as maintaining the current reservoir pool restriction elevation of 5,780 feet for normal conditions, 58 feet below gross pool. The panel also recommended long-term risk reduction measures including completion of on-going studies of hydrologic, seismic, and geophysical conditions, and improving the existing instrumentation to ensure adequate monitoring and to provide suitable baseline information.

2. *Remediation Alternatives.* The draft EIS will address an array of remediation alternatives that are necessary to prevent loss of life, extensive downstream damage, functional loss of the project, and the loss of all project benefits. The exact nature and extent of the remediation alternatives will be determined based on the results of on-going geotechnical and engineering studies, public and agency input during the scoping period, and preparation of the draft EIS.

3. *Issues To Be Addressed.* The draft EIS will address environmental issues concerning the remediation alternatives proposed. Issues will be identified based on public input during the scoping process and during the preparation of the draft EIS. Issues initially identified as potentially significant include, but are not limited to: soils and seismicity, hydrology and water quality, noise and vibration, air quality, socioeconomics, water supply, land use, recreation, visual and aesthetic resources, traffic and transportation, historical and cultural resources, vegetation and wildlife, special status species, and fisheries.

4. *Public Involvement.* Public scoping meetings will be held in June or July 2010 at specific locations to be announced within the local Martis Creek DSAP project area, in Truckee, CA. The purpose of the public scoping meetings will be to present information to the public regarding the array of remediation alternatives proposed that may be addressed in the draft EIS, receive public comments, and solicit input regarding environmental issues of concern to the public. These meetings are intended to initiate the process to involve concerned individuals, and local, State, and Federal agencies. The public scoping meeting place, date, and time will be advertised in advance in local newspapers, and meeting announcement letters will be sent to interested parties. Written comments may also be submitted via the Web site or mailed to (*see* **ADDRESSES**).

5. *Availability of the Draft EIS.* The Corps intends to issue the draft EIS in April 2011. The Corps will announce availability of the draft EIS in the **Federal Register** and other media, and will provide the public, organizations, and agencies with an opportunity to submit comments to be addressed in the final EIS.

Dated: April 19, 2010.

Thomas Chapman,

COL, EN, Commanding.

[FR Doc. 2010–10103 Filed 4–29–10; 8:45 am]

BILLING CODE 3720–58–P

DEPARTMENT OF EDUCATION

Submission for OMB Review; Comment Request

AGENCY: Department of Education.

SUMMARY: The Acting Director, Information Collection Clearance Division, Regulatory Information Management Services, Office of Management invites comments on the submission for OMB review as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before June 1, 2010.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Education Desk Officer, Office of Management and Budget, 725 17th Street, NW., Room 10222, New Executive Office Building, Washington, DC 20503, be faxed to (202) 395–5806 or e-mailed to *oira_submission@omb.eop.gov* with a cc: to *ICDocketMgr@ed.gov*.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Acting Director, Information Collection Clearance Division, Regulatory Information Management Services, Office of Management, publishes that notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, *e.g.* new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment.

Dated: April 27, 2010.

James Hyler,

Acting Director, Information Collection Clearance Division, Regulatory Information Management Services, Office of Management.

Office of Postsecondary Education

Type of Review: New.

Title: Native American-serving Nontribal Institutions Program.

Frequency: Annually.

Affected Public: Not-for-profit institutions.

Reporting and Recordkeeping Hour Burden:

Responses: 50.

Burden Hours: 2,000.

Abstract: The Program was authorized under Title III, Part A, of the Higher Education Act of 1965, as amended by the Higher Education Opportunity Act (HEOA) of 2008 Section 319. The program awards discretionary grants to eligible institutions of higher education so that they might increase self-sufficiency by improving academic programs, institutional management, and fiscal stability. This application package reflects the most recent changes to the HEOA legislation making it necessary to separate from OMB No. 1840–0798 and seek clearance under a new OMB No.

This information collection is being submitted under the Streamlined Clearance Process for Discretionary Grant Information Collections (1894–0001). Therefore, the 30-day public comment period notice will be the only public comment notice published for this information collection.

Requests for copies of the information collection submission for OMB review may be accessed from *http://edicsweb.ed.gov,* by selecting the "Browse Pending Collections" link and by clicking on link number 4207. When you access the information collection, click on "Download Attachments " to view. Written requests for information should be addressed to U.S. Department of Education, 400 Maryland Avenue, SW., LBJ, Washington, DC 20202–4537. Requests may also be electronically mailed to the Internet address *ICDocketMgr@ed.gov* or faxed to 202–401–0920. Please specify the complete title of the information collection when making your request.

Comments regarding burden and/or the collection activity requirements should be directed to *ICDocketMgr@ed.gov*. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. 2010–10201 Filed 4–29–10; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Office of Special Education and Rehabilitative Services; Overview Information; National Institute on Disability and Rehabilitation Research (NIDRR)—Disability and Rehabilitation Research Projects and Centers Program—Disability Rehabilitation Research Projects (DRRPs)—Transition to Employment; Notice Inviting Applications for New Awards for Fiscal Year (FY) 2010

Catalog of Federal Domestic Assistance (CFDA) Number: 84.133A–1.

Dates:

Applications Available: April 30, 2010.

Date of Pre-Application Meeting: May 19, 2010.

Deadline for Transmittal of Applications: June 29, 2010.

Full Text of Announcement

I. Funding Opportunity Description

Purpose of Program: The purpose of the DRRP program is to improve the effectiveness of services authorized under the Rehabilitation Act of 1973, as amended, by developing methods, procedures, and rehabilitation technologies that advance a wide range of independent living and employment outcomes for individuals with disabilities, especially individuals with the most severe disabilities. DRRPs carry out one or more of the following types of activities, as specified and defined in 34 CFR 350.13 through 350.19: research, training, demonstration, development, dissemination, utilization, and technical assistance.

An applicant for assistance under this program must demonstrate in its application how it will address, in whole or in part, the needs of individuals with disabilities from minority backgrounds (34 CFR 350.40(a)). The approaches an applicant may take to meet this requirement are found in 34 CFR 350.40(b).

Additional information on the DRRP program can be found at: *http://www.ed.gov/rschstat/research/pubs/res-program.html#DRRP*.

Priorities: NIDRR has established two absolute priorities for this competition.

Absolute Priorities: The *General DRRP Requirements* priority, which applies to all DRRP competitions, is from the notice of final priorities for the Disability and Rehabilitation Research Projects and Centers Program, published in the **Federal Register** on April 28, 2006 (71 FR 25472). The *Transition to Employment* priority is from the notice of final priority for the Disability and Rehabilitation Research Projects and Centers Program, published elsewhere in this issue of the **Federal Register.**

For FY 2010, these priorities are absolute priorities. Under 34 CFR 75.105(c)(3) we consider only applications that meet these priorities.

These priorities are:

General Disability Rehabilitation Research Projects (DRRP) Requirements and *Transition to Employment.*

Note: The full text of each of these priorities is included in the pertinent notice of final priority or priorities published in the **Federal Register** and in the application package for this competition.

Program Authority: 29 U.S.C. 762(g) and 764(a).

Applicable Regulations: (a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 74, 75, 77, 80, 81, 82, 84, 85, 86, and 97. (b) The regulations for this program in 34 CFR part 350. (c) The notice of final priorities for the Disability and Rehabilitation Research Projects and Centers program, published in the **Federal Register** on April 28, 2006 (71 FR 25472). (d) The notice of final priority for the Disability and Rehabilitation Research Projects and Centers program, published elsewhere in this issue of the **Federal Register.**

Note: The regulations in 34 CFR part 86 apply to institutions of higher education (IHEs) only.

II. Award Information

Type of Award: Discretionary grants.

Estimated Available Funds: $650,000.

Maximum Award: We will reject any application that proposes a budget exceeding $650,000 for a single budget period of 12 months. The Assistant Secretary for Special Education and Rehabilitative Services may change the maximum amount through a notice published in the **Federal Register.**

Estimated Number of Awards: 1.

Note: The Department is not bound by any estimates in this notice.

Project Period: Up to 60 months.

III. Eligibility Information

1. *Eligible Applicants:* States; public or private agencies, including for-profit agencies; public or private organizations, including for-profit organizations; IHEs; and Indian tribes and tribal organizations.

2. *Cost Sharing or Matching:* Cost sharing is required by 34 CFR 350.62(a) and will be negotiated at the time of the grant award.

IV. Application and Submission Information

1. *Address to Request Application Package:* ED Pubs, U.S. Department of Education, P.O. Box 22207, Alexandria, VA 22304. Telephone, toll free: 1–877–433–7827. FAX: (703) 605–6794. If you use a telecommunications device for the deaf (TDD), call, toll free: 1–877–576–7734.

You can contact ED Pubs at its Web site, also: *http://www.EDPubs.gov* or at its e-mail address: *edpubs@inet.ed.gov.*

If you request an application package from ED Pubs, be sure to identify this program or competition as follows: CFDA number 84.133A–1.

Individuals with disabilities can obtain a copy of the application package in an accessible format (*e.g.,* braille, large print, audiotape, or computer diskette) by contacting the person or team listed under *Accessible Format* in section VIII of this notice.

2. *Content and Form of Application Submission:* Requirements concerning the content of an application, together with the forms you must submit, are in the application package for this competition.

Page Limit: The application narrative (Part III of the application) is where you, the applicant, address the selection criteria that reviewers use to evaluate your application. We recommend that you limit Part III to the equivalent of no more than 125 pages, using the following standards:

• A "page" is 8.5″ x 11″, on one side only, with 1″ margins at the top, bottom, and both sides.

• Double space (no more than three lines per vertical inch) all text in the application narrative. Single spacing may be used for titles, headings, footnotes, quotations, references, and captions, as well as all text in charts, tables, figures, and graphs.

• Use a font that is either 12 point or larger or no smaller than 10 pitch (characters per inch).

• Use one of the following fonts: Times New Roman, Courier, Courier New, or Arial. An application submitted in any other font (including Times Roman or Arial Narrow) will not be accepted.

The recommended page limit does not apply to Part I, the cover sheet; Part II, the budget section, including the narrative budget justification; Part IV, the assurances and certifications; or the one-page abstract, the resumes, the bibliography, or the letters of support. However, the recommended page limit does apply to all of the application narrative section (Part III).

The application package will provide instructions for completing all components to be included in the application. Each application must include a cover sheet (Standard Form 424); budget requirements (ED Form 524) and narrative justification; other required forms; an abstract, Human Subjects narrative, Part III narrative; resumes of staff; and other related materials, if applicable.

3. *Submission Dates and Times:*

Applications Available: April 30, 2010.

Date of Pre-Application Meeting: Interested parties are invited to participate in a pre-application meeting and to receive information and technical assistance through individual consultation with NIDRR staff. The pre-application meeting will be held on May 19, 2010. Interested parties may participate in this meeting by conference call with NIDRR staff from the Office of Special Education and Rehabilitative Services between 1:00 p.m. and 3:00 p.m., Washington, DC time. NIDRR staff also will be available from 3:30 p.m. to 4:30 p.m., Washington, DC time, on the same day, by telephone, to provide information and technical assistance through individual consultation. For further information or to make arrangements to participate in the meeting via conference call or for an individual consultation, contact Marlene Spencer, U.S. Department of Education, Potomac Center Plaza (PCP), room 5133, 550 12th Street, SW., Washington, DC 20202. Telephone: (202) 245–7532 or by e-mail: *Marlene.Spencer@ed.gov.*

Deadline for Transmittal of Applications: June 29, 2010.

Applications for grants under this competition must be submitted electronically using the Electronic Grant Application System (e-Application) accessible through the Department's e-Grants site. For information (including dates and times) about how to submit your application electronically, or in paper format by mail or hand delivery if you qualify for an exception to the electronic submission requirement, please refer to section IV. 6. *Other Submission Requirements* of this notice.

We do not consider an application that does not comply with the deadline requirements.

Individuals with disabilities who need an accommodation or auxiliary aid in connection with the application process should contact the person listed under **FOR FURTHER INFORMATION CONTACT** in section VII of this notice. If the Department provides an accommodation or auxiliary aid to an individual with a disability in connection with the application process, the individual's application remains subject to all other requirements and limitations in this notice.

4. *Intergovernmental Review:* This program is not subject to Executive Order 12372 and the regulations in 34 CFR part 79.

5. *Funding Restrictions:* We reference regulations outlining funding restrictions in the *Applicable Regulations* section in this notice.

6. *Other Submission Requirements:*

Applications for grants under this competition must be submitted electronically unless you qualify for an exception to this requirement in accordance with the instructions in this section.

a. *Electronic Submission of Applications.*

Applications for grants under the Disability Rehabilitation Research Projects (DRRP)—CFDA Number 84.133A–1 must be submitted electronically using e-Application, accessible through the Department's e-Grants Web site at: *http://e-grants.ed.gov*.

We will reject your application if you submit it in paper format unless, as described elsewhere in this section, you qualify for one of the exceptions to the electronic submission requirement and submit, no later than two weeks before the application deadline date, a written statement to the Department that you qualify for one of these exceptions. Further information regarding calculation of the date that is two weeks before the application deadline date is provided later in this section under *Exception to Electronic Submission Requirement*.

While completing your electronic application, you will be entering data online that will be saved into a database. You may not e-mail an electronic copy of a grant application to us.

Please note the following:

• You must complete the electronic submission of your grant application by 4:30 p.m., Washington, DC time, on the application deadline date. E-Application will not accept an application for this competition after 4:30 p.m., Washington, DC time, on the application deadline date. Therefore, we strongly recommend that you do not wait until the application deadline date to begin the application process.

• The hours of operation of the e-Grants Web site are 6:00 a.m. Monday until 7:00 p.m. Wednesday; and 6:00 a.m. Thursday until 8:00 p.m. Sunday, Washington, DC time. Please note that, because of maintenance, the system is unavailable between 8:00 p.m. on Sundays and 6:00 a.m. on Mondays, and

between 7:00 p.m. on Wednesdays and 6:00 a.m. on Thursdays, Washington, DC time. Any modifications to these hours are posted on the e-Grants Web site.

• You will not receive additional point value because you submit your application in electronic format, nor will we penalize you if you qualify for an exception to the electronic submission requirement, as described elsewhere in this section, and submit your application in paper format.

• You must submit all documents electronically, including all information you typically provide on the following forms: The Application for Federal Assistance (SF 424), the Department of Education Supplemental Information for SF 424, Budget Information—Non-Construction Programs (ED 524), and all necessary assurances and certifications. You must attach any narrative sections of your application as files in a .DOC (document), .RTF (rich text), or .PDF (Portable Document) format. If you upload a file type other than the three file types specified in this paragraph or submit a password protected file, we will not review that material.

• Your electronic application must comply with any page limit requirements described in this notice.

• Prior to submitting your electronic application, you may wish to print a copy of it for your records.

• After you electronically submit your application, you will receive an automatic acknowledgment that will include a PR/Award number (an identifying number unique to your application).

• Within three working days after submitting your electronic application, fax a signed copy of the SF 424 to the Application Control Center after following these steps:

(1) Print SF 424 from e-Application.

(2) The applicant's Authorizing Representative must sign this form.

(3) Place the PR/Award number in the upper right hand corner of the hard-copy signature page of the SF 424.

(4) Fax the signed SF 424 to the Application Control Center at (202) 245–6272.

• We may request that you provide us original signatures on other forms at a later date.

Application Deadline Date Extension in Case of e-Application Unavailability: If you are prevented from electronically submitting your application on the application deadline date because e-Application is unavailable, we will grant you an extension of one business day to enable you to transmit your application electronically, by mail, or by hand delivery. We will grant this extension if—

(1) You are a registered user of e-Application and you have initiated an electronic application for this competition; and

(2) (a) E-Application is unavailable for 60 minutes or more between the hours of 8:30 a.m. and 3:30 p.m., Washington, DC time, on the application deadline date; or

(b) E-Application is unavailable for any period of time between 3:30 p.m. and 4:30 p.m., Washington, DC time, on the application deadline date.

We must acknowledge and confirm these periods of unavailability before granting you an extension. To request this extension or to confirm our acknowledgment of any system unavailability, you may contact either (1) the person listed elsewhere in this notice under *For Further Information Contact* (*see* VII. Agency Contact) or (2) the e-Grants help desk at 1–888–336–8930. If e-Application is unavailable due to technical problems with the system and, therefore, the application deadline is extended, an e-mail will be sent to all registered users who have initiated an e-Application. Extensions referred to in this section apply only to the unavailability of e-Application.

Exception to Electronic Submission Requirement: You qualify for an exception to the electronic submission requirement, and may submit your application in paper format, if you are unable to submit an application through e-Application because—

• You do not have access to the Internet; or

• You do not have the capacity to upload large documents to e-Application; and

• No later than two weeks before the application deadline date (14 calendar days or, if the fourteenth calendar day before the application deadline date falls on a Federal holiday, the next business day following the Federal holiday), you mail or fax a written statement to the Department, explaining which of the two grounds for an exception prevents you from using the Internet to submit your application. If you mail your written statement to the Department, it must be postmarked no later than two weeks before the application deadline date. If you fax your written statement to the Department, we must receive the faxed statement no later than two weeks before the application deadline date.

Address and mail or fax your statement to: Donna Nangle, U.S. Department of Education, 400 Maryland Avenue, SW., Room 6030, PCP, Washington, DC 20202–2700. FAX: (202) 245–7323.

Your paper application must be submitted in accordance with the mail or hand delivery instructions described in this notice.

b. *Submission of Paper Applications by Mail.*

If you qualify for an exception to the electronic submission requirement, you may mail (through the U.S. Postal Service or a commercial carrier) your application to the Department. You must mail the original and two copies of your application, on or before the application deadline date, to the Department at the following address: U.S. Department of Education, Application Control Center, Attention: (CFDA Number 84.133A–1), LBJ Basement Level 1, 400 Maryland Avenue, SW., Washington, DC 20202–4260.

You must show proof of mailing consisting of one of the following:

(1) A legibly dated U.S. Postal Service postmark.

(2) A legible mail receipt with the date of mailing stamped by the U.S. Postal Service.

(3) A dated shipping label, invoice, or receipt from a commercial carrier.

(4) Any other proof of mailing acceptable to the Secretary of the U.S. Department of Education.

If you mail your application through the U.S. Postal Service, we do not accept either of the following as proof of mailing:

(1) A private metered postmark.

(2) A mail receipt that is not dated by the U.S. Postal Service.

If your application is postmarked after the application deadline date, we will not consider your application.

Note: The U.S. Postal Service does not uniformly provide a dated postmark. Before relying on this method, you should check with your local post office.

c. *Submission of Paper Applications by Hand Delivery.* If you qualify for an exception to the electronic submission requirement, you (or a courier service) may deliver your paper application to the Department by hand. You must deliver the original and two copies of your application, by hand, on or before the application deadline date, to the Department at the following address: U.S. Department of Education, Application Control Center, Attention: (CFDA Number 84.133A–1), 550 12th Street, SW., Room 7041, Potomac Center Plaza, Washington, DC 20202–4260.

The Application Control Center accepts hand deliveries daily between 8:00 a.m. and 4:30:00 p.m., Washington, DC time, except Saturdays, Sundays, and Federal holidays.

Note for Mail or Hand Delivery of Paper Applications: If you mail or hand deliver your application to the Department—

(1) You must indicate on the envelope and—if not provided by the Department—in Item 11 of the SF 424 the CFDA number, including suffix letter, if any, of the competition under which you are submitting your application; and

(2) The Application Control Center will mail to you a notification of receipt of your grant application. If you do not receive this grant notification within 15 business days from the application deadline date, you should call the U.S. Department of Education Application Control Center at (202) 245–6288.

V. Application Review Information

Selection Criteria: The selection criteria for this competition are from 34 CFR 350.54 and are listed in the application package.

VI. Award Administration Information

1. *Award Notices:* If your application is successful, we notify your U.S. Representative and U.S. Senators and send you a Grant Award Notification (GAN). We may notify you informally, also.

If your application is not evaluated or not selected for funding, we notify you.

2. *Administrative and National Policy Requirements:* We identify administrative and national policy requirements in the application package and reference these and other requirements in the *Applicable Regulations* section of this notice.

We reference the regulations outlining the terms and conditions of an award in the *Applicable Regulations* section of this notice and include these and other specific conditions in the GAN. The GAN also incorporates your approved application as part of your binding commitments under the grant.

3. *Reporting:* At the end of your project period, you must submit a final performance report, including financial information, as directed by the Secretary. If you receive a multi-year award, you must submit an annual performance report that provides the most current performance and financial expenditure information as directed by the Secretary under 34 CFR 75.118. The Secretary may also require more frequent performance reports under 34 CFR 75.720(c). For specific requirements on reporting, please go to *http://www.ed.gov/fund/grant/apply/appforms/appforms.html.*

Note: NIDRR will provide information by letter to grantees on how and when to submit the final performance report.

4. *Performance Measures:* To evaluate the overall success of its research program, NIDRR assesses the quality of its funded projects through a review of grantee performance and products. Each year, NIDRR examines a portion of its grantees to determine:

- The number of accomplishments (*e.g.,* new or improved tools, methods, discoveries, standards, interventions, programs, or devices) developed or tested with NIDRR funding that have been judged by expert panels to be of high quality and to advance the field.
- The average number of publications per award based on NIDRR-funded research and development activities in refereed journals.
- The percentage of new NIDRR grants that assess the effectiveness of interventions, programs, and devices using rigorous methods.

NIDRR uses information submitted by grantees as part of their Annual Performance Reports (APRs) for these reviews.

VII. Agency Contact

For Further Information Contact: Marlene Spencer, U.S. Department of Education, 400 Maryland Avenue, SW., Room 5133, PCP, Washington, DC 20202. Telephone: (202) 245–7532 or by e-mail: *Marlene.Spencer@ed.gov.*

If you use a TDD, call the Federal Relay Service (FRS), toll free, at 1–800–877–8339.

VIII. Other Information

Accessible Format: Individuals with disabilities can obtain this document and a copy of the application package in an accessible format (*e.g.,* braille, large print, audiotape, or computer diskette) by contacting the Grants and Contracts Services Team, U.S. Department of Education, 400 Maryland Avenue, SW., Room 5075, PCP, Washington, DC 20202–2550. Telephone: (202) 245–7363. If you use a TDD, call the FRS, toll-free, at 1–800–877–8339.

Electronic Access to This Document: You can view this document, as well as all other documents of this Department published in the **Federal Register**, in text or Adobe Portable Document Format (PDF) on the Internet at the following site: *http://www.ed.gov/news/fedregister.* To use PDF you must have Adobe Acrobat Reader, which is available free at this site.

Note: The official version of this document is the document published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available on GPO Access at: *http://www.gpoaccess.gov/nara/index.html.*

Dated: April 27, 2010.

Alexa Posny,

Assistant Secretary for Special Education and Rehabilitative Services.

[FR Doc. 2010–10193 Filed 4–29–10; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Office of Postsecondary Education; Overview Information: Underground Railroad Educational and Cultural Program; Notice Inviting Applications for New Awards for Fiscal Year (FY) 2010

Catalog of Federal Domestic Assistance (CFDA) Number: 84.345A.

Dates:

Applications Available: April 30, 2010.

Deadline for Transmittal of Applications: June 14, 2010.

Deadline for Intergovernmental Review: August 13, 2010.

Full Text of Announcement

I. Funding Opportunity Description

Purpose of Program: The purpose of the Underground Railroad Educational and Cultural (URR) Program is to preserve the Underground Railroad's legacy and to demonstrate how the Underground Railroad's widespread operations network transformed our Nation. In addition, the URR Program promotes the formation of public-private partnerships to help disseminate information regarding the Underground Railroad throughout the United States, including lessons to be drawn from the history of the Underground Railroad.

Program Authority: 20 U.S.C. 1153.

Applicable Regulations: The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 74, 75, 77, 79, 80, 82, 84, 85, 86, 97, 98 and 99. **Note:** The regulations in 34 CFR part 86 apply to institutions of higher education only.

II. Award Information

Type of Award: Discretionary grants.

Estimated Available Funds: $1,942,000.

Estimated Range of Awards: $500,000–$1,000,000.

Estimated Average Size of Awards: $647,333 to $971,000 total for up to three years.

Estimated Number of Awards: 2 to 3. **Note:** The Department is not bound by any estimates in this notice.

Project Period: Up to 36 months.

III. Eligibility Information

1. *Eligible Applicants:* Nonprofit educational organizations that are

established to research, display, interpret, and collect artifacts relating to the history of the Underground Railroad, including the lessons to be drawn from such history.

2. *Cost Sharing or Matching:* The Federal Government requires 4:1 cost sharing or matching for grants under the URR Program. The Federal Government will provide no more than 20 percent of the total funds for any project funded under this competition. *See* 20 U.S.C. 1153(b)(2). Applicants must provide the remaining funding from non-Federal public or private entities in an amount equal to or greater than four times the amount of the grant awarded under this section. All applicants are required to provide documentation to substantiate their ability to meet the cost sharing requirement.

3. *Other:*

(a) Each nonprofit educational organization awarded a grant under this competition must establish a facility to—

(i) House, display, interpret, and communicate information regarding the artifacts and other materials related to the history of the Underground Railroad, including the lessons to be drawn from such history;

(ii) Maintain such artifacts and materials;

(iii) Make these efforts described in paragraph (i), available, including through electronic means, to elementary and secondary schools, institutions of higher education, and the general public.

(b) Each grantee must demonstrate substantial public and private support for the operation of the facility through the implementation of a public-private partnership between one or more State or local public entities and one or more private entities. This public-private partnership must provide the matching funds from non-Federal sources for the support of the facility, as described in the preceding section on cost sharing or matching.

(c) Each grantee must create an endowment to fund any and all shortfalls in the costs of the on-going facility operations.

(d) Grantees may establish and maintain a network of satellite centers throughout the United States to help disseminate information regarding the Underground Railroad, including the lessons to be drawn from the history of the Underground Railroad, if such satellite centers raise 80 percent of the funds required to establish the satellite centers from non-Federal public and private sources.

(e) In addition, grantees must establish and maintain the capability to electronically link the facility with other local and regional facilities that have collections and programs that interpret the history of the Underground Railroad, including the lessons to be drawn from such history.

IV. Application and Submission Information

1. *Address to Request Application Package:* You can obtain an application package via the Internet or from the Education Publications Center (ED Pubs). To obtain a copy via the Internet, use the following address: *http://e-grants.ed.gov/fund/grant/apply/grantapps/index.html.* To obtain a copy from ED Pubs, write, fax, or call the following: ED Pubs, U.S. Department of Education, P.O. Box 22207, Alexandria, VA 22304. Telephone, toll free: 1–877–433–7827. FAX: (703) 605–6794. If you use a telecommunications device for the deaf (TDD), call, toll free: 1–877–576–7734.

You can contact ED Pubs at its Web site, also: *http://www.EDPubs.gov* or at its e-mail address: *edpubs@inet.ed.gov.*

If you request an application from ED Pubs, be sure to identify this program or competition as follows: CFDA number 84.345A.

Individuals with disabilities can obtain a copy of the application package in an accessible format (e.g., braille, large print, audiotape, or computer diskette) by contacting the person or team listed under *Accessible Format* in section VIII of this notice.

2. *Content and Form of Application Submission:* Requirements concerning the content of an application, together with the forms you must submit, are in the application package for this competition. Page Limit: The application narrative (Part III of the application) is where you, the applicant, address the selection criteria that reviewers use to evaluate your application. You must limit the application narrative to the equivalent of no more than 30 pages, using the following standards:

- A "page" is 8.5″ x 11″, on one side only, with 1″ margins at the top, bottom, and both sides.
- Double space (no more than three lines per vertical inch) all text in the application narrative, except titles, headings, footnotes, quotations, references, and captions, as well as all text in charts, tables, figures and graphs.
- Use a font that is either 12 point or larger, or no smaller than 10 pitch (characters per inch).
- Use one of the following fonts: Times New Roman, Courier, Courier New, or Arial. An application submitted in any other font (including Times Roman or Arial Narrow) will not be accepted.

The page limit does not apply to Part I, the cover sheet; Part II, the budget section, including the narrative budget justification; Part IV, the assurances and certifications; the table of contents; the one page abstract, the resumes, the bibliography or citation list, the letters of partners' or other collaborators' commitment, or the letters from professionals who will document that the applicant creates, designates, and will raise funds for the required project endowment.

We will reject your application if you exceed the page limit.

3. *Submission Dates and Times:*

Applications Available: April 30, 2010.

Deadline for Transmittal of Applications: June 14, 2010.

Applications for grants under this competition must be submitted electronically using the Electronic Grant Application System (e-Application) accessible through the Department's e-Grants site. For information (including dates and times) about how to submit your application electronically, or in paper format by mail or hand delivery if you qualify for an exception to the electronic submission requirement, please refer to section IV. 6. *Other Submission Requirements* of this notice.

We do not consider an application that does not comply with the deadline requirements.

Individuals with disabilities who need an accommodation or auxiliary aid in connection with the application process should contact the person listed under *For Further Information CONTACT* in section VII of this notice. If the Department provides an accommodation or auxiliary aid to an individual with a disability in connection with the application process, the individual's application remains subject to all other requirements and limitations in this notice.

Deadline for Intergovernmental Review: August 13, 2010.

4. *Intergovernmental Review:* This competition is subject to Executive Order 12372 and the regulations in 34 CFR part 79. Information about Intergovernmental Review of Federal Programs under Executive Order 12372 is in the application package for this competition.

5. *Funding Restrictions:* We reference regulations outlining funding restrictions in the *Applicable Regulations* section of this notice.

6. *Other Submission Requirements:* Applications for grants under this competition must be submitted electronically unless you qualify for an

exception to this requirement in accordance with the instructions in this section.

a. *Electronic Submission of Applications.*

Applications for grants under the Underground Railroad Educational and Cultural Program—CFDA number 84.345A must be submitted electronically using e-Application, accessible through the Department's e-Grants Web site at: *http://e-grants.ed.gov.*

We will reject your application if you submit it in paper format unless, as described elsewhere in this section, you qualify for one of the exceptions to the electronic submission requirement and submit, no later than two weeks before the application deadline date, a written statement to the Department that you qualify for one of these exceptions. Further information regarding calculation of the date that is two weeks before the application deadline date is provided later in this section under *Exception to Electronic Submission Requirement.*

While completing your electronic application, you will be entering data online that will be saved into a database. You may not e-mail an electronic copy of a grant application to us.

Please note the following:

• You must complete the electronic submission of your grant application by 4:30:00 p.m., Washington, DC time, on the application deadline date. E-Application will not accept an application for this competition after 4:30 p.m., Washington, DC time, on the application deadline date. Therefore, we strongly recommend that you do not wait until the application deadline date to begin the application process.

• The hours of operation of the e-Grants Web site are 6:00 a.m. Monday until 7:00 p.m. Wednesday; and 6:00 a.m. Thursday until 8:00 p.m. Sunday, Washington, DC time. Please note that, because of maintenance, the system is unavailable between 8:00 p.m. on Sundays and 6:00 a.m. on Mondays, and between 7:00 p.m. on Wednesdays and 6:00 a.m. on Thursdays, Washington, DC time. Any modifications to these hours are posted on the e-Grants Web site.

• You will not receive additional point value because you submit your application in electronic format, nor will we penalize you if you qualify for an exception to the electronic submission requirement, as described elsewhere in this section, and submit your application in paper format.

• You must submit all documents electronically, including all information you typically provide on the following forms: The Application for Federal Assistance (SF 424), the Department of Education Supplemental Information for SF 424, Budget Information—Non-Construction Programs (ED 524), and all necessary assurances and certifications. You must attach any narrative sections of your application as files in a .DOC (document), .RTF (rich text), or .PDF (Portable Document) format. If you upload a file type other than the three file types specified in this paragraph or submit a password protected file, we will not review that material.

• Your electronic application must comply with any page limit requirements described in this notice.

• Prior to submitting your electronic application, you may wish to print a copy of it for your records.

• After you electronically submit your application, you will receive an automatic acknowledgment that will include a PR/Award number (an identifying number unique to your application).

• Within three working days after submitting your electronic application, fax a signed copy of the SF 424 to the Application Control Center after following these steps:

(1) Print SF 424 from e-Application.

(2) The applicant's Authorizing Representative must sign this form.

(3) Place the PR/Award number in the upper right hand corner of the hard-copy signature page of the SF 424.

(4) Fax the signed SF 424 to the Application Control Center at (202) 245–6272.

• We may request that you provide us original signatures on other forms at a later date.

Application Deadline Date Extension in Case of e-Application Unavailability: If you are prevented from electronically submitting your application on the application deadline date because e-Application is unavailable, we will grant you an extension of one business day to enable you to transmit your application electronically, by mail, or by hand delivery. We will grant this extension if—

(1) You are a registered user of e-Application and you have initiated an electronic application for this competition; and

(2)(a) E-Application is unavailable for 60 minutes or more between the hours of 8:30 a.m. and 3:30 p.m., Washington, DC time, on the application deadline date; or

(b) E-Application is unavailable for any period of time between 3:30 p.m. and 4:30 p.m., Washington, DC time, on the application deadline date.

We must acknowledge and confirm these periods of unavailability before granting you an extension. To request this extension or to confirm our acknowledgment of any system unavailability, you may contact either (1) the person listed elsewhere in this notice under **FOR FURTHER INFORMATION CONTACT** (*see* VII. Agency Contact) or (2) the e-Grants help desk at 1–888–336–8930. If e-Application is unavailable due to technical problems with the system and, therefore, the application deadline is extended, an e-mail will be sent to all registered users who have initiated an e-Application. Extensions referred to in this section apply only to the unavailability of e-Application.

Exception to Electronic Submission Requirement: You qualify for an exception to the electronic submission requirement, and may submit your application in paper format, if you are unable to submit an application through e-Application because—

• You do not have access to the Internet; or

• You do not have the capacity to upload large documents to e-Application; and

• No later than two weeks before the application deadline date (14 calendar days or, if the fourteenth calendar day before the application deadline date falls on a Federal holiday, the next business day following the Federal holiday), you mail or fax a written statement to the Department, explaining which of the two grounds for an exception prevents you from using the Internet to submit your application. If you mail your written statement to the Department, it must be postmarked no later than two weeks before the application deadline date. If you fax your written statement to the Department, we must receive the faxed statement no later than two weeks before the application deadline date.

Address and mail or fax your statement to: Claire D. Cornell, U.S. Department of Education, 1990 K Street, NW., room 6151, Washington, DC 20006–8544. FAX: (202) 502–7877.

Your paper application must be submitted in accordance with the mail or hand delivery instructions described in this notice.

b. *Submission of Paper Applications by Mail.*

If you qualify for an exception to the electronic submission requirement, you may mail (through the U.S. Postal Service or a commercial carrier) your application to the Department. You must mail the original and two copies of your application, on or before the application deadline date, to the Department at the following address:

U.S. Department of Education, Application Control Center, Attention: (CFDA Number 84.345A) LBJ Basement Level 1, 400 Maryland Avenue, SW., Washington, DC 20202–4260.

You must show proof of mailing consisting of one of the following:

(1) A legibly dated U.S. Postal Service postmark.

(2) A legible mail receipt with the date of mailing stamped by the U.S. Postal Service.

(3) A dated shipping label, invoice, or receipt from a commercial carrier.

(4) Any other proof of mailing acceptable to the Secretary of the U.S. Department of Education.

If you mail your application through the U.S. Postal Service, we do not accept either of the following as proof of mailing:

(1) A private metered postmark.

(2) A mail receipt that is not dated by the U.S. Postal Service.

If your application is postmarked after the application deadline date, we will not consider your application.

Note: The U.S. Postal Service does not uniformly provide a dated postmark. Before relying on this method, you should check with your local post office.

c. *Submission of Paper Applications by Hand Delivery.*

If you qualify for an exception to the electronic submission requirement, you (or a courier service) may deliver your paper application to the Department by hand. You must deliver the original and two copies of your application, by hand, on or before the application deadline date, to the Department at the following address: U.S. Department of Education, Application Control Center, Attention: CFDA Number 84.345A, 550 12th Street, SW., Room 7041, Potomac Center Plaza, Washington, DC 20202–4260.

The Application Control Center accepts hand deliveries daily between 8:00 a.m. and 4:30:00 p.m., Washington, DC time, except Saturdays, Sundays, and Federal holidays. Note for Mail or Hand Delivery of Paper Applications: If you mail or hand deliver your application to the Department—

(1) You must indicate on the envelope and—if not provided by the Department—in Item 11 of the SF 424 the CFDA number, including suffix letter, if any, of the competition under which you are submitting your application; and

(2) The Application Control Center will mail to you a notification of receipt of your grant application. If you do not receive this grant notification within 15 business days from the application deadline date, you should call the U.S. Department of Education Application Control Center at (202) 245–6288.

V. Application Review Information

1. *Selection Criteria:* The selection criteria for this program are from 34 CFR 75.210 and are as follows: significance (10 points); quality of the project design (40 points); adequacy of resources (20 points); quality of project personnel (10 points); and quality of the project evaluation (20 points).

2. *Review and Selection Process:* Additional factors we consider in selecting an application for an award are in 34 CFR 75.217(d)(3). In making grant awards for this program, the Department will consider information concerning the applicant's performance and use of funds from a prior grant in this or any other Department program, and will consider the applicant's failure to submit an acceptable performance report for a grant in this or any other Department program.

VI. Award Administration Information

1. *Award Notices:* If your application is successful, we notify your U.S. Representative and U.S. Senators and send you a Grant Award Notification (GAN). We may notify you informally, also.

If your application is not evaluated or not selected for funding, we notify you.

2. *Administrative and National Policy Requirements:* We identify administrative and national policy requirements in the application package and reference these and other requirements in the *Applicable Regulations* section of this notice.

We reference the regulations outlining the terms and conditions of an award in the *Applicable Regulations* section of this notice and include these and other specific conditions in the GAN. The GAN also incorporates your approved application as part of your binding commitments under the grant.

3. *Reporting:* At the end of your project period, you must submit a final performance report, including financial information, as directed by the Secretary. If you receive a multi-year award, you must submit an annual performance report that provides the most current performance and financial expenditure information as directed by the Secretary under 34 CFR 75.118. The Secretary may also require more frequent performance reports under 34 CFR 75.720(c). For specific requirements on reporting, please go to: *http://www.ed.gov/fund/grant/apply/appforms/appforms.html.*

In the annual and final reports, applicants must provide documentation of their efforts to collect, research, display, and interpret artifacts, digital resources, and other materials that collect, preserve, and disseminate information on the Underground Railroad's history, including the lessons to be drawn from such history. If they have created or designated satellite centers, they must provide documentation of their creation or designation of satellite centers, an account of the satellite centers' activities, and documentation of the satellite centers' 4:1 cost share. Grantees must also provide evidence of their creation of electronic links to other organizations and facilities that have collections and programs that interpret the history of the Underground Railroad and lessons drawn from such history. Grantees must document their efforts to make their resources and efforts available through electronic means to elementary and secondary schools, to institutions of higher education, and to the general public. Finally, each annual report must contain the audited financial statement of the organization for the preceding fiscal year.

4. *Performance Measures:* Under the Government Performance and Results Act (GPRA), the following measure will be used by the Department in assessing the performance of the Underground Railroad Educational and Cultural Program: The extent to which funded projects have been institutionalized and are able to continue after URR funding ends.

If funded, you will be asked to collect and report data on this measure in your project's annual performance report (EDGAR, 34 CFR 75.590).

VII. Agency Contact

For Further Information Contact: Claire D. Cornell, Underground Railroad Educational and Cultural Program, U.S. Department of Education, 1990 K Street, NW., Room 6151, Washington, DC 20006–8544. Telephone: (202) 502–7609 or by e-mail: *claire.cornell@ed.gov.*

If you use a TDD, call the Federal Relay Service, toll free, at 1–800–877–8339.

VIII. Other Information

Accessible Format: Individuals with disabilities can obtain this document and a copy of the application package in an accessible format (e.g., braille, large print, audiotape, or computer diskette) on request to the program contact person listed under **FOR FURTHER INFORMATION CONTACT** in section VII of this notice.

Electronic Access to This Document: You can view this document, as well as all other documents of this Department published in the **Federal Register,** in text or Adobe Portable Document Format (PDF) on the Internet at the

following site: *http://www.ed.gov/news/fedregister.* To use PDF, you must have Adobe Acrobat Reader, which is available free at this site.

Note: The official version of this document is the document published in the **Federal Register.** Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available on GPO Access at: *http://www.gpoaccess.gov/nara/index.html.*

Delegation of Authority: The Secretary of Education has delegated authority to Daniel T. Madzelan, Director, Forecasting and Policy Analysis for the Office of Postsecondary Education, to perform the functions and duties of the Assistant Secretary for Postsecondary Education.

Dated: April 27, 2010.

Daniel T. Madzelan,

Director, Forecasting and Policy Analysis.

[FR Doc. 2010–10203 Filed 4–29–10; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

National Institute on Disability and Rehabilitation Research (NIDRR)—Disability and Rehabilitation Research Projects and Centers Program—Disability Rehabilitation Research Project (DRRP)—Transition to Employment

Catalog of Federal Domestic Assistance (CFDA) Number: 84.133A–1.

AGENCY: Office of Special Education and Rehabilitative Services, Department of Education.

ACTION: Notice of final priority.

SUMMARY: The Assistant Secretary for Special Education and Rehabilitative Services announces a priority for the Disability and Rehabilitation Research Projects and Centers Program administered by NIDRR. Specifically, this notice announces a priority for a DRRP on Transition to Employment. The Assistant Secretary may use this priority for a competition in fiscal year (FY) 2010 and later years. We take this action to focus research attention on areas of national need. We intend this priority to improve rehabilitation services and outcomes for individuals with disabilities.

EFFECTIVE DATE: This priority is effective June 1, 2010.

FOR FURTHER INFORMATION CONTACT: Marlene Spencer, U.S. Department of Education, 400 Maryland Avenue, SW., Room 5133, Potomac Center Plaza (PCP), Washington, DC 20202–2700. Telephone: (202) 245–7532 or by e-mail: *marlene.spencer@ed.gov.*

If you use a telecommunications device for the deaf (TDD), call the Federal Relay Service (FRS), toll free, at 1–800–877–8339.

SUPPLEMENTARY INFORMATION: This notice of final priority is in concert with NIDRR's Final Long-Range Plan for FY 2005–2009 (Plan). The Plan, which was published in the **Federal Register** on February 15, 2006 (71 FR 8165), can be accessed on the Internet at the following site: *http://www.ed.gov/about/offices/list/osers/nidrr/policy.html.*

Through the implementation of the Plan, NIDRR seeks to: (1) Improve the quality and utility of disability and rehabilitation research; (2) foster an exchange of expertise, information, and training to facilitate the advancement of knowledge and understanding of the unique needs of traditionally underserved populations; (3) determine best strategies and programs to improve rehabilitation outcomes for underserved populations; (4) identify research gaps; (5) identify mechanisms of integrating research and practice; and (6) disseminate findings.

Purpose of Program:

The purpose of the DRRP program is to improve the effectiveness of services authorized under the Rehabilitation Act of 1973, as amended, by developing methods, procedures, and rehabilitation technologies that advance a wide range of independent living and employment outcomes for individuals with disabilities, especially individuals with the most severe disabilities. DRRPs carry out one or more of the following types of activities, as specified and defined in 34 CFR 350.13 through 350.19: Research, training, demonstration, development, dissemination, utilization, and technical assistance. An applicant for assistance under this program must demonstrate in its application how it will address, in whole or in part, the needs of individuals with disabilities from minority backgrounds (34 CFR 350.40(a)). The approaches an applicant may take to meet this requirement are found in 34 CFR 350.40(b). In addition, NIDRR intends to require all DRRP applicants to meet the requirements of the *General Disability and Rehabilitation Research Projects (DRRP) Requirements* priority that it published in a notice of final priorities in the **Federal Register** on April 28, 2006 (71 FR 25472).

Additional information on the DRRP program can be found at: *http://www.ed.gov/rschstat/research/pubs/resprogram.html#DRRP.*

Program Authority: 29 U.S.C. 762(g) and 764(a).

Applicable Program Regulations: 34 CFR part 350.

We published a notice of proposed priority (NPP) for NIDRR's Disability and Rehabilitation Research Projects and Centers Program in the **Federal Register** on December 29, 2009 (74 FR 68808). The NPP included a background statement that described our rationale for the priority proposed in that notice.

There is one significant difference between the NPP and this notice of final priority (NFP) as discussed in the following section.

Public Comment:

In response to our invitation in the NPP, five parties submitted comments on the proposed priority. An analysis of the comments and of any changes in the priority since publication of the NPP follows.

Generally, we do not address technical and other minor changes or suggested changes the law does not authorize us to make under the applicable statutory authority. In addition, we do not address general comments that raised concerns not directly related to the proposed priority.

Analysis of Comments and Changes:

Comment: One commenter suggested that the priority address the effect of State budget crises on transition programs.

Discussion: Although the priority does not explicitly include a requirement for research on State finances, nothing in the priority precludes an applicant from proposing to examine the effect of this factor on transition programs and employment outcomes for youth with disabilities. However, NIDRR has no basis for requiring all applicants to focus on State finances. The peer review process will determine the merits of each proposal.

Changes: None.

Comment: One commenter asked how NIDRR envisions the relationship between this priority and other NIDRR-funded projects that address specific populations of youth with disabilities, and whether the priority requests a focus on different subpopulations or is inclusive of all youth with disabilities.

Discussion: This priority focuses specifically on transition to employment, rather than on other aspects of transition, such as self-determination or community participation. Accordingly, the target population for this priority is transition-age youth with disabilities who are at risk for poor employment outcomes, rather than all youth with disabilities. We note that under paragraph (b) of the priority, applicants must identify the specific at-risk group or groups of transition-age youth with disabilities

they propose to study, provide evidence that the selected population or populations are, in fact, at risk for poor employment outcomes, and explain how the proposed practices are expected to address the needs of the population or populations.

Changes: None.

Comment: One commenter asked NIDRR to elaborate on the definition of disability for purposes of this priority (*e.g.,* whether the priority should focus on individuals with disabilities who have received services under the Individuals with Disabilities Education Act, individuals who are considered to have a disability under the Americans with Disabilities Act, or individuals with disabilities who are eligible for the vocational rehabilitation program).

Discussion: The Rehabilitation Act (Section 7(20)(B)) defines "individual with a disability," with respect to this program, as any person who "(i) has a physical or mental impairment which substantially limits one or more of such person's major life activities; (ii) has a record of such an impairment; or (iii) is regarded as having such an impairment." Within the broad constraints of this definition, applicants have the flexibility to specify their target population for the purposes of their proposed projects.

Changes: None.

Comment: One commenter questioned the relationship between the research activities to be conducted under paragraph (a) and the research activities to be conducted under paragraph (b) of the priority. The commenter asked whether proposals should determine the promising practice(s) to be studied under paragraph (b) before all of the research conducted under paragraph (a) has been completed.

Discussion: Paragraph (a) of the priority requires the applicant to conduct research to identify promising employment-focused practices for transition-age youth with disabilities. Paragraph (b) requires the applicant to conduct research to determine the effectiveness of promising transition practices, using at least one of the promising practices identified in paragraph (a). NIDRR acknowledges the difficulty involved in planning to meet the requirements in paragraph (b) before the research activities proposed for paragraph (a) are completed, and therefore will change paragraph (b) to make clear that it is not necessary for an applicant to fully delineate the range of promising practices under paragraph (a) before planning the research under paragraph (b).

Changes: NIDRR has revised the priority to remove the reference to paragraph (a) in paragraph (b) of the priority to clarify that the promising practices evaluated under paragraph (b) are not wholly dependent on the results of research conducted by the applicant under paragraph (a).

Comment: One commenter asked how NIDRR defines employment outcomes for the target population. Another commenter asked whether the research projects funded under this priority should demonstrate effects on direct employment outcomes or on outcomes related to the employability of the target population.

Discussion: There is a wide variety of valid definitions and measures of employment outcomes, many of which would be precluded if NIDRR specified those measures and outcomes in the priority. Therefore, NIDRR is not providing a definition of employment outcome nor is it specifying the types of employment outcomes an applicant should use. Instead, NIDRR encourages applicants to use definitions and outcome measures that are appropriate to the research projects being proposed. The peer review process will determine the merits of each application.

Changes: None.

Comment: One commenter recommended that the priority focus on effective practices and interventions for individuals who are deaf-blind.

Discussion: Paragraph (b) of the priority requires applicants to identify the specific at-risk group or groups of transition-age youth with disabilities they propose to study, provide evidence that the selected population or populations are, in fact, at risk for poor employment outcomes, and explain how the proposed practices are expected to address the needs of the population or populations. Provided an applicant meets these requirements, it is not limited in the characteristics of the subpopulations it may identify and therefore could choose to include youth who are deaf-blind in its proposed project.

Changes: None.

Comment: One commenter encouraged NIDRR to recognize organized recreational and competitive sports programs for youth with disabilities as a promising practice in helping to address poor employment outcomes among transition-age youth with disabilities.

Discussion: Paragraph (a) of the priority specifies that the research conducted under this priority should generate new knowledge of promising transition practices, and paragraph (b) requires research on the effectiveness of transition practices for a particular subpopulation of transition-age youth with disabilities who are at risk for poor employment outcomes. The language in the priority does not specify the type of practices to be investigated. Therefore, the priority does not preclude an applicant from investigating the effects of recreational and competitive sports programs on employment outcomes for transition-age youth at risk for poor employment outcomes. However, NIDRR has no basis for requiring all applicants to conduct research on such programs. The peer review process will determine the merits of each application.

Changes: None.

Final Priority:

The Assistant Secretary for Special Education and Rehabilitative Services announces a priority for a Disability and Rehabilitation Research Project (DRRP) on Transition to Employment. The purpose of this priority is to identify and evaluate promising practices that will facilitate job entry and career development for transition-age youth with disabilities who are at risk for poor employment outcomes.

A number of factors can affect employment outcomes for this population, including demographic characteristics (*e.g.,* race/ethnicity, age), disability characteristics (*e.g.,* disability type) and disadvantaged background (*e.g.,* poverty, foster care, involvement in the juvenile justice system). The DRRP must build upon the current research literature and ongoing implementation and demonstration of promising practices in the field of transition to employment.

Under this priority, the DRRP must be designed to contribute to the following outcomes:

(a) New knowledge of promising employment-focused transition practices for transition-age youth with disabilities who are at risk for poor employment outcomes. The DRRP must contribute to this outcome by conducting research to identify such practices. These practices may include, but are not limited to: work experience during the secondary school years; involvement of employers in the design and implementation of the transition program; supported employment; and increased coordination among schools, State vocational rehabilitation (VR) programs, or other programs serving transition-age youth with disabilities.

(b) New knowledge regarding the effectiveness of employment-focused transition practices for transition-age youth with disabilities at risk for poor employment outcomes. The DRRP must contribute to this outcome by implementing and evaluating at least one promising practice for a particular

at-risk group of transition-age youth with disabilities. In evaluating the promising practice or practices, the DRRP must use scientifically based research, as defined in section 9101(37) of the Elementary and Secondary Education Act of 1965, as amended (20 U.S.C. 7801(37)). Applicants must identify the specific at-risk group or groups of transition-age youth with disabilities they propose to study, provide evidence that the selected population or populations are, in fact, at risk for poor employment outcomes, and explain how the proposed practices are expected to address the needs of the population or populations.

(c) Enhancement of the knowledge base of policy makers, State VR personnel, and personnel of other programs serving transition-age youth with disabilities. The DRRP must contribute to this outcome by conducting targeted dissemination of results from research conducted under paragraphs (a) and (b).

• In addition, through coordination with the NIDRR Project Officer, the DRRP must contribute to this outcome by:

(1) Collaborating with relevant technical assistance grantees from the Rehabilitation Services Administration, such as the Technical Assistance and Continuing Education (TACE) Centers; and

(2) Collaborating with relevant technical assistance grantees from the Office of Special Education Programs, such as the National Secondary Transition Technical Assistance Center.

Types of Priorities:

When inviting applications for a competition using one or more priorities, we designate the type of each priority as absolute, competitive preference, or invitational through a notice in the **Federal Register.** The effect of each type of priority follows: *Absolute priority:* Under an absolute priority, we consider only applications that meet the priority (34 CFR 75.105(c)(3)).

Competitive preference priority: Under a competitive preference priority, we give competitive preference to an application by (1) awarding additional points, depending on the extent to which the application meets the priority (34 CFR 75.105(c)(2)(i)); or (2) selecting an application that meets the priority over an application of comparable merit that does not meet the priority (34 CFR 75.105(c)(2)(ii)).

Invitational priority: Under an invitational priority, we are particularly interested in applications that meet the priority. However, we do not give an application that meets the priority a preference over other applications (34 CFR 75.105(c)(1)).

Note: This notice does not solicit applications. In any year in which we choose to use this priority, we invite applications through a notice in the **Federal Register**.

Executive Order 12866: This notice has been reviewed in accordance with Executive Order 12866. Under the terms of the order, we have assessed the potential costs and benefits of this regulatory action.

The potential costs associated with this final regulatory action are those resulting from statutory requirements and those we have determined as necessary for administering this program effectively and efficiently.

In assessing the potential costs and benefits—both quantitative and qualitative—of this final regulatory action, we have determined that the benefits of the final priority justify the costs.

Discussion of costs and benefits:

The benefits of the Disability and Rehabilitation Research Projects and Centers Programs have been well established over the years in that similar projects have been completed successfully. This final priority will generate new knowledge about transition to employment for youth with disabilities, through research, development, dissemination, utilization, or technical assistance projects.

Another benefit of this final priority is that the establishment of a new DRRP will improve the lives of individuals with disabilities. The new DRRP will generate, disseminate, and promote the use of new information about transition to employment for youth with disabilities. This information will improve the options for youth with disabilities as they transition into adulthood and employment activities.

Accessible Format: Individuals with disabilities can obtain this document in an accessible format (*e.g.,* braille, large print, audiotape, or computer diskette) by contacting the Grants and Contracts Services Team, U.S. Department of Education, 400 Maryland Avenue, SW., room 5075, PCP, Washington, DC 20202–2550. Telephone: (202) 245–7363. If you use a TDD, call the FRS, toll-free, at 1–800–877–8339.

Electronic Access to This Document: You can view this document, as well as all other documents of this Department published in the **Federal Register,** in text or Adobe Portable Document Format (PDF) on the Internet at the following site: *http://www.ed.gov/news/fedregister.* To use PDF you must have Adobe Acrobat Reader, which is available free at this site.

Note: The official version of this document is the document published in the **Federal Register.** Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available on GPO Access at: *http://www.gpoaccess.gov/nara/index.html.*

Dated: April 27, 2010.

Alexa Posny,

Assistant Secretary for Special Education and Rehabilitative Services.

[FR Doc. 2010–10183 Filed 4–29–10; 8:45 am]

BILLING CODE 4000–01–P

ELECTION ASSISTANCE COMMISSION

Sunshine Act Notice

AGENCY: U.S. Election Assistance Commission.

ACTION: Notice of Virtual Public Forum for EAC Standards Board.

DATE AND TIME: Monday, May 17, 2010, 9 a.m. EDT through Tuesday, June 1, 2010, 9 p.m. EDT.

PLACE: EAC Standards Board Virtual Meeting Room at *http://www.eac.gov.* Once at the main page of EAC's Web site, viewers should click the link to the Standards Board Virtual Meeting Room. The virtual meeting room will open on Monday, May 17, 2010, at 9 a.m. EDT and will close on Tuesday, June 1, 2010, at 9 p.m. EDT. The site will be available 24 hours per day during that 16-day period.

PURPOSE: The EAC Standards Board will review and provide comment on three draft chapters of the Election Management Guidelines. The draft chapters contain best practices and recommendations regarding: Accessibility, Elections Office Administration, and Technology in Elections.

The EAC Standards Board Virtual Meeting Room was established to enable the Standards Board to conduct business in an efficient manner in a public forum, including being able to review and discuss draft documents, when it is not feasible for an in-person board meeting. The Standards Board will not take any votes or propose any resolutions during the 16-day forum of May 17–June 1, 2010. Members will post comments about the three draft chapters of the Election Management Guidelines.

This activity is open to the public. The public may view the proceedings of this special forum by visiting the EAC Standards Board Virtual Meeting Room at *http://www.eac.gov* at any time between Monday, May 17, 2010, 9 a.m. EDT and Tuesday, June 1, 2010, 9 p.m.

EDT. The public also may view the three draft chapters of the election management guidelines, which will be posted on EAC's Web site beginning May 17, 2010. The public may file written statements to the EAC Standards Board at *standardsboard@eac.gov* and by copying Sharmili Edwards at *sedwards@eac.gov.* Data on EAC'S Web site is accessible to visitors with disabilities and meets the requirements of section 508 of the Rehabilitation Act.

PERSON TO CONTACT FOR INFORMATION: Bryan Whitener, Telephone: (202) 566–3100.

Gineen Bresso Beach,

Commissioner, U.S. Election Assistance Commission.

[FR Doc. 2010–10208 Filed 4–28–10; 11:15 am]

BILLING CODE 6820–KF–P

DEPARTMENT OF ENERGY

National Electric Transmission Congestion Study

AGENCY: Office of Electricity Delivery and Energy Reliability (OE), Department of Energy.

ACTION: Notice of Availability of 2009 National Electric Transmission Congestion Study and Request for Comments.

SUMMARY: The Department of Energy (the "Department") gives notice that it has issued a National Electric Transmission Congestion Study (2009 Congestion Study) and is seeking comments on all aspects of the study. The full text of the 2009 Congestion Study is available at *http://www.oe.energy.gov*.

DATES: Written comments may be filed electronically in MS Word and PDF formats. Comments regarding the 2009 Congestion Study should be emailed to *congestion09.@anl.gov*. Comments should be received no later than 5 p.m. EDT June 29, 2010. Also, comments can be filed by mail at the address listed below.

ADDRESSES: Written comments via mail should be submitted to: Office of Electricity Delivery and Energy Reliability, OE–10, Attention: 1221 Comments, U.S. Department of Energy, Forrestal Building, Room 6H050, 1000 Independence Avenue, SW., Washington, DC 20585.

Note: Delivery of U.S. Postal Service mail sent to the Department continues to be delayed by several weeks due to security screening procedures. Electronic submission of comments is therefore encouraged. Copies of written comments received and other relevant documents and information may be reviewed at *http://www.congestion09.anl.gov*.

FOR FURTHER INFORMATION CONTACT: Mr. David Meyer, Office Electricity Delivery and Energy Reliability, OE–10, U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–1411, *David.Meyer@hq.doe.gov,* or Lot Cooke, Office of General Counsel, GC–76, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–0503, *Lot.Cooke@hq.doe.gov*.

SUPPLEMENTARY INFORMATION: Section 1221(a) of the Energy Policy Act of 2005 (EPAct) directed the Secretary of Energy to conduct periodic nationwide studies of electric transmission congestion. The initial study was to be completed within one year of enactment of the EPAct with subsequent studies every three years thereafter. The American Reinvestment and Recovery Act of 2009 (Recovery Act) further directed the Secretary to include in the 2009 Congestion Study an analysis of significant potential sources of renewable energy that are constrained by lack of adequate transmission capacity. Based on the Congestion Study, and comments concerning it from states and other stakeholders, the Secretary of Energy may designate any geographic area experiencing electric transmission capacity constraints or congestion as a national interest electric transmission corridor (National Corridor).

In August 2006, the Department published its first National Electric Transmission Congestion Study.[1] In 2007, based in part on the findings of that study and after considering the comments of stakeholders, the Secretary designated two National Corridors, one in the Mid-Atlantic area and one covering portions of southern California and western Arizona, reflecting the high impacts of transmission congestion in each area.[2]

The 2009 Congestion Study has been completed and issued by the Department. The study is available for review at the website listed above. Based on the study, the Department found three classes of congestion areas that merit further federal attention: Critical Congestion Areas, Congestion Areas of Concern, and a Conditional Constrained Area.

The Department stated when it announced the beginning of its work on the 2009 Congestion Study that the study would focus on the identification of existing electric transmission-level congestion based on publicly available historic information and data related to transmission congestion. The information and data used by DOE in conducting the analysis in the 2009 Congestion Study was that which was available through May 2009. As a result the study does not address the possible impacts of the recent recession on congestion, or any other recent events, reports, or other developments affecting congestion.

The Department is seeking comments from interested persons on the 2009 Congestion Study, and on future steps for identifying and addressing electric transmission congestion, including the possible designation of National Corridors. Commenters may address any aspect of this study they consider appropriate. The Department intends to update, or issue an addendum to, this study in which it may consider the effect of the recession on congestion identified in the study, comments received on this version of the study, and the implications of additional data or information that has become available since May 2009. The Department invites commenters to direct it to data, publications, or other information that they believe relevant to this additional analysis.

Issued in Washington, DC, on April 26, 2010.

Patricia A. Hoffman,

Principal Deputy Assistant Secretary, Electricity Delivery and Energy Reliability.

[FR Doc. 2010–10110 Filed 4–29–10; 8:45 am]

BILLING CODE 6450–01–P

[1] See 71 FR 45047 (August 6, 2006).

[2] See 72 FR 56992 (October 5, 2007).

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 13652–000–Montana]

Gary E. Hall and Rita Hall; Notice of Availability of Environmental Assessment

April 22, 2010.

In accordance with the National Environmental Policy Act of 1969, as amended, and the Federal Energy Regulatory Commission's (Commission's) regulations (18 CFR Part 380), Commission staff has reviewed the application for exemption from licensing for the 50-watt Potter Creek Hydroelectric Project, located in Flathead County, Montana, and has prepared an Environmental Assessment (EA). The proposed project would be built on private lands owned by the applicant and on 0.51 acres of U.S. Forest Service land in the Flathead National Forest. The EA contains the

staff's analysis of the potential environmental impacts of the project and concludes that exempting the project from licensing, with appropriate environmental measures, would not constitute a major Federal action significantly affecting the quality of the human environment.

A copy of the EA is on file with the Commission and is available for public inspection. The EA may also be viewed on the Commission's Web site at *http://www.ferc.gov* using the "eLibrary" link. Enter the docket number excluding the last three digits in the docket number field to access documents. For assistance, contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at 1–866–208–3676, or for TTY, (202) 502–8659. You may also register online at *http://www.ferc.gov/docs-filing/esubscription.asp* to be notified via e-mail of new filings and issuances related to this or other pending projects. For assistance, contact FERC Online Support.

Please contact Jennifer Harper by telephone at (202) 502–6136 or by e-mail at *Jennifer.Harper@ferc.gov* if you have any questions.

Kimberly D. Bose,

Secretary.

[FR Doc. 2010–10062 Filed 4–29–10; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #1

April 19, 2010.

Take notice that the Commission received the following exempt wholesale generator filings:

Docket Numbers: EG10–32–000.

Applicants: White Oak Energy LLC.

Description: Notice of Self-Certification of Exempt Wholesale Generator Status of White Oak Energy LLC.

Filed Date: 04/16/2010.

Accession Number: 20100416–5083.

Comment Date: 5 p.m. Eastern Time on Friday, May 7, 2010.

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER10–753–001.

Applicants: California Independent System Operator Corporation.

Description: The California Independent System Operator Corp submits Substitute Second Revised Sheet 365 *et al.* to FERC Gas Tariff, Fourth Replacement Volume 1 in compliance with the Commission's April 6, 2010.

Filed Date: 04/15/2010.

Accession Number: 20100416–0204.

Comment Date: 5 p.m. Eastern Time on Thursday, May 6, 2010.

Docket Numbers: ER10–941–001.

Applicants: Southwest Power Pool, Inc.

Description: Southwest Power Pool, Inc submits executed Protocols to be appended to the Letter Agreement Regarding Comprehensive Seams Agreement with Entergy Services, Inc *etc.*

Filed Date: 04/16/2010.

Accession Number: 20100419–0204.

Comment Date: 5 p.m. Eastern Time on Friday, May 7, 2010.

Docket Numbers: ER10–973–001.

Applicants: Delmarva Power & Light Company.

Description: Delmarva Power & Light Company submits Original Service Agreement 2450 to FERC Electric Tariff, Sixth Revised Volume 1 to be effective 5/1/10.

Filed Date: 04/16/2010.

Accession Number: 20100416–0215.

Comment Date: 5 p.m. Eastern Time on Friday, May 7, 2010.

Docket Numbers: ER10–982–001.

Applicants: New York Independent System Operator.

Description: New York Independent System Operator, Inc submits Substitute Original Sheet 574C *et al.* to FERC Electric Tariff, Original Volume 1 to be effective 5/31/10.

Filed Date: 04/16/2010.

Accession Number: 20100419–0202.

Comment Date: 5 p.m. Eastern Time on Monday, April 26, 2010.

Docket Numbers: ER10–1002–001.

Applicants: Consolidated Edison Company of New York.

Description: Consolidated Edison Company of New York, Inc submits Substitute Fourth Revised Sheet 43 *et al.* to its FERC Electric Tariff, First Revised Rate Schedule 96 PASNY Delivery Service.

Filed Date: 04/16/2010.

Accession Number: 20100416–0211.

Comment Date: 5 p.m. Eastern Time on Friday, May 7, 2010.

Docket Numbers: ER10–1005–001.

Applicants: New York Independent System Operator.

Description: New York Independent System Operator, Inc submits Substitute Ninth Revised Sheet 51 *et al.* to FERC Electric Tariff, Original Volume 1 to be effective 5/31/10.

Filed Date: 04/16/2010.

Accession Number: 20100419–0203.

Comment Date: 5 p.m. Eastern Time on Friday, May 7, 2010.

Docket Numbers: ER10–1048–001.

Applicants: Commonwealth Edison Company.

Description: Commonwealth Edison Company submits tariff filing per 35: Baseline Tariff Corrected Filing to be effective 4/14/2010.

Filed Date: 04/15/2010.

Accession Number: 20100415–5095.

Comment Date: 5 p.m. Eastern Time on Thursday, May 6, 2010.

Docket Numbers: ER10–1057–000.

Applicants: Xcel Energy Operating Companies.

Description: Xcel Energy Operating Companies submits Original Sheet 9.1 *et al.* to its FERC Electric Tariff, First Revised Volume 1 to be effective 5/28/10.

Filed Date: 04/15/2010.

Accession Number: 20100415–0203.

Comment Date: 5 p.m. Eastern Time on Thursday, May 6, 2010.

Docket Numbers: ER10–1058–000.

Applicants: Pacific Gas and Electric Company.

Description: Pacific Gas and Electric Company submits revisions to the Service Agreement for Wholesale Distribution Service with Western Area Power Administration.

Filed Date: 04/15/2010.

Accession Number: 20100415–0204.

Comment Date: 5 p.m. Eastern Time on Thursday, May 6, 2010.

Docket Numbers: ER10–1059–000.

Applicants: The United Illuminating Company.

Description: The United Illuminating Company submits an executed Localized Costs Sharing Agreement with GenConn Devon, LLC.

Filed Date: 04/16/2010.

Accession Number: 20100416–0212.

Comment Date: 5 p.m. Eastern Time on Friday, May 7, 2010.

Docket Numbers: ER10–1060–000.

Applicants: Southern California Edison Company.

Description: Southern California Edison Company submits Six Revised Sheet 42 *et al.* First Revised Rate Schedule FERC No. 403 to be effective 6/16/10.

Filed Date: 04/16/2010.

Accession Number: 20100416–0213.

Comment Date: 5 p.m. Eastern Time on Friday, May 7, 2010.

Docket Numbers: ER10–1061–000.

Applicants: Southern California Edison Company.

Description: Southern California Edison Company submits a revised rate sheet reflecting cancellation of the Edison-Los Angeles Owens Valley Transmission Service Agreement with Dept of Water and Power of the City of Los Angeles.

Filed Date: 04/16/2010.
Accession Number: 20100416–0214.
Comment Date: 5 p.m. Eastern Time on Friday, May 7, 2010.

Docket Numbers: ER10–1063–000.
Applicants: Vermont Transco LLC.
Description: Vermont Transco, LLC submits Substation Participation Agreement, currently designated as Rate Schedule 7 *etc* to be effective 5/1/10.
Filed Date: 04/16/2010.
Accession Number: 20100419–0205.
Comment Date: 5 p.m. Eastern Time on Friday, May 7, 2010.

Take notice that the Commission received the following electric securities filings:

Docket Numbers: ES10–33–000.
Applicants: Consumers Energy Company.
Description: Consumers Energy Company's Application for authorization to issue Short term securities.
Filed Date: 04/16/2010.
Accession Number: 20100416–5186.
Comment Date: 5 p.m. Eastern Time on Friday, May 7, 2010.

Docket Numbers: ES10–34–000.
Applicants: Consumers Energy Company.
Description: Consumers Energy Company's Application for authorization to issue Long term securities.
Filed Date: 04/16/2010.
Accession Number: 20100416–5189.
Comment Date: 5 p.m. Eastern Time on Friday, May 7, 2010.

Take notice that the Commission received the following open access transmission tariff filings:

Docket Numbers: OA07–37–003.
Applicants: E.ON U.S. LLC.
Description: Penalty Assessment and Distribution Report of E.ON U.S. LLC.
Filed Date: 04/16/2010.
Accession Number: 20100416–5145.
Comment Date: 5 p.m. Eastern Time on Friday, May 7, 2010.

Docket Numbers: OA07–53–006.
Applicants: Progress Energy, Inc.
Description: Progress Energy, Inc. submits Annual Penalty Revenues Report on behalf of Carolina Power & Light Company and Florida Power Corporation.
Filed Date: 04/16/2010.
Accession Number: 20100416–5043.
Comment Date: 5 p.m. Eastern Time on Friday, May 7, 2010.

Docket Numbers: OA07–54–008.
Applicants: PacifiCorp.
Description: Annual Report on Operational Penalties of PacifiCorp.
Filed Date: 04/16/2010.
Accession Number: 20100416–5075.
Comment Date: 5 p.m. Eastern Time on Friday, May 7, 2010.

Docket Numbers: OA08–111–002.
Applicants: Portland General Electric Company.
Description: Portland General Electric Company 2009 Annual Informational Filing on Operational Penalty Assessments and Distributions as Required by Order Nos. 890 and 890–A.
Filed Date: 04/16/2010.
Accession Number: 20100416–5187.
Comment Date: 5 p.m. Eastern Time on Friday, May 7, 2010.

Docket Numbers: OA08–126–002.
Applicants: Mid-Continent Area Power Pool.
Description: Mid-Continent Area Power Pool Re: Annual Compliance Report of Penalty Assessments and Distributions.
Filed Date: 04/16/2010.
Accession Number: 20100416–5146.
Comment Date: 5 p.m. Eastern Time on Friday, May 7, 2010.

Docket Numbers: OA09–22–002.
Applicants: Florida Power & Light Company.
Description: Annual Compliance Report Regarding Penalties for Unreserved Use of Florida Power & Light Company.
Filed Date: 04/19/2010.
Accession Number: 20100419–5156.
Comment Date: 5 p.m. Eastern Time on Monday, May 10, 2010.

Any person desiring to intervene or to protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) on or before 5 p.m. Eastern time on the specified comment date. It is not necessary to separately intervene again in a subdocket related to a compliance filing if you have previously intervened in the same docket. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant. In reference to filings initiating a new proceeding, interventions or protests submitted on or before the comment deadline need not be served on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov.* To facilitate electronic service, persons with Internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically should submit an original and 14 copies of the intervention or protest to the Federal Energy Regulatory Commission, 888 First St., NE., Washington, DC 20426.

The filings in the above proceedings are accessible in the Commission's eLibrary system by clicking on the appropriate link in the above list. They are also available for review in the Commission's Public Reference Room in Washington, DC.

There is an eSubscription link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov.* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2010–10077 Filed 4–29–10; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EL10–61–000]

Cargill Power Markets, LLC, Complainant v. Public Service Company of New Mexico, Respondent; Notice of Complaint

April 21, 2010.

Take notice that on April 20, 2010, pursuant to section 206 of the Federal Energy Regulatory Commission's (Commission) Rules and Practice and Procedure, 18 CFR 385.206 (2009), and section 206 of the Federal Power Act (FPA), 16 U.S.C. 824e (2006), Cargill Power Markets, LLC (Complainant) filed a formal complaint against Public Service Company of New Mexico (Respondent) alleging that Respondent violated the requirements of its open access transmission tariff, the North American Energy Standards Board (NAESB) business practices incorporated by reference therein, and the non-discrimination requirements of the FPA by improperly denying Complainant's valid transmission service request (TSR) that complied with the Respondent's Tariff and NAESB requirements. Complainant also alleges that Respondent improperly granted invalid TSRs that did not

comply with the Respondent's Tariff and NAESB requirements. Complainant requests that the Commission direct Respondent to reprocess its TSRs in accordance with Respondent's Tariff and the NAESB standards and to institute an FPA section 206 investigation of Respondent's transmission and interconnection queue processing practices.

The Complainant states that a copy of the complaint has been served on the contacts for the Respondent as listed on the Commission's list of Corporate Officials.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. The Respondent's answer and all interventions, or protests must be filed on or before the comment date. The Respondent's answer, motions to intervene, and protests must be served on the Complainant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the "eFiling" link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov*, using the "eLibrary" link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an "eSubscription" link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov*, or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: 5 p.m. Eastern Time on May 10, 2010.

Kimberly D. Bose,

Secretary.

[FR Doc. 2010–10056 Filed 4–29–10; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EL08–47–005]

PJM Interconnection, L.L.C.; Notice of Filing

April 23, 2010.

Take notice that on April 22, 2010, PJM Interconnection, L.L.C. (PJM) filed revised tariff sheets to its Schedule 1 of the Amended and Restated Operating Agreement, the parallel provisions of Attachment K—Appendix of the PJM Open Access Transmission Tariff, and Schedule 2 of the Operating Agreement, pursuant to the Federal Energy Regulatory Commission's (Commission) March 23, 2010 Order on Compliance Filing, PJM Interconnection, L.L.C., 130 FERC ¶ 61,230 (2010).

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the comment date. Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant and all the parties in this proceeding.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the "eFiling" link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov,* using the "eLibrary" link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an "eSubscription" link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: 5 p.m. Eastern Time on May 13, 2010.

Kimberly D. Bose,

Secretary.

[FR Doc. 2010–10057 Filed 4–29–10; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EL10–59–000]

Southwest Power Pool, Inc, E.ON U.S. LLC, Cash Creek Generation LLC; Notice for Petition of Declaratory Order

April 23, 2010.

Take notice that on April 9, 2010, Southwest Power Pool, Inc., E.ON U.S. LLC, and Cash Creek LLC (Cash Creek) filed a joint petition for declaratory order, pursuant to section 219 of the Federal Power Act, 16 U.S.C. 825s, and section 207 of the Rules of Practice and Procedures of the Federal Energy Regulatory Commission (Commission), 18 CFR 285.207, requesting that the Commission decide certain disputed legal, policy and tariff issues related to a generator interconnection request submitted by Cash Creek.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the comment date. On or before the comment date, it is not necessary to serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the "eFiling" link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov,* using the "eLibrary" link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an "eSubscription" link on the Web site that enables subscribers to

receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: 5 p.m. Eastern Time on May 10, 2010.

Kimberly D. Bose,

Secretary.

[FR Doc. 2010–10058 Filed 4–29–10; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RM98–1–000]

Records Governing Off-the Record Communications; Public Notice

March 26, 2010.

This constitutes notice, in accordance with 18 CFR 385.2201(b), of the receipt of prohibited and exempt off-the-record communications.

Order No. 607 (64 FR 51222, September 22, 1999) requires Commission decisional employees, who make or receive a prohibited or exempt off-the-record communication relevant to the merits of a contested proceeding, to deliver to the Secretary of the Commission, a copy of the communication, if written, or a summary of the substance of any oral communication.

Prohibited communications are included in a public, non-decisional file associated with, but not a part of, the decisional record of the proceeding. Unless the Commission determines that the prohibited communication and any responses thereto should become a part of the decisional record, the prohibited off-the-record communication will not be considered by the Commission in reaching its decision. Parties to a proceeding may seek the opportunity to respond to any facts or contentions made in a prohibited off-the-record communication, and may request that the Commission place the prohibited communication and responses thereto in the decisional record. The Commission will grant such a request only when it determines that fairness so requires. Any person identified below as having made a prohibited off-the-record communication shall serve the document on all parties listed on the official service list for the applicable proceeding in accordance with Rule 2010, 18 CFR 385.2010.

Exempt off-the-record communications are included in the decisional record of the proceeding, unless the communication was with a cooperating agency as described by 40 CFR 1501.6, made under 18 CFR 385.2201(e)(1)(v).

The following is a list of off-the-record communications recently received by the Secretary of the Commission. The communications listed are grouped by docket numbers in ascending order. These filings are available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the eLibrary link. Enter the docket number, excluding the last three digits, in the docket number field to access the document. For assistance, please contact FERC, Online Support at *FERCOnlineSupport@ferc.gov* or toll free at (866) 208–3676, or for TTY, contact (202) 502–8659.

Docket No.	File date	Presenter or requester
Prohibited:		
1. CP09–35–000	3–22–10	Leslie and Dick Marchant.
2. CP09–54–000	3–22–10	James J. Cleary.
3. CP09–54–000	3–22–10	Marjorie Sill.
Exempt:		
1. CP09–54–000	3–4–10	Hon. Michael B. Enzi.
2. P–739–022	3–12–10	Brenda Winn.
3. P–2677–019	3–24–10	Nicholas J. Utrup.
4. P–13266–000, *et al.*	3–22–10	Philip T. Feir.
5. P–13641–000	3–10–10	Joe Nungaray.

Kimberly D. Bose,

Secretary.

[FR Doc. 2010–10063 Filed 4–29–10; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. AD10–1–010]

Review of Cost Submittals by Other Federal Agencies for Administering Part I of the Federal Power Act; Notice Requesting Questions and Comments on Other Federal Agency Cost Submissions for Fiscal Year 2009

April 22, 2010.

In its *Order On Rehearing Consolidating Administrative Annual Charges Bill Appeals And Modifying Annual Charges Billing Procedures,* 109 FERC ¶ 61,040 (2004) (October 8 Order), the Commission set forth an annual process for Other Federal Agencies (OFAs) to submit their costs related to Administering Part I of the Federal Power Act. Pursuant to the established process, the Director of the Financial Services Division, Office of the Executive Director, on October 22, 2009, issued a letter requesting the OFAs to submit their costs by January 21, 2010 using the OFA Cost Submission Form.

Upon receipt of the agency submissions, the Commission posted the information in eLibrary, and issued, on March 11, 2010, a notice announcing the date for a technical conference to review the submitted costs. On April 14, 2010, the Commission held the technical conference. Technical conference transcripts, submitted cost forms, and detailed supporting documents are all available for review under Docket No. AD10–1 on the Commission's eLibrary and are accessible on-line at *http://www.ferc.gov,* using the "eLibrary" link and are available for review in the Commission's Public Reference Room in Washington, DC. There is an "eSubscription" link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Those interested may file specific questions and comments on the FY 2009 OFA cost submissions with the Commission under Docket No. AD10–1–010, no later than May 7, 2010. Once filed, the Commission will forward the

questions and comments to the OFAs for response.

Anyone with questions pertaining to the technical conference or this notice should contact W. Doug Foster at (202) 502–6118 (via e-mail at *doug.foster@ferc.gov*), or Fannie Kingsberry at (202) 502–6108 (via e-mail at *fannie.kingsberry@ferc.gov*).

Kimberly D. Bose,

Secretary.

[FR Doc. 2010–10059 Filed 4–29–10; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 13124–000]

Copper Valley Electric Association; Notice of Scoping Meeting and Soliciting Scoping Comments for an Oirginal Application for License

April 23, 2010.

a. *Type of Application:* Original License Application.

b. *Project No.:* 13124–000.

c. *Applicant:* Copper Valley Electric Association.

d. *Name of Project:* Allison Lake Project.

e. *Location:* on the south side of Port Valdez, on the shore opposite from the community of Valdez, Alaska, near the Alyeska Marine Terminal and the terminus of the Trans Alaska Pipeline System (TAPS) in Township 9 South, Range 6 West, Seward Meridian, Alaska.

f. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r).

g. *Applicant Contact:* Robert A. Wilkinson, CEO, Copper Valley Electric Association, P.O. Box 45, Mile 187 Glenn Highway, Glennallen, Alaska 99588, 907–822–3211, *allisonlake@cvea.org.*

h. *FERC Contact:* Gaylord Hoisington, phone at (202) 502–6032; e-mail at *gaylord.hoisington@ferc.gov.*

i. *Deadline for filing scoping comments:* July 12, 2010.

All documents (original and eight copies) should be filed with: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

The Commission's Rules of Practice and Procedure require all intervenors filing documents with the Commission to serve a copy of that document on each person on the official service list for the project. Further, if an intervenor files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

Scoping comments may be filed electronically via the Internet in lieu of paper. The Commission strongly encourages electronic filings. See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site (*http://www.ferc.gov*) under the "e-Filing" link.

j. *The proposed project would consist of:* (1) A 70-foot high, 17-foot-wide rock-filled embankment dam; (2) a 12,500-acre-foot storage reservoir; (3) 9,700-foot-long, 33-inch-diameter-steel pipeline; (4) a 40-foot-high, 40-foot wide powerhouse; (5) a 4,000 kilowatt horizontal pelton turbine; (6) a 150-foot-long tailrace channel; (7) a switchyard; (8) 2.5-mile-long transmission line; and (9) all appurtenant structures.

k. *Scoping Process:* Copper Valley Electric Association (Copper Valley) has requested use of the Commission's alternative licensing procedures (ALP). To date, the Commission has not acted upon that request. Under the ALP, Copper Valley will prepare a Preliminary Draft Environmental Assessment (PDEA) and license application for the Allison Lake Project.

Copper Valley expects to file, with the Commission, the PDEA and the license application for the Allison Lake Project by July 30, 2010. Although Copper Valley's intent is to prepare a PDEA, there is the possibility that an Environmental Impact Statement (EIS) will be required. Nevertheless, this meeting will satisfy the scoping requirements, pursuant to the National Environmental Policy Act of 1969, as amended, irrespective of whether an EA or EIS is issued by the Commission.

The purpose of this notice is to inform you of the opportunity to participate in the upcoming scoping meetings identified below, and to solicit your scoping comments.

Scoping Meetings

Copper Valley and the Commission staff will hold two scoping meetings, one in the daytime and one in the evening, to help us identify the scope of issues to be addressed in the PDEA.

The daytime scoping meeting will focus on resource agency concerns, while the evening scoping meeting is primarily for public input. All interested agencies, Indian tribes, individuals, and organizations are invited to attend one or both of the meetings, and to assist staff in identifying the environmental issues that should be analyzed in the PDEA. The times and locations of these meetings are as follows:

Daytime Meeting

Monday, May 10, 2010, 10 a.m.–Noon, Carr Gottstein Academic Building, Veco Board Room, 4101 University Drive, Anchorage, AK 99508.

Note: Parking is available to the east of the building.

Evening Meeting

Wednesday, May 12, 2010, 7 p.m. (Alaska time zone), Valdez Civic Center, 110 Clifton, Valdez, AK.

To help focus discussions, Scoping Document 1 (SD1) was mailed on April 23, 2010, outlining the subject areas to be addressed in the license to the parties on the mailing list. Copies of the SD1 also will be available at the scoping meetings. SD1 is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "eLibrary" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at 1–866–208–3676, or for TTY, (202) 502–8659.

You may also register online at *http://www.ferc.gov/docs-filing/esubscription.asp* to be notified via e-mail of new filings and issuances related to this or other pending projects. For assistance, contact FERC Online Support.

Based on all written comments received, a Scoping Document 2 (SD2) may be issued. SD2 will include a revised list of issues, based on the scoping meetings.

Objectives

At the scoping meetings, staff will: (1) Summarize the environmental issues tentatively identified for analysis in the NEPA analysis; (2) solicit from the meeting participants all available information, especially quantifiable data, on the resources at issue; (3) encourage statements from experts and the public on issues that should be analyzed in the PDEA, including viewpoints in opposition to, or in support of, staff's preliminary views; (4) determine the resource issues to be addressed in the PDEA; and (5) identify those issues that require a detailed analysis, as well as those issues that do not require a detailed analysis.

Procedures

The meetings will be recorded by a stenographer and will become part of the formal record of the Commission proceeding for the project.

Individuals, organizations, agencies, and Indian tribes with environmental expertise and concerns are encouraged to attend the meetings and to assist Copper Valley and Commission staff in defining and clarifying the issues to be addressed in the PDEA.

Kimberly D. Bose,

Secretary.

[FR Doc. 2010–10061 Filed 4–29–10; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER10–1064–000]

511 Plaza Energy, LLC; Supplemental Notice That Initial Market-Based Rate Filing Includes Request for Blanket Section 204 Authorization

April 22, 2010.

This is a supplemental notice in the above-referenced proceeding of 511 Plaza Energy, LLCs application for market-based rate authority, with an accompanying rate tariff, noting that such application includes a request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability.

Any person desiring to intervene or to protest should file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant.

Notice is hereby given that the deadline for filing protests with regard to the applicant's request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability, is May 12, 2010.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov.* To facilitate electronic service, persons with Internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically should submit an original and 14 copies of the intervention or protest to the Federal Energy Regulatory Commission, 888 First St., NE., Washington, DC 20426.

The filings in the above-referenced proceeding are accessible in the Commission's eLibrary system by clicking on the appropriate link in the above list. They are also available for review in the Commission's Public Reference Room in Washington, DC. There is an eSubscription link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed dockets(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Kimberly D. Bose,

Secretary.

[FR Doc. 2010–10060 Filed 4–29–10; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OAR–2006–0895, FRL–9144–1]

Agency Information Collection Activities; Proposed Collection; Comment Request; Engine Emission Defect Information Reports and Voluntary Emission Recall Reports; EPA ICR No. 0282.15, OMB Control No. 2060–0048

AGENCY: Environmental Protection Agency.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) (44 U.S.C. 3501 *et seq.*), this document announces that EPA is planning to submit a request to renew an existing approved Information Collection Request (ICR) to the Office of Management and Budget (OMB). This ICR is scheduled to expire on July 31, 2010. Before submitting the ICR to OMB for review and approval, EPA is soliciting comments on specific aspects of the proposed information collection as described below.

DATES: Comments must be submitted on or before June 29, 2010.

ADDRESSES: Submit your comments, identified by the Docket ID numbers provided for each item in the text, by one of the following methods:

- *http://www.regulations.gov:* Follow the online instructions for submitting comments.
- *E-mail: a-and-r-Docket@epa.gov.*
- *Fax:* (202) 566–9744.
- *Mail:* Air Docket, Environmental Protection Agency, Mailcode: 2822T, 1200 Pennsylvania Ave., NW., Washington, DC 20460.
- *Hand Delivery:* Docket Center, (EPA/DC), EPA West, Room 3334, 1301 Constitution Ave., NW., Washington, DC 20460. Such deliveries are only accepted during the Docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to the Docket ID Numbers identified for each item in the text. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at http://*www.regulations.gov,* including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through www.regulations.gov or e-mail. The *http://www.regulations.gov* Web site is an "anonymous access" system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through www.regulations.gov, your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. For additional information about EPA's public docket visit the EPA Docket Center homepage at *http://www.epa.gov/epahome/dockets.htm.*

FOR FURTHER INFORMATION CONTACT: Nydia Yanira Reyes-Morales, Environmental Protection Agency, 1200 Pennsylvania Avenue, NW., Mail Code 6403J, Washington, DC 20460; telephone number: 202–343–9264; fax number: 202–343–2804; e-mail address: *reyes-morales.nydia@epa.gov.*

SUPPLEMENTARY INFORMATION:

How can I access the docket and/or submit comments?

EPA has established public docket this ICR under Docket ID No. EPA–HQ–

OAR–2006–0895, which is available for online viewing at *http://www.regulations.gov*, or in person viewing at the Air Docket in the EPA Docket Center (EPA/DC), EPA West, Room 3334, 1301 Constitution Ave., NW., Washington, DC. The EPA/DC Public Reading Room is open from 8 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Reading Room is 202–566–1744, and the telephone number for the Air Docket is 202–566–1742.

Use *www.regulations.gov* to obtain a copy of the draft collection of information, submit or view public comments, access the index listing of the contents of the docket, and to access those documents in the public docket that are available electronically. Once in the system, select "search," then key in the Docket ID number identified in this document.

What information is EPA particularly interested in?

Pursuant to section 3506(c)(2)(A) of the PRA, EPA specifically solicits 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. In particular, EPA is requesting comments from very small businesses (those that employ less than 25) on examples of specific additional efforts that EPA could make to reduce the paperwork burden for very small businesses affected by this collection.

What should I consider when I prepare my comments for EPA?

You may find the following suggestions helpful for preparing your comments:

1. Explain your views as clearly as possible and provide specific examples.

2. Describe any assumptions that you used.

3. Provide copies of any technical information and/or data you used that support your views.

4. If you estimate potential burden or costs, explain how you arrived at the estimate that you provide.

5. Offer alternative ways to improve the collection activity.

6. Make sure to submit your comments by the deadline identified under **DATES**.

7. To ensure proper receipt by EPA, be sure to identify the docket ID number assigned to this action in the subject line on the first page of your response. You may also provide the name, date, and **Federal Register** citation.

What information collection activity or ICR does this apply to?

Docket ID No.: EPA–HQ–OAR–2006–0895.

Affected entities: Entities potentially affected by this action are manufacturers of on-highway heavy-duty engines, nonroad compression-ignition engines, spark-ignition engines, spark-ignition equipment components, marine engines, locomotives and locomotive engines.

Title: Engine Emission Defect Information Reports and Voluntary Emission Recall Reports (Renewal).

ICR numbers: EPA ICR No. 0282.15, OMB Control No. 2060–0048.

ICR status: This ICR is currently scheduled to expire on July 31, 2010. An Agency may not conduct or sponsor, and a person is not required to respond to, a collection of information, unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations in title 40 of the CFR, after appearing in the **Federal Register** when approved, are listed in 40 CFR part 9, are displayed either by publication in the **Federal Register** or by other appropriate means, such as on the related collection instrument or form, if applicable. The display of OMB control numbers in certain EPA regulations is consolidated in 40 CFR part 9.

Abstract: Under the provisions of the Clean Air Act (CAA), the Administrator is required to promulgate regulations to control air pollutant emissions from motor vehicles and nonroad engines, as defined in the CAA. Per Sections 207(d)(1) and 213 of the CAA, when a substantial number of properly maintained and used engines produced by a manufacturer do not conform to emission standards, the manufacturer is required to recall the engines. Engine manufacturers are required to submit Defect Information Reports (DIRs) if emission-related defects are found on engines of the same model year that may cause the engines' emissions to exceed the standards. EPA uses these reports to target potentially nonconforming classes of engines for future testing, to monitor compliance with applicable regulations and to order a recall, if necessary. Manufacturers can also initiate a recall voluntarily by submitting a Voluntary Emission Recall Report (VERR). VERRs and VERR updates allow EPA to determine whether the manufacturer conducting the recall is acting in accordance with the CAA and to examine and monitor the effectiveness of the recall campaign. The information is collected by the Heavy-Duty and Nonroad Engines Group (HDNEG), Compliance and Innovative Strategies Division (CISD), Office of Transportation and Air Quality (OTAQ), Office of Air and Radiation (OAR).

Burden Statement: The annual public reporting and recordkeeping burden for this collection of information is estimated to average 20 hours per response. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements which have subsequently changed; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

The ICR provides a detailed explanation of the Agency's estimate, which is only briefly summarized here:

Estimated total number of potential respondents: 75.

Frequency of response: DIRs and VERRs are submitted on occasion, whereas VERR updates are submitted quarterly by some respondents.

Estimated total average number of responses for each respondent: Varies as needed.

Estimated total annual burden hours: 19,877.

Estimated total annual costs: $1,423,652. This includes an estimated cost of $1,859 for capital investment or maintenance and operational costs.

Are there changes in the estimates from the last approval?

To date, there are no changes in the number of hours in the total estimated respondent burden compared with that identified in the ICR currently approved by OMB. However, estimates may change based on comments received from the public.

What is the next step in the process for this ICR?

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 pursuant to 5 CFR 1320.12. At that time, EPA will issue another **Federal Register** notice pursuant to 5 CFR 1320.5(a)(1)(iv) to announce the submission of the ICR to OMB and the opportunity to submit additional comments to OMB. If you have any questions about this ICR or the approval process, please contact the technical person listed under **FOR FURTHER INFORMATION CONTACT**.

Dated: April 23, 2010.

Lori Stewart,

Acting Director, Office of Transportation and Air Quality.

[FR Doc. 2010–10175 Filed 4–29–10; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[ER–FRL–8990–1]

Environmental Impacts Statements; Notice of Availability

Responsible Agency: Office of Federal Activities, General Information (202) 564–1399 or *http://www.epa.gov/compliance/nepa/*

Weekly receipt of Environmental Impact Statements

Filed 04/19/2010 Through 04/23/2010 Pursuant to 40 CFR 1506.9

Notice: In accordance with Section 309(a) of the Clean Air Act, EPA is required to make its comments on EISs issued by other Federal agencies public. Historically, EPA has met this mandate by publishing weekly notices of availability of EPA comments, which includes a brief summary of EPA's comment letters, in the **Federal Register.** Since February 2008, EPA has been including its comment letters on EISs on its Web site at: *http://www.epa.gov/compliance/nepa/eisdata.html.* Including the entire EIS comment letters on the Web site satisfies the Section 309(a) requirement to make EPA's comments on EISs available to the public. Accordingly, after March 31, 2010, EPA will discontinue the publication of this notice of availability of EPA comments in the **Federal Register.**

EIS No. 20100146, Draft EIS, FHWA, CA, Tier 1—Hollister to Gilroy State Route 25 Widening and Route Adoption, Proposal Widen from Two-Lane Conventional Highway to Four-Lane Expressway, and Route Adoption, San Benito and Santa Clara Counties, CA, Comment Period Ends: 06/14/2010, Contact: G. William Norris III 805–542–4711.

EIS No. 20100147, Draft EIS, NPS, FL, PROGRAMMATIC—Coral Reef Restoration Plan, Implementation, Biscayne National Park, Homestead, FL, Comment Period Ends: 06/28/2010, Contact: Thomas Flanagan 303–969–2691.

EIS No. 20100148, Final EIS, USFS, CO, Gunnison Basin Federal Lands Travel Management Project, To Address Travel Management on Federal Lands within the Upper Gunnison Basin and North Fork Valley, Implementation, Gunnison, Delta, Hinsdale and Saguache Counties, CO, Wait Period Ends: 06/01/2010, Contact: Gary S. Shellhorn 970–874–6666.

EIS No. 20100149, Draft EIS, NOAA, 00, American Lobster Fishery, Proposed Effort Control Measures, Interstate Fishery Management Plan, Implementation, Maine through North Carolina, Comment Period Ends: 06/28/2010, Contact: Patricia A. Kurkull 978–281–9300.

EIS No. 20100150, Draft Supplement, USFS, CA, Tehachapi Renewable Transmission Project, New Information on Changed Conditions Caused by the Station Fire, Construct, Operate and Maintain New and Upgraded 500 kV and 220kV Transmission Lines and Substations, Special Use Authorization, Angeles National Forest, Los Angeles County, CA, Comment Period Ends: 06/14/2010, Contact: Justin Seastrand 626–574–5278.

EIS No. 20100151, Draft EIS, USFS, OR, Cobbler II Timber Sale and Fuels Reduction Project, Proposing Vegetation and Fuels Management to Improve Health and Vigor Upland Forest Stands and Reduce Hazardous and Ladder Fuels, Walla Walla Ranger District, Umatilla National Forest, Wallowa and Union Counties, OR, Comment Period Ends: 06/14/2010, Contact: Betsy Kaiser 509–572–6290.

EIS No. 20100152, Final EIS, USFS, CA, Piute Fire Restoration Project, Proposes to Salvage Dead and Dying Trees, Treat Excess Fuels, and Plant Trees, Kern River Ranger District, Sequoia National Forest, Kern County, CA, Wait Period Ends: 06/01/2010, Contact: Barbara Johnston 559–784–1500 Ext. 1220.

EIS No. 20100153, Final EIS, BR, CA, Millerton Lake Resource Management Plan (RMP) and General Plan, Implementation, Fresno and Madera Counties, CA, Wait Period Ends: 06/01/2010, Contact: Jack Collins 559–349–4544.

EIS No. 20100154, Draft EIS, BLM, NV, Genesis Project, Proposes Expansion of Existing Mine Pits and Development of the Bluestar Ridge Open Pit Mine, Newmont Mining Corporation, Eureka County, NV, Comment Period Ends: 06/14/2010, Contact: Kirk Laird 775–753–0272.

EIS No. 20100155, Final EIS, USFS, OR, Canyon Fuels and Vegetation Management Project, Proposed Fuels and Vegetation Treatment to Reduce the Risk of Stand Loss Due to Overly Dense Stand Conditions, Lookout Mountain Ranger District, Ochoco National Forest, Crook County, OR, Wait Period Ends: 06/01/2010, Contact: Marcy Anderson 541–416–6463.

EIS No. 20100156, Final EIS, USCG, 00, USCG Pacific Operations: Districts 11 Area, California and Districts 13 Area, Oregon and Washington, Improve the Protection and Conservation of Marine Protected Species and Marine Protected Areas, CA, OR and WA, Wait Period Ends: 06/01/2010, Contact: Jeff R. Bray 202–372–3752.

Amended Notices

EIS No. 20100133, Final EIS, FHWA, 00, TIER 1—FEIS Trans-Texas Corridor—35 (TTC–35) System, Improvement to International, Interstate and Intrastate Movement of Goods and People, Oklahoma-Mexico/Gulf Coast Element, Wait Period Ends: 05/25/2010, Contact: Brett Jackson 512–536–5946 Revision to FR Notice Published 04/26/2010: Correction to Wait Period End from 05/24/2010 to 05/25/2010.

EIS No. 20100134, Final EIS, FHWA, TN, US 127/TN 28 Improvements, from 1–40 at Crossville to TN 62 at Clarkrange, Funding, US Army COE Section 10 and 404 Permits, Cumberland and Fentress Counties, TN, Wait Period Ends: 05/25/2010, Contact: Pamela M. Kordenbrock 615–781–5770, Revision to FR Notice Published 04/26/2010: Correction to Wait, Period End from 05/24/2010 to 05/25/2010.

EIS No. 20100135, Final EIS, BLM, NV, Round Mountain Expansion Project, Proposed to Construct and Operate and Expand the Existing Open-Pit Gold Mining and Processing

Operations, north of the town of Tonopah in Nye County, NV, Wait Period Ends: 05/25/2010, Contact: Christopher Worthington 775–635–4000 Revision to FR Notice Published 04/26/2010: Correction to Wait Period End from 05/24/2010 to 05/25/2010.

EIS No. 20100136, Final EIS, USFS, 00, Nebraska National Forests and Grassland Travel Management Project, Proposes to Designate Routes and Areas Open to Motorized Travel, Buffalo Gap National Grassland, Oglala National Grassland, Samuel R. McKelvie National Forest, and the Pine Ridge and Bessey Units of the Nebraska National Forest, Fall River, Custer, Pennington, Jackson Counties; SD and Sioux, Dawes, Cherry, Thomas and Blaine Counties, NE, Wait Period Ends: 05/25/2010, Contact: Mike McNeill 308–432–0336, Revision to FR Notice Published 04/26/2010: Correction to Wait, Period End from 05/24/2010 to 05/25/2010.

EIS No. 20100137, Draft EIS, USFS, ID, Robo Elk Project, Proposes Watershed Improvement, Timber Harvest, Fuel Treatments, and Recreation Activities, Palouse Ranger District, Clearwater National Forest, Clearwater County, ID, Comment Period Ends: 06/09/2010, Contact: George Harbaugh 208–935–4260, Revision to FR Notice Published 04/26/2010: Correction to Comment Period End from 06/07/2010 to 06/09/2010.

EIS No. 20100138, Final EIS, BR, CA, Lake Casitas Resource Management Plan (RMP), Implementation, Cities of Los Angeles and Ventura, Western Ventura County, CA, Wait Period Ends: 05/25/2010, Contact: Jack Collins 559–349–4544, Revision to FR Notice Published 04/26/2010: Correction to Wait, Period End from 05/24/2010 to 05/25/2010.

EIS No. 20100139, Draft EIS, USFS, CA, Kelsey Peak Timber Sale and Fuelbreak Project, Proposing to Harvest Commercial Timber and Create Fuelbreak, Upper Mad River Watershed, Mad River Ranger District, Six Rivers National Forest, Trinity County, CA, Comment Period Ends: 06/09/2010, Contact: Keith Menasco 928–774–0594, Revision to FR Notice Published 04/26/2010: Correction to Comment Period End from 06/07/2010 to 06/09/2010.

EIS No. 20100140, Final EIS, FSA, 00, WITHDRAWN—PROGRAMMATIC—Biomass Crop Assistance Program (BCAP), To Establish and Administer the Program Areas Program Component of BCAP as mandated in Title IX of the 2008 Farm Bill in the United States, Wait Period Ends: 05/25/2010, Contact: Matthew T. Ponish 202–720–6853, Revision to FR Notice Published 04/26/2010: Officially Withdrawn by the preparing agency by letter dated 04/26/2010.

EIS No. 20100141, Final EIS, BLM, UT, Mona to Oquirrh Transmission Corridor Project and Draft Pony Express Resource Management Plan Amendment, Construction, Operation, Maintenance and Decommissioning a Double-Circuit 500/345 Kilovolt (Kv) Transmission Line, Right-of-Way Grant, Rocky Mountain Power, Juab, Salt Lake, Tooele and Utah Counties, UT, Wait Period Ends: 05/25/2010, Contact: Mike Nelson 801–977–4300, Revision to FR Notice Published 04/26/2010: Correction to Wait, Period End from 05/24/2010 to 05/25/2010.

EIS No. 20100142, Draft EIS, USFS, UT, Kitty Hawk Administrative Site Master Development Plan, Implementation, Cedar City Ranger District, Dixie National Forest, Cedar City, Iron County, UT, Comment Period Ends: 06/09/2010, Contact: Georgina Lampman 435–865–3794, Revision to FR Notice Published 04/26/2010: Correction to Comment Period End from 06/07/2010 to 06/09/2010.

EIS No. 20100143, Final EIS, FHWA, NC, NC–24 Transportation Improvements, from west of I–95 to I–40, Funding, US Army COE 4040 Permit, Cumberland, Sampson, and Duplin Counties, NC, Wait Period Ends: 05/25/2010, Contact: John F. Sullivan 919–865–4346, Revision to FR Notice Published 04/26/2010: Correction to Wait, Period End from 05/24/2010 to 05/25/2010.

EIS No. 20100144, Draft EIS, NRC, SC, Virgil C. Summer Nuclear Station Units 2 and 3, Application for Combined License to Construct and Operate a New Nuclear Reactors, Fairfield County, SC, Comment Period Ends: 07/09/2010, Contact: Patricia Vokoun 301–415–3470, Revision to FR Notice Published 04/26/2010: Correction to Comment Period End from 07/06/2010 to 07/09/2010.

EIS No. 20100145, Draft EIS, NRC, MD, Calvert Cliffs Nuclear Power Plant Unit 3, Application for Combined License for Construct and Operate a New Nuclear Unit, NUREG 1936, Calvert County, MD, Comment Period Ends: 07/09/2010, Contact: Laura Quinn 301–415–2220, Revision to FR Notice Published 04/26/2010: Correction to Comment Period End from 07/06/2010 to 07/09/2010.

Dated: April 27, 2010.

Robert W. Hargrove,

Director, NEPA Compliance Division, Office of Federal Activities.

[FR Doc. 2010–10156 Filed 4–29–10; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPP–2010–0383; FRL–8823–8]

FIFRA Scientific Advisory Panel; Notice of Public Meeting

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: There will be a 3–day meeting of the Federal Insecticide, Fungicide, and Rodenticide Act Scientific Advisory Panel (FIFRA SAP) to consider and review a set of scientific issues related to review of SHEDs-Multimedia version 4, Peer consult on PBPK Modeling, and a SHEDS-PBPK Permethrin study.

DATES: The meeting will be held on July 20-22, 2010, from 9 a.m. to approximately 5:30 p.m.

Comments. The Agency encourages that written comments be submitted by July 8, 2010 and requests for oral comments be submitted by July 15, 2010. However, written comments and requests to make oral comments may be submitted until the date of the meeting, but anyone submitting written comments after July 8, 2010 should contact the Designated Federal Official (DFO) listed under **FOR FURTHER INFORMATION CONTACT.** For additional instructions, see Unit I.C. of the **SUPPLEMENTARY INFORMATION**.

Nominations. Nominations of candidates to serve as ad hoc members of FIFRA SAP for this meeting should be provided on or before May 14, 2010.

Webcasting. This meeting may be webcast. Please refer to the FIFRA SAP's website, *http://www.epa.gov/scipoly/SAP/* for information on how to access the webcast. Please note that the webcast is a supplementary public process provided only for convenience. If difficulties arise resulting in webcasting outages, the meeting will continue as planned.

Special accommodations. For information on access or services for individuals with disabilities, and to request accommodation of a disability, please contact the DFO listed under **FOR FURTHER INFORMATION CONTACT** at least 10 days prior to the meeting to give EPA as much time as possible to process your request.

ADDRESSES: The meeting will be held at the Environmental Protection Agency, Conference Center, Lobby Level, One Potomac Yard (South Bldg.), 2777 S. Crystal Dr., Arlington, VA 22202.

Comments. Submit your comments, identified by docket identification (ID) number EPA–HQ–OPP–2010–0383, by one of the following methods:

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

• *Mail*: Office of Pesticide Programs (OPP) Regulatory Public Docket (7502P), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001.

• *Delivery*: OPP Regulatory Public Docket (7502P), Environmental Protection Agency, Rm. S–4400, One Potomac Yard (South Bldg.), 2777 S. Crystal Dr., Arlington, VA. Deliveries are only accepted during the Docket Facility's normal hours of operation (8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays). Special arrangements should be made for deliveries of boxed information. The Docket Facility telephone number is (703) 305–5805.

Instructions. Direct your comments to docket ID number EPA–HQ–OPP–2010–0383. If your comments contain any information that you consider to be CBI or otherwise protected, please contact the DFO listed under **FOR FURTHER INFORMATION CONTACT** to obtain special instructions before submitting your comments. EPA's policy is that all comments received will be included in the docket without change and may be made available on-line at *http://www.regulations.gov*, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through regulations.gov or e-mail. The regulations.gov website is an "anonymous access" system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through regulations.gov, your e-mail address will be automatically captured and included as part of the comment that is placed in the docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD-ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

Docket: All documents in the docket are listed in the docket index available at *http://www.regulations.gov*. Although listed in the index, some information is not publicly available, e.g., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either in the electronic docket at *http://www.regulations.gov*, or, if only available in hard copy, at the OPP Regulatory Public Docket in Rm. S–4400, One Potomac Yard (South Bldg.), 2777 S. Crystal Dr., Arlington, VA. The hours of operation of this Docket Facility are from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The Docket Facility telephone number is (703) 305–5805.

Nominations, requests to present oral comments, and requests for special accommodations. Submit nominations to serve as ad hoc members of FIFRA SAP, requests for special seating accommodations, or requests to present oral comments to the DFO listed under **FOR FURTHER INFORMATION CONTACT**.

FOR FURTHER INFORMATION CONTACT: Sharlene R. Matten, DFO, Office of Science Coordination and Policy (7201M), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (202) 564–0130; fax number: (202) 564–8382; e-mail address: *matten.sharlene@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

This action is directed to the public in general. This action may, however, be of interest to persons who are or may be required to conduct testing of chemical substances under the Federal Food, Drug, and Cosmetic Act (FFDCA), FIFRA, and the Food Quality Protection Act of 1996 (FQPA). Since other entities may also be interested, the Agency has not attempted to describe all the specific entities that may be affected by this action. If you have any questions regarding the applicability of this action to a particular entity, consult the DFO listed under **FOR FURTHER INFORMATION CONTACT**.

B. What Should I Consider as I Prepare My Comments for EPA?

When submitting comments, remember to:

1. Identify the document by docket ID number and other identifying information (subject heading, **Federal Register** date and page number).

2. Follow directions. The Agency may ask you to respond to specific questions or organize comments by referencing a Code of Federal Regulations (CFR) part or section number.

3. Explain why you agree or disagree; suggest alternatives and substitute language for your requested changes.

4. Describe any assumptions and provide any technical information and/or data that you used.

5. If you estimate potential costs or burdens, explain how you arrived at your estimate in sufficient detail to allow for it to be reproduced.

6. Provide specific examples to illustrate your concerns and suggest alternatives.

7. Explain your views as clearly as possible, avoiding the use of profanity or personal threats.

8. Make sure to submit your comments by the comment period deadline identified.

C. How May I Participate in this Meeting?

You may participate in this meeting by following the instructions in this unit. To ensure proper receipt by EPA, it is imperative that you identify docket ID number EPA–HQ–OPP–2010–0383 in the subject line on the first page of your request.

1. *Written comments*. The Agency encourages that written comments be submitted, using the instructions in **ADDRESSES**, no later than July 8, 2010, to provide FIFRA SAP the time necessary to consider and review the written comments. Written comments are accepted until the date of the meeting, but anyone submitting written comments after July 15, 2010 should contact the DFO listed under **FOR FURTHER INFORMATION CONTACT.** Anyone submitting written comments at the meeting should bring 30 copies for distribution to FIFRA SAP.

2. *Oral comments*. The Agency encourages that each individual or group wishing to make brief oral comments to FIFRA SAP submit their request to the DFO listed under **FOR FURTHER INFORMATION CONTACT** no later than July 15, 2010, in order to be included on the meeting agenda. Requests to present oral comments will be accepted until the date of the meeting and, to the extent that time permits, the

Chair of FIFRA SAP may permit the presentation of oral comments at the meeting by interested persons who have not previously requested time. The request should identify the name of the individual making the presentation, the organization (if any) the individual will represent, and any requirements for audiovisual equipment (e.g., overhead projector, 35 mm projector, chalkboard). Oral comments before FIFRA SAP are limited to approximately 5 minutes unless prior arrangements have been made. In addition, each speaker should bring 30 copies of his or her comments and presentation slides for distribution to the FIFRA SAP at the meeting.

3. *Seating at the meeting.* Seating at the meeting will be open and on a first-come basis.

4. *Request for nominations to serve as ad hoc members of FIFRA SAP for this meeting.* As part of a broader process for developing a pool of candidates for each meeting, FIFRA SAP staff routinely solicits the stakeholder community for nominations of prospective candidates for service as ad hoc members of FIFRA SAP. Any interested person or organization may nominate qualified individuals to be considered as prospective candidates for a specific meeting. Individuals nominated for this meeting should have expertise in one or more of the following areas: pesticide exposure, general statistics, exposure modeling, dose modeling, and risk assessment. Nominees should be scientists who have sufficient professional qualifications, including training and experience, to be capable of providing expert comments on the scientific issues for this meeting. Nominees should be identified by name, occupation, position, address, and telephone number. Nominations should be provided to the DFO listed under **FOR FURTHER INFORMATION CONTACT** on or before May 14, 2010. The Agency will consider all nominations of prospective candidates for this meeting that are received on or before this date. However, final selection of ad hoc members for this meeting is a discretionary function of the Agency.

The selection of scientists to serve on FIFRA SAP is based on the function of the panel and the expertise needed to address the Agency's charge to the panel. No interested scientists shall be ineligible to serve by reason of their membership on any other advisory committee to a Federal department or agency or their employment by a Federal department or agency except the EPA. Other factors considered during the selection process include availability of the potential panel member to fully participate in the panel's reviews, absence of any conflicts of interest or appearance of lack of impartiality, independence with respect to the matters under review, and lack of bias. Although financial conflicts of interest, the appearance of lack of impartiality, lack of independence, and bias may result in disqualification, the absence of such concerns does not assure that a candidate will be selected to serve on FIFRA SAP. Numerous qualified candidates are identified for each panel. Therefore, selection decisions involve carefully weighing a number of factors including the candidates' areas of expertise and professional qualifications and achieving an overall balance of different scientific perspectives on the panel. In order to have the collective breadth of experience needed to address the Agency's charge for this meeting, the Agency anticipates selecting approximately 12–15 ad hoc scientists.

FIFRA SAP members are subject to the provisions of 5 CFR part 2634, Executive Branch Financial Disclosure, as supplemented by the EPA in 5 CFR part 6401. In anticipation of this requirement, prospective candidates for service on the FIFRA SAP will be asked to submit confidential financial information which shall fully disclose, among other financial interests, the candidate's employment, stocks and bonds, and where applicable, sources of research support. The EPA will evaluate the candidates financial disclosure form to assess whether there are financial conflicts of interest, appearance of a lack of impartiality or any prior involvement with the development of the documents under consideration (including previous scientific peer review) before the candidate is considered further for service on FIFRA SAP. Those who are selected from the pool of prospective candidates will be asked to attend the public meetings and to participate in the discussion of key issues and assumptions at these meetings. In addition, they will be asked to review and to help finalize the meeting minutes. The list of FIFRA SAP members participating at this meeting will be posted on the FIFRA SAP website at *http://epa.gov/scipoly/sap* or may be obtained from the OPP Regulatory Public Docket at *http://www.regulations.gov*.

II. Background

A. Purpose of FIFRA SAP

FIFRA SAP serves as the primary scientific peer review mechanism of EPA's Office of Chemical Safety and Pollution Prevention (OCSPP) and is structured to provide scientific advice, information and recommendations to the EPA Administrator on pesticides and pesticide-related issues as to the impact of regulatory actions on health and the environment. FIFRA SAP is a Federal advisory committee established in 1975 under FIFRA that operates in accordance with requirements of the Federal Advisory Committee Act. FIFRA SAP is composed of a permanent panel consisting of seven members who are appointed by the EPA Administrator from nominees provided by the National Institutes of Health and the National Science Foundation. FIFRA, as amended by FQPA, established a Science Review Board consisting of at least 60 scientists who are available to the SAP on an ad hoc basis to assist in reviews conducted by the SAP. As a peer review mechanism, FIFRA SAP provides comments, evaluations and recommendations to improve the effectiveness and quality of analyses made by Agency scientists. Members of FIFRA SAP are scientists who have sufficient professional qualifications, including training and experience, to provide expert advice and recommendation to the Agency.

B. Public Meeting

The Food Quality Protection Act (FQPA) amended laws under which EPA evaluates the safety of pesticide residues in food. Section 408(b)(2)(D)(v) and (vi) of the Federal Food, Drug, and Cosmetic Act (FFDCA) as amended by FQPA, specifies that, when determining the safety of a pesticide chemical, EPA shall consider aggregate exposure (i.e.,total dietary (food and water), residential, and other non-occupational) and available information concerning the cumulative effects to human health that may result from exposure to other substances that have a common mechanism of toxicity. Aggregate assessments account for multiple sources and routes of exposure for a single chemical. FQPA-mandated cumulative assessments combine exposures and doses to two or more chemicals that share a common mechanism of toxicity.

EPA's Office of Pesticide Programs (OPP) and Office of Research and Development (ORD) have been conducting collaborative science to inform the Agency's anticipated pyrethroid cumulative risk assessment (CRA). This FIFRA SAP review is part of the Agency's ongoing process to enhance probabilistic exposure, dose, and risk assessments, and OPP's ongoing efforts to consider available probabilistic exposure and dose models to address FQPA. Through a coordinated multi-disciplinary effort,

ORD and OPP scientists have developed new approaches for Commulative Risk Assessment (CRA) which are incorporated into ORD's SHEDS-Multimedia (Stochastic Human Exposure and Dose Simulation) computer model and software. SHEDS-Multimedia (*http://www.epa.gov/heasd/products/ sheds_multimedia/sheds_mm.html*) is a physically-based, probabilistic model that predicts for user-specified population cohorts exposures incurred via eating contaminated foods or drinking water, inhaling contaminated air, touching contaminated surface residues, and ingesting residues from hand-to-mouth or object-to-mouth activities. It can simulate aggregate or cumulative exposures over time via multiple routes of exposure (dietary & non-dietary residential) for multiple types of chemicals & scenarios. To do this, it combines information on chemical usage, human activity data (e.g., from Consolidated Human Activity Database (CHAD; *www.epa.gov/chadnet1*) time/activity diary surveys and videography studies), environmental residues and concentrations, and exposure factors to generate time series of exposure for simulated individuals. One-stage or two-stage Monte Carlo simulation is used to produce distributions of exposure for various population cohorts (e.g., age/gender groups) that reflect the variability and/or uncertainty in the input parameters.

While the core of SHEDS-Multimedia is the concentration-to-exposure module, there are various options (e.g., built-in simple source-to-concentration module, user-entered time series from other models or field study measurements) for obtaining concentration inputs. SHEDS-Multimedia also includes a simple built-in pharmacokinetic (PK) model. In addition, SHEDS-Multimedia exposure outputs can be used as inputs to more sophisticated physiologically-based pharmacokinetic (PBPK) models which can, in turn, be used to model and estimate tissue burden and urinary concentrations of chemicals through class-oriented approaches. The combined exposure- and dose- modeled outputs will be compared against real-world biomonitoring data, and will be integrated with corresponding effects research.

An earlier version of the SHEDS-Multimedia model (version 3) was originally presented to the SAP for review in August 2007 (*http://www.epa.gov/scipoly/SAP/meetings/2007/081407_mtg.htm*). In that version, only the aggregate residential module of SHEDS-Multimedia was operational, and then only for post-application exposures (i.e., pesticide applicators were not considered). In that 2007 meeting, the SAP reviewed the aggregate residential (post-application only) version of SHEDS-Multimedia (version 3), as well as conceptual plans for the SHEDS dietary module and for the PBPK modeling.

This July 2010 SAP will focus on work conducted by ORD and OPP scientists since 2007 on these models, and will consist of:

(i) A formal review of SHEDS-Multimedia version 4 which now includes dietary as well as both applicator and post-application residential exposures, and allows for cumulative as well as aggregate assessments;

(ii) A peer consult on refinements to the PBPK models and how SHEDS outputs are introduced into and used by PBPK models; and

(iii) Demonstration of the application of linked SHEDS-PBPK models with a permethrin case study.

The methods and models reviewed by this SAP will provide new science and data that will inform the CRA for pyrethroids and support future cumulative risk assessments. The overall goal of this SAP is to review these individual and linked state-of-the-science exposure and dose assessment tools with a permethrin case study to support the Agency's pyrethroid CRA.

The purpose of this review is to request input from the SAP on this updated version of the models and related software. Specifically, the FIFRA SAP Panel at this meeting will be asked to review:

(i) The dietary module of SHEDS-Multimedia version 4, including algorithms, inputs, and results illustrated with a permethrin case study;

(ii) The residential module of SHEDS-Multimedia version 4, including algorithms, inputs, and results illustrated with a permethrin case study;

(iii) The SHEDS-Multimedia version 4 aggregate (dietary and residential modules combined) permethrin case study, including algorithms, inputs, and results;

(iv) Update on PBPK modeling since the 2007 SAP, and approaches for and results of linking SHEDS-Multimedia with PBPK models, illustrated with a permethrin case study; and

(v) Plans for a mini-cumulative (2-3 chemicals) cumulative pyrethroids assessment, including proposed methodologies using linked SHEDS-Multimedia and PBPK models.

Review of the SHEDS-Multimedia model (both dietary and residential modules) will include review of: The approaches, methodology, and algorithms used in SHEDS; annotated SHEDS SAS code; the SHEDS Graphical User Interface (GUI) and its ease of use; and technical and user manuals. The Panel will be asked to focus on non-chemical-specific default inputs at this SAP meeting. While a permethrin case study is being presented for model illustration and evaluation purposes, the Panel will not be asked to assess permethrin outputs.

Overall, the science and products being reviewed in this SAP provide exposure and risk assessors within and outside the Agency with an externally peer-reviewed physically-based, probabilistic human exposure model for multimedia, multi-route/pathway chemicals. In addition, the issues associated with refinements to PBPK models and how SHEDS outputs are linked to and used by PBPK models will be discussed both in general and by a demonstration of the application of linked SHEDS-PBPK models to a permethrin case study. It is anticipated that the review of this material by the SAP will assist ORD and OPP in both producing a plan for applying these tools to inform any future pyrethroids CRA and a generalizable approach that can be applied to other chemicals in the future.

C. FIFRA SAP Documents and Meeting Minutes

EPA's background paper, related supporting materials, charge/questions to FIFRA SAP, FIFRA SAP composition (i.e., members and ad hoc members for this meeting), and the meeting agenda will be available by late June. In addition, the Agency may provide additional background documents as the materials become available. You may obtain electronic copies of these documents, and certain other related documents that might be available electronically, at *http://www.regulations.gov* and the FIFRA SAP homepage at *http://www.epa.gov/scipoly/sap*.

FIFRA SAP will prepare meeting minutes summarizing its recommendations to the Agency approximately 90–days after the meeting. The meeting minutes will be posted on the FIFRA SAP website or may be obtained from the OPP Regulatory Public Docket at *http://www.regulations.gov*.

List of Subjects

Environmental protection, Pesticides and pests.

Dated: April 27, 2010.

Frank Sanders,

Director, Office of Science Coordination and Policy.

[FR Doc. 2010–10231 Filed 4–29–10; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPP–2010–0378; FRL–8823–4]

FIFRA Scientific Advisory Panel; Notice of Public Meeting

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: There will be a 1–day meeting of the Federal Insecticide, Fungicide, and Rodenticide Act. Scientific Advisory Panel (FIFRA SAP) to consider and review a set of scientific issues related to the Comparative Adult and Juvenile Sensitivity Toxicity Protocols for Pyrethroids.

DATES: The meeting will be held on July 23, 2010, from 8:30 a.m. to approximately 5 p.m.

Comments. The Agency encourages that written comments be submitted by July 8, 2010 and requests for oral comments be submitted by July 15, 2010. However, written comments and requests to make oral comments may be submitted until the date of the meeting, but anyone submitting written comments after July 8, 2010 should contact the Designated Federal Official (DFO) listed under **FOR FURTHER INFORMATION CONTACT.** For additional instructions, see Unit I.C. of the **SUPPLEMENTARY INFORMATION.**

Nominations. Nominations of candidates to serve as ad hoc members of FIFRA SAP for this meeting should be provided on or before May 14, 2010.

Webcasting. This meeting may be webcast. Please refer to the FIFRA SAP's website, *http://www.epa.gov/scipoly/SAP/* for information on how to access the webcast. Please note that the webcast is a supplementary public process provided only for convenience. If difficulties arise resulting in webcasting outages, the meeting will continue as planned.

Special accommodations. For information on access or services for individuals with disabilities, and to request accommodation of a disability, please contact the DFO listed under **FOR FURTHER INFORMATION CONTACT** at least 10 days prior to the meeting to give EPA as much time as possible to process your request.

ADDRESSES: The meeting will be held at the Environmental Protection Agency, Conference Center, Lobby Level, One Potomac Yard (South Bldg.), 2777 S. Crystal Dr., Arlington, VA 22202.

Comments. Submit your comments, identified by docket identification (ID) number EPA–HQ–OPP–2010–0378, by one of the following methods:

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

• *Mail*: Office of Pesticide Programs (OPP) Regulatory Public Docket (7502P), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001.

• *Delivery*: OPP Regulatory Public Docket (7502P), Environmental Protection Agency, Rm. S–4400, One Potomac Yard (South Bldg.), 2777 S. Crystal Dr., Arlington, VA. Deliveries are only accepted during the Docket Facility's normal hours of operation (8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays). Special arrangements should be made for deliveries of boxed information. The Docket Facility telephone number is (703) 305–5805.

Instructions. Direct your comments to docket ID number EPA–HQ–OPP–2010–0378. If your comments contain any information that you consider to be CBI or otherwise protected, please contact the DFO listed under **FOR FURTHER INFORMATION CONTACT** to obtain special instructions before submitting your comments. EPA's policy is that all comments received will be included in the docket without change and may be made available on-line at *http://www.regulations.gov*, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through regulations.gov or e-mail. The regulations.gov website is an "anonymous access" system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through regulations.gov, your e-mail address will be automatically captured and included as part of the comment that is placed in the docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD-ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

Docket: All documents in the docket are listed in the docket index available at *http://www.regulations.gov*. Although listed in the index, some information is not publicly available, e.g., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either in the electronic docket at *http://www.regulations.gov*, or, if only available in hard copy, at the OPP Regulatory Public Docket in Rm. S–4400, One Potomac Yard (South Bldg.), 2777 S. Crystal Dr., Arlington, VA. The hours of operation of this Docket Facility are from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The Docket Facility telephone number is (703) 305–5805.

Nominations, requests to present oral comments, and requests for special accommodations. Submit nominations to serve as ad hoc members of FIFRA SAP, requests for special seating accommodations, or requests to present oral comments to the DFO listed under **FOR FURTHER INFORMATION CONTACT.**

FOR FURTHER INFORMATION CONTACT: Sharlene R. Matten, DFO, Office of Science Coordination and Policy (7201M), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (202) 564–0130; fax number: (202) 564–8382; e-mail address: *matten.sharlene@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

This action is directed to the public in general. This action may, however, be of interest to persons who are or may be required to conduct testing of chemical substances under the Federal Food, Drug, and Cosmetic Act (FFDCA), FIFRA, and the Food Quality Protection Act of 1996 (FQPA). Since other entities may also be interested, the Agency has not attempted to describe all the specific entities that may be affected by this action. If you have any questions regarding the applicability of this action to a particular entity, consult the DFO listed under **FOR FURTHER INFORMATION CONTACT**.

B. What Should I Consider as I Prepare My Comments for EPA?

When submitting comments, remember to:

1. Identify the document by docket ID number and other identifying information (subject heading, **Federal Register** date and page number).

2. Follow directions. The Agency may ask you to respond to specific questions or organize comments by referencing a Code of Federal Regulations (CFR) part or section number.

3. Explain why you agree or disagree; suggest alternatives and substitute language for your requested changes.

4. Describe any assumptions and provide any technical information and/or data that you used.

5. If you estimate potential costs or burdens, explain how you arrived at your estimate in sufficient detail to allow for it to be reproduced.

6. Provide specific examples to illustrate your concerns and suggest alternatives.

7. Explain your views as clearly as possible, avoiding the use of profanity or personal threats.

8. Make sure to submit your comments by the comment period deadline identified.

C. How May I Participate in this Meeting?

You may participate in this meeting by following the instructions in this unit. To ensure proper receipt by EPA, it is imperative that you identify docket ID number EPA–HQ–OPP–2010–0378 in the subject line on the first page of your request.

1. *Written comments*. The Agency encourages that written comments be submitted, using the instructions in **ADDRESSES**, no later than July 8, 2010, to provide FIFRA SAP the time necessary to consider and review the written comments. Written comments are accepted until the date of the meeting, but anyone submitting written comments after July 8, 2010 should contact the DFO listed under **FOR FURTHER INFORMATION CONTACT.** Anyone submitting written comments at the meeting should bring 30 copies for distribution to FIFRA SAP.

2. *Oral comments*. The Agency encourages that each individual or group wishing to make brief oral comments to FIFRA SAP submit their request to the DFO listed under **FOR FURTHER INFORMATION CONTACT** no later than July 15, 2010, in order to be included on the meeting agenda. Requests to present oral comments will be accepted until the date of the meeting and, to the extent that time permits, the Chair of FIFRA SAP may permit the presentation of oral comments at the meeting by interested persons who have not previously requested time. The request should identify the name of the individual making the presentation, the organization (if any) the individual will represent, and any requirements for audiovisual equipment (e.g., overhead projector, 35 mm projector, chalkboard). Oral comments before FIFRA SAP are limited to approximately 5 minutes unless prior arrangements have been made. In addition, each speaker should bring 30 copies of his or her comments and presentation slides for distribution to the FIFRA SAP at the meeting.

3. *Seating at the meeting*. Seating at the meeting will be open and on a first-come basis.

4. *Request for nominations to serve as ad hoc members of FIFRA SAP for this meeting*. As part of a broader process for developing a pool of candidates for each meeting, FIFRA SAP staff routinely solicits the stakeholder community for nominations of prospective candidates for service as ad hoc members of FIFRA SAP. Any interested person or organization may nominate qualified individuals to be considered as prospective candidates for a specific meeting. Individuals nominated for this meeting should have expertise in one or more of the following areas: pyrethroid pesticides, rodent and human metabolic enzymes and their related ontogeny, *in vitro* pharmacokinetic studies, particularly when used in risk assessment; voltage-gated sodium channels, ontogeny and specificity; mode of action and risk assessment, and tissue dosimetry. Nominees should be scientists who have sufficient professional qualifications, including training and experience, to be capable of providing expert comments on the scientific issues for this meeting. Nominees should be identified by name, occupation, position, address, and telephone number. Nominations should be provided to the DFO listed under **FOR FURTHER INFORMATION CONTACT** on or before May 14, 2010. The Agency will consider all nominations of prospective candidates for this meeting that are received on or before this date. However, final selection of ad hoc members for this meeting is a discretionary function of the Agency.

The selection of scientists to serve on FIFRA SAP is based on the function of the panel and the expertise needed to address the Agency's charge to the panel. No interested scientists shall be ineligible to serve by reason of their membership on any other advisory committee to a Federal department or agency or their employment by a Federal department or agency except the EPA. Other factors considered during the selection process include availability of the potential panel member to fully participate in the panel's reviews, absence of any conflicts of interest or appearance of lack of impartiality, independence with respect to the matters under review, and lack of bias. Although financial conflicts of interest, the appearance of lack of impartiality, lack of independence, and bias may result in disqualification, the absence of such concerns does not assure that a candidate will be selected to serve on FIFRA SAP. Numerous qualified candidates are identified for each panel. Therefore, selection decisions involve carefully weighing a number of factors including the candidates' areas of expertise and professional qualifications and achieving an overall balance of different scientific perspectives on the panel. In order to have the collective breadth of experience needed to address the Agency's charge for this meeting, the Agency anticipates selecting approximately 12–15 ad hoc scientists.

FIFRA SAP members are subject to the provisions of 5 CFR part 2634, Executive Branch Financial Disclosure, as supplemented by the EPA in 5 CFR part 6401. In anticipation of this requirement, prospective candidates for service on the FIFRA SAP will be asked to submit confidential financial information which shall fully disclose, among other financial interests, the candidate's employment, stocks and bonds, and where applicable, sources of research support. The EPA will evaluate the candidates financial disclosure form to assess whether there are financial conflicts of interest, appearance of a lack of impartiality or any prior involvement with the development of the documents under consideration (including previous scientific peer review) before the candidate is considered further for service on FIFRA SAP. Those who are selected from the pool of prospective candidates will be asked to attend the public meetings and to participate in the discussion of key issues and assumptions at these meetings. In addition, they will be asked to review and to help finalize the meeting minutes. The list of FIFRA SAP members participating at this meeting will be posted on the FIFRA SAP website at *http://epa.gov/scipoly/sap* or may be obtained from the OPP Regulatory Public Docket at *http://www.regulations.gov*.

II. Background

A. Purpose of FIFRA SAP

FIFRA SAP serves as the primary scientific peer review mechanism of EPA's Office of Chemical Safety and Pollution (OCSPP) and is structured to provide scientific advice, information and recommendations to the EPA Administrator on pesticides and pesticide-related issues as to the impact of regulatory actions on health and the environment. FIFRA SAP is a Federal advisory committee established in 1975 under FIFRA that operates in accordance with requirements of the Federal Advisory Committee Act. FIFRA SAP is composed of a permanent panel consisting of seven members who are appointed by the EPA Administrator from nominees provided by the National Institutes of Health and the National Science Foundation. FIFRA, as amended by FQPA, established a Science Review Board consisting of at least 60 scientists who are available to the SAP on an ad hoc basis to assist in reviews conducted by the SAP. As a peer review mechanism, FIFRA SAP provides comments, evaluations and recommendations to improve the effectiveness and quality of analyses made by Agency scientists. Members of FIFRA SAP are scientists who have sufficient professional qualifications, including training and experience, to provide expert advice and recommendation to the Agency.

B. Public Meeting

The Office of Pesticide Programs (OPP) is actively working on a reevaluation of the human health effects of the pyrethroids and pyrethrins under the OPP registration review program *http://www.epa.gov/oppsrrd1/reevaluation/pyrethroids-pyrethrins.html* required under FIFRA. As directed by FQPA, the Agency is to make special considerations for pre- and post-natal exposures concerning the susceptibility of infants and children. Guideline studies submitted to the Agency for pesticide registration address a variety of routes, toxicity endpoints, and durations. These studies, however, generally do not provide direct measures of relative sensitivity between adult and juvenile laboratory animals. Moreover, the guideline studies often do not adequately quantify pyrethroid toxicity due to their rapid pharmacokinetic time course and mode-of-action (i.e., sodium channel disruption leading to alterations in membrane excitability and firing potentials, ultimately resulting in signs of neurotoxic behavior). In a February 16, 2010 letter to the public, EPA asked interested parties to voluntarily submit study protocols to better understand the juvenile sensitivity for synthetic pyrethroids and naturally-occurring pyrethrins (see pyrethroid docket, EPA–HQ–OPP–2008–0331).

Pyrethroids exert toxicity by interfering with the voltage-gated sodium channels in the nervous system. Ideally, an *in vivo* measure of sodium channel disruption could be evaluated in laboratory animals to assess the initiating event in the toxicity pathway of this class. However, a rapid and practical *in vivo* metric is not likely to be available within the Agency's registration review schedule for the 20+ pyrethroids that are currently registered. The Agency believes that a well-designed set of *in vivo* and *in vitro* studies, and possibly in silico studies, would provide the Agency with the necessary scientific information to conduct a risk assessment. The Agency has identified some key scientific issues which are important in considering comparative age sensitivity for this class of pesticides such as, 1) the ontogeny of hydrolytic and oxidative metabolic enzymes; 2) the ontogeny and differentiation of sodium channels; 3) dose-dependent (high vs. low) effects; and 4) rodent to human concordance and species sensitivity.

Proposals submitted by May 21, 2010 will be reviewed by the Agency and presented to the FIFRA SAP for their independent evaluation. The Agency is asking the SAP to comment on the relevance and reliability, as well as the strengths and limitations of the proposal studies in addressing age-specific sensitivity to pyrethroids. Based on the recommendations of the SAP and comments from the public, the Agency will develop a scientifically-based study design for use in pyrethroid risk characterization.

C. FIFRA SAP Documents and Meeting Minutes

EPA's background paper, related supporting materials, charge/questions to FIFRA SAP, FIFRA SAP composition (i.e., members and ad hoc members for this meeting), and the meeting agenda will be available by late June. In addition, the Agency may provide additional background documents as the materials become available. You may obtain electronic copies of these documents, and certain other related documents that might be available electronically, at *http://www.regulations.gov* and the FIFRA SAP homepage at *http://www.epa.gov/scipoly/sap*.

FIFRA SAP will prepare meeting minutes summarizing its recommendations to the Agency approximately 90–days days after the meeting. The meeting minutes will be posted on the FIFRA SAP website or may be obtained from the OPP Regulatory Public Docket at *http://www.regulations.gov*.

List of Subjects

Environmental protection, Pesticides and pests.

Dated: April 27, 2010.

Frank Sanders,

Director, Office of Science Coordination and Policy.

[FR Doc. 2010–10229 Filed 4–29–10; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[FRL–9143–8]

Proposed Administrative Settlement Agreement Under Section 122 of the Comprehensive Environmental Response, Compensation, and Liability Act for the Chemical Leaman Tank Lines, Inc. Superfund Site Located in Logan Township, Gloucester County, NJ

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of proposed administrative settlement and opportunity for public comment.

SUMMARY: The United States Environmental Protection Agency ("EPA") is proposing to enter into an administrative settlement agreement ("Settlement Agreement") with Quality Distribution, Inc. (the "Settling Party") pursuant to Section 122 of the Comprehensive Environmental Response, Compensation, and Liability Act ("CERCLA"), 42 U.S.C. 9622. The Settlement Agreement provides for Settling Party payment of certain response costs incurred by EPA at the Chemical Leaman Tank Lines, Inc. Superfund Site ("Site") located in Logan Township, Gloucester County, New Jersey.

In accordance with Section 122(i) of CERCLA, 42 U.S.C. 9622(i), this notice is being published to inform the public of the proposed Settlement Agreement and of the opportunity to comment. For thirty (30) days following the date of publication of this notice, EPA will receive written comments relating to the proposed Settlement Agreement. EPA will consider all comments received and may modify or withdraw its consent to the settlement if comments received disclose facts or considerations that

indicate that the proposed settlement is inappropriate, improper or inadequate. EPA's response to any comments received will be available for public inspection at EPA Region 2, 290 Broadway, 17th floor, New York, New York 10007–1866.

DATES: Comments must be provided by June 1, 2010.

ADDRESSES: Comments should reference the Chemical Leaman Tank Lines, Inc. Superfund Site, EPA Index No. II–CERCLA–02–2010–2010 and should be sent to the U.S. Environmental Protection Agency, Office of Regional Counsel, New Jersey Superfund Branch, 290 Broadway—17th Floor, New York, NY 10007.

FOR FURTHER INFORMATION CONTACT: Juan M. Fajardo, Assistant Regional Counsel, New Jersey Superfund Branch, Office of Regional Counsel, U.S. Environmental Protection Agency, 17th Floor, 290 Broadway, New York, New York 10007–1866. Telephone: 212–637–3132.

SUPPLEMENTARY INFORMATION: A copy of the proposed administrative settlement, as well as background information relating to the settlement, may be obtained from Juan M. Fajardo, Assistant Regional Counsel, New Jersey Superfund Branch, Office of Regional Counsel, U.S. Environmental Protection Agency, 17th Floor, 290 Broadway, New York, New York 10007–1866. Telephone: 212–637–3132.

Dated: April 12, 2010.

Walter Mugdan,

Director, Emergency and Remedial Response Division.

[FR Doc. 2010–10143 Filed 4–29–10; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–9143–7]

Proposed Consent Decree, Clean Air Act Citizen Suit

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of Proposed Consent Decree; Request for Public Comment.

SUMMARY: In accordance with section 113(g) of the Clean Air Act, as amended ("CAA" or the "Act"), 42 U.S.C. 7413(g), notice is hereby given of a proposed consent decree to address a lawsuit filed by Sierra Club in the United States District Court for the Western District of Wisconsin: *Sierra Club* v. *Jackson,* No. 09-cv-0751 (W.D. WI). Plaintiff filed a deadline suit to compel the Administrator to respond to an administrative petition seeking EPA's objection to a CAA Title V operating permit issued by the Wisconsin Department of Natural Resources to Wisconsin Public Service Corporation's J.P. Pulliam Generating Station in Green Bay, Wisconsin. Under the terms of the proposed consent decree, EPA has agreed to respond to the petition by June 4, 2010, or within 20 days of the entry date of this Consent Decree, whichever is later.

DATES: Written comments on the proposed consent decree must be received by *June 1, 2010.*

ADDRESSES: Submit your comments, identified by Docket ID number EPA–HQ–OGC–2010–XXXX, online at *http://www.regulations.gov* (EPA's preferred method); by e-mail to *oei.docket@epa.gov;* by mail to EPA Docket Center, Environmental Protection Agency, Mailcode: 2822T, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; or by hand delivery or courier to EPA Docket Center, EPA West, Room 3334, 1301 Constitution Ave., NW., Washington, DC, between 8:30 a.m. and 4:30 p.m. Monday through Friday, excluding legal holidays. Comments on a disk or CD–ROM should be formatted in Word or ASCII file, avoiding the use of special characters and any form of encryption, and may be mailed to the mailing address above.

FOR FURTHER INFORMATION CONTACT: Amy Branning, Air and Radiation Law Office (2344A), Office of General Counsel, U.S. Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone: (202) 564–1744; fax number (202) 564–5603; e-mail address: *branning.amy@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. Additional Information About the Proposed Consent Decree

This proposed consent decree would resolve a lawsuit alleging that the Administrator failed to perform a nondiscretionary duty to grant or deny, within 60 days of submission, an administrative petition to object to a CAA Title V permit issued by the Wisconsin Department of Natural Resources to Wisconsin Public Service Corporation's J.P. Pulliam Generating Station in Green Bay, Wisconsin. Under the terms of the proposed consent decree, EPA has agreed to respond to the petition by June 4, 2010, or within 20 days of the entry date of this Consent Decree, whichever is later. In addition, the proposed consent decree further states that, within 15 business days following signature, EPA shall deliver notice of such action to the Office of the Federal Register for prompt publication and, if EPA's response contains an objection in whole or in part, transmit the signed response to the Wisconsin Department of Natural Resources. The proposed consent decree sets the attorneys' fees at $2,624.71, and states that, after EPA fulfills its obligations under the decree, the case shall be dismissed with prejudice.

For a period of thirty (30) days following the date of publication of this notice, the Agency will accept written comments relating to the proposed consent decree from persons who are not named as parties or intervenors to the litigation in question. EPA or the Department of Justice may withdraw or withhold consent to the proposed consent decree if the comments disclose facts or considerations that indicate that such consent is inappropriate, improper, inadequate, or inconsistent with the requirements of the Act. Unless EPA or the Department of Justice determines that consent to this consent decree should be withdrawn, the terms of the decree will be affirmed.

II. Additional Information About Commenting on the Proposed Consent Decree

A. How can I get a copy of the consent decree?

The official public docket for this action (identified by Docket ID No. EPA–HQ–OGC–2010–XXXX) contains a copy of the proposed consent decree. The official public docket is available for public viewing at the Office of Environmental Information (OEI) Docket in the EPA Docket Center, EPA West, Room 3334, 1301 Constitution Ave., NW., Washington, DC. The EPA Docket Center Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the OEI Docket is (202) 566–1752.

An electronic version of the public docket is available through *http://www.regulations.gov.* You may use *http://www.regulations.gov* to submit or view public comments, access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Once in the system, key in the appropriate docket identification number then select "search".

It is important to note that EPA's policy is that public comments, whether submitted electronically or on paper, will be made available for public viewing online at *http://www.regulations.gov* without change,

unless the comment contains copyrighted material, CBI, or other information whose disclosure is restricted by statute. Information claimed as CBI and other information whose disclosure is restricted by statute is not included in the official public docket or in the electronic public docket. EPA's policy is that copyrighted material, including copyrighted material contained in a public comment, will not be placed in EPA's electronic public docket but will be available only in printed, paper form in the official public docket. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the EPA Docket Center.

B. How and to whom do I submit comments?

You may submit comments as provided in the **ADDRESSES** section. Please ensure that your comments are submitted within the specified comment period. Comments received after the close of the comment period will be marked "late." EPA is not required to consider these late comments.

If you submit an electronic comment, EPA recommends that you include your name, mailing address, and an e-mail address or other contact information in the body of your comment and with any disk or CD ROM you submit. This ensures that you can be identified as the submitter of the comment and allows EPA to contact you in case EPA cannot read your comment due to technical difficulties or needs further information on the substance of your comment. Any identifying or contact information provided in the body of a comment will be included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment.

Use of the *http://www.regulations.gov* website to submit comments to EPA electronically is EPA's preferred method for receiving comments. The electronic public docket system is an "anonymous access" system, which means EPA will not know your identity, e-mail address, or other contact information unless you provide it in the body of your comment. In contrast to EPA's electronic public docket, EPA's electronic mail (e-mail) system is not an "anonymous access" system. If you send an e-mail comment directly to the Docket without going through *http://www.regulations.gov,* your e-mail address is automatically captured and included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket.

Dated: April 23, 2010.

Richard B. Ossias,

Associate General Counsel.

[FR Doc. 2010–10149 Filed 4–29–10; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–9143–6]

Proposed Settlement Agreement, Clean Air Act Citizen Suit

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of Proposed Settlement Agreement; Request for Public Comment.

SUMMARY: In accordance with section 113(g) of the Clean Air Act, as amended ("Act"), 42 U.S.C. 7413(g), notice is hereby given of a proposed settlement agreement, to address a lawsuit filed by Louisiana Environmental Action Network and Concerned Citizens of Livingston Parish: *Louisiana Environmental Action Network* v. *Jackson,* Civil Action No. 1:09–cv–01943–HHK (D. D.C.). On or about October 13, 2009, Louisiana Environmental Action Network and Concerned Citizens of Livingston Parish filed a complaint alleging that EPA Administrator Jackson failed to fulfill a mandatory duty to respond to an administrative petition to object to issuance of air permit No. 1740–00025V1 to Waste Management for the Woodside Landfill in Walker, Livingston Parish Louisiana (the "Woodside Petition") within the 60 days specified in section 505(b)(2) of the Clean Air Act and asking the court to enter judgment: (i) Declaring that EPA's failure to perform its nondiscretionary duty to grant or deny the administrative petition within 60 days is a violation of Clean Air Act section 505(b); and, (ii) Ordering EPA to grant or deny the administrative petition within 60 calendar days of the court's ruling. Under the terms of the proposed settlement agreement, EPA agrees to sign a response to the Woodside Petition no later than May 28, 2010.

DATES: Written comments on the proposed settlement agreement must be received by *June 1, 2010.*

ADDRESSES: Submit your comments, identified by Docket ID number EPA–HQ–OGC–2010–0400 online at *http://www.regulations.gov* (EPA's preferred method); by e-mail to *oei.docket@epa.gov;* by mail to EPA Docket Center, Environmental Protection Agency, Mailcode: 2822T, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; or by hand delivery or courier to EPA Docket Center, EPA West, Room 3334, 1301 Constitution Ave., NW., Washington, DC, between 8:30 a.m. and 4:30 p.m. Monday through Friday, excluding legal holidays. Comments on a disk or CD–ROM should be formatted in Word or ASCII file, avoiding the use of special characters and any form of encryption, and may be mailed to the mailing address above.

FOR FURTHER INFORMATION CONTACT: Rick Vetter, Air and Radiation Law Office (2344A), Office of General Counsel, U.S. Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone: (919) 541–2127; fax number (919) 541–4991; e-mail address: *vetter.rick@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. Additional Information About the Proposed Settlement or Consent Decree

On October 13, 2009, Louisiana Environmental Action Network, a non-profit conservation organization, and Concerned Citizens of Livingston Parish, a non-profit corporation, (hereinafter collectively "LEAN") filed a complaint in the United States District Court for the District of Columbia (Civil Action No. 1:09–cv–01943–HHK). In the complaint, LEAN alleges that EPA has failed to fulfill a mandatory duty to respond to an administrative petition to object to issuance of air permit No. 1740–00025V1 to Waste Management for the Woodside Landfill in Walker, Livingston Parish Louisiana (the "Woodside Petition") within the 60 days specified in section 505(b)(2) of the Clean Air Act.

The EPA and LEAN chose to enter into a proposed settlement agreement to avoid protracted and costly litigation and to preserve judicial resources. Under the terms of the proposed settlement agreement, EPA is to sign a response to the Woodside Petition no later than May 28, 2010.

For a period of thirty (30) days following the date of publication of this notice, the Agency will receive written comments relating to the proposed settlement agreement from persons who were not named as parties or intervenors to the litigation in question. EPA or the Department of Justice may withdraw or withhold consent to the proposed settlement agreement if the comments disclose facts or considerations that indicate that such

consent is inappropriate, improper, inadequate, or inconsistent with the requirements of the Clean Air Act. Unless EPA or the Department of Justice determines, based on any comment which may be submitted, that consent to the settlement agreement should be withdrawn, the terms of the agreement will be affirmed.

II. Additional Information About Commenting on the Proposed Settlement Agreement

A. How can I get a copy of the settlement agreement?

Direct your comments to the official public docket for this action under Docket ID No. EPA–HQ–OGC–2010–0400 which contains a copy of the settlement agreement. The official public docket is available for public viewing at the Office of Environmental Information (OEI) Docket in the EPA Docket Center, EPA West, Room 3334, 1301 Constitution Ave., NW., Washington, DC. The EPA Docket Center Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the OEI Docket is (202) 566–1752.

An electronic version of the public docket is available through *http://www.regulations.gov.* You may use the *http://www.regulations.gov* to submit or view public comments, access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Once in the system, key in the appropriate docket identification number, then select "search".

It is important to note that EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing online at *http://www.regulations.gov* without change, unless the comment contains copyrighted material, CBI, or other information whose disclosure is restricted by statute. Information claimed as CBI and other information whose disclosure is restricted by statute is not included in the official public docket or in the electronic public docket. EPA's policy is that copyrighted material, including copyrighted material contained in a public comment, will not be placed in EPA's electronic public docket but will be available only in printed, paper form in the official public docket. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the EPA Docket Center.

B. How and to whom do I submit comments?

You may submit comments as provided in the **ADDRESSES** section. Please ensure that your comments are submitted within the specified comment period. Comments received after the close of the comment period will be marked "late." EPA is not required to consider these late comments.

If you submit an electronic comment, EPA recommends that you include your name, mailing address, and an e-mail address or other contact information in the body of your comment and with any disk or CD–ROM you submit. This ensures that you can be identified as the submitter of the comment and allows EPA to contact you in case EPA cannot read your comment due to technical difficulties or needs further information on the substance of your comment. Any identifying or contact information provided in the body of a comment will be included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment.

Use of the *http://www.regulations.gov* Web site to submit comments to EPA electronically is EPA's preferred method for receiving comments. The electronic public docket system is an "anonymous access" system, which means EPA will not know your identity, e-mail address, or other contact information unless you provide it in the body of your comment. In contrast to EPA's electronic public docket, EPA's electronic mail (e-mail) system is not an "anonymous access" system. If you send an e-mail comment directly to the Docket without going through *http://www.regulations.gov,* your e-mail address is automatically captured and included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket.

Dated: April 23, 2010.

Richard B. Ossias,

Associate General Counsel.

[FR Doc. 2010–10154 Filed 4–29–10; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPP–2010-0177; FRL–8815–9]

Garlic Oil and Capsaicin; Registration Review Proposed Decisions; Notice of Availability

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces the availability of EPA's proposed registration review decisions for the pesticides listed in the table in Unit II.A. and opens a public comment period on the proposed decisions. Registration review is EPA's periodic review of pesticide registrations to ensure that each pesticide continues to satisfy the statutory standard for registration, that is, that the pesticide can perform its intended function without unreasonable adverse effects on human health or the environment. Through this program, EPA is ensuring that each pesticide's registration is based on current scientific and other knowledge, including its effects on human health and the environment.

DATES: Comments must be received on or before June 29, 2010.

ADDRESSES: Submit your comments, identified by the docket identification (ID) number for the specific pesticide of interest provided in the table in Unit II.A., by one of the following methods:

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

• *Mail*: Office of Pesticide Programs (OPP) Regulatory Public Docket (7502P), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001.

• *Delivery*: OPP Regulatory Public Docket (7502P), Environmental Protection Agency, Rm. S–4400, One Potomac Yard (South Bldg.), 2777 S. Crystal Dr., Arlington, VA. Deliveries are only accepted during the Docket Facility's normal hours of operation (8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays). Special arrangements should be made for deliveries of boxed information. The Docket Facility telephone number is (703) 305–5805.

Instructions: Direct your comments to the docket identification (ID) number for the specific pesticide of interest provided in the table in Unit II.A. EPA's policy is that all comments received will be included in the docket without change and may be made available on-line at *http://www.regulations.gov*, including any personal information

provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through regulations.gov or e-mail. The regulations.gov website is an "anonymous access" system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through regulations.gov, your e-mail address will be automatically captured and included as part of the comment that is placed in the docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD-ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

Docket: All documents in the docket are listed in the docket index available at *http://www.regulations.gov*. Although listed in the index, some information is not publicly available, e.g., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either in the electronic docket at *http://www.regulations.gov*, or, if only available in hard copy, at the OPP Regulatory Public Docket in Rm. S–4400, One Potomac Yard (South Bldg.), 2777 S. Crystal Dr., Arlington, VA. The hours of operation of this Docket Facility are from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The Docket Facility telephone number is (703) 305–5805.

FOR FURTHER INFORMATION CONTACT: *For pesticide specific information, contact*: The Chemical Review Manager for the pesticide of interest identified in the table in Unit II.A.

For general information on the registration review program, contact: Kevin Costello, Pesticide Re-evaluation Division (7508P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 305–5026; fax number: (703) 308–8090; e-mail address: *costello.kevin@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

This action is directed to the public in general and may be of interest to a wide range of stakeholders including: environmental; human health; farm worker; agricultural advocates; the chemical industry; pesticide users; and members of the public interested in the sale, distribution, or use of pesticides. Since others also may be interested, the Agency has not attempted to describe all the specific entities that may be affected by this action. If you have any questions regarding the applicability of this action to a particular entity, consult the chemical review manager listed under **FOR FURTHER INFORMATION CONTACT**.

B. What Should I Consider as I Prepare My Comments for EPA?

1. *Submitting CBI*. Do not submit this information to EPA through regulations.gov or e-mail. Clearly mark the part or all of the information that you claim to be CBI. For CBI information in a disk or CD-ROM that you mail to EPA, mark the outside of the disk or CD-ROM as CBI and then identify electronically within the disk or CD-ROM the specific information that is claimed as CBI. In addition to the one complete version of the comment that includes information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

2. *Tips for preparing your comments*. When submitting comments, remember to:

i. Identify the document by docket ID number and other identifying information (subject heading, **Federal Register** date, and page number).

ii. Follow directions. The Agency may ask you to respond to specific questions or organize comments by referencing a Code of Federal Regulations (CFR) part or section number.

iii. Explain why you agree or disagree; suggest alternatives, and substitute language for your requested changes.

iv. Describe any assumptions and provide any technical information and/or data that you used.

v. If you estimate potential costs or burdens, explain how you arrived at your estimate in sufficient detail to allow for it to be reproduced.

vi. Provide specific examples to illustrate your concerns and suggest alternatives.

vii. Explain your views as clearly as possible, avoiding the use of profanity or personal threats.

viii. Make sure to submit your comments by the comment period deadline identified.

II. Background

A. What Action is the Agency Taking?

In accordance with 40 CFR 155.58, this notice announces the availability of EPA's proposed registration review decisions for the pesticides shown in the table in Unit II.A. and opens a 60–day public comment period on the proposed decisions.

Garlic oil is the volatile oil extracted from the bulb of the garlic plant or the entire plant. Garlic oil is used as a repellent for the control of insects, mites, birds, deer, rabbits and squirrels and is registered for use on terrestrial food and feed such as vegetables, fruits, nuts, and grains. Garlic oil is also registered for use on terrestrial non-food crops such as ornamental plants and shrubs.

Capsaicin is a naturally occurring polymer that comprises the principal active element of chili peppers (genus Capsaicum). Capsaicin is used as a fungicide, insect repellent and vertebrate animal repellent. Use sites are indoor and outdoor terrestrial uses. Applications are residential, commercial and when applied as a defensive repellent, circumstantial.

TABLE— REGISTRATION REVIEW PROPOSED FINAL DECISIONS

Registration Review Case Name and Number	Pesticide Docket ID Number	Regulatory Action Leader,Telephone Number, E-mail Address
Garlic Oil (case number 4007)	EPA–HQ–OPP–2009–0113	Cheryl Greene, (703) 308–0352, *greene.cheryl@epa.gov*

TABLE— REGISTRATION REVIEW PROPOSED FINAL DECISIONS—Continued

Registration Review Case Name and Number	Pesticide Docket ID Number	Regulatory Action Leader,Telephone Number, E-mail Address
Capsaicin (case number 4018)	EPA–HQ–OPP–2009–0121	Chris Pfeifer, (703) 308–0031, *pfeifer.chris@epa.gov*

The registration review docket for a pesticide includes earlier documents related to the registration review of the case. For example, the review opened with the posting of a Summary Document, containing a Preliminary Work Plan, for public comment. A Final Work Plan was posted to the docket following public comment on the initial docket.

The documents in the dockets describe EPA's rationales for conducting additional risk assessments for the registration review of the pesticides included in the table in Unit II.A., as well as the Agency's subsequent risk findings. These proposed registration review decisions are supported by the rationales included in those documents..

Following public comment, the Agency will issue final registration review decisions for products containing the pesticides listed in the table in Unit II.A.

The registration review program is being conducted under Congressionally mandated time frames, and EPA recognizes the need both to make timely decisions and to involve the public. Section 3(g) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended, required EPA to establish, by regulation, procedures for reviewing pesticide registrations, originally with a goal of reviewing each pesticide's registration every 15 years to ensure that a pesticide continues to meet the FIFRA standard for registration. The Agency's final rule to implement this program was issued in August 2006 and became effective in October 2006, and appears at 40 CFR part 155, subpart C. The Pesticide Registration Improvement Act of 2003 (PRIA) was amended and extended in September 2007. FIFRA, as amended by PRIA in 2007, requires EPA to complete registration review decisions by October 1, 2022, for all pesticides registered as of October 1, 2007.

The registration review final rule at 40 CFR 155.58(a) provides for a minimum 60–day public comment period on all proposed registration review decisions. This comment period is intended to provide an opportunity for public input and a mechanism for initiating any necessary amendments to the proposed decision. All comments should be submitted using the methods in **ADDRESSES**, and must be received by EPA on or before the closing date. These comments will become part of the docket for the pesticides included in the table in Unit II.A. Comments received after the close of the comment period will be marked "late." EPA is not required to consider these late comments.

The Agency will carefully consider all comments received by the closing date and will provide a "Response to Comments Memorandum" in the docket. The final registration review decision will explain the effects that any comments had on the decision and provide the Agency's response to significant comments.

Background on the registration review program is provided at: *http://www.epa.gov/oppsrrd1/registration_review*. Links to earlier documents related to the registration review of these pesticides are provided at: *http://www.epa.gov/oppsrrd1/registration_review/reg_review_status.htm*.

B. What is the Agency's Authority for Taking this Action?

Section 3(g) of FIFRA and 40 CFR part 155, subpart C, provide authority for this action.

List of Subjects

Environmental protection, Administrative practice and procedure, Pesticides and pests, Garlic oil and Capsaicin.

Dated: April 22, 2010.

W. Michael McDavit,

Acting Director, Biopesticides and Pollution Prevention Division, Office of Pesticide Programs.

[FR Doc. 2010–9985 Filed 4–29–10; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[FRL–9144–2]

Science Advisory Board Staff Office; Request for Nominations of Candidates for EPA's Advisory Council on Clean Air Compliance Analysis (Council) EPA's Clean Air Scientific Advisory Committee (CASAC) and EPA's Science Advisory Board (SAB)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The U.S. Environmental Protection Agency's (EPA) Science Advisory Board (SAB) Staff Office is soliciting nominations for consideration of membership on EPA's Advisory Council on Clean Air Compliance Analysis (Council), EPA's Clean Air Scientific Advisory Committee (CASAC), and EPA's Science Advisory Board (SAB).

DATES: Nominations should be submitted in time to arrive no later than June 1, 2010.

FOR FURTHER INFORMATION CONTACT: Nominators unable to submit nominations electronically as described below, may submit a paper copy by contacting Ms. Wanda Bright, U.S. EPA SAB Staff Office (Mail Code 1400F), 1200 Pennsylvania Avenue, NW., Washington, DC 20460 (UPS/FedEx/Courier address: US EPA SAB, Suite 3600, 1025 F Street, NW., Washington, DC 20004), (202) 343–9986 (telephone), (202) 233–0643 (fax), or via e-mail at *bright.wanda@epa.gov*. General inquiries regarding the work of the Council, CASAC and SAB may be directed to Dr. Anthony F. Maciorowski, Deputy Director, US EPA SAB Staff Office, (202) 343–9983 (telephone), or via e-mail at *maciorowski.anthony@epa.gov*.

Background: Established by statute, the Council (42 U.S.C. 7612), the CASAC (42 U.S.C. 7409) and SAB (42 U.S.C. 4365) are EPA's chartered Federal Advisory Committees that provide independent scientific and technical peer review, consultation, advice and recommendations directly to the EPA Administrator on a wide variety of EPA science activities. As Federal Advisory Committees, the

Council, CASAC, and SAB conduct business in accordance with the Federal Advisory Committee Act (FACA) (5 U.S.C. App. 2) and related regulations. Generally, Council, CASAC and SAB meetings are announced in the Federal Register, conducted in public view, and provide opportunities for public input during deliberations. Additional information about these Federal Advisory Committees may be found at *http://www.epa.gov/advisorycouncilcaa, http://www.epa.gov/casac* and *http://www.epa.gov/sab,* respectively.

Members of the Council, CASAC, and the SAB, constitute a distinguished body of non-EPA scientists, engineers, economists, and social scientists that are nationally and internationally recognized experts in their respective fields. Members are appointed by the EPA Administrator for a period of three years, with the possibility of re-appointment to a second three-year term. This notice specifically requests nominations for the chartered Council, the chartered CASAC, and the chartered SAB.

Expertise Sought: The Council was established in 1990 pursuant to the Clean Air Act (CAA) Amendments of 1990 to provide advice and recommendations to the EPA Administrator on technical and economic aspects of the impacts of the Clean Air Act (CAA) on the public health, economy, and environment of the United States. The SAB Staff office is seeking nominations for individuals to serve on the Council with demonstrated expertise in air pollution issues. A nominee's expertise may include the following disciplines: *Environmental economics; economic modeling; air quality modeling; atmospheric science and engineering; ecology and ecological risk assessment; epidemiology; environmental health sciences; statistics; and human health risk assessment.*

Established in 1977 under the Clean Air Act (CAA) Amendments, the chartered CASAC reviews and offers scientific advice to the EPA Administrator on technical aspects of national ambient air quality standards for criteria pollutants. As required under the CAA section 109(d), CASAC will be composed of seven members, with at least one member of the National Academy of Sciences, one physician, and one person representing state air pollution control agencies. The SAB Staff Office is seeking nominations of experts to serve on the CASAC with demonstrated experience in the evaluation of effects of air pollution on human health and ecosystems. A nominee's expertise may include the following disciplines: *Air quality modeling and monitoring; public health; environmental medicine; environmental health sciences; ecological sciences, and risk assessment.* We also request nominations of candidates from state pollution control agencies.

The chartered SAB was established in 1978 by the Environmental Research, Development and Demonstration Act to provide independent advice to the Administrator on general scientific and technical matters underlying the Agency's policies and actions. All the work of the SAB is under the direction of the chartered Board. The chartered Board provides strategic advice to the EPA Administrator on a variety of EPA science and research programs and reviews and approves all SAB subcommittee and panel reports. The chartered Board consists of about forty members. The SAB Staff Office is seeking nominations of experts to serve on the chartered Board in the following disciplines: *Behavioral and decision sciences; ecological sciences and risk assessment; environmental modeling; industrial ecology; environmental engineering; environmental medicine; pediatrics; public health; and human health risk assessment.*

How to Submit Nominations: Any interested person or organization may nominate qualified persons to be considered for appointment to these chartered advisory committees and SAB subcommittees. Individuals may self-nominate. Qualified nominees will demonstrate appropriate scientific education, training, and experience to evaluate basic and applied science issues addressed by these advisory committees. Successful nominees will have distinguished themselves professionally and be available to invest the time and effort in providing advice and recommendations on the development and application of science at EPA. Nominations should be submitted in electronic format (preferred) following the instructions for "Nominating Experts to a Chartered Advisory Committee" provided on the SAB Web site. The form can be accessed through the "Nomination of Experts" link on the blue navigational bar on the SAB Web site at *http://www.epa.gov/sab.* To be considered, all nominations should include the information requested. EPA values and welcomes diversity. In an effort to obtain nominations of diverse candidates, EPA encourages nominations of women and men of all racial and ethnic groups.

Nominators are asked to identify the specific committee(s) for which nominees would like to be considered. The nominating form requests contact information about: The person making the nomination; contact information about the nominee; the disciplinary and specific areas of expertise of the nominee; the nominee's curriculum vita; and a biographical sketch of the nominee indicating current position, educational background; research activities; and recent service on other national advisory committees or national professional organizations. Persons having questions about the nomination procedures, or who are unable to submit nominations through the SAB Web site, should contact Ms. Wanda Bright as indicated above in this notice. Non-electronic submissions must follow the same format and contain the same information as the electronic form. The SAB Staff Office will acknowledge receipt of nominations.

Candidates invited to serve will be asked to submit the "Confidential Financial Disclosure Form for Special Government Employees Serving on Federal Advisory Committees at the U.S. Environmental Protection Agency" (EPA Form 3110–48). This confidential form allows EPA to determine whether there is a statutory conflict between that person's public responsibilities as a Special Government Employee and private interests and activities, or the appearance of a lack of impartiality, as defined by Federal regulation. The form may be viewed and downloaded through the "Ethics Requirements for Advisors" link on the blue navigational bar on the SAB Web site at *http://www.epa.gov/sab.* This form should not be submitted as part of a nomination.

The SAB Staff Office seeks candidates who possess the necessary domains of knowledge, and relevant scientific perspectives (which, among other factors, can be influenced by work history and affiliation) to adequately address scientific issues facing the Agency. The primary criteria to be used in evaluating potential nominees will be scientific and/or technical expertise, knowledge, and experience. Additional criteria that will be used to evaluate technically qualified nominees will include: The absence of financial conflicts of interest; scientific credibility and impartiality; availability and willingness to serve; and the ability to work constructively and effectively on committees. The selection of new members for each of the chartered committees will also include consideration of the collective breadth and depth of scientific expertise; a balance of scientific perspectives; continuity of knowledge and understanding of EPA missions and environmental programs; and diversity

factors (*e.g.,* geographical areas and professional affiliations).

Dated: April 22, 2010.

Vanessa T. Vu,

Director, EPA Science Advisory Board Staff Office.

[FR Doc. 2010–10135 Filed 4–29–10; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

[AU Docket No. 10–31; DA 10–524]

Closed Auction of Broadcast Construction Permits Scheduled for July 20, 2010; Notice and Filing Requirements, Minimum Opening Bids, Upfront Payments, and Other Procedures for Auction 88

AGENCY: Federal Communications Commission.

ACTION: Notice.

SUMMARY: This document announces the procedures and minimum opening bids for the upcoming auction of identified Broadcast construction permits (Auction 88). This document is intended to familiarize prospective bidders with the procedures and minimum opening bids for the auction.

DATES: Applications to participate in Auction 88 must be filed prior to 6 p.m. Eastern Time (ET) on May 13, 2010. Bidding for construction permits in Auction 88 is scheduled to begin on July 20, 2010.

FOR FURTHER INFORMATION CONTACT: *Wireless Telecommunications Bureau, Auctions and Spectrum Access Division:* For legal questions: Lynne Milne or Howard Davenport at (202) 418–0660. For general auction questions: Jeff Crooks at (202) 418–0660 or Linda Sanderson at (717) 338–2868. *Media Bureau, Audio Division:* For licensing information and service rule questions: Lisa Scanlan or Tom Nessinger at (202) 418–2700. To request materials in accessible formats (Braille, large print, electronic files or audio format) for people with disabilities, send an e-mail to *fcc504@fcc.gov* or call the Consumer and Governmental Affairs Bureau at (202) 418–0530 or (202) 418–0432 (TTY).

SUPPLEMENTARY INFORMATION: This is a summary of the *Auction 88 Procedures Public Notice,* which was released on March 31, 2010. The complete text of the *Auction 88 Procedures Public Notice,* including attachments, as well as related Commission documents, are available for public inspection and copying from 8 a.m. to 4:30 p.m. ET Monday through Thursday and from 8 a.m. to 11:30 a.m. ET on Friday in the FCC Reference Information Center, 445 12th Street, SW., Room CY–A257, Washington, DC 20554. The *Auction 88 Procedures Public Notice* and related Commission documents may also be purchased from the Commission's duplicating contractor, Best Copy and Printing, Inc. (BCPI), Portals II, 445 12th Street, SW., Room CY–B402, Washington, DC 20554, telephone 202–488–5300, facsimile 202–488–5563, or Web site: *http://www.BCPIWEB.com,* using document number DA 10–524 for the *Auction 88 Procedures Public Notice.* The *Auction 88 Procedures Public Notice* and related documents are also available on the Internet at the Commission's Web site: *http://wireless.fcc.gov/auctions/88/.*

I. General Information

A. Introduction

1. The Wireless Telecommunications Bureau and the Media Bureau (collectively, the Bureaus) announce the procedures and minimum opening bid amounts for the upcoming closed auction of certain broadcast AM, FM, and FM Translator construction permits. This auction, which is designated as Auction 88, is scheduled to commence on July 20, 2010. Auction 88 is a closed auction; only those entities listed in Attachment A of the *Auction 88 Procedures Public Notice* will be eligible to participate in this auction. On February 4, 2010, the Bureaus released a public notice seeking comment on competitive bidding procedures to be used in Auction 88. Interested parties submitted six comments and one reply comment in response to the *Auction 88 Comment Public Notice,* 75 FR 8070, Feb. 23, 2010.

B. Construction Permits in Auction 88

2. Auction 88 will offer construction permits for 13 commercial full-power FM stations, one commercial FM translator station, and one commercial AM station as listed in Attachment A of the *Auction 88 Procedures Public Notice.* The Bureaus explained that, due to a database error, the channel for the Rosendale, New York, FM allotment (construction permit MM–FM750–273A) was listed in Attachment A to the *Auction 88 Comment Public Notice* as Channel 273A, when in fact the correct channel (as reflected in Attachment A of the *Auction 88 Procedures Public Notice*) is Channel 255A at Rosendale. Accordingly, the winning bidder for the Rosendale permit will be required to amend its application to specify operation on Channel 255. In Auction 88, the construction permit will be referred to as MM–FM750–255A. Despite commenter suggestions that the Commission should postpone conducting any auction for a permit for the FM Channel 251A allotment at Santa Isabel, Puerto Rico, on the basis of uncertainties concerning technical issues that may pose difficulties in implementing broadcast operations on this channel, the Bureaus will offer this permit in Auction 88.

3. Attachment A of the *Auction 88 Procedures Public Notice* identifies the closed groups of mutually exclusive applications for each construction permit in this auction. Four applicants notified the Bureaus that changes to the applicant's name occurred after the original construction permit application had been filed. Notwithstanding notification of such a change through paper-filed application amendments, the Commission databases were never updated to reflect the new applicant name. Consequently, these applicants were listed under the original applicant name in the *Auction 88 Comment Public Notice.* Attachment A of the *Auction 88 Procedures Public Notice* reflects the name changes for the following four applicants: (i) BBK Broadcasting, Inc. to Radio Plus, Inc., (ii) Directel Inc. to SCHC Lubbock Application, Inc., (iii) Music Express Broadcasting, Inc. to Music Express Broadcasting Corp., and (iv) Rosen Broadcasting, Inc. to CHET–5 Broadcasting, L.P.

4. An applicant listed in Attachment A of the *Auction 88 Procedures Public Notice* may become qualified to bid only if it meets the filing, qualification and payment requirements. Each qualified bidder will be eligible to bid on only those construction permits specified for that qualified bidder in Attachment A of the *Auction 88 Procedures Public Notice.* All applicants within these groups of mutually exclusive applications (MX groups) are directly mutually exclusive with one another; therefore no more than one construction permit will be awarded for each MX group.

i. Dismissal of Applications for Failure To Submit FRN

5. The *Auction 88 Comment Public Notice* established a deadline for the submission to the Commission of an FCC Registration Number (FRN) by each applicant, and warned of disqualification from participation in the auction and dismissal of any application where the applicant failed to provide its FRN by the deadline on March 12, 2010. Attachment B of the *Auction 88 Procedures Public Notice*

lists applications that were dismissed as a result of the applicant's failure to submit the requested FRN by the specified deadline.

6. Due to these dismissals, some applications no longer were mutually exclusive with other applications and are included in Attachment C of the *Auction 88 Procedures Public Notice.* The removal of applications in some cases has resulted in the removal of entire MX groups from the auction. Specifically, the failure by an applicant to submit its FRN by the specified deadline resulted in the removal from this auction of two MX groups: An MX group for an AM station at Lansing/South Hill, New York (construction permit MM–AM041–750) and an MX group for an FM translator at Manahawkin/Warren Grove, New Jersey (construction permit MM–FMT010–273).

ii. Dismissal of Applications for Failure To Submit Required Section 307(b) Information

7. AM applications in each of the two Indiana MX groups originally scheduled for this auction proposed to serve different communities. In order to make the evaluation required by 47 U.S.C. 307(b), the Media Bureau directed each applicant in closed MX group MM–AM039–640 and MX group MM–AM040–1230 to submit section 307(b) information. Attachment B of the *Auction 88 Procedures Public Notice* lists applications that no longer will be included in Auction 88 as a result of the applicant's failure to submit information needed for determinations required by section 307(b).

8. With respect to MX group MM–AM039–640, only three applicants submitted Section 307(b) showings. Having found no dispositive section 307(b) preference for either of the communities specified, these three applicants will be included in Auction 88 as MX group MM–AM039–640. With respect to MX group MM–AM040–1230, one applicant submitted a timely section 307(b) showing. Therefore, the engineering proposal for this construction permit no longer was mutually exclusive with other application engineering proposals and is listed as a singleton in Attachment C of the *Auction 88 Procedures Public Notice.* The Media Bureau dismissed the short-form applications (FCC Form 175) of the remaining five applicants in the MX group. All six MX group MM–AM040–1230 applications were removed from Auction 88.

C. Rules and Disclaimers

i. Relevant Authority

9. Prospective applicants must familiarize themselves thoroughly with the Commission's general competitive bidding rules, including recent amendments and clarifications, as well as Commission decisions in proceedings regarding competitive bidding procedures, application requirements, broadcast service rules and obligations of Commission licensees. It is the responsibility of all applicants to remain current with all Commission rules and with all public notices pertaining to this auction. The terms contained in the Commission's rules, relevant orders, and public notices are not negotiable. The Commission may amend or supplement information contained in its public notices at any time.

ii. Prohibited Communications and Compliance With Antitrust Laws

10. To ensure the competitiveness of the auction process, 47 CFR 1.2105(c) prohibits auction applicants for construction permits in any of the same geographic license areas from communicating with each other about bids, bidding strategies, or settlements unless such applicants have identified each other on their short-form applications (FCC Form 175) as parties with whom they have entered into agreements pursuant to 47 CFR 1.2105(a)(2)(viii).

a. Entities Subject to Section 1.2105

11. Unless applicants have identified each other on their short-form applications seeking to participate in a Commission auction as parties with whom they have entered into agreements under 47 CFR 1.2105(a)(2)(viii), applicants for any of the same geographic license areas must affirmatively avoid all communications with or disclosures to each other that affect or have the potential to affect bids or bidding strategy. In some instances, this prohibition extends to communications regarding the post-auction market structure. This prohibition applies to all applicants regardless of whether such applicants become qualified bidders or actually bid. The geographic license area is the market designation of the particular service. For the FM service, the market designation is the particular vacant FM allotment (*e.g.,* Greenwood, Arkansas, Channel 268A, MM–FM744–268A). In Auction 88, the rule would apply to applicants designated in Attachment A of the *Auction 88 Procedures Public Notice* for any of the same allotments or permits.

12. Applicants are also reminded that, for purposes of this prohibition on certain communications, 47 CFR 1.2105(c)(7)(i) defines applicant as including all officers and directors of the entity submitting a short-form application to participate in the auction, all controlling interests of that entity, as well as all holders of partnership and other ownership interests and any stock interest amounting to 10 percent or more of the entity, or outstanding stock, or outstanding voting stock of the entity submitting a short-form application. For example, where an individual served as an officer for two or more applicants, the Bureaus have found that the bids and bidding strategies of one applicant are necessarily conveyed to the other applicant, and, absent a disclosed bidding agreement, an apparent violation of 47 CFR 1.2105(c) occurs.

13. Individuals and entities subject to 47 CFR 1.2105(c) should take special care in circumstances where their employees may receive information directly or indirectly from a competing applicant relating to any competing applicant's bids or bidding strategies. Moreover, Auction 88 applicants are encouraged not to use the same individual as an authorized bidder. A violation of 47 CFR 1.2105(c) could occur if an individual acts as the authorized bidder for two or more competing applicants, and conveys information concerning the substance of bids or bidding strategies between such applicants. Also, if the authorized bidders are different individuals employed by the same organization (*e.g.,* law firm or engineering firm or consulting firm), a violation similarly could occur. In such a case, at a minimum, applicants should certify on their applications that precautionary steps have been taken to prevent communication between authorized bidders and that applicants and their bidding agents will comply with 47 CFR 1.2105(c).

b. Prohibition Applies Until Down Payment Deadline

14. 47 CFR 1.2105(c)'s prohibition on certain communications begins at the short-form application filing deadline and ends at the down payment deadline after the auction, which will be announced in a future public notice.

c. Prohibited Communications

15. Applicants should note that they must not communicate directly or indirectly about bids or bidding strategy to other applicants in this auction. 47 CFR 1.2105(c) prohibits not only a communication about an applicant's own bids or bidding strategy, but also a

communication of another applicant's bids or bidding strategy. While 47 CFR 1.2105(c) does not prohibit business negotiations among auction applicants, applicants must remain vigilant so as not to communicate directly or indirectly information that affects, or could affect, bids or bidding strategy, or the negotiation of settlement agreements.

16. The Commission remains vigilant about prohibited communications taking place in other situations. For example, the Commission has warned that prohibited communications concerning bids and bidding strategies may include communications regarding capital calls or requests for additional funds in support of bids or bidding strategies to the extent such communications convey information concerning the bids and bidding strategies directly or indirectly. Applicants are hereby placed on notice that public disclosure of information relating to bids, or bidding strategies, or to post-auction market structures may violate 47 CFR 1.2105(c), including an applicant's use of the Commission's bidding system or a statement to the press, financial analyst or others.

d. Disclosure of Bidding Agreements and Arrangements

17. The Commission's rules do not prohibit applicants from entering into otherwise lawful bidding agreements before filing their short-form applications, as long as they disclose the existence of the agreement(s) in their short-form applications. If parties agree in principle on all material terms prior to the short-form application filing deadline, each party to the agreement must identify the other party or parties to the agreement on its short-form application under 47 CFR 1.2105(c), even if the agreement has not been reduced to writing. If the parties have not agreed in principle by the short-form filing deadline, they should not include the names of parties to discussions on their applications, and they may not continue negotiations, discussions or communications with any other applicants after the short-form application filing deadline.

e. Section 1.2105(c) Certification

18. By electronically submitting a short-form application, each applicant in Auction 88 certifies its compliance with 47 CFR 1.2105(c) and 73.5002. However, the Bureaus caution that merely filing a certifying statement as part of an application will not outweigh specific evidence that a prohibited communication has occurred, nor will it preclude the initiation of an investigation when warranted. The Commission has stated that it intends to scrutinize carefully any instances in which bidding patterns suggest that collusion may be occurring. Any applicant found to have violated 47 CFR 1.2105(c) may be subject to sanctions.

f. Duty To Report Prohibited Communications: Reporting Procedure

19. 47 CFR 1.2105(c)(6) provides that any applicant that makes or receives a communication that appears to violate 47 CFR 1.2105(c) must report such communication in writing to the Commission immediately, and in no case later than five business days after the communication occurs. The Commission has clarified that each applicant's obligation to report any such communication continues beyond the five-day period after the communication is made, even if the report is not made within the five-day period.

20. To maintain the accuracy and completeness of information furnished in its pending application and to notify the Commission of any substantial change that may be of decisional significance to that application, an applicant is required by 47 CFR 1.65 to report to the Commission any communication the applicant has made to or received from another applicant after the short-form application filing deadline that affects or has the potential to affect bids or bidding strategy, unless such communication is made to or received from a party to an agreement identified under 47 CFR 1.2105(a)(2)(viii).

21. 47 CFR 1.65(a) and 1.2105(c) require applicants in competitive bidding proceedings to furnish additional or corrected information within five days of a significant occurrence, or to amend their short-form applications no more than five days after the applicant becomes aware of the need for amendment. A party reporting any communication pursuant to 47 CFR 1.65, 1.2105(a)(2), or 1.2105(c)(6) must take care to ensure that any reports of prohibited communications do not themselves give rise to a violation of 47 CFR 1.2105(c). For example, a party's report of a prohibited communication could violate the rule by communicating prohibited information to other applicants through the use of Commission filing procedures that would allow such materials to be made available for public inspection.

22. To minimize the risk of inadvertent dissemination of information in such reports, any reports required by 47 CFR 1.2105(c) must be filed consistent with the instructions set forth in the *Auction 88 Procedures Public Notice.* For Auction 88, such reports should be filed with the Chief of the Auctions and Spectrum Access Division, Wireless Telecommunications Bureau, by the most expeditious means available. Specifically, any such report should be submitted by e-mail at the following address: *auction88@fcc.gov,* or delivered to the following address: Margaret W. Wiener, Chief, Auctions and Spectrum Access Division, Wireless Telecommunications Bureau, Federal Communications Commission, 445 12th Street, SW., Room 6423, Washington, DC 20554.

23. A party seeking to report such prohibited communications should consider submitting its report with a request that the report or portions of the submission be withheld from public inspection pursuant to 47 CFR 0.459. Such filers must have a cover page that prominently displays that confidential treatment is sought for the document, covering all of the material to which the request applies. Such parties also are encouraged to coordinate with the Auctions and Spectrum Access Division staff if they have any questions about the procedures for submitting such reports.

g. Winning Bidders Must Disclose Terms of Agreements

24. Applicants that are winning bidders will be required to disclose in their long-form applications the specific terms, conditions, and parties involved in any bidding consortia, joint venture, partnership; or agreement, understanding, or other arrangement entered into relating to the competitive bidding process. Applicants must be aware that failure to comply with the Commission's rules can result in enforcement action.

h. Antitrust Laws

25. Applicants are also reminded that, regardless of compliance with the Commission's rules, they remain subject to the antitrust laws, which are designed to prevent anticompetitive behavior in the marketplace. Compliance with the disclosure requirements of 47 CFR 1.2105(c) will not insulate a party from enforcement of the antitrust laws. For instance, a violation of the antitrust laws could arise out of actions taking place well before any party submitted a short-form application. If an applicant is found to have violated the antitrust laws or the Commission's rules in connection with its participation in the competitive bidding process, it may be subject to forfeiture of its upfront payment, down payment or full bid amount and may be prohibited from participating in future

auctions, among other sanctions. *See* 47 CFR 1.2109(d).

iii. Due Diligence

26. The burden of due diligence is on the auction applicant. Potential applicants are reminded that they are solely responsible for investigating and evaluating all technical and marketplace factors that may have a bearing on the value of the construction permits for broadcast facilities they are seeking in this auction. It is each applicant's responsibility to assure itself that, if it wins a construction permit in this auction, it will be able to build and operate facilities in accordance with the Commission's rules. The Commission does not represent or warrant that licenses or permits offered are suitable for any particular service, nor does a Commission construction permit or license constitute a guarantee of business success.

iv. Use of Integrated Spectrum Auction System

27. The Commission will make available a browser-based bidding system to allow bidders to participate in Auction 88 over the Internet using the Commission's Integrated Spectrum Auction System (ISAS or FCC Auction System). The Commission makes no warranty whatsoever with respect to the FCC Auction System. In no event shall the Commission, or any of its officers, employees, or agents, be liable for any damages whatsoever (including, but not limited to, loss of business profits, business interruption, loss of business information, or any other loss) arising out of or relating to the existence, furnishing, functioning, or use of the FCC Auction System that is accessible to qualified bidders in connection with this auction. Moreover, no obligation or liability will arise out of the Commission's technical, programming, or other advice or service provided in connection with the FCC Auction System.

v. Environmental Review Requirements

28. Permittees or licensees must comply with the Commission's rules regarding implementation of the National Environmental Policy Act and other Federal environmental statutes. The construction of a broadcast facility is a Federal action and the permittee or licensee for each such facility must comply with the Commission's environmental rules, 47 CFR 1.1301–1.1319.

D. Auction Specifics

i. Auction Start Date

29. Bidding in Auction 88 will begin on Tuesday, July 20, 2010. The initial schedule for bidding will be announced by public notice at least one week before the start of the auction. Unless otherwise announced, bidding on all construction permits will be conducted on each business day until bidding has stopped on all construction permits.

ii. Bidding Methodology

30. The bidding methodology for Auction 88 will be simultaneous multiple round (SMR) bidding. The Commission will conduct this auction over the Internet using the FCC Auction System, and telephonic bidding will be available as well. Qualified bidders are permitted to bid electronically via the Internet or by telephone. All telephone calls are recorded.

iii. Pre-Auction Dates and Deadlines

31. The following dates and deadlines apply:

Auction Tutorial Available (via Internet)	May 4, 2010.
Short-Form Application (FCC Form 175):	
Filing Window Opens	May 4, 2010; 12 noon ET.
Short-Form Application (FCC Form 175):	
Filing Window Deadline	May 13, 2010; prior to 6 p.m. ET.
Upfront Payments (via wire transfer)	June 17, 2010; 6 p.m. ET.
Mock Auction	July 16, 2010.
Auction Begins	July 20, 2010.

II. Short-Form Application (FCC Form 175) Requirements

A. General Information Regarding Short-Form Applications

32. An application to participate in an FCC auction, referred to as a short-form application or FCC Form 175, provides information used in determining whether the applicant is legally, technically, and financially qualified to participate in Commission auctions for licenses or permits. Each applicant must take seriously its duties and responsibilities and carefully determine before filing an application that the applicant has the legal, technical and financial resources to participate in Auction 88, as well as construct and operate a broadcast station if the auction applicant becomes a licensee as a result of its participation in this auction. Eligibility to participate in bidding is based on the applicants' short-form applications and certifications under penalty of perjury, as well as their upfront payments.

33. All applicants for AM stations listed in Attachment A of the *Auction 88 Procedures Public Notice* previously filed short-form applications in response to the *Supplemental Terre Haute Window Notice.* All applicants for FM stations listed in Attachment A of the *Auction 88 Procedures Public Notice* previously filed long-form applications. All entities and individuals seeking construction permits in Auction 88 are required to file a new short-form application electronically via the FCC Auction System prior to 6 p.m. ET on May 13, 2010, following the procedures prescribed in Attachment D of the *Auction 88 Procedures Public Notice,* even if the applicant had previously filed a short-form application in response to the *Supplemental Terre Haute Window Notice* or a long-form application.

34. Applicants bear full responsibility for submitting accurate, complete and timely short-form applications. All applicants must certify on their short-form applications under penalty of perjury that they are legally, technically, financially, and otherwise qualified to hold a license. Applicants should read the instructions set forth in Attachment D of the *Auction 88 Procedures Public Notice* carefully and should consult the Commission's rules to ensure that, in addition to the materials, all the information that is required under the Commission's rules is included with their short-form applications. Auction 88 applicants are reminded that they are not permitted by 47 CFR 1.2105(b) to make major modifications to their applications as initially filed (whether long-form applications by applicants for FM stations or short-form applications by applicants for the AM station), including any change of their construction permit(s), any change of control of the applicant, or any change to claim eligibility for a higher percentage of bidding credit).

35. Applicants also should note that submission of a short-form application (and any amendments thereto)

constitutes a representation by the certifying official that he or she is an authorized representative of the applicant, that he or she has read the form's instructions and certifications, and that the contents of the application, its certifications, and any attachments are true and correct. Applicants are not permitted to make major modifications to their applications; such impermissible changes include a change of the certifying official to the application. Submission of a false certification to the Commission may result in penalties, including monetary forfeitures, license forfeitures, ineligibility to participate in future auctions, and/or criminal prosecution.

B. Construction Permits in Short-Form Application

36. Auction 88 will resolve pending closed groups of mutually exclusive applications. Participation in this auction is limited to those applicants and applications identified in Attachment A of the *Auction 88 Procedures Public Notice.* Qualifying applicants will be eligible to bid only on those construction permits for which the applicant's application is designated in the particular MX group specified in Attachment A of the *Auction 88 Procedures Public Notice.* Therefore, applicants will not select permits when filing the FCC Form 175.

C. New Entrant Bidding Credit

37. The Commission adopted a tiered New Entrant Bidding Credit for broadcast auction applicants with no, or very few, other media interests. The interests of the applicant, and of any individuals or entities with an attributable interest in the applicant, in other media of mass communications are considered when determining an applicant's eligibility for the New Entrant Bidding Credit. In Auction 88, the bidder's attributable interests are determined as of the short-form application filing deadline. Thus, the applicant's maximum new entrant bidding credit eligibility will be determined as of the short-form application filing deadline. Applicants intending to divest a media interest or make any other ownership changes, such as resignation of positional interests, in order to avoid attribution for purposes of qualifying for the New Entrant Bidding Credit must have consummated such divestment transactions or have completed such ownership changes by no later than the short-form filing deadline. Prospective bidders are reminded, however, that events occurring after the short-form filing deadline, such as the acquisition of attributable interests in media of mass communications, may cause diminishment or loss of the bidding credit, and must be reported immediately.

38. Under traditional broadcast attribution rules, such as 47 CFR 73.3555 Note 2, those entities or individuals with an attributable interest in a bidder include: (1) All officers and directors of a corporate bidder; (2) any owner of 5 percent or more of the voting stock of a corporate bidder; (3) all partners and limited partners of a partnership bidder, unless the limited partners are sufficiently insulated; and (4) all members of a limited liability company, unless sufficiently insulated. In cases where an applicant's spouse or close family member holds other media interests, such interests are not automatically attributable to the bidder. The Commission decides attribution issues in this context based on certain factors traditionally considered relevant. Applicants should note that the mass media attribution rules were revised in 1999.

39. Bidders are also reminded that, by the *New Entrant Bidding Credit Reconsideration Order,* 64 FR 44856, Aug. 18, 1999, the Commission further refined the eligibility standards for the New Entrant Bidding Credit, judging it appropriate to attribute the media interests held by very substantial investors in, or creditors of, an applicant claiming new entrant status. Specifically, the attributable mass media interests held by an individual or entity with an equity and/or debt interest in an applicant shall be attributed to that bidder for purposes of determining its eligibility for the New Entrant Bidding Credit, if the equity and debt interests, in the aggregate, exceed 33 percent of the total asset value of the applicant, even if such an interest is non-voting.

40. In the *Diversity Order,* 73 FR 28361, May 16, 2008, the Commission relaxed the equity/debt plus (EDP) attribution standard, to allow for higher investment opportunities in entities meeting the definition of eligible entities. An eligible entity is defined in Note 2(i) of 47 CFR 73.3555. Pursuant to the *Diversity Order,* the Commission will now allow the holder of an equity or debt interest in the applicant to exceed the above-noted 33 percent threshold without triggering attribution provided (1) the combined equity and debt in the eligible entity is less than 50 percent; or (2) the total debt in the eligible entity does not exceed 80 percent of the asset value, and the interest holder does not hold any equity interest, option, or promise to acquire an equity interest in the eligible entity or any related entity.

41. Generally, media interests will be attributable for purposes of the New Entrant Bidding Credit to the same extent that such other media interests are considered attributable for purposes of the broadcast multiple ownership rules. However, attributable interests held by a winning bidder in existing low power television, television translator or FM translator facilities will not be counted among the bidder's other mass media interests in determining its eligibility for a New Entrant Bidding Credit. A medium of mass communications is defined in 47 CFR 73.5008(b), and includes full service noncommercial educational stations, on both reserved and nonreserved channels.

i. Application Requirements

42. In addition to the ownership information required pursuant to 47 CFR 1.2112, applicants seeking a New Entrant Bidding Credit are required to establish on their short-form applications that they satisfy the eligibility requirements to qualify for the bidding credit. In those cases, a certification under penalty of perjury must be provided in completing the applicant's short-form application. An applicant claiming that it qualifies for a 35 percent New Entrant Bidding Credit must certify that neither it nor any of its attributable interest holders have any attributable interests in any other media of mass communications. An applicant claiming that it qualifies for a 25 percent New Entrant Bidding Credit must certify that neither it nor any of its attributable interest holders has any attributable interests in more than three media of mass communications, and must identify and describe such media of mass communications.

ii. Bidding Credits

43. Applicants that qualify for the New Entrant Bidding Credit, as specified in the applicable rule, are eligible for a bidding credit that represents the amount by which a bidder's winning bid is discounted. The size of a New Entrant Bidding Credit depends on the number of ownership interests in other media of mass communications that are attributable to the bidder-entity and its attributable interest-holders: (1) A 35 percent bidding credit will be given to a winning bidder if it, and/or any individual or entity with an attributable interest in the winning bidder, has no attributable interest in any other media of mass communications, as defined in 47 CFR 73.5008; (2) a 25 percent

bidding credit will be given to a winning bidder if it, and/or any individual or entity with an attributable interest in the winning bidder, has an attributable interest in no more than three mass media facilities, as defined in 47 CFR 73.5008; and (3) no bidding credit will be given if any of the commonly owned mass media facilities serve the same area as the broadcast station proposed in the auction, as defined in 47 CFR 73.5007(b), or if the winning bidder, and/or any individual or entity with an attributable interest in the winning bidder, has attributable interests in more than three mass media facilities.

44. To the extent that one commenter suggested that the criteria for the new entrant bidding credit be modified for Auction 88 with a request that the Bureaus allow a bidding credit for any applicant with no other broadcast facilities, the Bureaus are unable to adopt any such revision of existing bidding credit rules, that already provide that broadcast auction applicants with no attributable interests in media of mass communications may seek a 35 percent bidding credit, or to adopt new bidding credits based on other criteria. The Bureaus will implement for this auction the broadcast bidding credit criteria as adopted by the Commission in 47 CFR 73.5007–73.5008.

45. Bidding credits are not cumulative; qualifying applicants receive either the 25 percent or the 35 percent bidding credit, but not both. Attributable interests are defined in 47 CFR 73.3555 and note 2 of that section. Applicants should note that unjust enrichment provisions under 47 CFR 73.5007(c) apply to a winning bidder that utilizes a bidding credit and subsequently seeks to assign or transfer control of its license or construction permit to an entity not qualifying for the same level of bidding credit.

D. Disclosure of Bidding Arrangements

46. Applicants will be required to identify in their short-form application all parties with whom they have entered into any agreements, arrangements, or understandings of any kind relating to the construction permits being auctioned, including any agreements relating to post-auction market structure.

47. Applicants also will be required to certify under penalty of perjury in their short-form applications that they have not entered and will not enter into any explicit or implicit agreements, arrangements or understandings of any kind with any parties, other than those identified in the application, regarding the amount of their bids, bidding strategies, or the particular construction permits on which they will or will not bid. If an applicant has had discussions, but has not reached an agreement by the short-form application filing deadline, it should not include the names of parties to the discussions on its application and may not continue such discussions with any applicants after the deadline.

48. After the filing of short-form applications, the Commission's rules do not prohibit a party holding a non-controlling, attributable interest in one applicant from acquiring an ownership interest in or entering into a joint bidding arrangement with other applicants, provided that: (1) The attributable interest holder certifies in accordance with 47 CFR 1.2105(c)(4)(i), (ii) that it has not and will not communicate with any party concerning the bids or bidding strategies of more than one of the applicants in which it holds an attributable interest, or with which it has entered into a joint bidding arrangement; and (2) the arrangements do not result in a change in control of any of the applicants. While 47 CFR 1.2105(c) does not prohibit non-auction-related business negotiations among auction applicants, applicants are reminded that certain discussions or exchanges could touch upon impermissible subject matters because they may convey pricing information and bidding strategies. Such subject areas include, but are not limited to, issues such as management sales, local marketing agreements, rebroadcast agreements, and other transactional agreements. Compliance with the disclosure requirements of 47 CFR 1.2105(c) will not insulate a party from enforcement of the antitrust laws.

E. Ownership Disclosure Requirements

49. The ownership disclosure standards for the short-form application are prescribed in 47 CFR 1.2105 and 1.2112. Specifically, in completing the short-form application, all applicants will be required to fully disclose information on the real party- or parties-in-interest and ownership structure of the applicant, including both direct and indirect ownership interests of 10 percent or more. Each applicant is responsible for information submitted in its short-form application being complete and accurate.

50. For Auction 88, the ownership information must conform, in all material respects, to the ownership information appearing on the applicant's previously-filed long-form application (FM and FM translator applicants) or short-form application (AM applicants). Applicants are cautioned that the long-form application will be considered newly filed according to 47 CFR 1.2105(b)(2) and 73.3573(a)(1) if the information submitted on the electronic short-form application reflects that there has been a change of control. In such a case, the applicant will not be eligible to participate in the auction. Accordingly, each applicant should carefully review any information automatically entered in its short-form application to confirm that it is complete and accurate as of the deadline for filing the short-form application.

F. Provisions Regarding Former and Current Defaulters

51. Current defaulters or delinquents are not eligible to participate in Auction 88, but former defaulters or delinquents can participate so long as they are otherwise qualified and, make upfront payments that are fifty percent more than the normal upfront payment amounts. An applicant is considered a current defaulter or a current delinquent when it, any of its affiliates, any of its controlling interests, or any of the affiliates of its controlling interests, are in default on any payment for any Commission construction permit or license (including a down payment) or are delinquent on any non-tax debt owed to any Federal agency as of the filing deadline for short-form applications. An applicant is considered a former defaulter or a former delinquent when it, any of its affiliates, any of its controlling interests, or any of the affiliates of its controlling interests, have defaulted on any Commission construction permit or license or been delinquent on any non-tax debt owed to any Federal agency, but have since remedied all such defaults and cured all of the outstanding non-tax delinquencies.

52. On the short-form application, an applicant must certify under penalty of perjury that it, its affiliates, its controlling interests, and the affiliates of its controlling interests, as defined by 47 CFR 1.2110 currently are not in default on any payment for a Commission construction permit or license (including down payments) and that it is not currently delinquent on any non-tax debt owed to any Federal agency. Each applicant must also state under penalty of perjury whether it, its affiliates, its controlling interests, and the affiliates of its controlling interests, have ever been in default on any Commission construction permit or license or have ever been delinquent on any non-tax debt owed to any Federal agency. Prospective applicants are reminded that submission of a false

certification to the Commission is a serious matter that may result in severe penalties, including monetary forfeitures, license revocations, exclusion from participation in future auctions, and/or criminal prosecution. These statements and certifications are prerequisites to submitting an application to participate in an FCC auction.

53. Applicants are encouraged to review the Bureaus' previous guidance on default and delinquency disclosure requirements in the context of the short-form application process. For example, it has been determined that, to the extent that Commission rules permit late payment of regulatory or application fees accompanied by late fees, such debts will become delinquent for purposes of 47 CFR 1.2105(a) and 1.2106(a) only after the expiration of a final payment deadline. Therefore, with respect to regulatory or application fees, the provisions of 47 CFR 1.2105(a) and 1.2106(a) regarding default and delinquency in connection with competitive bidding are limited to circumstances in which the relevant party has not complied with a final Commission payment deadline. Parties are also encouraged to consult with the Commission's Office of Managing Director or the Wireless Telecommunications Bureau's Auctions and Spectrum Access Division staff if they have any questions about default and delinquency disclosure requirements.

54. The Commission considers outstanding debts owed to the United States Government, in any amount, to be a serious matter. The Commission adopted rules, including a provision referred to as the red light rule, that implement the Commission's obligations under the Debt Collection Improvement Act of 1996, which governs the collection of claims owed to the United States. Under the red light rule, the Commission will not process applications and other requests for benefits filed by parties that have outstanding debts owed to the Commission. In the same rulemaking order, the Commission explicitly declared, however, that the Commission's competitive bidding rules are not affected by the red light rule. As a consequence, the Commission's adoption of the red light rule does not alter the applicability of any of the Commission's competitive bidding rules, including the provisions and certifications of 47 CFR 1.2105 and 1.2106, with regard to current and former defaults or delinquencies.

55. Applicants are reminded, however, that the Commission's Red Light Display System, which provides information regarding debts currently owed to the Commission, may not be determinative of an auction applicant's ability to comply with the default and delinquency disclosure requirements of 47 CFR 1.2105. Thus, while the red light rule ultimately may prevent the processing of long-form applications by auction winners, an auction applicant's lack of current red light status is not necessarily determinative of its eligibility to participate in an auction or of its upfront payment obligation.

56. Moreover, prospective applicants in Auction 88 should note that any long-form applications filed after the close of bidding will be reviewed for compliance with the Commission's red light rule, and such review may result in the dismissal of a winning bidder's long-form application. Applicants that have their long-form application dismissed will be deemed to have defaulted and will be subject to default payments under 47 CFR 1.2104(g) and 1.2109(c).

G. Optional Applicant Status Identification

57. Applicants owned by members of minority groups and/or women, as defined in 47 CFR 1.2110(c)(3), and rural telephone companies, as defined in 47 CFR 1.2110(c)(4), may identify themselves regarding this status in filling out their short-form applications. This optional applicant status information is collected for statistical purposes only and assists the Commission in monitoring the participation in its auctions of designated entities, defined as small businesses, businesses owned by members of minority groups and/or women, and rural telephone companies.

H. Minor Modifications to Short-Form Applications

58. After the deadline for filing initial applications, 47 CFR 1.2105(b) specifies that an Auction 88 applicant is permitted to make only minor changes to its application. Permissible minor changes include, among other things, deletion and addition of authorized bidders (to a maximum of three) and revision of addresses and telephone numbers of the applicants and their contact persons. An applicant is not permitted to make a major modification to its application (*e.g.,* change control of the applicant, change the certifying official, or claim eligibility for a higher percentage of bidding credit) after the initial application filing deadline. Thus, any change in control of an applicant, resulting from a merger, for example, will be considered a major modification to the applicant's application, which will consequently be dismissed. In this regard, the Bureaus reiterated that, even if an applicant's short-form application is dismissed, the applicant would remain subject to the communication prohibitions of 47 CFR 1.2105(c) until the down payment deadline, which will be established after the auction closes.

59. Moreover, after the filing window has closed, ISAS will not permit applicants to make certain changes, such as the applicant's legal classification. Applicants also may not change the community of license prior to auction. While one commenter's request for a change in the community of license from New Holstein, Wisconsin, to Chilton, Wisconsin is not procedurally proper at this time, the winning bidder for FM Channel 225A will have the opportunity, when it files its post-auction FCC Form 301 application, to propose a new community of license, as long as the proposed change is mutually exclusive with the allotment and would represent a preferential arrangement of allotments.

60. If an applicant wishes to make permissible minor changes to its short-form application, such changes should be made electronically to its short-form application using the FCC Auction System whenever possible. Applicants are reminded to click on the SUBMIT button in the FCC Auction System for the changes to be submitted and considered by the Commission. After the revised application has been submitted, a confirmation page will be displayed that states the submission time, submission date, and a unique file number.

61. An applicant cannot use the FCC Auction System outside of the initial and resubmission filing windows to make changes to its short-form application other than administrative changes (*e.g.* changing certain contact information or the name of an authorized bidder). If other permissible minor changes need to be made outside of these windows, the applicant must submit a letter briefly summarizing the changes and subsequently update its short-form application in ISAS once the system is available. Any letter describing changes to an applicant's short-form application should be submitted by e-mail to the following address: *auction88@fcc.gov.* The e-mail summarizing the changes must include a subject or caption referring to Auction 88 and the name of the applicant.

62. Any application amendment and related statements of fact must be certified by (1) the applicant, if the applicant is an individual; (2) one of the partners if the applicant is a partnership; (3) an officer, director, or

duly authorized employee, if the applicant is a corporation; (4) a member who is an officer, if the applicant is an unincorporated association; (5) the trustee, if the applicant is an amateur radio service club; or (6) a duly elected or appointed official who is authorized to make such certifications under the laws of the applicable jurisdiction, if the applicant is a governmental entity.

63. Applicants must not submit application-specific material through the Commission's Electronic Comment Filing System which was used for submitting comments regarding Auction 88.

I. Maintaining Current Information in Short-Form Applications

64. 47 CFR 1.65 requires an applicant to maintain the accuracy and completeness of information furnished in its pending application and to notify the Commission within 30 days of any substantial change that may be of decisional significance to that application. Changes that cause a loss of or reduction in the percentage of bidding credit specified on the originally submitted application must be reported immediately. For example, if ownership changes result in the attribution of new interest holders that affect the applicant's qualifications for a new entrant bidding credit, such information must be clearly stated in the applicant's amendment. Events occurring after the application filing deadline, such as the acquisition of attributable interests in media of mass communications, may also cause diminishment or loss of the bidding credit, and must be reported immediately. If an amendment reporting substantial changes is a major amendment, as defined by 47 CFR 1.2105, the major amendment will not be accepted and may result in the dismissal of the application.

65. After the application filing deadline, applicants may make only minor changes to their applications. Applicants must click on the SUBMIT button in the FCC Auction System for any changes to be submitted and considered by the Commission. If a submission in compliance with 47 CFR 1.65 is needed outside of the initial and resubmission filing windows, applicants must submit a brief letter summarizing the changes in accordance with the instructions specified in the *Auction 88 Procedures Public Notice.*

III. Pre-Auction Procedures

A. Online Auction Tutorial—Available May 4, 2010

66. On Tuesday, May 4, 2010, the Commission will post an educational auction tutorial on the Auction 88 Web page for prospective bidders to familiarize themselves with the auction process. This online tutorial will provide information about pre-auction procedures, completing short-form applications, auction conduct, the FCC Auction Bidding System, auction rules, and broadcast services rules. The tutorial will also provide an avenue to ask FCC staff questions about the auction, auction procedures, filing requirements, and other matters related to this auction.

67. The auction tutorial will be accessible from the FCC's Auction 88 Web page at *http://wireless.fcc.gov/auctions/88/* through an Auction Tutorial link. Once posted, this tutorial will remain available for reference in connection with the procedures outlined in the *Auction 88 Procedures Public Notice.*

B. Short-Form Applications—Due Prior to 6 p.m. ET on May 13, 2010

68. In order to be eligible to bid in this auction, applicants must first follow the procedures set forth in Attachment D of the *Auction 88 Procedures Public Notice* to submit a short-form application (FCC Form 175) electronically via the FCC Auction System. This short-form application must be submitted through the FCC Auction System prior to 6 p.m. ET on May 13, 2010. Late applications will not be accepted. An applicant always must click on the SUBMIT button on the Certify & Submit screen to successfully submit its FCC Form 175 and any modification; otherwise the application or changes to the application will not be received or reviewed.

C. Application Processing and Minor Corrections

69. After the deadline for filing FCC Form 175 applications, the Commission will process all timely submitted applications to determine which are complete, and subsequently will issue a public notice identifying (1) those applications that are complete; (2) those applications that are rejected; and (3) those applications that are incomplete because of minor defects that may be corrected. The public notice will include the deadline for resubmitting corrected applications.

70. After the application filing deadline on May 13, 2010, applicants continue to be able to make only minor corrections to their applications. Applicants will not be permitted to make major modifications to their applications (*e.g.,* change control of the applicant, change the certifying official, or claim eligibility for a higher percentage of bidding credit).

71. Applicants should be aware the Commission staff will communicate only with an applicant's contact person or certifying official, as designated on the applicant's short-form application, unless the applicant's certifying official or contact person notifies the Commission in writing that applicant's counsel or other representative is authorized to speak on its behalf. Such authorizations may be sent by e-mail to *auction88@fcc.gov.* In no event, however, will the FCC send registration materials to anyone other than the contact person listed on the applicant's FCC Form 175 or respond to a request for replacement registration materials from anyone other than an authorized bidder, contact person or certifying official listed on the applicant's FCC Form 175.

D. Upfront Payments—Due June 17, 2010

72. In order to be eligible to bid in this auction, applicants must submit an upfront payment accompanied by an FCC Remittance Advice Form (FCC Form 159). The Bureaus note that all applicants for permits must make an upfront payment in order to qualify as a bidder and obtain a permit, whether or not any other applicant in their MX groups becomes a qualified bidder. An applicant must initiate the wire transfer through its bank, authorizing the bank to wire funds from the applicant's account to the Commission's auction payment lockbox bank, the U.S. Bank in St. Louis, Missouri. After completing its short-form application, an applicant will have access to an electronic version of the FCC Form 159 that can be printed and sent by fax to U.S. Bank in St. Louis, Missouri. All upfront payments must be made as instructed in this Public Notice and must be received in the proper account at U.S. Bank before 6 p.m. ET on June 17, 2010.

i. Making Upfront Payments by Wire Transfer

73. Wire transfer payments must be received before 6 p.m. ET on June 17, 2010. No other payment method is acceptable. The Commission will not accept checks, credit cards, or automated clearing house (ACH) payments. To avoid untimely payments, applicants should discuss arrangements (including bank closing schedules) with their bankers several days before they

plan to make the wire transfer, and allow sufficient time for the transfer to be initiated and completed before the deadline.

74. At least one hour before placing the order for the wire transfer (but on the same business day), applicants must fax a completed FCC Form 159 (Revised 2/03) to U.S. Bank at (314) 418–4232. On the fax cover sheet, applicants should write Wire Transfer—Auction Payment for Auction 88. In order to meet the Commission's upfront payment deadline, an applicant's payment must be credited to the Commission's account for Auction 88 before the deadline. The applicant is responsible for obtaining confirmation from its financial institution that U.S. Bank has timely received its upfront payment and deposited it in the proper account.

75. Please note the following information regarding upfront payments: (1) All payments must be made in U.S. dollars; (2) all payments must be made by wire transfer; (3) upfront payments for Auction 88 go to a lockbox number different from the lockboxes used in previous FCC auctions; and (4) failure to deliver a sufficient upfront payment as instructed by the specified deadline on June 17, 2010 will result in dismissal of the short-form application and disqualification from participation in the auction.

ii. FCC Form 159

76. A completed FCC Remittance Advice Form (FCC Form 159, Revised 2/03) must be faxed to U.S. Bank to accompany each upfront payment. Proper completion of FCC Form 159 is critical to ensuring correct crediting of upfront payments. Detailed instructions for completion of FCC Form 159 are included in Attachment E of the *Auction 88 Procedures Public Notice.* An electronic pre-filled version of the FCC Form 159 is available after submitting the FCC Form 175. Payers using the pre-filled FCC Form 159 are responsible for ensuring that all of the information on the form, including payment amounts, is accurate. The FCC Form 159 can be completed electronically, but must be filed with U.S. Bank by fax.

iii. Upfront Payments and Bidding Eligibility

77. Attachment A of the *Auction 88 Procedures Public Notice* sets forth minimum opening bids and upfront payments for permits being offered in this auction. Applicants must make upfront payments sufficient to obtain bidding eligibility on the construction permits on which they will bid. The amount of the upfront payment determines a bidder's initial bidding eligibility, the maximum number of bidding units on which a bidder may place bids. In order to bid on a particular construction permit, a qualified bidder must be identified as an applicant for the construction permit in Attachment A of the *Auction 88 Procedures Public Notice* and must have a current eligibility level that meets or exceeds the number of bidding units assigned to that construction permit. At a minimum, therefore, an applicant's total upfront payment must be enough to establish eligibility to bid on at least one of the construction permits for which it is identified as an applicant in Attachment A of the *Auction 88 Procedures Public Notice,* or else the applicant will not be eligible to participate in the auction.

78. An applicant does not have to make an upfront payment to cover all construction permits for which it is identified as an applicant in Attachment A of the *Auction 88 Procedures Public Notice,* but only enough to cover the maximum number of bidding units that are associated with construction permits on which the bidder wishes to place bids and hold provisionally winning bids at any given time. Provisionally winning bids are bids that would become final winning bids if the auction were to close after the given round.

79. Some commenters requested reductions of minimum opening bids for specific construction permits which correspond to the specific upfront payments proposed by the Bureaus in the *Auction 88 Comment Public Notice.* To the extent that the Bureaus reduced minimum opening bid amounts, the corresponding upfront payment amount for that construction permit also was reduced. With these exceptions, the Bureaus adopted the upfront payments and bidding units proposed for each construction permit in Auction 88. Upfront payment amounts and bidding units are set forth in Attachment A of the *Auction 88 Procedures Public Notice.*

80. In calculating its upfront payment amount, an applicant should determine the maximum number of bidding units on which it may wish to be active (bid on or hold provisionally winning bids on) in any single round, and submit an upfront payment amount covering that number of bidding units. In order to make this calculation, an applicant should add together the bidding units for all construction permits on which it seeks to be active in any given round. Applicants should check their calculations carefully, as there is no provision for increasing a bidder's eligibility after the upfront payment deadline. Further, a qualified bidder's maximum eligibility will not exceed the sum of the bidding units associated with the total number of construction permits identified for that applicant in Attachment A of the *Auction 88 Procedures Public Notice.* In some cases, a qualified bidder's maximum eligibility may be less than the amount of its upfront payment because the qualified bidder either has submitted an upfront payment that exceeds the total amount of bidding units associated with the construction permits identified for that applicant in Attachment A of the *Auction 88 Procedures Public Notice* or has previously been in default on a Commission construction permit or license or delinquent on non-tax debt owed to a Federal agency.

81. As explained previously in the *Auction 88 Procedures Public Notice,* applicants that are former defaulters must pay upfront payments 50 percent greater than non-former defaulters. If an applicant is a former defaulter, it must calculate its upfront payment for all of its identified construction permits by multiplying the number of bidding units on which it wishes to be active by 1.5. In order to calculate the number of bidding units to assign to former defaulters, the Commission will divide the upfront payment received by 1.5 and round the result up to the nearest bidding unit. If a former defaulter fails to submit a sufficient upfront payment to establish eligibility to bid on at least one of the construction permits designated for that applicant in Attachment A of the *Auction 88 Procedures Public Notice,* the applicant will not be eligible to participate in the auction.

E. Auction Registration

82. Approximately ten days before the auction, the Bureaus will issue a public notice announcing all qualified bidders for the auction. Qualified bidders are those applicants with submitted FCC Form 175 applications that are deemed timely-filed, accurate, and complete, provided that such applicants have timely submitted an upfront payment that is sufficient to qualify them to bid.

83. All qualified bidders are automatically registered for the auction. Registration materials will be distributed prior to the auction by overnight mail. The mailing will be sent only to the contact person at the contact address listed in the FCC Form 175 and will include the SecurID® tokens that will be required to place bids, the Integrated Spectrum Auction System (ISAS) Bidder's Guide, and the Auction Bidder Line phone number. Qualified

bidders that do not receive this registration mailing will not be able to submit bids. Therefore, any qualified bidder that has not received this mailing by noon on Wednesday, July 14, 2010, should call (717) 338–2868. Receipt of this registration mailing is critical to participating in the auction, and each applicant is responsible for ensuring it has received all of the registration material.

84. In the event that SecurID® tokens are lost or damaged, only a person who has been designated as an authorized bidder, the contact person, or the certifying official on the applicant's short-form application may request replacements. Qualified bidders requiring the replacement of these items must call Technical Support at (877) 480–3201, option nine; (202) 414–1250; or (202) 414–1255 (TTY).

F. Remote Electronic Bidding

85. The Commission will conduct this auction over the Internet, and telephonic bidding will be available as well. Only qualified bidders are permitted to bid. Each applicant should indicate its bidding preference—electronic or telephonic—on its FCC Form 175. In either case, each authorized bidder must have its own SecurID® token, which the Commission will provide at no charge. Each applicant with one authorized bidder will be issued two SecurID® tokens, while applicants with two or three authorized bidders will be issued three tokens. For security purposes, the SecurID® tokens, the telephonic bidding telephone number, and the Integrated Spectrum Auction System (ISAS) Bidder's Guide are only mailed to the contact person at the contact address listed on the FCC Form 175. Each SecurID® token is tailored to a specific auction. SecurID® tokens issued for other auctions or obtained from a source other than the FCC will not work for Auction 88.

G. Mock Auction—July 16, 2010

86. All qualified bidders will be eligible to participate in a mock auction on Friday, July 16, 2010. The mock auction will enable qualified bidders to become familiar with the FCC Auction System prior to the auction. Participation by all bidders is strongly recommended. Details will be announced by public notice.

IV. Auction Event

87. The first round of bidding for Auction 88 will begin on Tuesday, July 20, 2010. The initial bidding schedule will be announced in a public notice listing the qualified bidders, which is to be released approximately 10 days before the start of the auction.

A. Auction Structure

i. Simultaneous Multiple Round Auction

88. All construction permits in Auction 88 will be auctioned in a single auction using the Commission's standard simultaneous multiple-round auction format. This type of auction offers every construction permit for bid at the same time and consists of successive bidding rounds in which eligible bidders may place bids on individual construction permits. A bidder may bid on, and potentially win, any number of construction permits. Unless otherwise announced, bids will be accepted on all construction permits in each round of the auction until bidding stops on every construction permit.

ii. Eligibility and Activity Rules

89. The Bureaus will use upfront payments to determine initial (maximum) eligibility (as measured in bidding units) for Auction 88. The amount of the upfront payment submitted by a bidder determines initial bidding eligibility, the maximum number of bidding units on which a bidder may be active. As noted earlier, each construction permit is assigned a specific number of bidding units listed in Attachment A of the *Auction 88 Procedures Public Notice.* Bidding units for a given construction permit do not change as prices rise during the auction. A bidder's upfront payment is not attributed to specific construction permits. Rather, a bidder may place bids on any of the construction permits for which it is designated an applicant in Attachment A of the *Auction 88 Procedures Public Notice,* as long as the total number of bidding units associated with those construction permits does not exceed its current eligibility. Eligibility cannot be increased during the auction; it can only remain the same or decrease. Thus, in calculating its upfront payment amount, an applicant must determine the maximum number of bidding units it may wish to bid on or hold provisionally winning bids on in any single round, and submit an upfront payment amount covering that total number of bidding units. At a minimum, an applicant's upfront payment must cover the bidding units for at least one of the construction permits for which it is designated an applicant in Attachment A of the *Auction 88 Procedures Public Notice.* The total upfront payment does not affect the total dollar amount a bidder may bid on any given construction permit.

90. In order to ensure that an auction closes within a reasonable period of time, an activity rule requires bidders to bid actively throughout the auction, rather than wait until late in the auction before participating. Bidders are required to be active on a specific percentage of their current bidding eligibility during each round of the auction.

91. A bidder's activity level in a round is the sum of the bidding units associated with any construction permits covered by new and provisionally winning bids. A bidder is considered active on a construction permit in the current round if it is either the provisionally winning bidder at the end of the previous bidding round or if it submits a bid in the current round.

92. The eligibility and activity rules for Auction 88 require a bidder to be active on 100 percent of its current eligibility during each round of the auction. That is, a bidder must either place a bid or be a provisionally winning bidder during each round of the auction. Failure to maintain the requisite activity level will result in the use of an activity rule waiver, if any remain, or a reduction in the bidder's eligibility, possibly curtailing or eliminating the bidder's ability to place additional bids in the auction.

iii. Activity Rule Waivers

93. In Auction 88, each bidder in the auction will be provided with three activity rule waivers. It is important for bidders to understand that applying a waiver is irreversible. Once a bidder submits a proactive waiver, the bidder cannot unsubmit the waiver even if the round has not yet ended.

iv. Auction Stopping Rules

94. For Auction 88, the Bureaus will employ a simultaneous stopping rule approach. A simultaneous stopping rule means that all construction permits remain available for bidding until bidding closes simultaneously on all construction permits. More specifically, bidding will close simultaneously on all construction permits after the first round in which no bidder submits any new bids or applies a proactive waiver. The Bureaus also adopted alternative versions of the simultaneous stopping rule for Auction 88 as specified in the *Auction 88 Comment Public Notice.* The Bureaus retained the discretion to exercise any of options with or without prior announcement during the auction.

v. Auction Delay, Suspension, or Cancellation

95. By public notice or by announcement during the auction, the Bureaus may delay, suspend, or cancel the auction in the event of natural disaster, technical obstacle, administrative or weather necessity, evidence of an auction security breach or unlawful bidding activity, or for any other reason that affects the fair and efficient conduct of competitive bidding.

B. Bidding Procedures

i. Round Structure

96. The initial schedule of bidding rounds will be announced in the public notice listing the qualified bidders, which is released approximately 10 days before the start of the auction. Each bidding round is followed by the release of round results. Multiple bidding rounds may be conducted in a given day.

97. The Bureaus have the discretion to change the bidding schedule in order to foster an auction pace that reasonably balances speed with the bidders' need to study round results and adjust their bidding strategies. The Bureaus may increase or decrease the amount of time for the bidding rounds, the amount of time between rounds, or the number of rounds per day, depending upon bidding activity and other factors.

ii. Reserve Price and Minimum Opening Bids

98. There will be no reserve price for the construction permits to be offered in Auction 88. In the *Auction 88 Comment Public Notice,* the Bureaus proposed minimum opening bids and corresponding upfront payments for the permits being offered in this auction. The Commission received several comments requesting a reduction of the proposed minimum opening bids for specific construction permits in this auction.

99. A commenter requested a reduction from $25,000 to $7,500 of the minimum opening bid for the FM station construction permit for New Holstein, Wisconsin, alleging difficulty in finding transmitter sites. The Bureaus agreed that some reduction in the minimum opening bid was warranted and reduced the minimum opening bid for MM–FM755–225A to $15,000.

100. A commenter sought to postpone any auction of the permit for Channel 251A at Santa Isabel, Puerto Rico. Recognizing the technical challenges that may be involved in implementing a broadcast operation with this permit, the Bureaus reduced the minimum opening bid for Channel 251A at Santa Isabel to $25,000.

101. For the construction permits listed in Attachment A of the *Auction 88 Procedures Public Notice,* the Bureaus adopted the minimum opening bid amounts proposed in the *Auction 88 Comment Public Notice,* with the exception of the reduced minimum opening bid amounts for the New Holstein and Santa Isabel construction permits. The specific minimum opening bid amounts for the construction permits available in Auction 88 are set forth in Attachment A of the *Auction 88 Procedures Public Notice.*

iii. Bid Amounts

102. If a bidder has sufficient eligibility to place a bid on the particular construction permit, an eligible bidder will be able to place a bid on a given construction permit in any of up to nine different amounts. The FCC Auction System interface will list the nine acceptable bid amounts for each construction permit. In the event of duplicate bid amounts due to rounding, the FCC Auction System will omit the duplicates and will list fewer acceptable bid amounts for the license. The Bureaus retained the discretion to change, on a construction permit by construction permit basis, the minimum acceptable bid amounts, the minimum acceptable bid percentage, the bid increment percentage, and the number of acceptable bid amounts if the Bureaus determine that circumstances so dictate, as well as the discretion to limit (a) the amount by which a minimum acceptable bid for a construction permit may increase compared with the corresponding provisionally winning bid, and (b) the amount by which an additional bid amount may increase compared with the immediately preceding acceptable bid amount.

iv. Provisionally Winning Bids

103. At the end of each bidding round, a provisionally winning bid will be determined based on the highest bid amount received for each construction permit. A provisionally winning bid will remain the provisionally winning bid until there is a higher bid on the same construction permit at the close of a subsequent round. Provisionally winning bids at the end of the auction become the winning bids. Bidders are reminded that provisionally winning bids count toward activity for purposes of the activity rule.

104. In Auction 88, a random number generator will be used to select a single provisionally winning bid in the event of identical high bid amounts being submitted on a construction permit in a given round (*i.e.,* tied bids) as described in the *Auction 88 Procedures Public Notice.*

v. Bidding

105. All bidding will take place remotely either through the FCC Auction System or by telephonic bidding. There will be no on-site bidding during Auction 88. Please note that telephonic bid assistants are required to use a script when entering bids placed by telephone. Telephonic bidders are therefore reminded to allow sufficient time to bid by placing their calls well in advance of the close of a round. The length of a call to place a telephonic bid may vary; please allow a minimum of ten minutes.

106. A bidder's ability to bid on specific construction permits is determined by two factors: (1) The construction permits for which it is designated an applicant in Attachment A of the *Auction 88 Procedures Public Notice* and (2) the bidder's eligibility. The bid submission screens will allow bidders to submit bids on only those construction permits designated for that applicant in Attachment A of the *Auction 88 Procedures Public Notice.*

107. In order to access the bidding function of the FCC Auction System, bidders must be logged in during the bidding round using the passcode generated by the SecurID® token and a personal identification number created by the bidder. Bidders are strongly encouraged to print a round summary for each round after they have completed all of their activity for that round.

108. If a bidder has sufficient eligibility to place a bid on a particular permit, an eligible bidder will be able in each round to place bids on a given construction permit in any of up to nine pre-defined bid amounts. For each construction permit, the FCC Auction System will list the acceptable bid amounts in a drop-down box. Bidders use the drop-down box to select from among the acceptable bid amounts. The FCC Auction System also includes an upload function that allows bidders to upload text files containing bid information.

109. Until a bid has been placed on a construction permit, the minimum acceptable bid amount for that construction permit will be equal to its minimum opening bid amount. Once there are bids on a construction permit, minimum acceptable bids for a construction permit for the following round will be determined as described in the *Auction 88 Procedures Public Notice.*

110. During a round, an eligible bidder may submit bids for as many construction permits as it wishes (providing that it is eligible to bid), remove bids placed in the current bidding round, or permanently reduce eligibility. If a bidder submits multiple bids for the same construction permit in the same round, the system takes the last bid entered as that bidder's bid for the round. Bidders should note that the bidding units associated with construction permits for which the bidder has removed bids do not count towards the bidder's current activity.

vi. Bid Removal and Bid Withdrawal

111. In Auction 88, each bidder will have the option of removing any bids placed in a round provided that such bids are removed before the close of that bidding round. By using the remove bids function in the FCC Auction System, a bidder may effectively unsubmit any bid placed within that round. A bidder removing a bid placed in the same round is not subject to withdrawal payments. Removing a bid will affect a bidder's activity for the round in which it is removed, *i.e.,* a bid that is removed does not count toward bidding activity.

112. Once a round closes, a bidder may no longer remove a bid. In Auction 88, bidders are prohibited from withdrawing any bids after the round in which bids were placed has closed. Bidders are cautioned to select bid amounts carefully because no bid withdrawals will be allowed in Auction 88, even if a bid was mistakenly or erroneously made.

vii. Round Results

113. Reports reflecting bidders' identities for Auction 88 will be available before and during the auction. Thus, bidders will know in advance of this auction the identities of the bidders against which they are bidding.

114. Bids placed during a round will not be made public until the conclusion of that round. After a round closes, the Bureaus will compile reports of all bids placed, current provisionally winning bids, new minimum acceptable bid amounts for the following round, whether the construction permit is FCC held, and bidder eligibility status (bidding eligibility and activity rule waivers), and post the reports for public access.

viii. Auction Announcements

115. The Commission will use auction announcements to announce items such as schedule changes. All auction announcements will be available by clicking a link in the FCC Auction System.

V. Post-Auction Procedures

116. Shortly after bidding has ended, the Commission will issue a public notice declaring the auction closed, identifying the winning bidders, and establishing the deadlines for submitting down payments, final payments, and the long-form applications (FCC Forms 301 or 349).

A. Down Payments

117. Within ten business days after release of the auction closing public notice, each winning bidder must submit sufficient funds (in addition to its upfront payment) to bring its total amount of money on deposit with the Commission for Auction 88 to 20 percent of the net amount of its winning bids (gross bids less any applicable new entrant bidding credits).

B. Final Payments

118. Each winning bidder will be required to submit the balance of the net amount of its winning bids within ten business days after the applicable deadline for submitting down payments. In a departure from the final payment rule revision adopted for broadcast auctions in the *CSEA/Part 1 Report and Order,* 71 FR 6992, Feb. 10, 2006, a commenter proposed that any winning bidder with no other broadcast facilities be allowed to delay payment of the balance of its bid until the submission of its long-form application. The Bureaus are unable to modify this rule which was established by the Commission in a rulemaking proceeding. The balance of the net amount of each winning bid will be due within ten business days after the deadline for submitting down payments for this auction.

C. Long-Form Application (FCC Forms 301 or 349)

119. The Commission's rules currently provide that within thirty days after release of the auction closing notice, winning bidders must electronically submit a properly completed long-form application (FCC Form 301, Application for Construction Permit for Commercial Broadcast Station, or FCC Form 349, Application for Authority to Construct or Make Changes in an FM Translator or FM Booster Station) and required exhibits for each construction permit won through Auction 88. Winning bidders claiming new entrant bidding status must include an exhibit demonstrating their eligibility for the bidding credit in accordance with 47 CFR 1.2112(b) and 73.5005. Further instructions on these and other filing requirements will be provided to winning bidders in the auction closing public notice.

D. Default and Disqualification

120. Any winning bidder that defaults or is disqualified after the close of the auction (*i.e.,* fails to remit the required down payment within the prescribed period of time, fails to submit a timely long-form application, fails to make full payment, or is otherwise disqualified) will be subject to the payments described in 47 CFR 1.2104(g)(2). The payments include both a deficiency payment, equal to the difference between the amount of the bidder's bid and the amount of the winning bid the next time a construction permit covering the same spectrum is won in an auction, plus an additional payment equal to a percentage of the defaulter's bid or of the subsequent winning bid, whichever is less.

121. The percentage of the applicable bid to be assessed as an additional payment for defaults in a particular auction is established in advance of the auction. The additional default payment for this auction was set at twenty percent of the applicable bid.

122. Finally, in the event of a default, the Commission has the discretion to re-auction the construction permit or offer it to the next highest bidder (in descending order) at its final bid amount. In addition, if a default or disqualification involves gross misconduct, misrepresentation, or bad faith by an applicant, the Commission may declare the applicant and its principals ineligible to bid in future auctions, and may take any other action that it deems necessary, including institution of proceedings to revoke any existing authorizations held by the applicant.

E. Refund of Remaining Upfront Payment Balance

123. After the auction, applicants that are not winning bidders or are winning bidders whose upfront payment exceeded the total net amount of their winning bids may be entitled to a refund of some or all of their upfront payment. All refunds will be returned to the payer of record, as identified on the FCC Form 159, unless the payer submits written authorization instructing otherwise. Bidders that drop out of the auction completely (have exhausted all of their activity rule waivers and have no remaining bidding eligibility) may request a refund of their upfront

payments before the close of the auction.

William W. Huber,

Associate Chief, Auctions and Spectrum Access Division, WTB, Federal Communications Commission.

[FR Doc. 2010–10155 Filed 4–29–10; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL DEPOSIT INSURANCE CORPORATION

Update to Notice of Financial Institutions for Which the Federal Deposit Insurance Corporation Has Been Appointed Either Receiver, Liquidator, or Manager

AGENCY: Federal Deposit Insurance Corporation.

ACTION: Update listing of financial institutions in liquidation.

SUMMARY: Notice is hereby given that the Federal Deposit Insurance Corporation (Corporation) has been appointed the sole receiver for the following financial institutions effective as of the Date Closed as indicated in the listing. This list (as updated from time to time in the **Federal Register**) may be relied upon as "of record" notice that the Corporation has been appointed receiver for purposes of the statement of policy published in the July 2, 1992 issue of the **Federal Register** (57 FR 29491). For further information concerning the identification of any institutions which have been placed in liquidation, please visit the Corporation Web site at *http://www.fdic.gov/bank/individual/failed/banklist.html* or contact the Manager of Receivership Oversight in the appropriate service center.

Dated: April 26, 2010.

Federal Deposit Insurance Corporation.

Valerie J. Best,

Assistant Executive Secretary.

INSTITUTIONS IN LIQUIDATION

[In alphabetical order]

FDIC Ref. No.	Bank name	City	State	Date closed
10218	Amcore Bank, National Association	Rockford	IL	4/23/2010
10219	Broadway Bank	Chicago	IL	4/23/2010
10220	Citizens Bank and Trust Company of Chicago	Chicago	IL	4/23/2010
10221	Lincoln Park Savings Bank	Chicago	IL	4/23/2010
10222	New Century Bank	Chicago	IL	4/23/2010
10223	Peotone Bank and Trust Company	Peotone	IL	4/23/2010
10224	Wheatland Bank	Naperville	IL	4/23/2010

[FR Doc. 2010–10159 Filed 4–29–10; 8:45 am]

BILLING CODE 6714–01–P

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The applications also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States. Additional information on all bank holding companies may be obtained from the National Information Center website at *www.ffiec.gov/nic/*.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than May 27, 2010.

A. Federal Reserve Bank of Dallas (E. Ann Worthy, Vice President) 2200 North Pearl Street, Dallas, Texas 75201–2272:

1. Independent Bank Group, Inc., McKinney, Texas; to acquire 100 percent of the voting shares of Town Center Bank, Coppell, Texas.

Board of Governors of the Federal Reserve System, April 27, 2010.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 2010–10134 Filed 4–29–10; 8:45 am]

BILLING CODE 6210–01–S

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[OMB Control No. 9000–0168; Docket 2010–0083; Sequence 20]

Submission for OMB Review; American Recovery and Reinvestment Act—One-Time Reporting, Compensation Requirements

AGENCIES: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Withdrawal of Notice.

SUMMARY: The notice, OMB Control No. 9000–0168, American Recovery and Reinvestment Act—One-time Reporting, Compensation Requirements published in the **Federal Register** is being withdrawn and no longer is accepting comments.

DATES: April 30, 2010.

FOR FURTHER INFORMATION CONTACT: Mr. Ernest Woodson, Procurement Analyst, Contract Policy Branch, at telephone (202) 501–3775 or via e-mail to *ernest.woodson@gsa.gov.* Please cite

OMB Control No. 9000–0168, withdrawal.

SUPPLEMENTARY INFORMATION:

A. Background

The Notice, published in the **Federal Register** at 75 FR 18835, on April 13, 2010, requesting comments regarding an extension to an existing OMB clearance (9000–0168) is being withdrawn. The notice is being withdrawn because it is associated with a second interim rule which is still in process, and has not been published. Comments are no longer being sought.

Dated: April 26, 2010.

Al Matera,

Director, Acquisition Policy Division.

[FR Doc. 2010–10066 Filed 4–29–10; 8:45 am]

BILLING CODE 6820–EP–P

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[OMB Control No. 9000–0167; Docket 2010–0083; Sequence 19]

Submission for OMB Review; American Recovery and Reinvestment Act—One-Time Reporting Requirements for First-Tier Subcontractors

AGENCIES: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Withdrawal of Notice.

SUMMARY: The notice, OMB Control No. 9000–0167, American Recovery and Reinvestment Act—One-time Reporting Requirements for First-tier Subcontractors published in the **Federal Register** is being withdrawn and no longer is accepting comments.

DATES: April 30, 2010.

FOR FURTHER INFORMATION CONTACT: Mr. Ernest Woodson, Procurement Analyst, Contract Policy Branch, at telephone (202) 501–3775 or via e-mail to *ernest.woodson@gsa.gov.* Please cite OMB Control No. 9000–0167, withdrawal.

SUPPLEMENTARY INFORMATION:

A. Background

The Notice, published in the **Federal Register** at 75 FR 17918, April 8, 2010, requesting comments regarding an extension to an existing OMB clearance (9000–0167) is being withdrawn. The notice is being withdrawn because it is associated with a second interim rule which is still in process, and has not been published. Comments are no longer being sought.

Dated: April 26, 2010.

Al Matera,

Director, Acquisition Policy Division.

[FR Doc. 2010–10067 Filed 4–29–10; 8:45 am]

BILLING CODE 6820–EP–P

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[OMB Control No. 9000–0166; Docket 2010–0083; Sequence 18]

Submission for OMB Review; American Recovery and Reinvestment Act—One-Time Reporting Requirements for Prime Contractors

AGENCIES: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Withdrawal of Notice.

SUMMARY: The notice, OMB Control No. 9000–0166, American Recovery and Reinvestment Act—One-time Reporting Requirements for Prime Contractors published in the **Federal Register** is being withdrawn and no longer is accepting comments.

DATES: April 30, 2010.

FOR FURTHER INFORMATION CONTACT: Mr. Ernest Woodson, Procurement Analyst, Contract Policy Branch, at telephone (202) 501–3775 or via e-mail to *ernest.woodson@gsa.gov.* Please cite OMB Control No. 9000–0166, withdrawal.

SUPPLEMENTARY INFORMATION:

A. Background

The Notice, published in the **Federal Register** at 75 FR 17919, on April 8, 2010, requesting comments regarding an extension to an existing OMB clearance (9000–0166) is being withdrawn. The notice is being withdrawn because it is associated with a second interim rule which is still in process, and has not been published. Comments are no longer being sought.

Dated: April 26, 2010.

Al Matera,

Director, Acquisition Policy Division.

[FR Doc. 2010–10069 Filed 4–29–10; 8:45 am]

BILLING CODE 6820–EP–P

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[OMB Control No. 9000–0169; Docket 2010–0083; Sequence 21]

Submission for OMB Review; American Recovery and Reinvestment Act—Quarterly Reporting for Prime Contractors

AGENCIES: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Withdrawal of Notice.

SUMMARY: The notice, OMB Control No. 9000–0169, American Recovery and Reinvestment Act—Quarterly Reporting for Prime Contractors published in the **Federal Register** is being withdrawn and no longer is accepting comments.

DATES: April 30, 2010

FOR FURTHER INFORMATION CONTACT: Mr. Ernest Woodson, Procurement Analyst, Contract Policy Branch, at telephone (202) 501–3775 or via e-mail to *ernest.woodson@gsa.gov.* Please cite OMB Control No. 9000–0169, withdrawal.

SUPPLEMENTARY INFORMATION:

A. Background

The Notice, published in the **Federal Register** at 75 FR 17919, on April 8, 2010, requesting comments regarding an extension to an existing OMB clearance (9000–0169) is being withdrawn. The notice is being withdrawn because it is associated with a second interim rule which is still in process, and has not been published. Comments are no longer being sought.

Dated: April 26, 2010.

Al Matera,

Director, Acquisition Policy Division.

[FR Doc. 2010–10071 Filed 4–29–10; 8:45 am]

BILLING CODE 6820–EP–P

GENERAL SERVICES ADMINISTRATION

[Proposed GSA Bulletin FTR 10–XXX; Docket 2010–0009; Sequence 1]

Federal Travel Regulation; Relocation Allowances; Standard Data Dictionary for Collection of Transaction-Level Data Regarding Employee Relocation

AGENCY: Office of Governmentwide Policy, General Services Administration (GSA).

ACTION: Notice of a proposed bulletin.

SUMMARY: This notice announces that GSA is posting online a proposed FTR bulletin that contains the data dictionary that large Federal agencies must use in collecting data regarding employee relocation and in reporting such data to GSA. Proposed GSA Bulletin FTR 10–XXX may be viewed on GSA's Web site at *http://www.gsa.gov/relopolicy.* By this Notice, GSA is seeking comment on the proposed bulletin. After a review of the comments received, a final bulletin will be posted on the GSA Web site and will be announced in the **Federal Register.**

DATES: Comments must be received on or before June 1, 2010.

ADDRESSES: Submit comments identified by Proposed GSA Bulletin FTR 10–XXX, by any of the following methods:

- *Regulations.gov: http://www.regulations.gov.* Submit comments via the Federal eRulemaking portal by inputting "Proposed GSA Bulletin FTR 10–XXX" under the heading "Enter Keyword or ID" and selecting "Search." Select the link "Submit a Comment" that corresponds with "Proposed GSA Bulletin FTR 10–XXX." Follow the instructions provided at the "Submit a Comment" screen. Please include your name, company name (if any), and "Proposed GSA Bulletin FTR 10–XXX" on your attached document.
- *Fax:* 202–501–4067.
- *Mail:* General Services Administration, Regulatory Secretariat (MVCB), 1800 F Street, NW., Room 4041, ATTN: Hada Flowers, Washington, DC 20405.

Instructions: Please submit comments only and cite Proposed GSA Bulletin FTR 10–XXX 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: For further information, contact Mr. Henry Maury, Office of Governmentwide Policy (M), Office of Travel, Transportation, and Asset Management (MT), General Services Administration at (202) 208–7928 or via e-mail at *henry.maury@gsa.gov.*

Dated: April 16, 2010.

Becky Rhodes,

Deputy Associate Administrator.

[FR Doc. 2010–10206 Filed 4–29–10; 8:45 am]

BILLING CODE 6820–14–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

[Document Identifier: OS–0990–0313]

Agency Information Collection Request; 60-Day Public Comment Request

AGENCY: Office of the Secretary, HHS.

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Office of the Secretary (OS), Department of Health and Human Services, is publishing the following summary of a proposed information collection request for public comment. Interested persons are invited to send comments regarding this burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden. To obtain copies of the supporting statement and any related forms for the proposed paperwork collections referenced above, e-mail your request, including your address, phone number, OMB number, and OS document identifier, to *Sherette.funncoleman@hhs.gov,* or call the Reports Clearance Office on (202) 690–6162. Written comments and recommendations for the proposed information collections must be directed to the OS Paperwork Clearance Officer at the above e-mail address within 60 days.

Proposed Project: National Blood Collection and Utilization Survey—Extension—OMB No. 0990–0313—The Office of the Advisory Committee on Blood Safety and Availability.

Abstract: The NBCUS is a biennial survey of the blood collection and utilization community to produce reliable and accurate estimates of national and regional collections, utilization and safety of all blood products.

The objective of the NBCUS is to produce reliable and accurate estimates of national and regional collections, utilization, and safety of all blood products—red blood cells, fresh frozen plasma, and platelets, as well as related cellular therapy products. This survey will significantly improve the federal government's capacity to understand the dynamics of blood supply, safety and availability, and to provide a quantitative basis for assessing strategic and regulatory agendas. An important purpose of the 2011 survey is to help the federal government continue to monitor trends in blood availability since a variety of factors have come to play that have reduced the number of people eligible to give blood and, as stated in the evolving National Strategic Plan for Blood, this information is critical to ensure an adequate supply of safe blood in the United States.

ESTIMATED ANNUALIZED BURDEN TABLE

Type of respondent	Number of respondents	Number of responses per respondent	Average burden hours per response	Total burden hours
Hospitals, blood collection centers, cord blood banks	3,000	1	1	3,000

Terry Nicolosi,

Office of the Secretary, Paperwork Reduction Act Reports Clearance Officer.

[FR Doc. 2010–10085 Filed 4–29–10; 8:45 am]

BILLING CODE 4150–41–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Implementation of Section 5001 of the American Recovery and Reinvestment Act of 2009 (Pub. L. 111–5) for Adjustments to the Second Quarter of Fiscal Year 2010 Federal Medical Assistance Percentage Rates for Federal Matching Shares for Medicaid and Title IV–E Foster Care, Adoption Assistance and Guardianship Assistance Programs

AGENCY: Office of the Secretary, DHHS.

ACTION: Notice.

SUMMARY: This notice provides the adjusted Federal Medical Assistance Percentage (FMAP) rates for the second quarter of Fiscal Year 2010 (FY10) as required under Section 5001 of the American Recovery and Reinvestment Act of 2009 (ARRA). Section 5001 of the ARRA provides for temporary increases in the FMAP rates to provide fiscal relief to States and to protect and maintain State Medicaid and certain other assistance programs in a period of economic downturn. The increased FMAP rates apply during a recession adjustment period that is defined in ARRA as the period beginning October 1, 2008 and ending December 31, 2010.

DATES: *Effective Date:* These percentages are effective for the quarter beginning January 1, 2010 through March 31, 2010.

A. Background

The FMAP is used to determine the amount of Federal matching for specified State expenditures for assistance payments under programs under the Social Security Act ("the Act"). Sections 1905(b) and 1101(a)(8)(B) of the Act require the Secretary of Health and Human Services to publish the FMAP rates each year. The Secretary calculates the percentages using formulas in sections 1905(b) and 1101(a)(8)(B), and statistics from the Department of Commerce of average income per person in each State and for the Nation as a whole. The percentages must be within the upper and lower limits given in section 1905(b) of the Act. The percentages to be applied to the District of Columbia, Puerto Rico, the Virgin Islands, Guam, American Samoa, and the Northern Mariana Islands are specified separately in the Act, and thus are not based on the statutory formula that determines the percentages for the 50 States.

Section 1905(b) of the Act specifies the formula for calculating the FMAP as follows:

> The FMAP for any State shall be 100 per centum less the State percentage; and the State percentage shall be that percentage which bears the same ratio to 45 per centum as the square of the per capita income of such State bears to the square of the per capita income of the continental United States (including Alaska) and Hawaii; except that (1) the FMAP shall in no case be less than 50 per centum or more than 83 per centum, and (2) the FMAP for Puerto Rico, the Virgin Islands, Guam, the Northern Mariana Islands, and American Samoa shall be 50 per centum.

Section 4725 of the Balanced Budget Act of 1997 amended section 1905(b) to provide that the FMAP for the District of Columbia for purposes of titles XIX (Medicaid) and XXI (CHIP) shall be 70 percent. The Medicare Improvements for Patients and Providers Act of 2008 (MIPPA) (Pub. L. 110–275) amended the FMAP applied to the District of Columbia for maintenance payments under title IV–E programs to make it consistent with the 70 percent Medicaid match rate.

Section 5001 of Division B of the ARRA provides for a temporary increase in FMAP rates for Medicaid and title IV–E Foster Care, Adoption Assistance and Guardianship Assistance programs. The purpose of the increases to the FMAP rates is to provide fiscal relief to States and to protect and maintain State Medicaid and certain other assistance programs in a period of economic downturn, referred to as the "recession adjustment period." The recession adjustment period is defined as the period beginning October 1, 2008 and ending December 31, 2010.

B. Calculation of the Increased FMAP Rates Under ARRA

Section 5001 of the ARRA specifies that the FMAP rates shall be temporarily increased for the following: (1) Maintenance of FMAP rates for FY09, FY10, and first quarter of FY11, so that the FMAP rate will not decrease from the prior year, determined by using as the FMAP rate for the current year the greater of any prior fiscal year FMAP rates between 2008–2010 or the rate calculated for the current fiscal year; (2) in addition to any maintenance increase, the application of an increase in each State's FMAP of 6.2 percentage points; and (3) an additional percentage point increase based on the State's increase in unemployment during the recession adjustment period. The resulting increased FMAP cannot exceed 100 percent. Each State's FMAP will be recalculated each fiscal quarter beginning October 2008. Availability of certain components of the increased FMAP is conditioned on States meeting statutory programmatic requirements, such as the maintenance of effort requirement, which are not part of the calculation process.

Expenditures for which the increased FMAP is not available under title XIX include expenditures for disproportionate share hospital payments, certain eligibility expansions, services received through an IHS or Tribal facility (which are already paid at a rate of 100 percent and therefore not subject to increase), and expenditures that are paid at an enhanced FMAP rate. The increased FMAP is available for expenditures under part E of title IV (including Foster Care, Adoption Assistance and Guardianship Assistance programs) only to the extent of a maintenance increase (hold harmless), if any, and the 6.2 percentage point increase. The increased FMAP does not apply to other parts of title IV, including part D (Child Support Enforcement Program).

For title XIX purposes only, for each qualifying State with an unemployment rate that has increased at a rate above the statutory threshold percentage, ARRA provides additional relief above the general 6.2 percentage point increase in FMAP through application of a separate increase calculation. For those States, the FMAP for each qualifying State is increased by the number of percentage points equal to the product of the State matching percentage (as calculated under section 1905(b) and adjusted if necessary for the maintenance of FMAP without reduction from the prior year, and after applying half of the 6.2 percentage point general increase in the Federal percentage) and the applicable percent determined from the State unemployment increase percentage for the quarter.

The unemployment increase percentage for a calendar quarter is equal to the number of percentage points (if any) by which the average monthly unemployment rate for the State in the most recent previous 3-consecutive-month period for which data are available exceeds the lowest average monthly unemployment rate for the State for any 3-consecutive-month period beginning on or after January 1, 2006. A State qualifies for additional relief based on an increase in unemployment if that State's unemployment increase percentage is at least 1.5 percentage points.

The applicable percent is: (1) 5.5 percent if the State unemployment

increase percentage is at least 1.5 percentage points but less than 2.5 percentage points; (2) 8.5 percent if the State unemployment increase percentage is at least 2.5 percentage points but less than 3.5 percentage points; and (3) 11.5 percent if the State unemployment increase percentage is at least 3.5 percentage points.

If the State's applicable percent is less than the applicable percent for the preceding quarter, then the higher applicable percent shall continue in effect for any calendar quarter beginning on January 1, 2009 and ending before July 1, 2010.

Under section 5001(b)(2) of ARRA, Puerto Rico, the Virgin Islands, Guam, the Commonwealth of the Northern Mariana Islands, and America Samoa were given the option to make a special one-time election between (1) a 30 percent increase in their cap on Medicaid payments (as determined under subsections (f) and (g) of section 1108 of the Act), or (2) applying the general 6.2 percentage point increase in the FMAP plus a 15 percent increase in the cap on Medicaid payments. There is no quarterly unemployment adjustment for territories. All territories and the Commonwealth of the Northern Mariana Islands elected the 30 percent increase in their spending cap on Medicaid payments; therefore there is no recalculation of their FMAP rate.

D. Adjusted FMAPs for the Second Quarter of 2010

ARRA adjustments to FMAPs are shown by State in the accompanying table. The hold harmless FY10 FMAP is the higher of the original FY08, FY09, or FY10 FMAP. The 6.2 percentage point increase is added to the hold harmless FY10 FMAP. The unemployment tier is determined by comparing the average unemployment rate for the three consecutive months preceding the start of each fiscal quarter to the lowest consecutive 3-month average unemployment rate beginning January 1, 2006. The unemployment adjustment is calculated according to the unemployment tier and added to the hold harmless FY10 FMAP with the 6.2 percentage point increase.

FOR FURTHER INFORMATION CONTACT: Carrie Shelton or Thomas Musco, Office of Health Policy, Office of the Assistant Secretary for Planning and Evaluation, Room 447D—Hubert H. Humphrey Building, 200 Independence Avenue, SW., Washington, DC 20201, (202) 690–6870.

(Catalog of Federal Domestic Assistance Program Nos. 93.558: TANF Contingency Funds; 93.563: Child Support Enforcement; 93–596: Child Care Mandatory and Matching Funds of the Child Care and Development Fund; 93.658: Foster Care; 93.659: Adoption Assistance; 93.090: Guardianship Assistance; 93.769: Ticket-to-Work and Work Incentives Improvement Act; 93.778: Medical Assistance Program)

Dated: April 13, 2010.

Kathleen Sebelius,

Secretary.

ARRA ADJUSTMENTS TO FMAP Q2 FY10

State	FY08 original FMAP	FY09 original FMAP	FY10 original FMAP	Hold harmless FY10	Hold harmless FY10 FMAP with 6.2% point increase	3-month average unemployment ending Dec 2009	Minimum unemployment	Unemployment difference	Unemployment tier	Unemployment adjustment Q2 FY10	2nd quarter FY10 FMAP unemployment adjustment	2nd quarter FY10 FMAP unemployment hold harmless
Alabama	67.62	67.98	68.01	68.01	74.21	10.9	3.3	7.6	11.5	3.32	77.53	77.53
Alaska	52.48	50.53	51.43	52.48	58.68	8.5	6.0	2.5	8.5	3.78	62.46	62.46
Arizona	66.20	65.77	65.75	66.20	72.40	9.2	3.6	5.6	11.5	3.53	75.93	75.93
Arkansas	72.94	72.81	72.78	72.94	79.14	7.6	4.8	2.8	8.5	2.04	81.18	81.18
California	50.00	50.00	50.00	50.00	56.20	12.3	4.8	7.5	11.5	5.39	61.59	61.59
Colorado	50.00	50.00	50.00	50.00	56.20	7.4	3.6	3.8	11.5	5.39	61.59	61.59
Connecticut	50.00	50.00	50.00	50.00	56.20	8.7	4.3	4.4	11.5	5.39	61.59	61.59
Delaware	50.00	50.00	50.21	50.21	56.41	8.6	3.3	5.3	11.5	5.37	61.78	61.78
Dist of Columbia	70.00	70.00	70.00	70.00	76.20	11.6	5.4	6.2	11.5	3.09	79.29	79.29
Florida	56.83	55.40	54.98	56.83	63.03	11.6	3.3	8.3	11.5	4.61	67.64	67.64
Georgia	63.10	64.49	65.10	65.10	71.30	10.2	4.3	5.9	11.5	3.66	74.96	74.96
Hawaii	56.50	55.11	54.24	56.50	62.70	6.9	2.2	4.7	11.5	4.65	67.35	67.35
Idaho	69.87	69.77	69.40	69.87	76.07	9.0	2.8	6.2	11.5	3.11	79.18	79.18
Illinois	50.00	50.32	50.17	50.32	56.52	10.9	4.4	6.5	11.5	5.36	61.88	61.88
Indiana	62.69	64.26	65.93	65.93	72.13	9.8	4.4	5.4	11.5	3.56	75.69	75.69
Iowa	61.73	62.62	63.51	63.51	69.71	6.5	3.7	2.8	8.5	2.84	72.55	72.55
Kansas	59.43	60.08	60.38	60.38	66.58	6.7	4.0	2.7	8.5	3.10	69.68	69.68
Kentucky	69.78	70.13	70.96	70.96	77.16	10.7	5.4	5.3	11.5	2.98	80.14	80.14
Louisiana	72.47	71.31	67.61	72.47	78.67	7.3	3.5	3.8	11.5	2.81	81.48	81.48
Maine	63.31	64.41	64.99	64.99	71.19	8.1	4.4	3.7	11.5	3.67	74.86	74.86
Maryland	50.00	50.00	50.00	50.00	56.20	7.3	3.4	3.9	11.5	5.39	61.59	61.59
Massachusetts	50.00	50.00	50.00	50.00	56.20	9.2	4.4	4.8	11.5	5.39	61.59	61.59
Michigan	58.10	60.27	63.19	63.19	69.39	14.4	6.7	7.7	11.5	3.88	73.27	73.27
Minnesota	50.00	50.00	50.00	50.00	56.20	7.6	3.9	3.7	11.5	5.39	61.59	61.59
Mississippi	76.29	75.84	75.67	76.29	82.49	10.4	6.0	4.4	11.5	2.37	84.86	84.86
Missouri	62.42	63.19	64.51	64.51	70.71	9.6	4.7	4.9	11.5	3.72	74.43	74.43
Montana	68.53	68.04	67.42	68.53	74.73	6.6	3.2	3.4	8.5	2.41	77.14	77.99
Nebraska	58.02	59.54	60.56	60.56	66.76	4.6	2.8	1.8	5.5	2.00	68.76	68.76
Nevada	52.64	50.00	50.16	52.64	58.84	12.9	4.2	8.7	11.5	5.09	63.93	63.93
New Hampshire	50.00	50.00	50.00	50.00	56.20	6.9	3.4	3.5	11.5	5.39	61.59	61.59
New Jersey	50.00	50.00	50.00	50.00	56.20	9.9	4.2	5.7	11.5	5.39	61.59	61.59
New Mexico	71.04	70.88	71.35	71.35	77.55	8.1	3.5	4.6	11.5	2.94	80.49	80.49
New York	50.00	50.00	50.00	50.00	56.20	8.9	4.3	4.6	11.5	5.39	61.59	61.59
North Carolina	64.05	64.60	65.13	65.13	71.33	10.9	4.5	6.4	11.5	3.65	74.98	74.98
North Dakota	63.75	63.15	63.01	63.75	69.95	4.3	3.0	1.3	0	0.00	69.95	69.95
Ohio	60.79	62.14	63.42	63.42	69.62	10.8	5.3	5.5	11.5	3.85	73.47	73.47
Oklahoma	67.10	65.90	64.43	67.10	73.30	6.9	3.3	3.6	11.5	3.43	76.73	76.73
Oregon	60.86	62.45	62.74	62.74	68.94	10.7	5.0	5.7	11.5	3.93	72.87	72.87
Pennsylvania	54.08	54.52	54.81	54.81	61.01	8.7	4.3	4.4	11.5	4.84	65.85	65.85
Rhode Island	52.51	52.59	52.63	52.63	58.83	12.5	4.8	7.7	11.5	5.09	63.92	63.92

ARRA ADJUSTMENTS TO FMAP Q2 FY10—Continued

State	FY08 original FMAP	FY09 original FMAP	FY10 original FMAP	Hold harmless FY10	Hold harmless FY10 FMAP with 6.2% point increase	3-month average unemployment ending Dec 2009	Minimum unemployment	Unemployment difference	Unemployment tier	Unemployment adjustment Q2 FY10	2nd quarter FY10 FMAP unemployment adjustment	2nd quarter FY10 FMAP unemployment hold harmless
South Carolina	69.79	70.07	70.32	70.32	76.52	12.3	5.5	6.8	11.5	3.06	79.58	79.58
South Dakota	60.03	62.55	62.72	62.72	68.92	4.7	2.7	2.0	5.5	1.88	70.80	70.80
Tennessee	63.71	64.28	65.57	65.57	71.77	10.7	4.5	6.2	11.5	3.60	75.37	75.37
Texas	60.56	59.44	58.73	60.56	66.76	8.2	4.4	3.8	11.5	4.18	70.94	70.94
Utah	71.63	70.71	71.68	71.68	77.88	6.6	2.5	4.1	11.5	2.90	80.78	80.78
Vermont	59.03	59.45	58.73	59.45	65.65	6.7	3.5	3.2	8.5	3.18	68.83	69.96
Virginia	50.00	50.00	50.00	50.00	56.20	6.8	2.8	4.0	11.5	5.39	61.59	61.59
Washington	51.52	50.94	50.12	51.52	57.72	9.2	4.4	4.8	11.5	5.22	62.94	62.94
West Virginia	74.25	73.73	74.04	74.25	80.45	8.9	4.2	4.7	11.5	2.60	83.05	83.05
Wisconsin	57.62	59.38	60.21	60.21	66.41	8.6	4.4	4.2	11.5	4.22	70.63	70.63
Wyoming	50.00	50.00	50.00	50.00	56.20	7.5	2.8	4.7	11.5	5.39	61.59	61.59

[FR Doc. 2010–10055 Filed 4–29–10; 8:45 am]

BILLING CODE 4150–05–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Mandatory Guidelines for Federal Workplace Drug Testing Programs

AGENCY: Substance Abuse and Mental Health Services Administration (SAMHSA), Department of Health and Human Services.

ACTION: Final rule: Change in effective date.

SUMMARY: The Department of Health and Human Services (HHS) is changing the effective date of the Revisions to the Mandatory Guidelines for Federal Workplace Drug Testing Programs (Mandatory Guidelines) from May 1, 2010, to October 1, 2010. The purpose of this notice is to notify participants in Federal and federally-regulated workplace drug testing programs as soon as possible that they will not be expected to implement the revisions to the Mandatory Guidelines on May 1, 2010, so that they do not unnecessarily expend resources to comply on May 1, or risk compliance problems by prematurely implementing new provisions.

DATES: The revisions to the Mandatory Guidelines will now become effective October 1, 2010. This change in the effective date becomes effective April 30, 2010.

FOR FURTHER INFORMATION CONTACT: Robert L. Stephenson, II, M.P.H., Director, Division of Workplace Programs (DWP), Center for Substance Abuse Prevention (CSAP), Substance Abuse and Mental Health Services Administration (SAMHSA), 1 Choke Cherry Road, Room 2–1035, Rockville, MD 20857; Telephone: 240–276–2600; E-mail: *Bob.Stephenson@samhsa.hhs.gov.*

SUPPLEMENTARY INFORMATION: On November 25, 2008, HHS published a Final Notice of Revisions to the Mandatory Guidelines for Federal Workplace Drug Testing Programs in the **Federal Register** (73 FR 71858). A correction providing the effective date of May 1, 2010, was published in the **Federal Register** on December 10, 2008 (73 FR 75122). The Mandatory Guidelines establish the scientific and technical guidelines for Federal workplace drug testing programs and establish standards for certification of laboratories engaged in drug testing for Federal agencies under authority of section 503 of Public Law 100–71, 5 U.S.C. Section 7301 note and Executive Order (E.O.) 12564. The revisions to the Mandatory Guidelines address the collection and testing of urine specimens, the requirements for certification of Instrumented Initial Test Facilities (IITF), and the role of and standards for collectors and Medical Review Officers (MRO).

The Department of Transportation (DOT) publishes the Procedures for Transportation Workplace Drug and Alcohol Testing Programs at 49 Code of Federal Regulations (CFR) Part 40. This DOT regulation requires the drug and alcohol testing of safety-sensitive employees in certain DOT-regulated industries. Consistent with the Omnibus Transportation Employee Testing Act of 1991, the DOT utilizes the HHS laboratory procedures set forth in the Mandatory Guidelines in its regulations.

On February 4, 2010, DOT published a notice of proposed rulemaking (NPRM) in the **Federal Register** (75 FR 5722) announcing revised procedures for transportation workplace drug and alcohol testing programs. DOT's final rule based on this NPRM will not be completed by May 1, 2010. It is anticipated that DOT's rule will be issued in time to go into effect by October 1, 2010.

Without this change of effective date for the Mandatory Guidelines, laboratories certified under the Mandatory Guidelines would be required to maintain a dual system for testing using the revised Mandatory Guidelines, and testing for DOT-regulated entities covered by the current Mandatory Guidelines, until DOT rules are issued. Further, the National Laboratory Certification Program would be required to certify laboratories utilizing different sets of requirements. The new effective date of October 1, 2010 will allow time for related training in Federal and federally-regulated workplace drug testing programs and will be consistent with the beginning of the new Fiscal Year for Federal agencies.

The Department's implementation of this rule without opportunity for public comment, effective immediately upon publication today in the **Federal Register**, is based on the good cause exemptions in 5 U.S.C. section 553(b)(3)(B) and 553(d)(3), to the extent that 5 U.S.C. title 5 applies. This delay in the effective date is temporary, and necessary to avoid requiring DOT-regulated industries to comply with a different set of rules than federal workplace drug testing programs, which would create a confusing and unfair situation in which similarly situated employees would be treated inconsistently.

The new implementation date will also avoid the unnecessary expenditure of scarce resources on compliance with different standards; allow time for related training in Federal and federally-regulated workplace drug testing programs, including HHS coordination with testing laboratories on implementing new procedures to be used in the federal workplace testing

programs; and be consistent with the beginning of the new fiscal year for Federal agencies. Given the imminence of the current effective date, seeking prior public comment on this temporary delay would be impractical. Further, given the risk of inconsistency and confusion from the imposition of divergent requirements across federal agencies, it has been determined that seeking prior comment on this temporary delay would be contrary to the public interest. The imminence of the effective date is also good cause for making this rule effective immediately upon publication.

DOT's rule is expected to issue in time to go into effect by October 1, 2010; however, should it later appear that DOT regulations may not issue in time for an October 1, 2010 implementation, SAMHSA will undertake notice and comment rulemaking to delay the effective date further.

No other changes to the Mandatory Guidelines have been made. The new effective date for the revisions to the HHS Mandatory Guidelines is October 1, 2010.

Dated: April 26, 2010.

Pamela S. Hyde,

Administrator, Substance Abuse and Mental Health Services Administration.

Kathleen Sebelius,

Secretary.

[FR Doc. 2010–10118 Filed 4–29–10; 8:45 am]

BILLING CODE 4160–20–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

[Document Identifier: CMS–2552–10]

Agency Information Collection Activities: Submission for OMB Review; Comment Request

AGENCY: Centers for Medicare & Medicaid Services, HHS.

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Centers for Medicare & Medicaid Services (CMS), Department of Health and Human Services, is publishing the following summary of proposed collections for public comment. Interested persons are invited to send comments regarding this burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the Agency's function; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

1. *Type of Information Collection Request:* Revision of a currently approved collection; *Title of Information Collection:* Hospital and Health Care Complexes Cost Report and supporting Regulations in 42 CFR 413.20 and 413.24; *Use:* Part A institutional providers must provide adequate cost data to receive Medicare reimbursement (42 CFR 413.24(a)). Providers must submit the cost data to their Medicare Fiscal Intermediary (FI)/ Medicare Administrative Contractor (MAC) through the Medicare cost report (MCR). The primary function of the cost report is to determine the reimbursement of providers for services rendered to program beneficiaries. The FI/MAC uses the cost report to make settlement with the provider for the fiscal period covered by the cost report. Furthermore, the FI/MAC uses the cost report to determine the necessity and scope of an audit of the records of the provider. CMS uses the data collected on the MCR to project future Medicare expenditures, determine adequate deductibles and premiums, and develop and update provider market baskets mandated for use in updating Medicare payment rates. CMS also uses the data to offer public use data files. Revisions made to update the forms currently in use are incorporated within this request for approval. *Form Number:* CMS–2552–10 (OMB#: 0938–0050); *Frequency:* Yearly; *Affected Public:* Business or other for-profits and not-for-profit institutions; *Number of Respondents:* 6,174; *Total Annual Responses:* 6,174; *Total Annual Hours:* 4,155,102. (For policy questions regarding this collection contact Nadia Massuda at 410–786–5834. For all other issues call 410–786–1326.)

To obtain copies of the supporting statement and any related forms for the proposed paperwork collections referenced above, access CMS Web Site address at *http://www.cms.hhs.gov/PaperworkReductionActof1995,* or E-mail your request, including your address, phone number, OMB number, and CMS document identifier, to *Paperwork@cms.hhs.gov,* or call the Reports Clearance Office on (410) 786–1326.

To be assured consideration, comments and recommendations for the proposed information collections must be received by the OMB desk officer at the address below, no later than 5 p.m. on *June 1, 2010.*

OMB, Office of Information and Regulatory Affairs, Attention: CMS Desk Officer.
Fax Number: (202) 395–6974.
E-mail: *OIRA_submission@omb.eop.gov*.

Dated: April 23, 2010.

Michelle Shortt,

Director, Regulations Development Group, Office of Strategic Operations and Regulatory Affairs.

[FR Doc. 2010–10041 Filed 4–29–10; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

[Document Identifier: CMS–10165, CMS–10095 and CMS–10003]

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Centers for Medicare & Medicaid Services.

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Centers for Medicare & Medicaid Services (CMS) is publishing the following summary of proposed collections for public comment. Interested persons are invited to send comments regarding this burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

1. *Type of Information Collection Request:* Revision of a currently approved collection; *Title of Information Collection:* Electronic Health Records Demonstration System (EHRDS)—practice application and profile update system; *Use:* In 2008, the Secretary of the Department of Health and Human Services directed the Centers for Medicare & Medicaid Services to develop a new demonstration initiative using Medicare waiver authority to reward the delivery of high-quality care supported by the

adoption and use of electronic health records (EHRs). This continues to be a critical priority under the current administration. The goal of this demonstration is to foster the implementation and adoption of EHRs and health information technology (HIT) more broadly as effective vehicles to improve the quality of care provided and transform the way medicine is practiced and delivered. Adoption of HIT has the potential to provide significant savings to the Medicare program and improve the quality of care rendered to Medicare beneficiaries.

The new electronic EHR demonstration system was first developed with the intention of having practices applying to participate in Phase 2 of the demonstration use an on-line application form, rather than the currently approved paper application form that was used for Phase 1. However, with the cancellation of Phase 2, the system will not be used to collect new applications at this time. Instead, existing data on Phase 1 applications that was collected through the paper form and manually keyed into a PC based Access database will be transferred to the new system. Practices participating in Phase 1 of the demonstration will be requested to use the new system to provide periodic updates to their practice information. The EHR demonstration system will enable practices to update critical demonstration information on line in a secure, Web-enabled environment, thereby facilitating timely and more accurate updates and processing of information. Thus, the EHR demonstration system (EHRDS) does not reflect a request for new or additional data beyond what practices are already providing to CMS and its contractors. Rather it represents an effort to streamline and improve what has been a more 'ad hoc' process for providing the same information. *Form Number:* CMS–10165 (OMB#: 0938–0965); *Frequency:* Occasionally; *Affected Public:* Business or other for-profits and not-for-profit institutions; *Number of Respondents:* 400; *Total Annual Responses:* 313; *Total Annual Hours:* 52.3 (For policy questions regarding this collection contact Jody Blatt at 410–786–6921. For all other issues call 410–786–1326.)

2. *Type of Information Collection Request:* Revision of a currently approved collection; *Title of Information Collection:* Detailed Explanation of Non-Coverage (42 CFR 422.626(e)(1)), and Notice of Medicare Non-Coverage (42 CFR 422.624(b)(1)); *Use:* Under section 42 CFR 422.624(b)(1), skilled nursing facilities (SNFs), home health agencies (HHAs), and comprehensive outpatient rehabilitation facilities (CORFs) must deliver to Medicare health plan enrollees a 2-day advance notice of termination of services. Per requirements at 42 CFR 422.626(e)(1), plans must deliver detailed notices to the Quality Improvement Organization (QIO) and enrollees whenever an enrollee appeals a termination of services. The Notice of Medicare Non-Coverage (NOMNC) and the Detailed Explanation of Non-Coverage (DENC) fulfill these regulatory requirements. Additionally, 42 CFR 417.600(b) provides that cost plans must follow these same fast track appeal notification procedures for their enrollees in SNFs, HHAs and CORFs. Refer to the crosswalk document for a list of changes. *Form Number:* CMS–10095 (OMB#: 0938–0910); *Frequency:* Yearly; *Affected Public:* Business or other for-profits and not-for-profit institutions; *Number of Respondents:* 25,655; *Total Annual Responses:* 100,785; *Total Annual Hours:* 45,353.25 (For policy questions regarding this collection contact Stephanie Simons at 206–615–2420. For all other issues call 410–786–1326.)

3. *Type of Information Collection Request:* Revision of a currently approved collection; *Title of Information Collection:* Notice of Denial of Medical Coverage (NDMC) and Notice of Denial of Payment (NDP)—42 CFR 422.568; *Use:* Medicare health plans, including Medicare Advantage plans, cost plans, and Health Care Prepayment Plans (HCPPs), are required to issue the NDMC and NDP when a request for either a medical service or payment is denied in whole or in part. Additionally, the notices inform Medicare enrollees of their right to file an appeal. All Medicare health plans are required to use these standardized notices. Medicare health plans provide an NDMC to enrollees upon denial, in whole or in part, of an enrollee's coverage request. This denial may be subject to a series of administrative review levels, involving defined steps and timeframes. The NDMC was developed to ensure Medicare enrollees have access to information needed to navigate the Medicare beneficiary appeals process. The NDMC meets requirements for both Medicare's standard and expedited appeals processes.

Medicare health plans provide an NDP to enrollees upon denial, in whole or in part, of payment for a service or item that the enrollee received. This denial may be subject to a series of administrative review levels, involving defined steps and timeframes. The NDP was developed to ensure Medicare enrollees have access to information needed to navigate the Medicare beneficiary appeals process. The NDP meets requirements for Medicare's standard appeals process. *Form Number:* CMS–10003 (OMB#: 0938–0829); *Frequency:* Yearly; *Affected Public:* Business or other for-profits and not-for-profit institutions; *Number of Respondents:* 740; *Total Annual Responses:* 1,168,368; *Total Annual Hours:* 194,728 (For policy questions regarding this collection contact Stephanie Simons at 206–615–2420. For all other issues call 410–786–1326.)

To obtain copies of the supporting statement and any related forms for the proposed paperwork collections referenced above, access CMS' Web site at *http://www.cms.hhs.gov/PaperworkReductionActof1995,* or E-mail your request, including your address, phone number, OMB number, and CMS document identifier, to *Paperwork@cms.hhs.gov,* or call the Reports Clearance Office on (410) 786–1326.

In commenting on the proposed information collections please reference the document identifier or OMB control number. To be assured consideration, comments and recommendations must be submitted in one of the following ways by June 29, 2010:

1. *Electronically.* You may submit your comments electronically to *http://www.regulations.gov.* Follow the instructions for "Comment or Submission" or "More Search Options" to find the information collection document(s) accepting comments.

2. *By regular mail.* You may mail written comments to the following address: CMS, Office of Strategic Operations and Regulatory Affairs, Division of Regulations Development, Attention: Document Identifier/OMB Control Number, Room C4–26–05, 7500 Security Boulevard, Baltimore, Maryland 21244–1850.

Dated: April 23, 2010.

Michelle Shortt,

Director, Regulations Development Group, Office of Strategic Operations and Regulatory Affairs.

[FR Doc. 2010–10038 Filed 4–29–10; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2010–D–0035]

Agency Information Collection Activities; Submission for Office of Management and Budget Review; Comment Request; Guidance for Industry on How to Submit a Notice of Intent to Slaughter for Human Food Purposes in Electronic Format to the Center for Veterinary Medicine

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that a proposed collection of information has been submitted to the Office of Management and Budget (OMB) for review and clearance under the Paperwork Reduction Act of 1995.

DATES: Fax written comments on the collection of information by June 1, 2010.

ADDRESSES: To ensure that comments on the information collection are received, OMB recommends that written comments be faxed to the Office of Information and Regulatory Affairs, OMB, Attn: FDA Desk Officer, FAX: 202–395–7285, or e-mailed to *oira_submission@omb.eop.gov*. All comments should be identified with the OMB control number 0910–0450. Also include the FDA docket number found in brackets in the heading of this document

FOR FURTHER INFORMATION CONTACT: Denver Presley, Jr., Office of Information Management, Food and Drug Administration, 1350 Piccard Dr., PI50–400B, Rockville, MD 20850, 301–796–3793.

SUPPLEMENTARY INFORMATION: In compliance with 44 U.S.C. 3507, FDA has submitted the following proposed collection of information to OMB for review and clearance.

Guidance for Industry on How to Submit a Notice of Intent to Slaughter for Human Food Purposes in Electronic Format to The Center for Veterinary Medicine—(OMB Control Number 0910–0450)—Extension

Section 512(j) of the Federal Food, Drug, and Cosmetic Act (the act), gives FDA the authority to set conditions under which animals treated with investigational new animal drugs may be marketed for food use. Under this authority, FDA's Center for Veterinary Medicine (CVM) issues to a new animal drug sponsor (sponsor) a slaughter authorization letter that sets the terms under which animals treated with investigational new animal drugs may be slaughtered. The U.S. Department of Agriculture (USDA), also monitors the slaughter of animals treated with investigational new animal drugs under the authority of the Meat Inspection Act (21 U.S.C. 601–95). Sponsors must submit slaughter notices each time animals treated with investigational new animal drugs are presented for slaughter, unless this requirement is waived by an authorization letter (21 CFR 511.1(b)(5) and 9 CFR 309.17). These notifications assist CVM and USDA in monitoring the safety of the food supply. Slaughter notices were previously submitted to CVM and USDA in paper format. CVM's guidance on "How to Submit a Notice of Intent to Slaughter for Human Food Purposes in Electronic Format to the Center for Veterinary Medicine" provides sponsors with the option of submitting a slaughter notice to CVM and USDA via the Internet as an e-mail attachment. The electronic submission of slaughter notices is part of CVM's ongoing initiative to provide a method for paperless submission. The likely respondents are new animal drug sponsors.

In the **Federal Register** of February 5, 2010 (75 FR 6034), FDA published a 60-day notice requesting public comment on the proposed collection of information. No comments were received.

FDA estimates the burden of this collection of information as follows:

TABLE 1.—ESTIMATED ANNUAL REPORTING BURDEN[1]

Section of the act/ FDA Form Number	Number of Respondents	Annual Frequency of Responses	Total Annual Responses[2]	Hours per Response	Total Hours
512j/3488	40	0.4	16	.08	1.3

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.
[2] Electronic submissions received between January 1, 2008, and December 31, 2008.

The number of respondents in table 1 of this document is the number of sponsors registered to make electronic submissions (40). The number of total annual responses are based on a review of the actual number of submissions made between January 1, 2008, and December 31, 2008. Sixteen total annual responses times .08 hours per response = 1.3 total hours.

Submitting a slaughter notice electronically represents an alternative to submitting a notice on paper of intent to slaughter. The reporting burden for compilation and submission on paper of this information is included in OMB clearance of the information collection provisions of 21 CFR 511.1 (OMB number 0910–0450). The estimates in table 1 of this document reflect the burden associated with putting the same information on FDA Form 3488, and resulted from previous discussions with sponsors about the time necessary to complete this form.

Dated: April 27, 2010.

Leslie Kux,

Acting Assistant Commissioner for Policy.

[FR Doc. 2010–10084 Filed 4–29–10; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2009–D–0600]

Guidance for Industry on Tobacco Health Document Submission; Availability; Correction

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice; correction.

SUMMARY: The Food and Drug Administration (FDA) is correcting a notice that appeared in the **Federal Register** of April 20, 2010 (75 FR 20606). The notice announced the availability of a guidance entitled "Tobacco Health Document

Submission." The notice published with an inadvertent error in the **ADDRESSES** section. This document corrects that error.

FOR FURTHER INFORMATION CONTACT: Joyce A. Strong, Office of Policy (HF–27), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20957, 301–827–7010.

SUPPLEMENTARY INFORMATION: In FR Doc. 2010–9134, appearing on page 20606, in the **Federal Register** of Tuesday, April 20, 2010, the following correction is made:

1. On page 20606, in the second column, in the **ADDRESSES** section, the second sentence is corrected to read: "Send one self-addressed adhesive label to assist that office in processing your request or include a fax number to which the guidance document may be sent."

Dated: April 27, 2010.

Leslie Kux,

Acting Assistant Commissioner for Policy.

[FR Doc. 2010–10160 Filed 4–29–10; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2008–D–0263]

Guidance for Industry: Requalification Method for Reentry of Blood Donors Deferred Because of Reactive Test Results for Antibody to Hepatitis B Core Antigen (Anti-HBc); Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of a document entitled "Guidance for Industry: Requalification Method for Reentry of Blood Donors Deferred Because of Reactive Test Results for Antibody to Hepatitis B Core Antigen (Anti-HBc)," dated May 2010. The guidance document provides recommendations to establishments that collect Whole Blood or blood components intended for transfusion, with recommendations for a requalification method or process for reentering deferred donors into the donor pool based on a determination that previous tests that were repeatedly reactive for antibodies to hepatitis B core antigen (anti-HBc) were falsely positive and that there is no evidence of infection with hepatitis B virus (HBV). These recommendations are based on the recent availability of FDA-licensed hepatitis B virus nucleic acid tests (HBV NAT) that are particularly sensitive when single samples are tested. These tests provide an additional, powerful method of determining whether a donor who has been deferred because of anti-HBc reactivity is truly infected by HBV. The guidance announced in this notice finalizes the draft guidance of the same title dated May 2008.

DATES: Submit written or electronic comments on agency guidances at any time.

ADDRESSES: Submit written requests for single copies of the guidance to the Office of Communication, Outreach and Development (HFM–40), Center for Biologics Evaluation and Research (CBER), Food and Drug Administration, 1401 Rockville Pike, suite 200N, Rockville, MD 20852–1448. Send one self-addressed adhesive label to assist the office in processing your requests. The guidance may also be obtained by mail by calling CBER at 1–800–835–4709 or 301–827–1800. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the guidance document.

Submit written comments on the guidance to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Submit electronic comments to *http://www.regulations.gov*.

FOR FURTHER INFORMATION CONTACT: Paul E. Levine, Jr., Center for Biologics Evaluation and Research (HFM–17), Food and Drug Administration, 1401 Rockville Pike, suite 200N, Rockville, MD 20852–1448, 301–827–6210.

SUPPLEMENTARY INFORMATION:

I. Background

FDA is announcing the availability of a document entitled "Guidance for Industry: Requalification Method for Reentry of Blood Donors Deferred Because of Reactive Test Results for Antibody to Hepatitis B Core Antigen (Anti-HBc)," dated May 2010. The guidance document provides recommendations to establishments that collect Whole Blood or blood components for a requalification method or process for the reentry of deferred donors into the donor pool based on a determination that previous tests that were repeatedly reactive for anti-HBc were falsely positive and that there is no evidence of infection with HBV. Currently, donors who are repeatedly reactive on more than one occasion for anti-HBc (samples from more than one collection from the donor are repeatedly reactive for anti-HBc) must be indefinitely deferred in accordance with current regulations. Situations have occurred with some frequency in which two anti-HBc tests are false positives because of the relative non-specificity of these tests. The result is that many otherwise suitable donors are indefinitely deferred because of their anti-HBc test results even though medical follow-up of such donors indicates that they are not infected with HBV. FDA-licensed HBV NAT assays, which are particularly sensitive when single samples are tested, are now available and provide an additional, powerful method of determining whether a donor who has been deferred because of anti-HBc reactivity is truly infected by HBV. Due to the availability of FDA-licensed HBV NAT assays and the improved specificity of anti-HBc assays, FDA is recommending in the guidance a reentry algorithm for donors deferred due to falsely positive repeatedly reactive tests for anti-HBc.

In the **Federal Register** of May 21, 2008 (73 FR 29519), FDA announced the availability of the draft guidance of the same title. FDA received several comments on the draft guidance and those comments were considered as the guidance was finalized. In addition, editorial changes were made to improve clarity. The guidance announced in this notice finalizes the draft guidance dated May 2008.

The guidance is being issued consistent with FDA's good guidance practices regulation (21 CFR 10.115). The guidance represents FDA's current thinking on this topic. It does not create or confer any rights for or on any person and does not operate to bind FDA or the public. An alternative approach may be used if such approach satisfies the requirements of the applicable statutes and regulations.

II. Paperwork Reduction Act of 1995

This 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 601.12 have been approved under OMB control number 0910–0338.

III. Comments

Interested persons may, at any time, submit to the Division of Dockets Management (see **ADDRESSES**) written or electronic comments regarding the guidance. Submit a single copy of electronic comments or two paper copies of any mailed comments, except that individuals may submit one paper copy. Comments are to be identified

with the docket number found in brackets in the heading of this document. A copy of the guidance and received comments are available for public examination in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday.

IV. Electronic Access

Persons with access to the Internet may obtain the guidance at either: *http://www.fda.gov/BiologicsBloodVaccines/GuidanceComplianceRegulatoryInformation/Guidances/default.htm*, *http://www.fda.gov/cber/guidelines.htm* or *http://www.regulations.gov*.

Dated: April 16, 2010.

Leslie Kux,

Acting Assistant Commissioner for Policy.

[FR Doc. 2010–10046 Filed 4–29–10; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2005–D–0140] (formerly Docket No. FDA–2005D–0261)

Guidance for Industry: Nucleic Acid Testing (NAT) for Human Immunodeficiency Virus Type 1 (HIV–1) and Hepatitis C Virus (HCV): Testing, Product Disposition, and Donor Deferral and Reentry; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of a document entitled "Guidance for Industry: Nucleic Acid Testing (NAT) for Human Immunodeficiency Virus Type 1 (HIV–1) and Hepatitis C Virus (HCV): Testing, Product Disposition, and Donor Deferral and Reentry" dated May 2010. The guidance document provides recommendations to blood and plasma establishments, manufacturers, and testing laboratories that are implementing a licensed method for Human Immunodeficiency Virus Type 1 (HIV–1) Nucleic Acid Test (NAT) and Hepatitis C Virus (HCV) NAT, on testing individual samples or pooled samples from donors of human blood and blood components for HIV–1 ribonucleic acid (RNA) and HCV RNA. This guidance also contains recommendations regarding product disposition and donor management based on the results of NAT and serologic testing for markers of HIV–1 and HCV infection on samples, collected at the time of donation, from donors of human blood and blood components. The guidance announced in this notice finalizes the draft guidance of the same title, dated July 2005. This guidance also supersedes the recommendations for reentry of donors deferred because of anti-HIV–1 test results, HIV–1 p24 antigen test results, and anti-HCV test results that were provided in the FDA memoranda entitled "Revised Recommendations for the Prevention of Human Immunodeficiency Virus (HIV–1) Transmission by Blood and Blood Products," April 23, 1992; "Revised Recommendations for Testing Whole Blood, Blood Components, Source Plasma and Source Leukocytes for Antibody to Hepatitis C Virus Encoded Antigen (Anti-HCV)," August 5, 1993; "Recommendations for Donor Screening with a Licensed Test for HIV–1 Antigen," August 8, 1995.

DATES: Submit electronic or written comments on agency guidances at any time.

ADDRESSES: Submit written requests for single copies of the guidance to the Office of Communication, Outreach and Development (HFM–40), Center for Biologics Evaluation and Research (CBER), Food and Drug Administration, 1401 Rockville Pike, suite 200N, Rockville, MD 20852–1448. Send one self-addressed adhesive label to assist the office in processing your requests. The guidance may also be obtained by mail by calling CBER at 1–800–835–4709 or 301–827–1800. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the guidance document.

Submit electronic or written comments on the guidance. Submit electronic comments to *http://www.regulations.gov*. Submit written comments to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852.

FOR FURTHER INFORMATION CONTACT: Paul Levine, Center for Biologics Evaluation and Research (HFM–17), Food and Drug Administration, 1401 Rockville Pike, suite 200N, Rockville, MD 20852–1448, 301–827–6210.

SUPPLEMENTARY INFORMATION:

I. Background

FDA is announcing the availability of a document entitled "Guidance for Industry: Nucleic Acid Testing (NAT) for Human Immunodeficiency Virus Type 1 (HIV–1) and Hepatitis C Virus (HCV): Testing, Product Disposition, and Donor Deferral and Reentry," dated May 2010. The guidance document provides recommendations to blood and plasma establishments, manufacturers, and testing laboratories that are implementing a licensed method for Human Immunodeficiency Virus Type 1 (HIV–1) Nucleic Acid Test (NAT) and Hepatitis C Virus (HCV) NAT, on testing individual samples or pooled samples from donors of human blood and blood components for HIV–1 ribonucleic acid (RNA) and HCV RNA. This guidance also contains recommendations regarding product disposition and donor management based on the results of NAT and serologic testing for markers of HIV–1 and HCV infection on samples, collected at the time of donation, from donors of human blood and blood components. The guidance announced in this notice finalizes the draft guidance of the same title, dated July 19, 2005. This guidance also supersedes the recommendations for reentry of donors deferred because of anti-HIV–1 test results, HIV–1 p24 antigen test results, and anti-HCV test results that were provided in the FDA memoranda entitled, "Revised Recommendations for the Prevention of Human Immunodeficiency Virus (HIV–1) Transmission by Blood and Blood Products," April 23, 1992; "Revised Recommendations for Testing Whole Blood, Blood Components, Source Plasma and Source Leukocytes for Antibody to Hepatitis C Virus Encoded Antigen (Anti-HCV)," August 5, 1993; "Recommendations for Donor Screening with a Licensed Test for HIV–1 Antigen," August 8, 1995.

In the **Federal Register** of July 27, 2005 (70 FR 43439), FDA announced the availability of the draft guidance of the same title. FDA received several comments on the draft guidance and those comments were considered as the guidance was finalized. The guidance announced in this notice finalizes the draft guidance dated July 2005.

The guidance is being issued consistent with FDA's good guidance practices regulation (21 CFR 10.115). The guidance represents FDA's current thinking on this topic. It does not create or confer any rights for or on any person and does not operate to bind FDA or the public. An alternative approach may be used if such approach satisfies the requirements of the applicable statutes and regulations.

II. Comments

Interested persons may, at any time, submit to the Division of Dockets Management (see **ADDRESSES**) written or electronic comments regarding the guidance. Submit a single copy of electronic comments or two paper copies of any mailed comments, except

that individuals may submit one paper copy. Comments are to be identified with the docket number found in brackets in the heading of this document. A copy of the guidance and received comments are available for public examination in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday.

III. Electronic Access

Persons with access to the Internet may obtain the guidance at either: *http://www.fda.gov/BiologicsBloodVaccines/GuidanceComplianceRegulatoryInformation/Guidances/default.htm* or *http://www.regulations.gov*.

Dated: April 16, 2010.

Leslie Kux,

Acting Assistant Commissioner for Policy.

[FR Doc. 2010–10048 Filed 4–29–10; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2010–N–0123]

Impact of Dissolvable Tobacco Use on Public Health; Request for Comments

Correction

In notice document 2010–6216 beginning on page 13556 in the issue of Monday, March 22, 2010, make the following correction:

On page 13556 in the second column, the paragraph that begins with "**DATES:**" should read: "**DATES:** Submit written or electronic comments by September 20, 2010."

[FR Doc. C1–2010–6216 Filed 4–29–10; 8:45 am]

BILLING CODE 1505–01–D

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Disease, Disability, and Injury Prevention and Control Special Emphasis Panel (SEP): Public Health Research on Craniofacial Malformation, Funding Opportunity Announcement (FOA) DP 10–001, Initial Review

In accordance with Section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), the Centers for Disease Control and Prevention (CDC) announces the aforementioned meeting:

Time and Date: 3:30 p.m.–5 p.m., May 17, 2010 (Closed).

Place: Teleconference.

Status: The meeting will be closed to the public in accordance with provisions set forth in section 552b(c)(4) and (6), Title 5 U.S.C., and the Determination of the Director, Management Analysis and Services Office, CDC, pursuant to Public Law 92–463.

Matters To Be Discussed: The meeting will include the initial review, discussion, and evaluation of applications received in response to "Public Health Research on Craniofacial Malformation, FOA DP 10–001."

Contact Person for More Information: Michael Dalmat, Dr.P.H., Scientific Review Officer, National Center for Chronic Disease and Health Promotion, Office of the Director, Extramural Research Program Office, 4770 Buford Highway, NE., Mailstop K–92, Atlanta, GA 30341, Telephone: (770) 488–6423, E-mail: *MED1@cdc.gov*.

The Director, Management Analysis and Services Office, has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities, for both CDC and the Agency for Toxic Substances and Disease Registry.

Dated: April 26, 2010.

Elaine L. Baker,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. 2010–10087 Filed 4–29–10; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Disease, Disability, and Injury Prevention and Control Special Emphasis Panel (SEP): Cooperative Agreement Program for the National Academic Centers of Excellence in Youth Violence Prevention (U01), Funding Opportunity Announcement (FOA) CE10–004, Initial Review

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), the Centers for Disease Control and Prevention (CDC), announces the aforementioned meeting:

Times and Dates: 8 a.m.–5 p.m., July 22, 2010 (Closed). 8 a.m.–5 p.m., July 23, 2010 (Closed).

Place: Embassy Suites Atlanta—Buckhead, 3285 Peachtree Road, NE., Atlanta, Georgia 30305, Telephone: 404–261–7733.

Status: The meetings will be closed to the public in accordance with provisions set forth in Section 552b(c)(4) and (6), Title 5, U.S.C., and the Determination of the Director, Management Analysis and Services Office, CDC, pursuant to Section 10(d) of Public Law 92–463.

Matters To Be Discussed: The meeting will include the initial review, discussion, and evaluation of applications received in response to "Cooperative Agreement Program for the National Academic Centers of Excellence in Youth Violence Prevention (U01), FOA CE10–004."

Agenda items are subject to change as priorities dictate.

Contact Person For More Information: J. Felix Rogers, PhD, M.P.H., NCIPC/ERPO, CDC, 4770 Buford Highway, NE., M/S F63, Atlanta, Georgia 30341–3724, Telephone (770) 488–4334.

The Director, Management Analysis and Services Office has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities for both CDC and the Agency for Toxic Substances and Disease Registry.

Dated: April 26, 2010.

Elaine L. Baker,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. 2010–10171 Filed 4–29–10; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Member Conflict: Developmental Brain Disorders II.

Date: May 5, 2010.

Time: 2 p.m. to 3 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: Jay Joshi, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5196, MSC 7846, Bethesda, MD 20892, (301) 408–9135, *joshij@csr.nih.gov*.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine;

93.333, Clinical Research, 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: April 28, 2010.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2010–10167 Filed 4–29–10; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Mental Health; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable materials, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Mental Health Special Emphasis Panel; NIMH Mentoring Networks to Enhance Diversity.

Date: May 25, 2010.

Time: 1 p.m. to 3 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Neuroscience Center, 6001 Executive Boulevard, Rockville, MD 20852 (Telephone Conference Call).

Contact Person: Rebecca Steiner, PhD, Scientific Review Officer, Division of Extramural Activities, National Institute of Mental Health, NIH, Neuroscience Center, 6001 Executive Blvd., Room 6149, MSC 9608, Bethesda, MD 20892–9608, 301–443–4525, *steinerr@mail.nih.gov.*

Name of Committee: National Institute of Mental Health Special Emphasis Panel; ITVA Conflicts #1.

Date: June 1, 2010.

Time: 2 p.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Neuroscience Center, 6001 Executive Boulevard, Rockville, MD 20852 (Telephone Conference Call).

Contact Person: Francois Boller, MD, PhD, Scientific Review Officer, Division of Extramural Activities, National Institute of Mental Health, NIH, Neuroscience Center, 6001 Executive Blvd., Room 6142, MSC 9606, Bethesda, MD 20892–9606, 301–443–1513, *bollerf@mail.nih.gov.*

Name of Committee: National Institute of Mental Health Special Emphasis Panel; ITVA Conflicts #2.

Date: June 1, 2010.

Time: 4 p.m. to 5:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Neuroscience Center, 6001 Executive Boulevard, Rockville, MD 20852 (Telephone Conference Call).

Contact Person: Francois Boller, MD, PhD, Scientific Review Officer, Division of Extramural Activities, National Institute of Mental Health, NIH, Neuroscience Center, 6001 Executive Blvd., Room 6142, MSC 9606, Bethesda, MD 20892–9606, 301–443–1513, *bollerf@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.242, Mental Health Research Grants; 93.281, Scientist Development Award, Scientist Development Award for Clinicians, and Research Scientist Award; 93.282, Mental Health National Research Service Awards for Research Training, National Institutes of Health, HHS)

Dated: April 26, 2010.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2010–10166 Filed 4–29–10; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Disease, Disability, and Injury Prevention and Control Special Emphasis Panel: Revitalizing Core Environmental Health Programs Through the Environmental Health Specialists Network (EHS-Net) Research (U01), Funding Opportunity Announcement (FOA) EH10–001, Initial Review

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), the Centers for Disease Control and Prevention (CDC), announces the aforementioned meeting:

Times and Dates: 8 a.m.–5 p.m., May 20, 2010 (Closed). 8 a.m.–5 p.m., May 21, 2010 (Closed).

Place: JW Marriott Hotel Buckhead, 3300 Lenox Road, Atlanta, GA 30326, Telephone (404) 262–3344.

Status: The meeting will be closed to the public in accordance with provisions set forth in Section 552b(c)(4) and (6), Title 5, U.S.C., and the Determination of the Director, Management Analysis and Services Office, CDC, pursuant to Section 10(d) of Public Law 92–463.

Matters To Be Discussed: The meeting will include the initial review, discussion, and evaluation of applications received in response to "Revitalizing Core Environmental Health Programs through the EHS-Net Research (U01), FOA EH10–001."

Agenda items are subject to change as priorities dictate.

Contact Person For More Information: J. Felix Rogers, PhD, M.P.H., NCIPC/ERPO, CDC, 4770 Buford Highway, NE., M/S F62, Atlanta, Georgia 30341–3724, Telephone (770) 488–4334.

The Director, Management Analysis and Services Office has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities for both CDC and the Agency for Toxic Substances and Disease Registry.

Dated: April 26, 2010.

Elaine L. Baker,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. 2010–10164 Filed 4–29–10; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Amended Notice of Meeting

Notice is hereby given of a change in the meeting of the Molecular and Integrative Signal Transduction Study Section, May 25, 2010, 8 a.m. to May 26, 2010, 5:30 p.m., Hotel Palomar, 2121 P Street, NW., Washington, DC 20037 which was published in the **Federal Register** on April 14, 2010, 75 FR 19408–19409.

The meeting will be one day only May 25, 2010, from 8 a.m. to 6:30 p.m. The meeting location remains the same. The meeting is closed to the public.

Dated: April 26, 2010.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2010–10148 Filed 4–29–10; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Healthcare Infection Control Practices Advisory Committee (HICPAC)

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), the Centers for Disease Control and Prevention (CDC) announces the following meeting of the aforementioned committee:

Time and Date: 3:30 p.m.–4:30 p.m., May 17, 2010.

Place: Teleconference.

Status: Open to the public. The toll free dial in number is (800) 369–2094 and the passcode is 3518331. Teleconference access is limited only by availability of telephone ports. Registration and teleconference logon information is also available at *http://www.cdc.gov/hicpac/*.

Purpose: The Committee is charged with providing advice and guidance to the Secretary, Department of Health and Human Services; the Director, CDC; and the Director, National Center for Emerging and Zoonotic Infectious Diseases (NCEZID), regarding the practice of hospital infection control and strategies for surveillance, prevention, and control of healthcare-associated infections (*e.g.,* nosocomial infections), antimicrobial resistance, and related events in settings where healthcare is provided, including hospitals, ambulatory and long-term care facilities, and home health agencies. The committee shall also advise CDC on periodic updating of existing guidelines, development of new guidelines, guideline evaluation, and other policy statements regarding prevention of healthcare-associated infections and healthcare-related conditions.

Matters To Be Discussed: The agenda will include a follow up discussion on the draft *Guidelines for the Prevention of Intravascular Catheter-Related Infections.*

Agenda items are subject to change as priorities dictate.

For More Information Contact: Michelle W. King, HICPAC, Division of Healthcare Quality Promotion, NCEZID, CDC, l600 Clifton Road, NE., Mailstop A–07, Atlanta, Georgia 30333, Telephone: (404) 639–2936, E-mail: *HICPAC@cdc.gov.*

The Director, Management Analysis and Services Office, has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities, for both CDC and the Agency for Toxic Substance and Disease Registry.

Dated: April 26, 2010.

Elaine L. Baker,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. 2010–10090 Filed 4–29–10; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2010–N–0001]

Emerging Infectious Diseases: Evaluation to Implementation for Transfusion and Transplantation Safety and Quantitative Risk Assessment: Blood Safety and Availability; Public Workshops

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice of public workshops.

The Food and Drug Administration (FDA) is announcing two public workshops entitled "Emerging Infectious Diseases: Evaluation to Implementation for Transfusion and Transplantation Safety" (EID public workshop) and "Quantitative Risk Assessment: Blood Safety and Availability" (QRA public workshop), respectively. The workshops have been scheduled on consecutive days to allow interested parties to attend both. The EID public workshop is a 2-day workshop; the purpose is to review the strategies used for identification, prioritization, and response to EID that are relevant to blood, cells, tissues and organs. The workshop has been planned in partnership with the HHS Office of Science and Public Health, Centers for Disease Control and Prevention, National Institutes of Health and Health Resources Services Administration. The QRA public workshop is a 1-day workshop; the purpose is to review the scientific principles of risk assessment and to discuss the role of risk assessment in the regulatory process, specifically as it relates to blood safety and availability. The public workshops will feature presentations, case studies and round table discussions led by national and international experts from government, academia and industry.

Date and Time: The EID public workshop will be held on May 11 and 12, 2010, from 8:00 a.m. to 5:30 p.m., each day. The QRA public workshop will be held on May 13, 2010, from 8:30 a.m. to 5:00 p.m.

Location: Both public workshops will be held at the Hilton Washington DC North/Gaithersburg, 620 Perry Pkwy., Gaithersburg, MD 20877.

Contact Person: Persons interested in the EID public workshop should contact Rhonda Dawson, Center for Biologics Evaluation and Research (HFM–302), Food and Drug Administration, 1401 Rockville Pike, Suite 550N, Rockville, MD 20852–1448, 301–827–6129, FAX: 301–827–2843, e-mail: *rhonda.dawson@fda.hhs.gov*.

Persons interested in the QRA public workshop should contact Mark O. Walderhaug, Center for Biologics Evaluation and Research (HFM–210), Food and Drug Administration, 1401 Rockville Pike, Suite 400S, Rockville, MD 20852–1448, 301–827–6028, FAX: 301–827–0648, e-mail: *mark.walderhaug@fda.hhs.gov*.

Registration: Mail or fax your registration information (including name, title, firm name, address, telephone and fax numbers) to the appropriate contact person (see *Contact Person*) by May 5, 2010. There is no registration fee for either public workshop. Early registration is recommended because seating is limited. Registration on the days of the public workshops will be provided on a space available basis beginning at 7:30 a.m.

If you need special accommodations due to a disability, please contact the appropriate contact person (see *Contact Person*) at least 7 days in advance.

SUPPLEMENTARY INFORMATION: FDA is announcing the following two public workshops:

1. EID Public Workshop

The characterization of risk from, and prioritization of response to, emerging infectious diseases relevant to blood, cells, tissue and organ safety has always been a complicated process. In terms of preparedness, when multiple EID agents threaten blood, cells, tissue and organ safety, it can be a challenge to prioritize efforts to address the resulting risk related issues since there is no single approach or formula that guarantees an ideal prioritization process. The EID public workshop will address processes for early threat detection and risk reduction of EID agents that are relevant to blood, cells, tissues and organs, including methods of "horizon scanning," risk assessment, risk communication and application of emerging pathogen detection and pathogen reduction technologies. In addition, the workshop will discuss research needed to help address issues regarding appropriate screening and testing for donors of human organs, cells, and tissues for transplantation.

The first day of the workshop will focus on transfusion safety and include discussions on the following topics: (1) The identification, surveillance and prioritization of EID agents in the United States (U.S.) and internationally; (2) risk assessment methodologies; and (3) tools to address EIDs, including pathogen reduction technologies, microarray sequencing and prion detection capabilities. The second day of the workshop will address organ, cell and tissue transplantation safety. Topics for discussion include the following: (1) The regulatory frameworks for cells, tissue and organ transplantation; (2) approaches to the identification and evaluation of EIDs in the U.S. and internationally; (3) risk assessment methodologies; and (4) current research priorities, limitations and opportunities.

2. QRA Public Workshop

FDA's mission to protect public health is a complex challenge that frequently requires regulators to use sophisticated analyses of risk and benefit to reach informed decisions

concerning the safety and effectiveness of therapeutics. To reach optimal decisions, regulators will often use a risk analysis that involves a deliberative process of risk management, risk communication and risk assessment. The workshop aims to increase the transparency of the decision-making process at FDA by increasing public understanding of risk assessment in the regulatory process for blood products.

Risk assessment is a process that reflects a structured approach of hazard identification, hazard characterization, exposure assessment and risk characterization. The QRA public workshop is designed to enhance understanding of the agency's operations and decision-making process in this regard. The workshop will discuss the principles of risk assessment, and a detailed case study using a recent risk assessment related to blood safety and availability will be presented.

Transcripts: Transcripts of the public workshop may be requested in writing from the Freedom of Information Office (HFI–35), Food and Drug Administration, 5600 Fishers Lane, rm. 6–30, Rockville, MD 20857, approximately 15 working days after the public workshop at a cost of 10 cents per page. A transcript of the public workshop will be available on the Internet at *http://www.fda.gov/BiologicsBloodVaccines/NewsEvents/WorkshopsMeetingsConferences/TranscriptsMinutes/default.htm*.

Dated: April 26, 2010.

Leslie Kux,

Acting Assistant Commissioner for Policy.

[FR Doc. 2010–10040 Filed 4–29–10; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Environmental Health Sciences; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Environmental Health Sciences Special Emphasis Panel; Virtual Consortium for Transdisciplinary/Translational Environmental Research (VICTER).

Date: May 26, 2010.

Time: 8:30 a.m. to 6 p.m.

Agenda: To review and evaluate grant applications.

Place: Nat. Inst. of Environmental Health Sciences, Building 101, Rodbell Auditorium, 111 T.W. Alexander Drive, Research Triangle Park, NC 27709.

Contact Person: Janice B. Allen, PhD, Scientific Review Administrator, Scientific Review Branch, Division of Extramural Research and Training, Nat. Institute of Environmental Health Science, P.O. Box 12233, MD EC–30/Room 3170 B, Research Triangle Park, NC 27709, 919/541–7556.

(Catalogue of Federal Domestic Assistance Program Nos. 93.115, Biometry and Risk Estimation—Health Risks from Environmental Exposures; 93.142, NIEHS Hazardous Waste Worker Health and Safety Training; 93.143, NIEHS Superfund Hazardous Substances—Basic Research and Education; 93.894, Resources and Manpower Development in the Environmental Health Sciences; 93.113, Biological Response to Environmental Health Hazards; 93.114, Applied Toxicological Research and Testing, National Institutes of Health, HHS)

Dated: April 26, 2010.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2010–10146 Filed 4–29–10; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Amended Notice of Meeting

Notice is hereby given of a change in the meeting of the Center for Scientific Review Special Emphasis Panel, May 26, 2010, 11 a.m. to May 26, 2010, 2 p.m., National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 which was published in the **Federal Register** on April 21, 2010, 75 FR 20852–20853.

The meeting title has been changed to "Meeting Conflict: Cancer Biomarker." The meeting is closed to the public.

Dated: April 28, 2010.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2010–10145 Filed 4–29–10; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Neurological Disorders and Stroke; 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 materials, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Neurological Disorders and Stroke Initial Review Group, Neurological Sciences and Disorders C.

Date: June 3–4, 2010.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Mayflower Park Hotel, 405 Olive Way, Seattle, WA 98101.

Contact Person: William C. Benzing, PhD, Scientific Review Administrator, Scientific Review Branch, NIH/NINDS/Neuroscience Center, 6001 Executive Blvd., Suite 3208, MSC 9529, Bethesda, MD 20892–9529, 301–496–0660, *Benzingw@mail.nih.gov.*

Name of Committee: National Institute of Neurological Disorders and Stroke Initial Review Group, NST–1 Subcommittee.

Date: June 3–4, 2010.

Time: 8 a.m. to 6 p.m.

Agenda: To review and evaluate grant applications.

Place: Argonaut Hotel, 495 Jefferson Street, San Francisco, CA 94109.

Contact Person: Raul A. Saavedra, PhD, Scientific Review Administrator, Scientific Review Branch, NIH/NINDS/Neuroscience Center, 6001 Executive Blvd., Suite 3208, MSC 9529, Bethesda, MD 20892–9529, 301–496–9223, *Saavedrr@ninds.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.853, Clinical Research Related to Neurological Disorders; 93.854, Biological Basis Research in the Neurosciences, National Institutes of Health, HHS)

Dated: April 28, 2010.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2010–10144 Filed 4–29–10; 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: Topics in Virology.

Date: May 17–18, 2010.

Time: 9 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Soheyla Saadi, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3211, MSC 7808, Bethesda, MD 20892, 301–435–0903, *saadisoh@csr.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Member Conflict: Viruses.

Date: May 25–26, 2010.

Time: 9 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Soheyla Saadi, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3211, MSC 7808, Bethesda, MD 20892, 301–435–0903, *saadisoh@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; AARA: Psychosocial Risk and Disease Prevention Competitive Revisions.

Date: May 25, 2010.

Time: 2:30 p.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: Courtyard Marriott Tysons Corner, 1960–A Chain Bridge Road, McLean, VA 22102.

Contact Person: Martha M. Faraday, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3110, MSC 7808, Bethesda, MD 20892, 301–435–3575, *faradaym@csr.nih.gov.*

Name of Committee: Surgical Sciences, Biomedical Imaging and Bioengineering Integrated Review Group; Surgery, Anesthesiology and Trauma Study Section.

Date: May 26–27, 2010.

Time: 1 p.m. to 2 p.m.

Agenda: To review and evaluate grant applications.

Place: Hyatt Regency Bethesda, One Bethesda Metro Center, 7400 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Weihua Luo, MD, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5114, MSC 7854, Bethesda, MD 20892, (301) 435–1170, *luow@csr.nih.gov.*

Name of Committee: Endocrinology, Metabolism, Nutrition and Reproductive Sciences Integrated Review Group; Integrative Physiology of Obesity and Diabetes Study Section.

Date: May 27–28, 2010.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Doubletree Hotel Bethesda, 8120 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Reed A Graves, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6166, MSC 7892, Bethesda, MD 20892, (301) 402–6297, *gravesr@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: April 26, 2010.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2010–10141 Filed 4–29–10; 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 Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Center for Scientific Review Special Emphasis Panel; ARRA: Psychosocial Risk and Disease Prevention Competitive Revisions.

Date: May 25, 2010

Time: 2:30 p.m. to 4:30 p.m.

Agenda: To review and evaluate grant applications.

Place: Courtyard Marriott Tysons Corner, 1960–A Chain Bridge Road, McLean, VA 22102.

Contact Person: Martha M. Faraday, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3110, MSC 7808, Bethesda, MD 20892, 301–435–3575, *faradaym@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: April 26, 2010.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2010–10139 Filed 4–29–10; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2010–N–0218]

Considerations Regarding Food and Drug Administration Review and Regulation of Articles for the Treatment of Rare Diseases; Public Hearing

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice of public hearing; request for comment.

SUMMARY: The Food and Drug Administration (FDA) is announcing a public hearing regarding the Agency's regulation of drugs, biological products, and devices (e.g., therapies and diagnostics) for the treatment, diagnosis, and/or management of rare diseases. This public hearing is intended to gain from health care providers, academia, industry, patients, and other interested persons their perspectives on various aspects of the development of medical products for the diagnosis, treatment, or management of rare diseases. The input from this public hearing will help inform the work of FDA's committee for rare diseases. To help solicit such information and views, FDA is seeking responses to specific questions.

DATES: The public hearing will be held on June 29 and 30, 2010, from 9 a.m. to 5 p.m. However, depending on the level of public participation, the meeting may be extended or may end early. Submit written or electronic requests for oral presentations to Paras M. Patel (see **FOR FURTHER INFORMATION CONTACT**) by May 31, 2010. Submit written comments to the Division of Dockets Management by May 31, 2010. Submit electronic comments to *http://www.regulations.gov* by May 31, 2010. Written or electronic comments will be accepted after the hearing until August 31, 2010.

ADDRESSES: The public hearing will be held at 10903 New Hampshire Ave., Bldg. 31, rm. 1503, Silver Spring, MD 20993. Additional information on parking and public transportation may be accessed at *http://www.fda.gov/AboutFDA/WorkingatFDA/BuildingsandFacilities/WhiteOakCampusInformation/ucm058421.htm.* (FDA has verified the Web site addresses throughout this document, but FDA is not responsible for any subsequent changes to the Web sites after this document publishes in the **Federal Register**.)

Submit written comments to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Submit electronic comments to *http://www.regulations.gov*. Transcripts of the hearing will be available for review at the Division of Dockets Management at *http://www.regulations.gov* approximately 45 days after the hearing.

FOR FURTHER INFORMATION CONTACT: Paras M. Patel, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 32, rm. 5271, Silver Spring, MD 20993–0002, 301–796–8660, FAX: 301–847–8621, e-mail: *OPDAR@fda.hhs.gov*.

SUPPLEMENTARY INFORMATION:

I. Background

The development of therapies and diagnostics for people with rare diseases, defined as those conditions which affect fewer than 200,000 people in the United States, presents economic and scientific challenges. Prior to the 1983 passage of (and subsequent amendments to) the Orphan Drug Act (ODA), the high development cost for therapies targeting few patients was often a prohibitive economic barrier; from 1973–1982 only 12 new drugs for rare diseases were approved by FDA. Since the ODA's passage, 357 drugs and biological products with Orphan Designation have received FDA marketing approval. More modest advances have been made in medical devices for people with rare diseases through the humanitarian use device (HUD) and humanitarian device exemption (HDE) programs. Nevertheless for most of the estimated 7,000 rare diseases that affect an estimated 30 million Americans, no approved therapies exist.

To optimize the means by which FDA considers articles for people with rare diseases, a recent public law (Agriculture, Rural Development, Food and Drug Administration, and Related Agencies Appropriations Act, 2010, Public Law 111–80, section 740) calls for the establishment of a committee of FDA employees to consider the means by which the Agency reviews the data from non-clinical studies and clinical trials, and makes decisions about marketing authorization and postmarketing surveillance for these patient populations. This committee, which was established March 11, 2010, is seeking public input to benefit from a better understanding of the opinions and suggestions of external stakeholders.

II. Purpose and Scope of the Hearing

This hearing is intended to provide advocates for patients with rare diseases, academics, health care providers, the pharmaceutical industry, and other interested parties an opportunity to relate their experience with, concerns about, and suggestions for the way FDA regulates the scientific evaluation of, marketing authorization for, and postmarket surveillance of, articles for rare diseases. The scope of such presentations may include non-clinical testing, clinical trials, and decisions regarding marketing authorization and postmarketing surveillance of products for the diagnosis or treatment of rare diseases. FDA invites public comment from interested parties on the following questions/issues:

1. Orphan drug marketing applications are reviewed under the same review process and statutory standards regarding demonstration of safety, effectiveness, and product quality as drugs for patients with non-orphan diseases or conditions. FDA is sensitive to the unique needs of patients with rare diseases as it makes approval decisions regarding the overall risk-benefit profile of therapies for the particular patient population for which they are being considered. Please comment on whether this practice has adequately addressed the needs of patients with rare diseases. If improvements are suggested, please provide specific examples/suggestions for any recommended changes.

2. FDA designates a medical device as an HUD designed to treat or diagnose a rare disease—defined in this instance as a disease affecting or manifesting in fewer than 4,000 patients per year. Please comment on whether this practice has adequately addressed the needs of patients with rare diseases. Please also comment and provide your rationale on whether 4,000 patients constitutes an appropriate population size for an HUD determination. If improvements are suggested, please provide specific examples/suggestions for any recommended changes.

3. Current regulations for the approval of an HUD through the HDE pathway require that the application have a "description of the device and a discussion of the scientific rationale for the use of the device for the rare disease or condition" and "an explanation of why the probable benefit to health from the use of the device outweighs the risk of injury or illness from its use, taking into account the probable risks and benefits of currently available devices or alternative forms of treatment" (21 CFR 814.102 and 814.104). Please comment if you believe that these standards remain appropriate for the approval of devices for rare diseases under the HDE mechanism; please also comment whether a more precise definition of probable benefit is needed.

4. Have current processes for rare disease stakeholders to communicate with FDA regarding rare disease article development been useful? How could these processes be improved? Please provide specific examples/suggestions for any recommended changes.

III. Attendance and/or Participation in the Public Hearing

The public hearing is free and seating will be on a first-come, first-served basis. Attendees who do not wish to make an oral presentation do not need to register.

If you wish to make an oral presentation during the hearing, you must register by submitting a written or electronic request by close of business on May 31, 2010, to Paras M. Patel (see **FOR FURTHER INFORMATION CONTACT**). You must provide your name, title, business affiliation (if applicable), address, telephone and fax numbers, e-mail address, and type of organization you represent (e.g., industry, consumer organization). You also should submit a brief summary of the presentation, including the discussion topic(s) that will be addressed and the approximate time requested for your presentation. We encourage individuals and

organizations with common interests to consolidate or coordinate their presentations to allow adequate time for each request for presentation. Persons registered to make an oral presentation should check in before the hearing.

Participants should submit a copy of each presentation to Paras M. Patel. We will file the hearing schedule, indicating the order of presentation and the time allotted to each person, with the Division of Dockets Management (see **ADDRESSES**). We will mail, e-mail, or fax the schedule to each participant before the hearing. Participants are encouraged to arrive early to ensure the designated order of presentation.

If you need special accommodations due to a disability, please contact Paras M. Patel at least 14 days in advance.

IV. Notice of Hearing Under 21 CFR Part 15

The Commissioner of Food and Drugs is announcing that the public hearing will be held in accordance with part 15 (21 CFR part 15). The hearing will be conducted by a presiding officer, accompanied by FDA senior management from the Office of the Commissioner, the Office of Orphan Products Development, as well as representatives from the committee established by section 740 of the Agriculture, Rural Development, Food and Drug Administration, and Related Agencies Appropriations Act, 2010.

Under paragraph § 15.30(f), the hearing is informal, and the rules of evidence do not apply. No participant may interrupt the presentation of another participant. Only the presiding officer and panel members may question any person during or at the conclusion of each presentation (§ 15.30(e)).

Public hearings under part 15 are subject to FDA's policy and procedures for electronic media coverage of FDA's public administrative proceedings (21 CFR 10.203(a)). Under 21 CFR 10.205, representatives of the electronic media may be permitted, subject to certain limitations, to videotape, film, or otherwise record FDA's public administrative proceedings, including presentations by participants.

The hearing will be transcribed as stipulated in paragraph § 15.30(b). Transcripts of the hearing will be available for review at the Division of Dockets Management and on the Internet at *http://www.regulations.gov* approximately 45 days after the hearing. A transcript will also be available in either hardcopy or on a CD–ROM after submission of a Freedom of Information request. Submit written requests to the Division of Freedom of Information (HFI–35), Office of Management Programs, Food and Drug Administration, 5600 Fishers Lane, rm. 6–30, Rockville, MD 20857.

To the extent that the conditions for the hearing, as described in this document, conflict with any provisions set out in part 15, this notice acts as a waiver of those provisions as specified in § 15.30(h).

V. Request for Comments

Interested persons may submit written or electronic comments for consideration to the Division of Dockets Management (see **ADDRESSES**). Persons who wish to provide additional materials for consideration should file these materials with the Division of Dockets Management. You should annotate and organize your comments to identify the specific questions identified by topic to which they refer. Submit a single copy of electronic comments or two paper copies of any mailed comments, except that individuals may submit one paper copy. Comments should be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the Division of Dockets Management between 9 a.m. and 4 p.m. Monday through Friday.

Dated: April 26, 2010.

Leslie Kux,

Acting Assistant Commissioner for Policy.

[FR Doc. 2010–10079 Filed 4–29–10; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Statement of Organization, Functions, and Delegations of Authority

Part C (Centers for Disease Control and Prevention) of the Statement of Organization, Functions, and Delegations of Authority the Department of Health and Human Services (45 FR 67772–76, dated October 14, 1980, and corrected at 45 FR 69296, October 20, 1980, as amended most recently at 75 FR 14608, dated March 26, 2010) is amended to reflect the reorganization of the Center for Global Health, Centers for Disease Control and Prevention.

Section C–B, Organization and Functions, is hereby amended as follows: Delete in their entirety the titles and functional statements for the Center for Global Health (CW), and insert the following:

Center for Global Health (CW). The Center for Global Health (CGH): (1) Leads the execution of the Center for Disease Control and Prevention's (CDC) global health strategy; (2) works in partnership to assist Ministries of Health to plan, manage effectively, and evaluate health programs; (3) achieves U.S. Government program and international organization goals to improve health, including disease eradication and elimination targets; (4) expands CDC's global health programs that focus on the leading causes of mortality, morbidity and disability, especially chronic disease and injuries; (5) generates and applies new knowledge to achieve health goals; and (6) strengthens health systems and their impact.

Office of the Director (CWA). (1) Provides strategic direction and guidance on the execution of CDC's global health strategy including decision-making, policy development and program planning and evaluation; (2) ensures the impact and effectiveness of Congressionally-mandated programs; (3) improves implementation and coordination of CDC global programs; (4) harmonizes CDC global health priorities with host country priorities to improve essential public health functions and maximize positive health outcomes, country ownership and sustainability; (5) supervises all CDC country directors and provides leadership in the selection of additional countries to expand or establish collaboration; (6) measures the performance of CDC's global health programs in terms of public health impact and fiscal accountability; (7) facilitates the conduct and maintenance of ethical and high quality, evidence-based scientific investigations by implementing regulatory requirements, monitoring human subjects compliance, and clearing scientific products; (8) promotes cross-cutting agendas and harmonizes CDC's global laboratory science activities to improve diagnostic methodologies and respond to threats of emerging pathogens; (9) provides leadership to promote growth of CDC global health programs; (10) analyzes, measures, and evaluates the global burden and distribution of disease; (11) promotes scientific innovation and best technical practices in global health surveillance, epidemiology, outbreak investigation, monitoring and evaluation, and informatics; (12) provides leadership on issues management, budget formulation and performance integration, and country-specific issues through triaging to programs; (13) participates in defining, developing, shaping and implementing U.S. global health policy and actions; (14) manages inter-governmental and

external affairs and cultivates strategic partnerships; (15) plans and executes CDC's global health communications strategy and public affairs media response/outreach; (16) provides oversight, guidance, and accountability for all operations functions, human resources, workforce management, budget formulation and distribution, extramural reviews and processing, internal and domestic travel, and property management responsibilities of CGH; and (17) develops standardized management processes and solutions for CDC country offices.

Division of Public Health Systems and Workforce Development (CWF). The Division of Public Health Systems and Workforce Development (DPHSWD) contributes to improving the health of the people of the U.S. and other nations by partnering with relevant foreign government ministries, educational institutions, Federal agencies, and international organizations to strengthen capacity of countries around the world to improve public health. To carry out its mission, the division performs the following functions: (1) Works with partners to build strong, transparent, and sustained public health systems through training, consultation, capacity building, and technical assistance in applied epidemiology, public health surveillance, evaluation, operational and implementation research, and laboratory systems; and promotes organizational excellence in public health through strengthening leadership and management capacity; (2) assists in developing and implementing CGH policy on public health system strengthening and sustainability; (3) collaborates with other CDC organizations, Federal agencies, international agencies, partner countries, and non-governmental organizations assisting ministries of health to build public health capacity in other areas of public health; and (4) supports and performs primary research on health systems and health systems performance that are relevant to the improvement of the division's own programs as well as the programs with which it collaborates.

Office of the Director (CWF1). (1) Provides leadership, overall direction, and evaluation for the division; (2) formulates and coordinates execution of CDC's strategy for developing global public health capacity in applied epidemiology, public health systems management and leadership; (3) provides leadership and guidance on policy, program planning, program management, and operations; (4) plans, allocates, and monitors resources; (5) formulates, executes, and monitors CORE budgets; (6) monitors and assists in the formulation and execution of branch and county project's budgets; (7) provides support and assistance to the branches in management, administrative, and personnel services; (8) develops and manages cooperative agreements, grants and contracts; (9) develops and disseminates communication material; (10) provides leadership in assisting national ministries of health, international agencies, and nongovernmental organizations in the delivery of epidemiologic services and the development of international epidemiologic networks; (11) liaises with other CDC organizations, other Federal agencies, ministries of health, and international organizations; (12) provides consultations with partners and stakeholders including nongovernmental organizations and the private sector on program development and overall public health systems and sub-systems; (13) develops and produces communication materials documenting the division's public health programs, accomplishments, and impact (*e.g.,* annual reports, newsletters, Web sites, training materials); (14) develops and maintains intranet and internet Web sites for the division and its programs; (15) provides consultation and technical assistance to programs and partners in scientific communication, health communication, and public health marketing programs; and (16) assesses scientific communication needs for partners, and develops and delivers public health materials and information, and training tailored to the specific needs of the partners.

Sustainable Management Development Program (CWF12). (1) Partners with ministries of health, educational institutions, and nongovernmental organizations to promote organizational excellence in public health through strengthening leadership and management capacity; (2) works with partners to build capacity for public health leadership and management development through a multi-phased approach including situational analysis, capacity development, technical assistance, and sustainability; (3) develops strategic institutional partnerships for public health leadership and management capacity-building efforts; (4) develops faculty to enhance in-country leadership and management training capacity through the Management for International Public Health course and in-country training-of-trainers; (5) provides support to training faculty in partner institutions to conduct performance needs assessments; develops locally appropriate curricula; and designs in-country leadership and management workshops that provide participants with practical skills needed to manage public health teams, programs, and organizations; (6) works with partner institutions to ensure the long-term sustainability of global public health leadership and management development programs; and (7) supports and performs primary operational and implementation research in support of continuous improvement of its own and partners' leadership and management programs.

FELTP and Systems Development Branch (Africa) (CWFB). (1) With partners, designs and conducts evidence-based instruction in public health disciplines needed to strengthen their public health systems, including instructional design, epidemiology, surveillance, laboratory operations and management, communications, and economic evaluation; (2) assists ministries of health in the African region and elsewhere to develop sustainable field epidemiology and laboratory training programs for public health systems strengthening; (3) develops models for continuous tracking and improvement of critical outputs and outcomes from field epidemiology and laboratory training programs around the world; (4) working with DPHSWD technical program components, provides consultation to ministries of health in development of surveillance systems (e.g., communicable and non communicable disease surveillance, injury, chronic diseases, etc.); (5) coordinates CDC's support the World Health Organization's (WHO) Integrated Disease Surveillance and Response strategy; (6) creates and maintains division wide computer-based and distance-based learning methods, and develops the capacity of partners to create, evaluate, and share their own; (7) develops and evaluates competency based training materials for the FETP and similar program for use of the division and its partners; (8) maintains a divisional training material library and website; and (9) collaborates within CDC and with national or international organizations in development of competency-based training materials, evaluation of training, and design of surveillance systems needed to accomplish the mission.

FELTP and Systems Development Branch (Asia and the Americas) (CWFC). (1) Assists partners in assessing their needs for health systems strengthening; (2) plans, directs,

supports, implements, and coordinates field epidemiology and laboratory training programs, Data for Decision Making Projects, operational and implementation research projects, and other partnerships with ministries of health; (3) provides leadership and management oversight in assisting ministries of health in capacity building by training epidemiologists and other health professionals through the development of competency based, residency-style, applied training programs; (4) provides leadership and expertise in assisting national ministries of health to utilize trained public health workers for developing health policy, and implementing and evaluating health programs; (5) assigns and manages expert consultants as long-term, in-country advisors to ministry of health programs; (6) collaborates within CDC, with other Federal agencies, and with national and international organizations in support of partner programs; (7) provides consultation to ministries of health in development of surveillance systems (e.g., communicable and non-communicable disease surveillance, injury, chronic diseases, etc.); (8) develops and evaluates competency-based training materials for the FETP and similar programs for use of the division and its partners; and (9) collaborates within CDC and with national or international organizations in development of competency-based training materials, evaluation of training, and design of surveillance systems needed to accomplish mission.

Division of Global HIV/AIDS (CWG) The Division of Global HIV/AIDS (DGHA) provides technical assistance to host governments, working through its strong partnerships with Ministries of Health and local and international partners to implement integrated HIV/AIDS clinical and preventive services and systems; develop and strengthen laboratory services; and provide epidemiologic science, informatics, and research support to develop sustainable public health systems in resource-constrained countries. DGHA: (1) Provides leadership, management, and services to DGHA country offices; (2) implements integrated evidence-based prevention, care, and treatment programs and services; (3) evaluates program cost effectiveness and impact to assist with prioritization, inform program planning, and determine appropriate rates of program expansion, and supports transition of responsibility for implementation of HIV programs to indigenous partners and Ministries of Health; (4) builds sustainable public health capacity in laboratory services and systems; (5) ensures epidemiologic and scientific excellence in HIV/AIDS programs; (6) contributes to the broader scientific body of knowledge in global public health by systematically evaluating the scope and quality of global HIV/AIDS programs; (7) implements operations and effectiveness research to inform the design of current and future programs as well as optimize allocation of human and financial resources; (8) strengthens in-country capacity to design and implement HIV/AIDS surveillance systems and surveys; (9) builds host government public health management capacity and trains in-country public heath workforce with the goal of long term program sustainability; (10) supports host government capacity to monitor and evaluate the process, outcome, and impact of HIV prevention, care, and treatment programs, and (11) helps countries respond to public health emergencies, assisting in response planning and implementation with Ministries of Health and other international partners.

Office of the Director (CWG1). (1) Provides strategic leadership, guidance, management and oversight to all DGHA programs and ensures coordination and communication across its branches and with other CDC programs including CDC/Washington; U.S. Government (USG) agencies, including the Department of Health and Human Services (HHS), the United States Agency for International Development (USAID), and Department of State (DoS); and other international organizations; (2) plans, implements, and oversees all field programs along with other USG agencies; (3) manages all DGHA country directors and provides leadership and guidance to country offices in all matters of daily operation, including management of global workforce staff; (4) provides leadership and guidance on policy development and interpretation, budget formulation, program planning, issues management, management and operations, and evaluation; (5) helps to build capacity and strengthen the public health response by sharing best practices through communication materials and coordinating dissemination of resources to the media, partners, and other audiences; (6) identifies opportunities for leveraging and enhancing partnerships for public health protection and synergies with other Agency programs and partners; (7) provides DGHA management and operations services in coordination with appropriate CDC staff offices, including processing travel and assisting with accountability and management of HHS/CDC property, facilities, and equipment; (8) ensures timely and sufficient DGHA domestic staff placement through recruitment, hiring, and orienting of qualified staff; (9) ensures retention of qualified staff by providing workforce management and career development services for DGHA domestic staff; (10) ensures scientific excellence for all DGHA scientific, programmatic, and informational documents/materials which includes providing scientific review and clearance of manuscripts for publication, abstracts for presentation, and protocols for institutional review boards and human subjects review; (11) provides coordination and support for, as well as contributes to, global public health evaluation and operational research to maximize the effectiveness and quality of global HIV/AIDS interventions to guide DGHA programs and policies; (12) establishes and implements standards for organizational excellence; (13) provides direct technical assistance and maintains relationships with host country partners and responds to other health needs as required; (14) assures accountability of program funds and reports on progress; and (15) collaborates with other CDC and HHS programs and offices; other USG agencies; and other national and international organizations.

International Laboratory Branch (CWGB). (1) Serves as a reference laboratory that provides guidance on quality assurance and certification for international sites; (2) provides technical assistance to country programs in the areas of laboratory information systems and laboratory systems; (3) provides training packages, training, guidance, and support to host nations, other USG agencies and international and national partners on HIV, Sexually Transmitted Infection (STI), and opportunistic infection (OI) diagnostics and monitoring techniques; HIV incidence testing; hematology; chemistry; CD4; TB/OI testing; antiretroviral treatment (ART) resistance testing; dried blood spot polymerase chain reaction for early infant diagnosis; viral load monitoring; and ensuring the quality of laboratories and testing activities; (4) serves as a training center of excellence for HIV/STI/OI diagnostics for international sites; (5) provides laboratory assistance to international surveillance activities to monitor trends of HIV prevalence and incidence; (6) assists in the surveillance of HIV subtypes in the overall context of supporting sero-surveillance programs; (7) assists in the surveillance and evaluation of HIV drug resistance as part of antiretroviral care and treatment

programs and serves as a reference laboratory for the World Health Organization (WHO)–CDC HIV drug resistance network; (8) develops strategies and methodologies to meet the clinical and diagnostic needs of HIV/AIDS programs; (9) assists in the evaluation and validation of serologic and nucleic acid assays for measurement of HIV incidence to enable evaluation of effectiveness of prevention programs; (10) develops comprehensive testing algorithms for HIV diagnosis; (11) contributes to operational research to maximize the effectiveness and quality of global HIV/AIDS interventions to guide DGHA programs and policies; (12) conducts laboratory capacity assessments and assists in development of infrastructure for effective implementation of programs in countries where DGHA operates; (13) provides laboratory guidance and support on national strategic planning and quality management of tiered laboratory systems in host nations and consults on all technical aspects of laboratory procurement, standardization, quality control and quality assurance; (14) works with international accrediting organizations to establish guidance, training, and tools for accreditation of laboratory systems in resource-poor settings; (15) supports ongoing collaboration with international laboratory experts and national and regional laboratory personnel to resolve technical issues and develops international tools, guidelines, curriculum and other resources to improve laboratory capacity in host nations; (16) develops and implements strategies to expand the laboratory health workforce and increase human capacity of host government public health programs to strengthen and ensure a sustainable public health response to HIV/AIDS; (17) promotes a transition toward greater sustainability of laboratory systems through the support of country-driven efforts; (18) establishes strategic Public Private Partnerships for strengthening laboratory systems, training, development of referral systems for transporting samples, and quality management schemes; (19) ensures scientific excellence for all branch manuscripts, protocols, and programs in collaboration with the DGHA Office of the Director (OD) Science Office; (20) contributes to the greater body of scientific knowledge through the presentation of laboratory operational research findings at conferences and through publications in peer reviewed journals; and (21) collaborates with other DGHA branches; other CDC and HHS programs and offices; other USG agencies; and other national and international organizations.

HIV Prevention Branch (CWGC). (1) Provides technical assistance and builds capacity to implement, improve, expand, sustain, and maximize effectiveness of HIV prevention programs; (2) provides technical assistance for scale-up of prevention and biomedical interventions and linkage with other HIV clinical services; (3) assists DGHA country programs in the recruitment of safe blood (products) donors, quality testing, blood bank management, appropriate use of blood and blood products, and prevention of severe anemia; (4) fosters the improvement of HIV prevention and counseling services through blood donor education, mobilization, and retention of safe blood donors; (5) supports development of safe injection practices, improved sharps waste management, safer blood transfusions, and avoidance of unnecessary medical injections; (6) assists in the development, implementation, and evaluation of model behavior change interventions and programs to reduce risk-behaviors and enhance health-seeking behaviors; (7) helps strengthen, expand, and make accessible programs to prevent, diagnose, and treat STIs in high risk populations and to prevent HIV infection among persons seeking treatment for STIs; (8) assists in tailoring HIV prevention programs to meet the special needs of youth and drug-using populations; (9) helps to develop, expand, and evaluate voluntary HIV counseling and testing programs in both clinical and community settings; (10) assists in the provision of technical support to DGHA programs in developing laboratory, clinical, and administrative capacities to prevent HIV/AIDS; (11) assists in implementing, and monitoring the quality and impact of, prevention programs for persons living with HIV/AIDS and their families and integrating HIV prevention programs within health services for HIV care and treatment; (12) assists in safe and effective implementation of biomedical interventions, including the scale-up of male circumcision; (13) assists in monitoring the training of health care workers to prevent HIV; (14) contributes to operational research to maximize the effectiveness and quality of global HIV/AIDS interventions to guide DGHA programs and policies; (15) establishes strategic Public Private Partnerships to build capacity for and maximize effectiveness of HIV prevention programs in host countries; (16) ensures scientific excellence for all branch manuscripts, protocols, and programs in collaboration with the DGHA OD Science Office; and (17) collaborates with other DGHA branches; other CDC and HHS programs and offices; other USG agencies; and other national and international organizations.

HIV Care and Treatment Branch (CWGD). (1) Provides technical assistance and builds capacity in developing and implementing sustainable comprehensive care and treatment programs for persons with HIV/AIDS. This includes prevention, diagnosis, and treatment services for HIV/AIDS, tuberculosis, other opportunistic infections, and opportunistic cancers; (2) provides technical expertise and support to country programs, partners, and Ministries of Health in planning, implementing, and evaluating effective strategies for care and treatment of persons with HIV; (3) provides HIV care and treatment expertise to country programs, partners, and Ministries of Health on management, standard operating procedures, human resources, physical infrastructure, training, drug and health commodities management, laboratory services, monitoring and evaluation, community services, linkage between HIV and other programs, promotion of prevention, and sustainability; (4) provides support for continuous quality improvement of HIV care and treatment programs; (5) promotes appropriate integration of services, including HIV prevention interventions into clinical care and treatment settings and HIV services into general medical services; (6) conducts operational research in collaboration with country programs to identify best practices, address barriers, and respond to emerging scientific issues related to HIV care and treatment service delivery; (7) collaborates with international partners to synthesize the scientific body of knowledge on HIV care and treatment, including TB/HIV co-infection; (8) collaborates with international partners to develop and disseminate tools (*e.g.,* protocols and training curricula), guidelines and policies; (9) supports analysis of program costs and cost effectiveness to assist with prioritization, inform program planning, and determine appropriate rates of program expansion; (10) supports capacity building of host countries to transition responsibility for implementation of HIV care and treatment services to indigenous partners and Ministries of Health, with result of increasing ownership, sustainability and service delivery cost

efficiencies; (11) establishes strategic Public Private Partnerships aimed at augmenting capacity for developing and implementing sustainable comprehensive care and treatment programs, including prevention, diagnosis, and treatment services for HIV/AIDS, tuberculosis, other opportunistic infections, and opportunistic cancers; (12) ensures scientific excellence for all branch manuscripts, protocols, and programs in collaboration with the DGHA OD Science Office; (13) collaborates with other DGHA branches; other CDC and HHS programs and offices; other USG agencies; and other national and international organizations.

Maternal and Child Health Branch (CWGE). (1) Supports the international scale up of comprehensive, quality prevention of mother-to-child HIV transmission (PMTCT) and pediatric (Peds) programs by developing adaptable training tools, utilizing operational research to identify and implement models of service delivery adapted to district, regional, sub-national and national contexts; (2) provides technical expertise and support to countries in planning, implementing, and evaluating effective strategies for scaling up of sustainable programs for the prevention, diagnosis, and treatment of HIV/AIDS, tuberculosis, and other opportunistic infections in women, infants, and children, including linking PMTCT/Peds HIV programs with HIV clinical and preventive services and other maternal and child health settings/contexts; (3) builds national capacity for and provides guidance on development of policy for formulations for and access to appropriate long-term combination ART for HIV-infected children; (4) conducts operational research in collaboration with country programs to promote best practices, address barriers, and respond to emerging scientific issues for PMTCT/Peds HIV service delivery; (5) collaborates with international partners to contribute to the scientific body of knowledge on global PMTCT/Peds and broader maternal arid child health issues and to develop and disseminate tools, guidelines, and policies to translate research for improved program implementation in resource-constrained countries; (6) provides support for continuous quality improvement of PMTCT and Peds HIV care and treatment programs, including those within broader maternal and child health programs; (7) supports analysis of program costs and cost-effectiveness to assist with prioritization, inform program planning, and determine appropriate rates of program expansion; (8) acts as a key part of a broader CDC strategic response to address health needs and gender-related issues of maternal and child health worldwide, supporting a comprehensive, multidisciplinary approach to building maternal and child health services and systems capacity in host countries; (9) establishes strategic Public Private Partnerships for HIV maternal and child health services and systems capacity in host countries; (10) ensures scientific excellence for all branch manuscripts, protocols, and programs in collaboration with the DGHA OD Science Office; and (11) collaborates with other DGHA branches; other CDC and HHS programs and offices; other USG agencies; and other national and international organizations.

Epidemiology and Strategic Information Branch (CWGG). (1) Assists countries in developing and/or enhancing HIV-related surveillance systems and in using the results of surveillance surveys for impact monitoring, program planning, and HIV/AIDS policy making; (2) assists and provides training on analyzing, disseminating, and using HIV/AIDS data; (3) assists and provides training to CDC programs and host country governments to assess and ensure the quality of the data collected in HIV-related surveillance systems and HIV/AIDS program monitoring systems; (4) strengthens host government capacity to monitor and evaluate the process, outcome, and impact of HIV/AIDS prevention, care, and treatment programs, other related global health programs, and health systems through the development of guidelines, curricula, and other tools; (5) implements and evaluates novel approaches for conducting surveillance and surveys, and conducting program monitoring and evaluation; (6) performs epidemiologic investigations of HIV/AIDS as well as provides statistical and epidemiologic technical assistance for in-country investigations; (7) supports surveys and monitoring and evaluation systems that measure HIV prevalence, changes in HIV-related behavior, and health status among individuals and at the population level; (8) strengthens country monitoring systems that track program service delivery and ensure effective, evidence based programming; (9) provides support to the DoS Office of the US Global AIDS Coordinator (OGAC) and to interagency USG in-country teams to monitor and evaluate the outputs, outcomes, and impact of global HIV/AIDS activities and advises interagency in-country teams on planning of strategic information activities; (10) improves the collection and analysis of data through development of guidelines on HIV surveillance and assists countries to develop procedures to standardize HIV surveillance systems, write protocols for HIV surveillance, train for data collection, and assist with data cleaning and data analysis; (11) provides a wide range of statistical and epidemiologic support and technical expertise to agencies and staff engaged in global HIV/AIDS activities, including consultation and direct assistance at all stages of a public health study; specifically, development of study design, sample size and power estimation, questionnaire design, data monitoring, statistical analysis and report writing; (12) provides comprehensive data management support to staff and countries engaged in global HIV/AIDS activities, including development of data organization plan and standards for coding of data elements, quality assurance, maintenance of databases, report generation, and implementation of policies on electronic record retention and data security; (13) coordinates, oversees, or assists in the formulation of epidemiology and strategic information funding/budgets and in the execution of a variety of acquisition and assistance awards; (14) ensures scientific excellence for all branch manuscripts, protocols, and programs in collaboration with the DGHA OD Science Office; and (15) collaborates with other DGHA branches; other CDC and HHS programs and offices; other USG agencies; and other national and international organizations.

Health Economics, Systems, and Integration Branch (CWGH). (1) Identifies priority information needs for program planning, resource allocation, efficiency and program integration, and develops economic analysis and operational research activities; (2) implements economic studies, including costing and cost-effectiveness studies, and applies advanced modeling techniques to inform and optimize global health planning, policy and programs, and provide a broader understanding of the effects of health programs on improving economic and other non-health outcomes; (3) supports USG efforts in projecting financing needs to efficiently meet program targets in areas of prevention, care and treatment, and human resources for health (HRH); (4) guides development and implementation of monitoring systems to routinely capture program

expenditure data to support planning, accountability and efficient programming; (5) trains and mentors partner country personnel in the methods and application of economic analysis of global health programs and policy; (6) provides technical input, guidance, review and implementation support to operational research on and evaluation of global HIV/AIDS activities; (7) supports the development of partner country health finance systems and capacity to develop sustainable and accountable programs, and assists in the implementation of national AIDS spending assessment activities; (8) assists countries in the collection, transmission, classification, storage, and analysis of strategic information, and helps countries to design, implement, maintain, and evaluate a wide range of information systems to both support implementation of global HIV/AIDS services, and to monitor and evaluate the results to inform policy and program decisions; (9) supports the integration of HIV data into broader, more comprehensive health information systems, supports development of comprehensive health information systems, and works to ensure that systems are not duplicative; (10) works with in-country counterparts to provide technical assistance on strengthening health information systems in-country, including systems needs assessments, identifying and resolving DGHAs, describing data exchanges needed across these systems, and developing standards for data and for system interoperability; (11) in conjunction with WHO/Joint United Nations Program on HIV/AIDS develops: standardized definitions for data that support ART, HIV/TB, maternal child health, PMTCT, and other clinical care; open source tools for the implementation of electronic patient record and other systems; security and confidentiality guidance for HIV/AIDS data; guidance on unique identification and matching of patient records across disparate information systems; (12) participates in USG interagency technical working groups and provides technical leadership to address global health information systems, Health Systems Strengthening (HSS), and HRH issues and initiatives; (13) provides technical support for the routine monitoring of health related governance including financial accountability, programmatic transparency, policy development and enforcement, and engagement and regulation of the private health sector, including the Global Fund to Fight AIDS, Tuberculosis, and Malaria; (14) develops the HSS operational research agenda for DGHA and implements public health evaluations related to health systems; (15) provides broad HSS technical assistance and support to USG in-country teams and host countries to improve the delivery of HIV and other health services and work toward transition to country ownership of program; (16) supports branches in strengthening health systems, developing metrics to assess DGHA's contribution to HSS and implementing monitoring systems to routinely collect DGHA's health system impact, especially in the areas of laboratory systems, maternal child health services, HIV care and treatment service delivery, blood safety programs, and prevention services; (17) helps define CDC's role and identify priority needs for strengthening HRH to support sustainability of HIV programs; (18) provides HRH technical assistance and other support to meet priority HRH needs, including pre-service and in-service training, task-shifting, capacity-building of accreditation and credentialing bodies, HRH planning and management, workplace performance and safety, and the development of human resource information systems and their use in health decision-making; (19) conducts monitoring and evaluation of US-supported HRH activities, to help inform U.S. resource and program decision-making; (20) ensures that public health epidemiologists, laboratorians, and administrators are represented in the goal of training and retaining 140,000 new health professionals; (21) supports operational research activities and public health evaluations that address current HRH questions and monitoring needs; (22) ensures scientific excellence for all branch manuscripts, protocols, and programs in collaboration with the DGHA OD Science Office; and (23) collaborates with other DGHA branches; other CDC and HHS programs and offices; other USG agencies; and other national and international organizations.

Country Operations Branch (CWGJ). (1) Provides operations support to facilitate effective delivery of global HIV/AIDS activities in DGHA country programs in the areas of fiscal management, procurement, personnel, extramural (grants, cooperative agreements and contracts) programs, and other administrative services; (2) serves as the key linkage between DGHA headquarters and DGHA country offices coordinating calls and liaising with the CDC Financial Management Office (FMO) and Procurement and Grants Office (PGO), Atlanta Human Resources Center, and OGAC; (3) serves as the CDC representative on the OGAC core team/country support team; (4) develops strategies to improve the technical skills and problem-solving abilities of country program managers and locally employed staff who work in the administrative, management and operational area; (5) provides short- and long-term consultation, technical assistance, and backstopping for management and operations issues and staff to DGHA country offices; (6) provides long-term management and operations support for smaller countries; (7) ensures timely and sufficient CDC international staff placement through recruitment, hiring, orienting, deploying, and assisting with relocation of qualified staff; (8) ensures retention of qualified staff by providing workforce management and career development services for CDC international staff; and (9) collaborates with other DGHA branches; other CDC and HHS programs and offices; other USG agencies; and other national and international organizations.

Program Budget and Extramural Management Branch (CWGK). (1) Coordinates all DGHA procurement and extramural activities in creating spend plans in compliance with federal appropriations law, congressional intent, and global HIV/AIDS policies; (2) facilitates and manages the development, clearance, and award of all new and ongoing DGHA headquarters and field grants, cooperative agreements, and contracts; (3) provides technical assistance and guidance to the countries and branches on budget and extramural issues including assisting programs in determining the appropriate funding mechanism to support global HIV/AIDS activities; (4) provides training and tools to DGHA country programs to improve budget and cooperative agreement management; (5) manages DGHA headquarters budget and tracks overall DGHA budget, which includes conducting budget planning exercises and managing the annual close-out process; (6) provides funding and budgetary data for regular reports including the Headquarters Operational Plan, GAO and IG audits, country Annual Program Results to OGAC, and other requests for data; (8) reviews and provides input on budgetary and procurement policy-related documents; (9) liaises and collaborates, as appropriate, with the DGHA Associate Director for Science, other financial and procurement-related units and offices including FMO and PGO, as well as other CDC and HHS offices, OGAC, and

other USG agencies; (10) collaborates with other DGHA branches; other CDC and HHS programs and offices; other USG agencies; and other national and international organizations. Division of Parasitic Diseases and Malaria (CWH). The Division of Parasitic Diseases and Malaria (DPDM) prevents and controls parasitic diseases in the U.S. and throughout the world by providing diagnostic, consultative, epidemiologic services, and training. In carrying out its mission, DPDM: (1) Conducts surveillance, investigations, and studies of parasitic diseases to define disease etiology, mode of transmission, and populations at risk, and to develop effective methods for diagnosis, prevention, control, and elimination; (2) conducts or participates in clinical, field, and laboratory research to develop, evaluate, and improve laboratory methodologies, materials and therapeutic practices used for rapid and accurate diagnosis and treatment of parasitic diseases; (3) provides epidemic aid, epidemiologic consultation, and reference diagnostic services to state and local health departments, other federal agencies, and national and international health organizations; (4) conducts a program of laboratory and field research in the biology, ecology, and host-parasitic relationships to develop better methods for diagnosis, prevention, and control of parasitic diseases; (5) provides scientific and technical assistance to other components within CDC when the work requires unique expertise or specialized equipment not available in other CDC components; (6) serves as WHO Collaborating Centers for Cysticercosis, Research Training and Eradication of Dracunculiasis, Control and Elimination of Lymphatic Filariasis, Evaluating and Testing New Insecticides, Insecticide Resistance, Insect Vectors; Malaria Control in Africa, Human African Trypanosomiasis, Production and Distribution of Malaria Sporozoite ELISAs; (7) maintains field-based research and program activities in numerous developing countries; and (8) provides marketing communications support for responsive, evidence-based information targeted to the public, local and state health officials, international partners, and private organizations to inform health decisions, to prevent, and control parasitic diseases in the U.S. and abroad. Office of the Director (CWH1). (1) Works with CGH OD to ensure spending plans and budget are in line with the overall infectious disease strategies and priorities; (2) ensures that the CGH strategy is executed by the divisions and aligned with overall CDC goals; (3) co-develops execution strategies for the division with the branch chiefs; (4) provides program and science quality oversight; (5) builds leadership at the division and branch levels; (6) evaluates the strategies, focus, and prioritization of the division research, program, and budget activities; (7) identifies and coordinates synergies between the division and relevant partners; (8) ensures that policy development is consistent and appropriate; (9) facilitates research and program activities by providing leadership support; (10) proposes resource priorities throughout the budget cycle; (11) ensures scientific quality, ethics, and regulatory compliance; (12) fosters an integrated approach to research, program, and policy activities; and (13) liaises with HHS and partners as defined in the partnership management plan.

Malaria Branch (CWHB). (1) Conducts malaria surveillance, prevention, and control in U.S. residents and visitors by monitoring the frequency and distribution of malaria cases that occur in U.S. residents and visitors and the efficacy and safety of antimalarial drugs for chemoprophylaxis and chemotherapy; (2) provides clinical advice and epidemiologic assistance on the treatment, control, and prevention of malaria in the U.S. and in malaria endemic countries; (3) provides information to the U.S. public and to appropriate agencies and groups on appropriate measures to prevent and control malaria; (4) provides consultation, technical assistance, and training to malaria-endemic countries and to international and U.S. agencies and organizations on issues of malaria prevention and control; (5) conducts epidemiologic, laboratory, and field-based research projects, including laboratory and field studies on parasitic diseases to define biology, ecology, transmission dynamics, parasite species differences, host-parasite relationships, diagnostics, host immune responses, populations at risk, and determinants of morbidity and mortality; (6) conducts laboratory studies of malaria parasites utilizing animal models and in vitro systems for parasitic relationships, chemotherapy, and vaccine evaluation studies; (7) conducts field studies of malaria prevention and control tools and strategies; and (8) conducts assessments of malaria monitoring and evaluation methods and program use of these methods.

Parasitic Diseases Branch (CWHC). (1) Investigates outbreaks and unusual occurrences of parasitic diseases in concert with states, ministries of health, WHO, and other agencies and organizations; (2) conducts surveillance of foodborne disease outbreaks and other parasitic diseases in the U.S.; (3) provides reference and laboratory diagnostic services to physicians and laboratories; (4) transfers technologies and expertise in laboratory diagnosis of parasitic infections to public health laboratories; (5) provides consultation on the prevention, treatment, and management of parasitic diseases to clinicians, laboratorians, departments of health, and other agencies; and provides otherwise unavailable anti-parasitic drugs to healthcare providers and ensures compliance with FDA's regulations; (6) supports the agency's overall emergency response mandate; (7) conducts field and laboratory investigations and research on the etiology, biology, epidemiology, ecology, pathogenesis, immunology, genetics, host-parasite relationships, chemotherapy and other aspects of parasitic diseases to develop new tools for identifying and controlling parasitic diseases; (8) develops and tests new laboratory methods and tools for improved diagnosis, control, and prevention of parasitic diseases, and conducts laboratory training courses for public health laboratories; (9) carries out and evaluates operational research to evaluate current strategies and develops new strategies to support programmatic activities for the control and elimination of parasitic diseases, and provides technical assistance to ministries of health, WHO, and other agencies and organizations for these programs; (10) provides training to Epidemic Intelligence Service officers, Emerging Infectious Disease fellows, American Society of Microbiology/Postdoctoral Fellows, Preventive Medicine Residents, public health prevention specialists, and other fellows and students; and (11) prepares and disseminates health communication materials on the prevention and treatment of parasitic diseases.

Entomology Branch (CWHD). (1) Conducts surveillance, field investigations, and laboratory studies on the vectors of parasitic diseases of humans, with a focus on malaria, Chagas' disease, lymphatic filariasis, onchocerciasis, and leishmaniasis, with a particular emphasis on the anopheline vectors of malaria; (2) serves as WHO Collaborating Centers for pesticides resistance, anopheline vector identification, antimalarial drug evaluation, and vector control; (3) develops methods supporting the use of pesticides for control of vector-borne diseases, the management of insecticide resistance, and the monitoring of anti-

parasitic drugs; (4) serves as an international reference reagent and anopheline vector repository, providing materials, training, and information related to malaria vectors; and (5) provides entomological consultation, epidemic aid, and training to local, state, federal and foreign agencies and international health organizations on surveillance and control of vectors and vector-borne diseases.

Division of Global Disease Detection and Emergency Response (CWJ). The Division of Disease Detection and Emergency Response (DGDDBER) supports CDC global efforts to strengthen public health systems abroad and build essential infrastructure in host countries. By providing leadership and coordinating with global partners, the Division increases preparedness and response to prevent and control naturally occurring and man-made threats to health. To carry out its mission, the Division performs the following functions: (1) Supports the requirements of the revised International Health Regulations by fostering collaborations, partnerships, integration, and resource leveraging to increase CDCs impact and achieve public health goals; (2) works with partners to build strong, transparent, and sustained global public health systems through training, consultation, capacity building, and technical assistance in applied epidemiology, public health surveillance, evaluation, and laboratory systems; (3) coordinates management and oversight of critical global health preparedness and emergency response activities across CDC, including situational awareness and partnership management at the global and regional level; (4) coordinates with and responds to requests from a wide array of internal CDC and external partners and stakeholders; and (5) provides stewardship and leadership support to global health preparedness programs housed in the Division.

Office of the Director (CWJ1). (1) Provides leadership, oversight, evaluation and overall direction and management for the activities of the Division; (2) develops Division overall strategy, policies on planning, evaluation, management, and operations; (3) plans, allocates, and monitors resources; (4) provides liaison with other CDC organizations, other Federal agencies, national ministries of health, international organizations, non governmental organizations, private sector, and others that CDC cooperates with in global health programs and activities; and (5) promotes high standards in science and ethics among CDC's international activities.

Global Disease Detection Branch (CWJB). The Global Disease Detection (GDDB) Branch: (1) Provides leadership and works with partners around the globe to increase preparedness for and mitigate the consequences of a catastrophic public-health event, whether by an intentional act of terrorism, or the natural emergence of a deadly infectious disease; (2) provides program support, resources and technical assistance to the seven Global Disease Detection (GDD) Centers around the world; (3) supports emerging infectious disease detection and response, pandemic influenza preparedness, health communications, zoonotic disease investigation, laboratory systems and biosafety, and training in field epidemiology and laboratory methods through the GDD Centers and other CDC field locations; (4) provides epidemic intelligence and response capacity to provide an early warning about international disease threats, and coordinates with partners throughout the U.S. government to provide rapid response; (5) leads and administers CDCs GDD program through coordination with relevant implementing programs across the Agency; (6) provides leadership, guidance, technical assistance support and resources for global infectious disease surveillance, applied epidemiologic and laboratory research, and response to emerging infectious disease threats; (7) provides resources and assists in developing country-level epidemiologic, laboratory, and other capacity to ensure country emergency preparedness and response to outbreaks and incidents of local importance and of international interests; and (8) maintains staff in the CDC Emergency Operations Center to manage, direct, coordinate and evaluate biosurveillance data from domestic and international networks and serve as a central focus for global outbreak and incident response activities.

Global Health Security Branch (CWJC). The Global Health Security Branch (GHSB): (1) Serves as the principal point of coordination at CDC for global health security activities at HHS/OS, the DoS, the Department of Defense (DoD), USAID, USDA, other U.S. government agencies, and international and multilateral organizations; (2) aligns the activities formerly conducted by CDC units supporting the Biosecurity Engagement Program (BEP), the Defense Threat Reduction Agency Program and the International Influenza Unit (IIU); (3) provides support and coordination regarding the development of policies and priorities on international influenza; (4) serves as liaison with HHS and technical agency (CDC, NIH, FDA) representative for international pandemic preparedness related to budget formulation, program development, strategic planning, and global health policy development; (5) provides leadership, coordination, management and oversight of technical agency reports, briefing documents, and talking points for the HHS Secretary and staff related to global health policy; (6) provides technical assistance through training, and capacity building in supporting efforts to reduce the threat from chemical, biological, and nuclear disasters that are either natural or man-made; (7) provides liaison with the DoS Biosecurity Engagement Program and DoD Defense Threat Reduction Agency to coordinate on global biological threats; and (8) coordinates international aspects of CDC's terrorism preparedness and emergency response activities in collaboration with OPHPR.

International Emergency and Refugee Health Branch (CWJD). The International Emergency and Refugee Health Branch (IERHB) applies public health and epidemiologic principles to improve the health of refugees, internally displaced persons (IDPs) and populations affected by complex humanitarian and other international emergencies. Specifically, it: (1) Coordinates, supervises, and monitors, CDC's work in international emergency settings and in refugee or displaced populations in collaboration with other U.S. government agencies, United Nations agencies, and non-governmental organizations; (2) provides direct technical assistance to refugees/IDPs and emergency affected populations in the field, focusing on rapid health and nutrition assessments, public health surveillance, epidemic investigations, communicable disease prevention and control and program evaluation; (3) develops and implements operational research aimed at developing more effective public health and nutrition interventions in emergency-affected populations; (4) plans, implements, and evaluates training courses and workshops to help strengthen CDC technical capacity in emergency public health of CDC, as well as that of other U.S. government agencies, international and private voluntary organizations, and schools of public health; (5) develops technical guidelines on public health issues associated with international complex humanitarian emergencies; (6) serves as the CDC liaison with other international, bilateral, and non-governmental relief organizations

involved with humanitarian emergencies; and (7) helps prepare CDC country offices, host countries, and local partners to respond to the full range of public health emergencies.

Delete in its entirety the title and functional statements for the Division of Global AIDS (CVJG) within the National Center for HIV/AIDS, Viral Hepatitis, STD and TB Prevention.

Delete in its entirety the title and functional statement for the International Emergency and Refugee Health Branch (CTBBD) within the Division of Emergency and Environmental Health Services of the National Center for Environmental Health.

Dated: April 19, 2010.

William P. Nichols,

Chief Operating Officer, Centers for Disease Control and Prevention.

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DEPARTMENT OF HOMELAND SECURITY

Coast Guard

[Docket No. USCG–2006–24163]

National Environmental Policy Act; Final Environmental Impact Statement on U.S. Coast Guard Pacific Area Operations: Districts 11 and 13

AGENCY: Coast Guard, DHS.

ACTION: Notice of availability and request for comments.

SUMMARY: The U.S. Coast Guard announces the availability of the Final Environmental Impact Statement (FEIS) to implement enhanced environmental protection measures, as necessary, for marine protected species (MPS) and marine protected areas (MPAs) that occur in the Coast Guard's District 11 (California) and 13 (Oregon and Washington) areas of responsibility (AORs). The FEIS analyzes the potential environmental impacts of specific Coast Guard vessel and aircraft operations on MPS and MPAs when engaged in the following missions and activities: law enforcement, national security, search and rescue (SAR), aids to navigation (ATON), and oil pollution and vessel grounding response. We request your comments on the FEIS.

DATES: Comments and related material must either be submitted to our online docket via *http://www.regulations.gov* on or before June 1, 2010 or reach the Docket Management Facility by that date.

ADDRESSES: You may submit comments identified by docket number USCG–2006–24163 using any of the following methods:

(1) *Federal eRulemaking Portal: http://www.regulations.gov.*

(2) *Fax:* 202–493–2251.

(3) *Mail:* Docket Management Facility (M–30), U.S. Department of Transportation, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590–0001.

(4) *Hand delivery:* Same as mail address above, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The telephone number is 202–366–9329.

To avoid duplication, please use only one of these four methods. *See* the "Public Participation and Request for Comments" portion of the **SUPPLEMENTARY INFORMATION** section below for instructions on submitting comments.

FOR FURTHER INFORMATION CONTACT: If you have questions on this notice, call or e-mail LCDR Jeff Bray, Office of Environmental and Real Property Law, Coast Guard; telephone 202–372–3752, e-mail *JEFF.R.BRAY@USCG.MIL.* If you have questions on viewing or submitting material to the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone 202–366–9826.

SUPPLEMENTARY INFORMATION:

Public Participation and Request for Comments

We encourage you to submit comments and related material on the FEIS. All comments received will be posted, without change, to *http://www.regulations.gov* and will include any personal information you have provided.

Submitting comments: If you submit a comment, please include the docket number for this notice (USCG–2006–24163) and provide a reason for each suggestion or recommendation. You may submit your comments and material online, or by fax, mail or hand delivery, but please use only one of these means. We recommend that you include your name and a mailing address, an e-mail address, or a telephone number in the body of your document so that we can contact you if we have questions regarding your submission.

To submit your comment online, go to *http://www.regulations.gov,* click on the "submit a comment" box, which will then become highlighted in blue. In the "Document Type" drop down menu select "Notices" and insert "USCG–2006–24163" in the "Keyword" box. Click "Search" then click on the balloon shape in the "Actions" column. If you submit your comments by mail or hand delivery, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. If you submit them by mail and would like to know that they reached the Facility, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and material received during the comment period.

Viewing the comments, Draft Environmental Impact Statement (DEIS), FEIS, and associated documents: To view the comments, FEIS, DEIS, and other documents, go to *http://www.regulations.gov,* click on the "read comments" box, which will then become highlighted in blue. In the "Keyword" box, insert "USCG–2006–24163" and click "Search." Click the "Open Docket Folder" in the "Actions" column. If you do not have access to the Internet, you may view the docket online by visiting the Docket Management Facility in Room W12–140 on the ground floor of the Department of Transportation West Building, 1200 New Jersey Avenue SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. We have an agreement with the Department of Transportation to use the Docket Management Facility. In addition, the Coast Guard has posted the FEIS at the following Web site: *http://pacareaeis.uscg.e2m-inc.com.*

Privacy Act: Anyone can search the electronic form of comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, *etc.*). You may review a Privacy Act, system of records notice regarding our public dockets in the January 17, 2008, issue of the **Federal Register** (73 FR 3316).

Background and Purpose

Final Environmental Impact Statement

We have prepared an FEIS to implement enhanced protective measures, as necessary, for MPS and MPAs that occur in the Eleventh Coast Guard District (California) (D11) and Thirteenth Coast Guard District (Washington and Oregon) (D13) AORs. The FEIS analyzes the potential environmental impacts of specific Coast Guard vessel and aircraft operations on MPS and MPAs when engaged in law enforcement, national security, SAR, ATON, and oil pollution and vessel grounding response.

The Coast Guard published a notice of intent to prepare an EIS in the **Federal**

Register (71 FR 14233, Mar. 21, 2006). The Cost Guard provided a 45-day public review period for the DEIS. The public review period was initiated through publication of a Notice of Availability in the **Federal Register** (73 FR 77043, Dec. 18, 2008).

Alternatives Analyzed

The FEIS evaluates a variety of actions, listed below as Alternatives 1 through 6, to determine whether modification or supplementation of current procedures is required to accomplish the wide variety of Coast Guard missions in a manner that lessens the probability of adverse impacts on MPS and MPAs. Alternative 1, the No Action Alternative, documents baseline strategies the Coast Guard currently employs to protect marine resources in the D11 and D13 AOR. Alternatives 2 through 5 present discrete actions and are evaluated individually to determine whether their implementation is reasonable and would serve the purpose and need of minimizing and avoiding negative impacts on MPS and MPAs. Alternatives 2 through 5 are designed to augment or otherwise amend all those actions described in the No Action Alternative. Alternative 6, the Coast Guard's Preferred Alternative, represents a combination of select components of Alternatives 1 through 5.

Alternative 1—No Action Alternative: Under the No Action Alternative, the Coast Guard would continue current operations, without augmentation or modification. Existing strategic plans, directives, guidance, and permits would continue to guide Coast Guard vessel and aircraft operations in a manner intended to minimize, to the maximum extent possible, adverse impacts on MPS and MPAs. The level of protected living marine resources (LMR) efforts would continue to be balanced with other Coast Guard missions and requirements, and would remain constantly in flux due to other mission responsibilities and requisite operational tempo. The analysis of the No Action Alternative takes into account the increased number of vessels and aircraft operating in the D11 and D13 AORs since September 11, 2001, and the associated expansion of asset mission duties and responsibilities.

Alternative 2—Enhanced Operational Procedures: Implement Improved Local Operating Procedures; Revise Coast Guard Speed and Approach Guidance; and Enhance Law Enforcement Operations to include "pulse operations": This alternative would amend, append, eliminate portions of, or wholly incorporate the No Action Alternative and would build upon the existing Protected Living Marine Resources Program (PLMRP) at each district by formalizing localized operational mitigation procedures and protection efforts, strengthening and expanding Coast Guard speed and approach guidance, and better unifying interdistrict and intradistrict law enforcement strategies, including engaging in "pulse operations."

Alternative 3—Enhanced Training Program: Enhance Marine Protected Species and Marine Protected Area Awareness Training for Coast Guard Personnel: This alternative would amend, append, eliminate portions of, or wholly incorporate the No Action Alternative and would build upon the existing PLMRP at each district by requiring the Coast Guard to review and, if necessary, implement enhanced training for Officer of the Deck, coxswain, vessel lookouts, and air station personnel.

Alternative 4—Reporting Program: Implement a Web-based Whale Reporting Program: This alternative would amend, append, eliminate portions of, or wholly incorporate the No Action Alternative and would build upon the existing PLMRP at each district by implementing a Whale Reporting Program for D11 and D13 surface and aviation units. This reporting program would establish real-time, Web-based whale reporting protocols within the Region of Influence. This program would be maintained centrally by Pacific Area (PACAREA) personnel and would collect vital information on real-time locations of live, dead, injured, or entangled whales. The Web site would allow for regional sorting so that units could prepare for a patrol by logging on to the Web site and receiving vital real-time sighting information for the area they would be transiting or patrolling. Implementation of this Alternative would allow deploying Coast Guard assets to have heightened situational awareness of the possible presence of marine species along their intended transit path and patrol area, and would allow units to alter operations accordingly.

Alternative 5—Enhanced Partnership Program: Strengthen Partnerships to Facilitate Marine Protected Species and Marine Protected Area Public Outreach Programs: This alternative would amend, append, eliminate portions of, or wholly incorporate the No Action Alternative and would build upon the existing PLMRP at each district by strengthening joint partnerships and efforts to support the conservation and recovery of MPS and MPAs.

Alternative 6—Environmentally Preferred Alternative: Combination Enhancements: Under the Preferred Alternative, the Coast Guard would further minimize or avoid impacts on MPS and MPAs by strengthening its current operations (No Action Alternative) by incorporating some of the various components described in Alternatives 1, 2, 3, and 5 that could be implemented reasonably and would likely provide some enhancement to marine resource protection. Specifically, this would entail:

1. Implement Improved Local Operating Procedures, Revised Guidance, and Enhanced Law Enforcement Operations

- Annually review and update formal PLMRPs for the districts.
- Require all Sectors, Air Stations, and major Cutters to designate a MPS Point of Contact.
- Update and amend speed and approach guidance to include both vessels and aircraft and continue to update regularly.
- Have each district plan, execute, and document one collaborative MPS-driven pulse operation per year, thereby utilizing resources and the subject matter expertise of our partners.
- Expand an existing program in which National Marine Fisheries Service (NMFS) representatives periodically accompany Coast Guard personnel on LMR missions.

2. Enhance In-House Marine Protected Species and Marine Protected Area Training

- Enhance regional lookout, coxswain, and deck watch officer skills by providing D11 and D13 units a standardized regionally focused MPS awareness training module. Module will include methods for detecting, identifying, and avoiding MPS and ensuring adequate awareness of and responsiveness to the enforcement needs of MPAs.

3. Enhance Partnerships To Facilitate Marine Protected Species and Marine Protected Area Outreach and Conservation

- Require each district to participate in one collaborative MPS public outreach campaign per year.
- Broadcast Notices to Mariners advising caution in known areas of high MPS concentration in bays.
- Include National Oceanic and Atmospheric Administration, the National Marine Sanctuary Program, and the United States Fish and Wildlife Service educational resources on PACAREA's Internet site.

• Utilize the Coast Guard Auxiliary and Sea Partners Program as main vehicles for public outreach. Provide educational materials to the Coast Guard Auxiliary and Sea Partners programs for public distribution.

This notice is issued under authority of 5 U.S.C. 552(a).

Dated: April 10, 2010.

Jody A. Breckenridge,

Vice Admiral, United Stated Coast Guard, Pacific Area Commander.

[FR Doc. 2010–10092 Filed 4–29–10; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5375–N–16]

Federal Property Suitable as Facilities To Assist the Homeless

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Notice.

SUMMARY: This Notice identifies unutilized, underutilized, excess, and surplus Federal property reviewed by HUD for suitability for possible use to assist the homeless.

FOR FURTHER INFORMATION CONTACT: Kathy Ezzell, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 7266, Washington, DC 20410; telephone (202) 708–1234; TTY number for the hearing- and speech-impaired (202) 708–2565 (these telephone numbers are not toll-free), or call the toll-free Title V information line at 800–927–7588.

SUPPLEMENTARY INFORMATION: In accordance with 24 CFR part 581 and section 501 of the Stewart B. McKinney Homeless Assistance Act (42 U.S.C. 11411), as amended, HUD is publishing this Notice to identify Federal buildings and other real property that HUD has reviewed for suitability for use to assist the homeless. The properties were reviewed using information provided to HUD by Federal landholding agencies regarding unutilized and underutilized buildings and real property controlled by such agencies or by GSA regarding its inventory of excess or surplus Federal property. This Notice is also published in order to comply with the December 12, 1988 Court Order in *National Coalition for the Homeless* v. *Veterans Administration,* No. 88–2503–OG (D.D.C.).

Properties reviewed are listed in this Notice according to the following categories: Suitable/available, suitable/unavailable, suitable/to be excess, and unsuitable. The properties listed in the three suitable categories have been reviewed by the landholding agencies, and each agency has transmitted to HUD: (1) Its intention to make the property available for use to assist the homeless, (2) its intention to declare the property excess to the agency's needs, or (3) a statement of the reasons that the property cannot be declared excess or made available for use as facilities to assist the homeless.

Properties listed as suitable/available will be available exclusively for homeless use for a period of 60 days from the date of this Notice. Where property is described as for "off-site use only" recipients of the property will be required to relocate the building to their own site at their own expense. Homeless assistance providers interested in any such property should send a written expression of interest to HHS, addressed to Theresa Rita, Division of Property Management, Program Support Center, HHS, room 5B–17, 5600 Fishers Lane, Rockville, MD 20857; (301) 443–2265. (This is not a toll-free number.) HHS will mail to the interested provider an application packet, which will include instructions for completing the application. In order to maximize the opportunity to utilize a suitable property, providers should submit their written expressions of interest as soon as possible. For complete details concerning the processing of applications, the reader is encouraged to refer to the interim rule governing this program, 24 CFR part 581.

For properties listed as suitable/to be excess, that property may, if subsequently accepted as excess by GSA, be made available for use by the homeless in accordance with applicable law, subject to screening for other Federal use. At the appropriate time, HUD will publish the property in a Notice showing it as either suitable/available or suitable/unavailable.

For properties listed as suitable/unavailable, the landholding agency has decided that the property cannot be declared excess or made available for use to assist the homeless, and the property will not be available.

Properties listed as unsuitable will not be made available for any other purpose for 20 days from the date of this Notice. Homeless assistance providers interested in a review by HUD of the determination of unsuitability should call the toll free information line at 1–800–927–7588 for detailed instructions or write a letter to Mark Johnston at the address listed at the beginning of this Notice. Included in the request for review should be the property address (including zip code), the date of publication in the **Federal Register**, the landholding agency, and the property number.

For more information regarding particular properties identified in this Notice (*i.e.,* acreage, floor plan, existing sanitary facilities, exact street address), providers should contact the appropriate landholding agencies at the following addresses: *Energy:* Mr. Mark Price, Department of Energy, Office of Engineering & Construction Management, MA–50, 1000 Independence Ave., SW., Washington, DC 20585: (202) 586–5422; *Interior:* Mr. Michael Wright, Acquisition & Property Management, Department of the Interior, 1849 C Street, NW., MS2603, Washington, DC 20240; (202) 208–5399; *Navy:* Mr. Albert Johnson, Department of the Navy, Asset Management Division, Naval Facilities Engineering Command, Washington Navy Yard, 1330 Patterson Ave., SW., Suite 1000, Washington, DC 20374; (202) 685–9305; (These are not toll-free numbers).

Dated: April 22, 2010.

Mark R. Johnston,

Deputy Assistant Secretary for Special Needs.

Title V, Federal Surplus Property Program Federal Register Report for 04/30/2010

Unsuitable Properties Building

California

APN–#109–20–45
1390 Limantour Dr.
Point Reyes Station CA 94956
Landholding Agency: Interior
Property Number: 61201020001
Status: Unutilized
Reasons: Extensive deterioration

Maryland

Bldgs. 439, 440/3.28 acres
Naval Air Station
Patuxent River MD
Landholding Agency: Navy
Property Number: 77201020001
Status: Underutilized
Reasons: Secured Area

8 Bldgs.
Naval Support Activity
Indian Head MD 20640
Landholding Agency: Navy
Property Number: 77201020002
Status: Underutilized
Directions: Bldgs. Nos. 290, 525, 554, 624, 625, 1858, 1894, and 3035
Reasons: Secured Area

Structure 511
Naval Air Station
Patuxent River MD 20670
Landholding Agency: Navy
Property Number: 77201020004
Status: Excess
Reasons: Secured Area

Nevada

Approx 200 Misc Blgs/Structure
Tonopah Test Range

Tonopah NV 89049
Landholding Agency: Energy
Property Number: 41201020001
Status: Excess
Directions: Nellis AFB
Reasons: Extensive deterioration

New Jersey

3 Tracts
Delaware Water Nat'l Rec. Area
Montague Co: Sussex NJ 07827
Landholding Agency: Interior
Property Number: 61201020002
Status: Unutilized
Directions: Nos. 10839–5, 11233, and 11400
Reasons: Extensive deterioration

8 Tracts
Delaware Water Gap Nat'l Rec. Area
Walpack NJ 07881
Landholding Agency: Interior
Property Number: 61201020003
Status: Unutilized
Directions: Nos. 7055–1, 7107–1, 7613, 7820–2, 8201, 8215–1, and 8215–2
Reasons: Extensive deterioration

Tract 603–1
Delaware Water Gap Nat'l Rec. Area
Pahaquarry Co: Warren NJ 07825
Landholding Agency: Interior
Property Number: 61201020004
Status: Unutilized
Reasons: Extensive deterioration

Tract 10208
Delaware Water Gap Nat'l Rec. Area
Sandyston Co: Sussex NJ 07826
Landholding Agency: Interior
Property Number: 61201020005
Status: Unutilized
Reasons: Extensive deterioration

Oregon

Painted Hills Quarter
37375 Bear Creek Rd.
Mitchell Co: Wheeler OR 97750
Landholding Agency: Interior
Property Number: 61201020006
Status: Unutilized
Reasons: Extensive deterioration

Pennsylvania

9 Tracts
Delaware Water Gap Nat'l Rec. Area
Dingmans Ferry Co: Pike PA 18328
Landholding Agency: Interior
Property Number: 61201020007
Status: Unutilized
Directions: Nos. 1077, 8548, 8548-#51, 10139, 10552, 10964, 11329, 11904, and 12104
Reasons: Extensive deterioration

3 Bldgs.
Delaware Water Gap Nat'l Rec. Area
Middle Smithfield Co: Monroe PA 18301
Landholding Agency: Interior
Property Number: 61201020008
Status: Unutilized
Directions: Bldg Nos. 919, 1359, and 1522
Reasons: Extensive deterioration

Tract 7300
Delaware Water Gap Nat'l Rec. Area
Bushkill Co: Pike PA 18324
Landholding Agency: Interior
Property Number: 61201020009
Status: Unutilized
Reasons: Floodway and Extensive deterioration

3 Tracts
Delaware Water Gap Nat'l Rec. Area
Milford Co: Pike PA 18337
Landholding Agency: Interior
Property Number: 61201020010
Status: Unutilized
Directions: Nos. 12415, 12424, and 12848
Reasons: Floodway and Extensive deterioration

Virginia

Bldg. SDA–215
Naval Support Activity
Norfolk VA 23551
Landholding Agency: Navy
Property Number: 77201020006
Status: Excess
Reasons: Secured Area and Extensive deterioration

Washington

Watermaster's Office
205 N. Washington Way
George Co: Grant WA 98848
Landholding Agency: Interior
Property Number: 61201020011
Status: Unutilized
Reasons: Extensive deterioration

4 Bldgs.
Naval Base
Kitsap WA
Landholding Agency: Navy
Property Number: 77201020005
Status: Unutilized
Directions: Bldg. Nos. 499, 806, 929, and 5436
Reasons: Secured Area

Land

Maryland

Site A: 6.2 acres
Naval Support Activity
Indian Head MD 20640
Landholding Agency: Navy
Property Number: 77201020003
Status: Underutilized
Reasons: Secured Area

[FR Doc. 2010–9766 Filed 4–29–10; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS–R4–R–2009–N284; 40136–1265–0000–S3]

Lake Wales Ridge National Wildlife Refuge, Highlands and Polk Counties, FL

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of availability: Draft comprehensive conservation plan and environmental assessment; request for comments.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), announce the availability of a draft comprehensive conservation plan and environmental assessment (Draft CCP/EA) for Lake Wales Ridge National Wildlife Refuge (NWR) for public review and comment. In this Draft CCP/EA, we describe the alternative we propose to use to manage this refuge for the 15 years following approval of the final CCP.

DATES: To ensure consideration, we must receive your written comments by June 1, 2010.

ADDRESSES: You may obtain a copy of the Draft CCP/EA by writing to: Mr. Bill Miller, Lake Wales Ridge NWR, Pelican Island National Wildlife Refuge Complex, 1339 20th Street, Vero Beach, FL 32960; telephone: 561/715–0023. You may also access and download the document from the Service's Web site at *http://southeast.fws.gov/planning* under "Draft Documents."

FOR FURTHER INFORMATION CONTACT: Mr. Bill Miller, Lake Wales Ridge NWR, Pelican Island National Wildlife Refuge Complex; telephone: 561/715–0023.

SUPPLEMENTARY INFORMATION:

Introduction

With this notice, we continue the CCP process for Lake Wales Ridge NWR. We started the process through a notice in the **Federal Register** on June 20, 2008 (73 FR 35149). For more about the refuge and our CCP process, please see that notice.

Lake Wales Ridge NWR is a unit of the Merritt Island National Wildlife Refuge Complex (NWR Complex) and is administered by and co-managed with Pelican Island and Archie Carr National Wildlife Refuges, colloquially termed the Pelican Island National Wildlife Refuge Complex (NWR Complex).

Background

The CCP Process

The National Wildlife Refuge System Administration Act of 1966 (16 U.S.C. 668dd–668ee), as amended by the National Wildlife Refuge System Improvement Act of 1997, requires us to develop a CCP for each national wildlife refuge. The purpose for developing a CCP is to provide refuge managers with a 15-year strategy for achieving refuge purposes and contributing toward the mission of the National Wildlife Refuge System, consistent with sound principles of fish and wildlife management, conservation, legal mandates, and our policies. In addition to outlining broad management direction on conserving wildlife and their habitats, CCPs identify wildlife-dependent recreational opportunities available to the public, including opportunities for hunting, fishing, wildlife observation, wildlife photography, and environmental education and interpretation. We will review and update the CCP at least

every 15 years in accordance with the Administration Act.

CCP Alternatives, Including Our Proposed Alternative

We developed three alternatives for managing the refuge and chose "Alternative B" as the proposed alternative. A full description of each alternative is in the Draft CCP/EA. We summarize each alternative below.

Alternative A—Current Management (No Action)

Alternative A would continue present management activities and programs. Management emphasis would continue to focus on maintaining existing habitats for rare, threatened, and endangered species through partnerships and management agreements. Primary management activities would continue to include providing infrequent and limited habitat management through: (1) Application of prescribed fire (Merritt Island NWR Complex provides fire program staff); (2) rare, threatened, and endangered species monitoring, utilizing partnerships; (3) litter and debris control; and (4) exotic, invasive, and nuisance species' control. Alternative A represents the anticipated conditions of the refuge for the next 15 years, assuming current funding, staffing, policies, programs, and activities continue.

This alternative would reflect actions that include managing habitats for rare, threatened, and endangered species. Both Federal- and State-listed species are found on the refuge. Habitat management actions are intended to benefit rare, threatened, and endangered species, but there is limited active management of other species and habitats due to the current level of resources. As a result, the refuge would continue to rely almost entirely on the actions and assistance of partners and volunteers who conduct a wide array of resource management activities, including monitoring of key refuge resources.

Management coordination would occur primarily between the refuge and the Lake Wales Ridge Ecosystem Working Group (LWREWG)—a consortium of Federal, State, local, and non-governmental land management organizations. The LWREWG shares natural area management information in an effort to increase the understanding and awareness of the Lake Wales Ridge ecosystem.

Land acquisition would continue based on the availability of willing sellers within the refuge's approved acquisition boundary, and where opportunities arise, through the LWREWG, or other initiatives on a case-by-case basis. Since the refuge is neither staffed nor funded, management agreements with partner agencies/organizations would be a primary focus.

The refuge would remain closed, and access for management purposes would be conducted solely through the refuge's special use permit process. On a case-by-case basis, extremely limited access for environmental education and interpretation opportunities might occur. The refuge would actively support key Lake Wales Ridge ecosystem partner-managed lands that are open to public use by identifying and updating links to partner Web sites on the refuge's official Web site.

The refuge would remain unstaffed and administered through the Pelican Island NWR Complex. Volunteer activities would continue to be supported through the Merritt Island Wildlife Association and the Pelican Island NWR Complex staff. Partnerships through the LWREWG and the Service's North and South Florida Ecological Services field offices would continue. The refuge would continue to opportunistically seek funding for habitat management, monitoring, and other program areas through alternative sources.

Alternative B—Rare, Threatened, and Endangered Species (Proposed Action)

This alternative expands the actions under Alternative A with a greater amount of habitat management focusing primarily on restoring and enhancing habitats to benefit the needs of rare, threatened, and endangered species. A total of 17 plants and 6 animals are federally listed species on the 1,842-acre refuge; 1 federal candidate species is known to occur on the refuge. Some of these species are protected nowhere else but on refuge lands. In addition, this endemic-rich refuge is home to at least 33 State-listed species, including 5 plant and 6 animal species that are not listed federally.

One key to this alternative is a focused effort to expand management activities through the implementation of a frequent, routine prescribed fire program to restore pyrogenic habitats to pre-fire exclusion conditions. This focused approach would provide for the restoration of a mosaic of suitable habitats, including xeric scrub lands, sandhills, open sand patches, and ephemeral wetlands necessary to maintain and expand populations of the refuge's rare, threatened, and endangered species. This restorative process may exceed the 15-year life of the CCP for some habitats. Once pre-fire exclusion conditions are attained, fire return intervals would be adapted based on rare, threatened, and endangered species and habitat responses provided through fire effects monitoring. As habitats are restored, the refuge would investigate potential expansion of rare, threatened, or endangered species introduction/reintroduction projects, coordinating and collaborating with partners through the LWREWG to identify best management opportunities.

This alternative would expand the monitoring efforts under Alternative A to provide additional active efforts to monitor rare, threatened, and endangered species. Monitoring efforts would be increased by the assistance of additional staff and trained volunteers, and through academic research. Greater effort would be made to recruit academic researchers to study and monitor rare, threatened, and endangered species. Under this alternative, we would increase efforts to control invasive and nuisance species; increase coordination with researchers and partners to investigate rare, threatened, and endangered species' response to changing patterns of suitable habitats; and assume a leadership role in identifying the impacts of climate change on rare, threatened, and endangered species.

This alternative would continue pursuing completion of the acquisition boundary, based on the availability of willing sellers, and prioritizing acquisition efforts on unprotected, undeveloped inholdings where threats of habitat loss and constraints to habitat management are greatest. We would evaluate a variety of land protection and conservation measures, including land swaps, to protect high-quality properties.

Expanding public awareness and support for the refuge and partner-managed lands of the Lake Wales Ridge ecosystem would be an important component of this alternative. Even though the refuge would remain closed to visitor use, we would implement a range of visitor service opportunities (*e.g.,* environmental education and interpretation, and wildlife observation and photography), which would be controlled through an approval process. We would implement guided tours provided by Service staff or Service partners on a case-by-case basis and permitted through our special use permit process. In addition, we would develop and conduct an annual refuge day where guided tours, information, and refuge awareness through community outreach would be provided. Updated messages on both the refuge's Web site and brochure would be provided, focusing on the needs of

rare, threatened, and endangered species. Further, we would work with partners to incorporate these messages in information distributed by them.

We would increase involvement with governmental and non-governmental partners through the LWREWG and would be positioned to increase Service presence with other partner organizations when opportunities arise. Coordination with both the North and South Florida Ecological Services field offices for funding and recovery direction would be expanded to optimize listed species management. Opportunities to build additional support through the Merritt Island Wildlife Association, Pelican Island Preservation Society, and Friends of the Carr Refuge would increase.

The refuge would gain staff to fulfill the goals, objectives, and strategies identified in the CCP, and staff would be situated to manage all day-to-day operations. The Lake Wales Ridge NWR is presently administered remotely and has no dedicated staff or budget. The refuge is approximately 130 miles from fire management support (Merritt Island NWR Complex) and approximately 100 miles from its Pelican Island NWR Complex management team. This situation considerably challenges all day-to-day operations and management necessary to provide for the needs of rare, threatened, and endangered species and the habitats they occupy.

This alternative would propose a 5-member staff, including a wildlife refuge specialist (assistant refuge manager), a private lands biologist, a botanist/biologist, a biological science technician, and a fire/forestry technician to manage refuge programs and provide a Service presence currently lacking in the Lake Wales Ridge system of naturally managed lands. The proposed staff would be in close proximity to refuge lands in order to manage day-to-day operations. To support operations and maintenance, we would enter into memoranda of understanding or other agreements with partners and/or secure independent spaces for equipment storage, operational functions, and administrative needs. This alternative would bolster management by investigating opportunities to enter into management agreements and other options with partner land management agencies and organizations, enabling partner management of Service properties in accordance with the CCP, subsequent step-down plans, and Service policies. We would continue to share facilities, equipment, utilities, and staff with Pelican Island and Archie Carr National Wildlife Refuges. The Merritt Island NWR Complex would continue to provide fire program staff.

Alternative C—Wildlife and Habitat Diversity

This alternative would serve the needs of key rare, threatened, and endangered species on the refuge, but within the larger context of wildlife and habitat diversity. Under this alternative, focused efforts utilizing prescribed fire to restore habitats to pre-fire exclusion conditions would be proposed, targeting the needs of a wide array of native wildlife and habitats to benefit the larger Lake Wales Ridge and central Florida landscape. We would continue to support recovery efforts of key listed species and expand efforts to provide opportunities targeting the needs of neotropical migratory birds, resident birds, wading and water birds, shorebirds, raptors, cavity-dependent species, and other resident species. Habitats where pines dominate the overstory would be managed to provide more pine stems per acre to promote habitat for cavity-dependent birds. Understory, shrub, and canopy vegetation would be managed to provide for a diversity of wildlife, and snag development would be encouraged to provide cavities and perch sites and to promote insect development. Where appropriate, burn frequencies would be reduced to provide for the production of saw palmetto for use as forage by wildlife, including the Florida black bear. We would investigate management opportunities with the Atlantic Coast Joint Venture and would support management of migratory birds. Through partnerships, we would conduct wading and water bird surveys to better understand our management role at the landscape level. Management to protect important habitat and wildlife corridors would increase under this alternative and invasive and nuisance species control efforts would expand.

This alternative would expand the monitoring efforts under Alternative A. Monitoring of neotropical migratory and resident birds in addition to other resident species would occur. Monitoring efforts would be increased by the assistance of additional staff and trained volunteers, and through academic research. We would take a leadership role in identifying the impacts of climate change on refuge resources, coordinating with researchers and partners to investigate species response to changing patterns of suitable habitats.

Under this alternative, the refuge would remain closed to visitor use except for limited and guided environmental education and interpretation and wildlife observation and photography opportunities by Service staff or volunteers and partners. Education, interpretation, and outreach messages would focus on the importance of the refuge in the landscape, and would include listed species as key topics. Further, we would work with the partners to incorporate applicable messages into their visitor activities and signage. We would develop and conduct an annual refuge day to promote refuge awareness. This alternative would seek to expand partnerships and would work with the partners, including the LWREWG environmental education subcommittee, to expand environmental education and interpretation opportunities on refuge lands.

As under Alternative B, we would gain staff to be located locally to manage all day-to-day operations of the refuge. This alternative would propose a 4-member staff, including a wildlife refuge specialist (assistant refuge manager), a private lands biologist, a botanist/biologist, and a fire/forestry technician. To support operations and maintenance, we would enter into memoranda of understanding or other agreements with the partners and/or secure independent spaces for equipment storage, operational functions, and refuge administrative needs. This alternative also would bolster management by investigating opportunities to enter into management agreements and other options with partner land management agencies and organizations, enabling partner management of Service properties in accordance with the CCP, subsequent step-down plans, and Service policies. We would continue to share facilities, equipment, utilities, and staff with Pelican Island and Archie Carr National Wildlife Refuges. The Merritt Island NWR Complex would continue to provide fire program staff.

Next Step

After the comment period ends, we will analyze the comments and address them.

Public Availability of Comments

Before including your address, phone number, e-mail address, or other personal identifying information in your comment, you should be aware that your entire comment, including your personal identifying information, may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Authority

This notice is published under the authority of the National Wildlife Refuge System Improvement Act of 1997, Public Law 105–57.

Dated: February 18, 2010.

Jon Andrew,

Acting Regional Director.

[FR Doc. 2010–10117 Filed 4–29–10; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS–R8–ES–2010–N087; 1112–0000–81440–F2]

Endangered and Threatened Wildlife and Plants; Permits, Santa Cruz County, CA

AGENCY: U.S. Fish and Wildlife Service, Interior.

ACTION: Notice of availability.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), have received applications from William Menchine and Alicia Stanton and the San Lorenzo Valley Water District (applicants) for incidental take permits under the Endangered Species Act of 1973, as amended (Act). We are considering issuing permits that would authorize the applicants' take of the Federally endangered Mount Hermon June beetle (*Polyphylla barbata*) incidental to otherwise lawful activities that would result in the permanent loss of 0.05 acre (2,182 square feet (sq ft)) of Mount Hermon June beetle habitat near Santa Cruz, Santa Cruz County, California. We invite comments from the public on the applications, which include Habitat Conservation Plans (HCPs) that fully describe the proposed projects and measures the applicants would undertake to minimize and mitigate anticipated take of the species. We also invite comments on our preliminary determination that the HCPs qualify as "low-effect" plans, eligible for categorical exclusions under the National Environmental Policy Act (NEPA) of 1969, as amended. We explain the basis for this determination in our draft Environmental Action Statements and associated Low-Effect Screening Forms, both of which are also available for review.

DATES: To ensure consideration, please send your written comments by June 1, 2010.

ADDRESSES: You may download a copy of the permit applications, plans, and related documents on the Internet at *http://www.fws.gov/ventura/,* or you may request documents by U.S. mail or phone (*see* below). Please address written comments to Diane K. Noda, Field Supervisor, Ventura Fish and Wildlife Office, U.S. Fish and Wildlife Service, 2493 Portola Road, Suite B, Ventura, CA 93003. You may alternatively send comments by facsimile to (805) 644–3958.

FOR FURTHER INFORMATION CONTACT: Jen Lechuga, HCP Coordinator, at the Ventura address above, or by telephone at (805) 644–1766, extension 224.

SUPPLEMENTARY INFORMATION:

Background

The Mount Hermon June beetle was listed as endangered on January 24, 1997 (62 FR 3616). Section 9 of the Act (16 U.S.C. 1531 *et seq.*) and our implementing Federal regulations in the Code of Federal Regulations (CFR) at 50 CFR part 17 prohibit the "take" of fish or wildlife species listed as endangered or threatened. Take of listed fish or wildlife is defined under the Act as "to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or to attempt to engage in any such conduct" (16 U.S.C. 1532). However, under limited circumstances, we issue permits to authorize incidental take (*i.e.,* take that is incidental to, and not the purpose of, the carrying out of an otherwise lawful activity). Regulations governing incidental take permits for threatened and endangered species are at 50 CFR 17.32 and 17.22, respectively. The Act's take prohibitions do not apply to Federally listed plants on private lands unless such take would violate State law. In addition to meeting other criteria, an incidental take permit's proposed actions must not jeopardize the existence of Federally listed fish, wildlife, or plants.

Reconstruction of the home's failing foundation and construction of a retaining wall for the Menchine HCP would take place within a 0.44-acre parcel (APN 060–361–03) located at 6 Lyle Way near the city of Santa Cruz, Santa Cruz County, California. The parcel contains Zayante sand soils and vegetation consisting primarily of landscaping. The parcel is presumed to be occupied by the Mount Hermon June beetle, as the species is known to occur approximately 650 feet to the north of the property. Implementation of the project would result in impacts to a total of 0.05 acre (1,993 sq ft) of habitat for the Mount Hermon June beetle. Impacts would result in the permanent loss of 0.04 acre (1,543 sq ft) and the temporary loss of 0.01 acre (450 sq ft) of Mount Hermon June beetle habitat. The Menchines propose to implement the following measures to minimize and mitigate for the loss of Mount Hermon June beetle habitat within the permit area: (1) Applicants will purchase 0.05 acre (1,993 sq ft) of conservation credits at the Ben Lomond Sandhills Preserve of the Zayante Sandhills Conservation Bank, operated by PCO, LLC; (2) a qualified biologist will oversee construction and provide worker training on the Mount Hermon June beetle and requirements of the HCP; (3) temporary fencing will be installed to demarcate the impact area from the remainder of the property; (4) any life stages of the Mount Hermon June beetle will be captured and relocated if one is observed in an area that would be impacted; (5) dust control measures will be implemented to reduce impacts to the Mount Hermon June beetle and its habitat; (6) the 0.01-acre (450-sq-ft) area of temporary habitat disturbance will be revegetated with native Sandhills plant species; and (7) all exposed soils will be covered with impermeable material if construction occurs during the species' flight season.

The Menchine HCP considers three alternatives to the taking of Mount Hermon June beetle. The No Action alternative would maintain current conditions, the project would not be implemented, and an incidental take permit application would not be submitted to the Service. The second alternative would involve a redesign of the project. The project would be reduced in scale under this alternative; however, is not practical, as the home's foundation requires repair, and a retaining wall is necessary for slope stabilization. The third alternative is the proposed action, which includes issuing an incidental take permit to the applicants, who would then implement the HCP.

Construction of a pump house and pipeline for the Mañana Woods HCP would take place primarily at 140 Elena Court (APN 067–081–55), a 10.6-acre parcel, with a small portion crossing through 324 Blueberry Drive (APN 067–081–41), a 1.8-acre parcel. Both parcels are located just southwest of the City of Scotts Valley, Santa Cruz County, California. The applicant has received authorization from the two landowners to implement the project on private land. Both parcels contain Zayante sand soils with vegetation consisting of native and nonnative plant species and mixed evergreen forest. The parcels are presumed to be occupied by the Mount Hermon June beetle, as the species is known to occur at several locations within 0.75 mile of the project area.

The Mañana Woods project would result in impacts to a total of 0.05 acre

(1,942 sq ft) of habitat for the Mount Hermon June beetle. Impacts would result in the permanent loss of 0.02 acre (639 sq ft), and the temporary loss of 0.03 acre (1,303 sq ft) of habitat for the species. The applicant proposes to implement the following measures to minimize and mitigate for the loss of Mount Hermon June beetle habitat within the permit area: (1) Applicant will purchase 0.05 acre (1,942 sq ft) of conservation credits at the Ben Lomond Sandhills Preserve of the Zayante Sandhills Conservation Bank, operated by PCO, LLC; (2) a qualified biologist will oversee construction and provide worker training on the Mount Hermon June beetle and requirements of the HCP; (3) any life stages of the Mount Hermon June beetle will be captured and relocated if one is observed in an area that would be impacted; (4) the use of outdoor night lighting will be minimized to avoid disrupting the species' breeding activity; (5) no landscaping will be used in order to avoid adverse effects to the species; and (6) all exposed soil will be covered with impermeable material if construction occurs during the species' flight season.

In the Mañana Woods HCP, three alternatives to the taking of listed species are considered. The No Action alternative would maintain current conditions, the project would not be implemented, and an incidental take permit application would not be submitted to the Service. The second alternative would involve a project redesign that would relocate construction to the mixed evergreen forest habitat on site. This option was rejected because the location was deemed suboptimal, potentially resulting in substandard performance, and the pipeline installation would be significantly greater, resulting in undue financial burden on the applicant. The third alternative is the proposed action, which includes issuing an incidental take permit to the applicant, who would then implement the HCP.

We are requesting comments on our preliminary determination that both applicants' proposals will have a minor or negligible effect on the Mount Hermon June beetle, and that the HCPs both qualify as "low-effect" HCPs as defined by our Habitat Conservation Planning Handbook (November 1996). We base our determination that the plans qualify as low-effect HCPs on the following three criteria: (1) Implementation of the HCPs would result in minor or negligible effects on Federally listed, proposed, and candidate species and their habitats; (2) implementation of the HCPs would result in minor or negligible effects on other environmental values or resources; and (3) impacts of the HCPs, considered together with the impacts of other past, present, and reasonably foreseeable similarly situated projects, would not result, over time, in cumulative effects to the environmental values or resources that would be considered significant. As more fully explained in our Environmental Action Statements and associated Low-Effect Screening Forms, both applicants' proposed HCPs qualify as "low-effect" HCPs for the following reasons:

(1) Approval of the HCPs would result in minor or negligible effects on the Mount Hermon June beetle and its habitat. We do not anticipate significant direct or cumulative effects to the Mount Hermon June beetle resulting from the proposed projects;

(2) Approval of the HCPs would not have adverse effects on unique geographic, historic, or cultural sites, or involve unique or unknown environmental risks;

(3) Approval of the HCPs would not result in any cumulative or growth-inducing impacts and would not result in significant adverse effects on public health or safety;

(4) The projects do not require compliance with Executive Order (E.O.) 11988 (Floodplain Management), Executive Order 11990 (Protection of Wetlands), or the Fish and Wildlife Coordination Act, nor do they threaten to violate a Federal, State, local, or Tribal law or requirement imposed for the protection of the environment; and

(5) Approval of the HCPs would not establish a precedent for future actions or represent a decision in principle about future actions with potentially significant environmental effects.

We, therefore, have made the preliminary determination that approval of the HCPs and incidental take permits qualify as categorical exclusions under the National Environmental Policy Act (NEPA; 42 U.S.C. 4321 *et seq.*), as provided by the Department of the Interior Manual (516 DM 2 Appendix 1 and 516 DM 8). Based on our review of public comments that we receive in response to this notice, we may revise the preliminary determinations.

Next Steps

We will evaluate the HCPs and comments we receive to determine whether the permit applications meet the requirements of section 10(a) of the Act (16 U.S.C. 1531 *et seq.*). If we determine that the applications meet these requirements, we will issue two permits for the incidental take of the Mount Hermon June beetle. We will also evaluate whether issuance of the section 10(a)(1)(B) permits would comply with section 7 of the Act by conducting intra-Service section 7 consultations for each plan. We will use the results of these consultations, in combination with the above findings, in our final analysis to determine whether or not to issue the permits. If the requirements are met, we will issue the permits to the applicants.

Public Comments

If you wish to comment on the permit applications, plans, and associated documents, you may submit comments by any one of the methods in **ADDRESSES**.

Public Availability of Comments

Before including your address, phone number, e-mail address, or other personal identifying information in your comments, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Authority

We provide this notice under section 10 of the Act (16 U.S.C. 1531 *et seq.*) and NEPA regulations (40 CFR 1506.6).

Dated: April 23, 2010.

Diane K. Noda,

Field Supervisor, Ventura Fish and Wildlife Office, Ventura, California.

[FR Doc. 2010–10086 Filed 4–29–10; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLORW00000 L16100000.DO0000; HAG10–0117]

Notice of Intent To Prepare a Resource Management Plan for the Eastern Washington and San Juan Planning Area in the State of Washington and Associated Environmental Impact Statement

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Intent.

SUMMARY: In compliance with the National Environmental Policy Act of 1969, as amended, and the Federal Land Policy and Management Act of 1976, as amended, the Bureau of Land Management (BLM) Spokane District, Spokane Valley, Washington, intends to prepare a Resource Management Plan (RMP) with an associated

Environmental Impact Statement (EIS) for the Eastern Washington and San Juan Planning Area and by this notice is announcing the beginning of the scoping process to solicit public comments and identify issues. The RMP will replace the existing Spokane RMP and expand the planning area to include the San Juan Islands, which do not have an RMP in place.

DATES: This notice initiates the public scoping process for the RMP with associated EIS. Comments on issues may be submitted in writing until June 25, 2010. The date(s) and location(s) of any scoping meetings will be announced at least 15 days in advance through local media and the BLM Web site at: *http://www.blm.gov/or/districts/spokane/plans/ewsjrmp.* In order to be included in the Draft RMP/EIS, all comments must be received prior to the close of the scoping period or 30 days after the last public meeting, whichever is later. We will provide additional opportunities for public participation upon publication of the Draft RMP/EIS.

ADDRESSES: You may submit comments on issues and planning criteria related to the Eastern Washington and San Juan RMP/EIS by any of the following methods:

- *Web site: http://www.blm.gov/or/districts/spokane/plans/ewsjrmp.*
- *E-mail: OR_Spokane_RMP@blm.gov.*
- *Mail:* BLM Spokane District, ATTN: RMP, 1103 N. Fancher Rd., Spokane Valley, WA 99212.

Documents pertinent to this proposal may be examined at the Spokane District Office.

FOR FURTHER INFORMATION CONTACT: For further information and/or to have your name added to our mailing list, contact Scott Pavey; Planning and Environmental Coordinator; telephone (509) 536–1252; address BLM Spokane District, ATTN: RMP, 1103 N. Fancher Rd., Spokane Valley, WA 99212; e-mail *OR_Spokane_RMP@blm.gov.*

SUPPLEMENTARY INFORMATION: This document provides notice that the BLM Spokane District Office, Spokane Valley, Washington, intends to prepare an RMP with an associated EIS for the Eastern Washington and San Juan Planning Area, announces the beginning of the scoping process, and seeks public input on issues and planning criteria. The planning area is located in Adams, Asotin, Benton, Chelan, Columbia, Douglas, Ferry, Franklin, Garfield, Grant, Kittitas, Klickitat, Lincoln, Okanogan, Pend Oreille, San Juan, Skagit, Spokane, Stevens, Walla Walla, Whatcom, Whitman, and Yakima Counties in Washington and encompasses approximately 445,000 acres of public land. The purpose of the public scoping process is to determine relevant issues that will influence the scope of the environmental analysis, including alternatives, and guide the planning process. Preliminary issues for the planning area have been identified by BLM personnel; Federal, State, and local agencies; and other stakeholders. The issues include:

1. How will the shrub-steppe, and its associated riparian and wetland habitats, be managed to maintain, improve, or restore healthy plant and wildlife communities?

2. How should the BLM manage public lands with consideration of uses of adjacent lands, given the mixed ownership pattern in the planning area?

3. How should the BLM manage multiple uses and resources that have changed or that occur on lands that were either not administered by the BLM or were not within the planning area when the current RMP was developed? and

4. How should the BLM facilitate energy development while allowing for multiple uses and appropriate protection of public lands and resources?

Preliminary planning criteria include:

1. The BLM will protect resources in accordance with the Federal Land Policy and Management Act of 1976, as amended (43 U.S.C. 1701 *et seq.*), and other applicable laws and regulations;

2. The BLM will strive to make land use plan decisions compatible with existing plans and policies of adjacent local, State, Federal, and tribal agencies, and consistent with other applicable laws and regulations governing the administration of public land;

3. The plan will recognize valid existing rights within the Planning Area;

4. Land use plan decisions will apply to BLM lands and split-estate minerals administered by the BLM;

5. The BLM will use a collaborative and multi-jurisdictional approach, when practical, to jointly determine the desired future conditions of public lands;

6. The plan will recognize the state's authority to manage wildlife; and

7. The plan will incorporate the BLM Oregon and Washington Rangeland Health Standards and Guidelines.

You may submit comments on issues and planning criteria in writing to the BLM at any public scoping meeting, or you may submit them to the BLM using one of the methods listed in the **ADDRESSES** section above. To be most helpful, you should submit comments within 30 days after the last public meeting. Before including your address, phone number, e-mail address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask the BLM in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so. The minutes and list of attendees for each scoping meeting will be available to the public and open for 30 days after the meeting to any participant who wishes to clarify the views he or she expressed. The BLM will evaluate identified issues to be addressed in the plan and will place them into one of three categories:

1. Issues to be resolved in the plan;

2. Issues to be resolved through policy or administrative action; or

3. Issues beyond the scope of this plan.

The BLM will provide an explanation in the Draft RMP/EIS as to why an issue was placed in category 2 or 3. The public is also encouraged to help identify any management questions and concerns that should be addressed in the plan. The BLM will work collaboratively with interested parties to identify the management decisions that are best suited to local, regional, and national needs and concerns.

The BLM will use an interdisciplinary approach to develop the plan in order to consider the variety of resource issues and concerns identified. Specialists with expertise in the following disciplines will be involved in the planning process: Wildlife, Threatened and Endangered Species, Vegetation and Native Plants, Riparian and Wetlands, Invasive and Noxious Weeds, Rangeland Management, Forest Management, Fire and Fuels Management, Cultural Resources and Native American Concerns, Geology and Minerals, Lands and Realty, Recreation, Visual Resource Management, Wilderness, Wild and Scenic Rivers, sociology, and economics.

Edward W. Shepard,

State Director, Oregon/Washington.

Authority: 40 CFR 1501.7, 43 CFR 1610.2.

[FR Doc. 2010–9991 Filed 4–29–10; 8:45 am]

BILLING CODE 4310–33–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLNVE01000.L19900000.DQ0000; MO:4500011511; 10–08807; TAS:14X1109]

Notice of Availability of the Draft Environmental Impact Statement for the Genesis Project, Eureka County, NV

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of availability.

SUMMARY: In accordance with the National Environmental Policy Act of 1969, as amended, the Bureau of Land Management (BLM) has prepared a Draft Environmental Impact Statement (EIS) for the Genesis Project and by this notice is announcing the opening of the comment period.

DATES: To ensure comments will be considered, the BLM must receive written comments on the Genesis Project Draft EIS within 45 days following the date the Environmental Protection Agency publishes its Notice of Availability in the **Federal Register**. The BLM will announce future meetings or hearings and any other public involvement activities at least 15 days in advance through public notices, media releases, and/or mailings.

ADDRESSES: You may submit comments related to the Genesis Project by any of the following methods:

- *Fax:* (775) 753–0255
- *Mail:* BLM Elko District Office, Attention Kirk Laird, EIS Project Manager, 3900 East Idaho Street, Elko, Nevada 89801
- *E-mail: Kirk_Laird@nv.blm.gov or eiscommentselko@nv.blm.gov.*

Copies of the Genesis Project Draft EIS are available in the BLM Elko District Office at the above address and at the following Web site: *http://www.blm.gov/nv* (click on Elko District link).

FOR FURTHER INFORMATION CONTACT: For further information, contact Kirk Laird, EIS Project Manager, telephone (775) 753–0200; address BLM Elko District Office, 3900 East Idaho Street, Elko, Nevada 89801; or e-mail *Kirk_Laird@nv.blm.gov.*

SUPPLEMENTARY INFORMATION: Newmont Mining Corporation's Genesis-Bluestar mining operations area is located in northeastern Nevada on the Carlin Trend, a 50-mile-long by 10-mile-wide geologic area that has produced more than 60 million ounces of gold from numerous mines over the last 30 years. The proposed action is to expand the Genesis Pit, develop the new Bluestar Ridge Pit, backfill the Beast and the Bluestar pits and partially backfill the Genesis Pit, expand the Section 36 and Section 5 Waste Rock Disposal Facilities, construct the necessary haul roads and access roads, and process 60 million tons of gold-bearing ore. The proposed project would disturb an additional 43 acres (25 acres of public land and 18 acres of private land) and provide for continued mining activities on approximately 1,092 acres of previously-disturbed lands.

The Draft EIS analyzes the potential environmental impacts of the Proposed Action and No Action alternative, and identifies measures to minimize adverse impacts. The BLM reviewed several action alternatives to the Proposed Action, but eliminated them from in-depth analysis in the Draft EIS because they provided no substantive benefits to the environment. Major issues brought forward during the public scoping process and addressed in the Draft EIS include:

(1) The cumulative impacts of mining and related actions on affected resources, for example water quality and quantity and wildlife habitat, in the Carlin Trend;

(2) The release of mercury associated with processing the 60 million tons of ore;

(3) The impacts of 12 additional years of active mining as it relates to continued employment and economic activity for the local area; and

(4) The impacts of a pit lake forming under the No Action alternative, but not in the action alternative.

The Proposed Action includes an Adaptive Management Plan which is analyzed in the Draft EIS and included as an appendix to the Draft EIS. The agency's preferred alternative is the Proposed Action as described above.

A Notice of Intent to Prepare an EIS for the Genesis Project was published in the **Federal Register** on March 18, 2008 [73 FR 14484]. Public participation was solicited through the media, mailings, the BLM Web site, and a public scoping meeting.

Please note that public comments and information submitted including names, street addresses, and e-mail addresses of persons who submit comments, will be available for public review and disclosure at the above address during regular business hours (8 a.m. to 4 p.m.), Monday through Friday, except holidays.

Before including your address, phone number, e-mail address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Kenneth E. Miller,

District Manager, Elko.

Authority: 40 CFR 1506.6 and 1506.10.

[FR Doc. 2010–10011 Filed 4–29–10; 8:45 am]

BILLING CODE 4310–HC–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS–R4–R–2010–N025; 40136–1265–0000–S3]

Cape Romain National Wildlife Refuge, Charleston County, SC

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of availability: Draft comprehensive conservation plan and environmental assessment; request for comments.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), announce the availability of a draft comprehensive conservation plan and environmental assessment (Draft CCP/EA) for Cape Romain National Wildlife Refuge (NWR) for public review and comment. In this Draft CCP/EA, we describe the alternative we propose to use to manage this refuge for the 15 years following approval of the final CCP.

DATES: To ensure consideration, we must receive your written comments by June 1, 2010.

ADDRESSES: Send comments, questions, and requests for information to: Ms. Raye Nilus, Project Leader, Cape Romain NWR, 5801 Highway 17 North, Awendaw, SC 29429; e-mail: *caperomainccp@fws.gov.* The Draft CCP/EA is available on compact disc or in hard copy. You may also access and download a copy of the Draft CCP/EA from the Service's Internet site: *http://southeast.fws.gov/planning/*.

FOR FURTHER INFORMATION CONTACT: Ms. Laura Housh; telephone: 912/496–7366, Extension 244.

SUPPLEMENTARY INFORMATION:

Introduction

With this notice, we continue the CCP process for Cape Romain NWR. We started this process through a notice in the **Federal Register** on January 3, 2007 (72 FR 141).

Background

The CCP Process

The National Wildlife Refuge System Administration Act of 1966 (16 U.S.C. 668dd-668ee), as amended by the National Wildlife Refuge System Improvement Act of 1997, requires us to develop a CCP for each national wildlife refuge. The purpose for developing a CCP is to provide refuge managers with a 15-year strategy for achieving refuge purposes and contributing toward the mission of the National Wildlife Refuge System, consistent with sound principles of fish and wildlife management, conservation, legal mandates, and our policies. In addition to outlining broad management direction on conserving wildlife and their habitats, CCPs identify wildlife-dependent recreational opportunities available to the public, including opportunities for hunting, fishing, wildlife observation, wildlife photography, and environmental education and interpretation. We will review and update the CCP at least every 15 years in accordance with the Administration Act.

CCP Alternatives, Including our Proposed Alternative

We developed three alternatives for managing the refuge and chose Alternative C as the proposed alternative. A full description is in the Draft CCP/EA. We summarize each alternative below.

Alternative A: Continuation of Current Refuge Management (No Action)

This alternative represents no change from current management of the refuge. Management emphasis would continue to focus on loggerhead sea turtle recovery and maintaining existing wetland impoundments for wintering waterfowl, shorebirds, and wading birds. Primary management activities would include managing wetland impoundments, managing maritime forests for neotropical migratory birds, monitoring basic species, and relocating sea turtle nests. Alternative A represents the anticipated conditions of the refuge for the next 15 years, assuming current funding, staffing, policies, programs, and activities continue.

This alternative would include actions to manage habitat for resident and wintering shorebirds, waterfowl, foraging wood storks, and over-wintering piping plovers. It also would provide opportunities for wildlife-dependent recreation; however, some areas would only be seasonally opened. Hunting and fishing would be allowed and would follow State regulations. Environmental education and interpretation programs would continue. Species monitoring would be limited due to staffing constraints, lack of volunteer assistance, and limited research interest. Habitat management actions would primarily benefit sea turtles, wading birds, shorebirds, and waterfowl; however, there is limited active management of other species and habitats.

The refuge would remain staffed at current levels, with the use of periodic interns. Researchers would be accommodated when projects benefit the refuge.

Alternative B

This alternative expands on Alternative A with an increase of habitat and species management efforts. The focus of this alternative is to enhance suitable habitat under species-specific management and to increase monitoring efforts. We would control invasive exotic plant species to help increase populations of neotropical migratory birds and breeding songbirds to higher levels than under Alternative A. We would increase efforts to monitor populations of secretive marsh birds, and we would conduct nesting surveys of shorebirds, sea birds, and wading birds. Alternative B would continue waterfowl and shorebird monitoring, with additional effort placed on monitoring marsh birds and wading birds by conducting nesting surveys. Monitoring efforts would occur based on available staffing, additional volunteers, and academic research.

Wildlife-dependent recreation would continue. Hunting and fishing would continue to be allowed and environmental education and interpretation enhanced with messages regarding climate change and sea level rise. Interpretive signage would be increased or added to existing nature trails. There would be restricted access to some areas of the refuge that have birds or threatened and endangered species sensitive to disturbance. Interpretation efforts would focus mostly on the primary objectives of migratory birds and threatened and endangered species.

The refuge would be staffed at current levels plus the addition of a wildlife refuge specialist and a biologist to carry out the increased habitat management and monitoring needs. Researchers would be accommodated when projects benefit the refuge and focus mostly on shorebirds and habitat management.

Alternative C: (Proposed Alternative)

This alternative expands on Alternative A with a greater amount of effort to increase overall wildlife and habitat quality. Although management of sea turtles, waterfowl, threatened and endangered species, and migratory birds would remain a focus of the refuge, wetland habitat manipulations would also consider the needs of multiple species, such as marsh and wading birds. Maritime forests and fields for neotropical migratory birds would be more actively managed. Landscape-level consideration of habitat management would include identifying areas of important habitat that would become critical to wildlife as sea level rises and reduces habitat currently on the refuge. Multiple species consideration would include species and habitats identified by the South Atlantic Migratory Bird Initiative and the State's Strategic Conservation Plan.

This alternative would expand the monitoring efforts under Alternative A to provide additional, active efforts to monitor and survey migratory neotropical and breeding songbirds, secretive marsh birds, and plants. Monitoring efforts would be increased with the assistance of additional staff, trained volunteers, and academic research. Greater effort would be made to recruit academic researchers to the refuge to study and monitor resources.

Wildlife-dependent recreational uses of the refuge would continue. Hunting and fishing would continue to be allowed. However, hunting would be managed with a greater focus to achieve biological needs of the refuge such as deer population management. Environmental education and interpretation would be the same as under Alternative A, but with additional education and outreach efforts aimed at the importance of climate change, sea level rise, and wilderness. A significantly greater effort would be made with outreach to nearby developing urban communities and a growing human population. Existing environmental education programs, such as the Earth Stewards Program, conducted in concert with the SEWEE Association, the refuge friends group, would be expanded to include additional elementary schools, students, and teachers.

The refuge would be staffed at current levels plus the addition of a wildlife refuge specialist and two biologists to carry out the increased habitat management and monitoring needs. An additional park ranger would be hired to enhance visitor services and environmental education programs. Greater emphasis would be placed on recruiting and training volunteers, and worker-camper opportunities would be expanded to facilitate the

accomplishment of refuge maintenance programs and other refuge goals and objectives. The refuge's biological programs would actively seek funding and researchers to study primarily management-oriented needs. Refuge staff would place greater emphasis on developing and maintaining active partnerships, including seeking grants to assist the refuge in reaching primary objectives.

Next Step

After the comment period ends, we will analyze the comments and address them.

Public Availability of Comments

Before including your address, phone number, e-mail address, or other personal identifying information in your comment, you should be aware that your entire comment, including your personal identifying information, may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Authority

This notice is published under the authority of the National Wildlife Refuge System Improvement Act of 1997, Public Law 105–57.

Dated: February 24, 2010.

Mark J. Musaus,

Acting Regional Director.

[FR Doc. 2010–10089 Filed 4–29–10; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[WY–923–1310–FI; WYW136450]

Notice of Proposed Reinstatement of Terminated Oil and Gas Lease, Wyoming

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: Pursuant to Federal law, the Bureau of Land Management (BLM) received a petition for reinstatement from St. Mary Land & Exploration Company for non-competitive oil and gas lease WYW136450 in Natrona County, Wyoming. The petition was filed on time and was accompanied by all the rentals due since the date the lease terminated under the law.

FOR FURTHER INFORMATION CONTACT: Bureau of Land Management, Julie L. Weaver, Chief, Branch of Fluid Minerals Adjudication, at (307) 775–6176.

SUPPLEMENTARY INFORMATION: The lessee has agreed to the amended lease terms for rentals and royalties at rates of $10 per acre or fraction thereof, per year and 18⅔ percent, respectively. The lessee has paid the required $500 administrative fee and $163 to reimburse the Department for the cost of this **Federal Register** notice. The lessee has met all the requirements for reinstatement of the lease as set out in Sections 31(d) and (e) of the Mineral Lands Leasing Act of 1920 (30 U.S.C. 188), and the Bureau of Land Management is proposing to reinstate lease WYW136450 effective September 1, 2009, under the original terms and conditions of the lease and the increased rental and royalty rates cited above. The BLM has not issued a valid lease affecting the lands.

Julie L. Weaver,

Chief, Branch of Fluid Minerals Adjudication.

[FR Doc. 2010–10013 Filed 4–29–10; 8:45 am]

BILLING CODE 4310–22–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337–TA–670]

In the Matter of Certain Adjustable Keyboard Support Systems and Components Thereof; Notice of Commission Determination To Review-in-Part a Final Determination on Violation of Section 337; Schedule for Filing Written Submissions on the Issues Under Review and on Remedy, the Public Interest, and Bonding

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined to review a portion of the final initial determination ("ID") issued by the presiding administrative law judge ("ALJ") on February 23, 2010, regarding whether there is a violation of section 337 in the above-captioned investigation.

FOR FURTHER INFORMATION CONTACT: Jia Chen, Office of the General Counsel, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436, telephone (202) 708–4737. Copies of non-confidential documents filed in connection with this investigation are or will be available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436, telephone (202) 205–2000. General information concerning the Commission may also be obtained by accessing its Internet server at *http://www.usitc.gov.* The public record for this investigation may be viewed on the Commission's electronic docket (EDIS) at *http://edis.usitc.gov.* Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on (202) 205–1810.

SUPPLEMENTARY INFORMATION: The Commission instituted this investigation on March 13, 2009 based on a complaint filed by Humanscale Corporation ("Humanscale") of New York, New York, 74 FR 10963 (Mar. 13, 2009). The complaint, as amended, named the following two companies as respondents: CompX International, Inc., of Dallas, Texas and Waterloo Furniture Components Limited, of Ontario, Canada (collectively, "CompX"). The complaint alleged violations of section 337 of the Tariff Act of 1930 (19 U.S.C. 1337) in the importation into the United States, the sale for importation, and the sale within the United States after importation of certain adjustable keyboard support systems and components thereof that infringe certain claims of U.S. Patent No. 5,292,097 ("the '097 patent").

On February 23, 2010, the ALJ issued a final ID, including his recommended determination on remedy and bonding. In his final ID, the ALJ found that respondents did not violate section 337 with respect to their "Wedge-Brake" products because they did not infringe asserted independent claim 7 or asserted dependent claim 34. The ALJ found, however, that respondents did violate section 337 with respect to their "Brake-Shoe" products because they infringed dependent claim 34. The ALJ also found that there was no violation with respect to independent claim 7 because respondents established by clear and convincing evidence that claim 7 is invalid for obviousness under 35 U.S.C. 103. The ALJ further found that respondents have not established any intervening rights. Finally, the ALJ found that complainant proved the existence of a domestic industry in the United States with respect to the '097 patent. Accordingly, the ALJ recommended that the Commission issue a limited exclusion order barring entry into the United States of infringing adjustable keyboard support systems and components thereof. The ALJ further recommended the issuance of a cease and desist order against

respondent Waterloo Furniture Components Ltd. Finally, he recommended that the Commission set the bond during the Presidential review period at 100 percent of the entered value of the infringing products.

On March 9, 2010, Humanscale, CompX, and the Commission investigative attorney ("IA") each filed a petition for review of the ALJ's final ID. On March 17, 2010, CompX filed a reply to Humanscale's petition for review. On the same day, Humanscale filed its consolidated reply to CompX's and the IA's petitions for review. Also on the same day, the IA filed a consolidated reply to Humanscale's and CompX's petitions for review.

Having examined the record of this investigation, including the ALJ's final ID and the submissions of the parties, the Commission has determined to review (1) the claim construction of the term "frictionally interengagable" recited in dependent claim 34, (2) infringement of claim 34 by the Brake-Shoe products, (2) the priority date of claim 34, (3) invalidity for anticipation and obviousness of claims 7 and 34, and (4) the defense of intervening rights. The economic prong of the domestic industry requirement is already under review. No other issues are being reviewed. This constitutes a final determination that the Wedge-Brake products do not infringe claims 7 and 34 and therefore there is no violation with respect to these products.

The parties should brief their positions on the issues on review with reference to the applicable law and the evidentiary record. In connection with its review, the Commission is particularly interested in responses to the following questions:

1. Assuming that the locking means of claim 34 is not limited to the first and second locking members of claim 7, and assuming that "frictionally interengagable" locking means do not include serrated locking structures that operate through blocking, what is the proper construction of the term "frictionally interengagable"? Should the Commission limit the construction of "frictionally interengagable" to the V-shaped structures described in the ninth embodiment of the '097 patent? Please cite to evidence from the record as support.

2. Applying the construction of "frictionally interengagable" provided in response to Question 1, do the Brake-Shoe products meet this limitation? Please cite to evidence from the record as support.

3. What, if any, assembly of the keyboard support system does Humanscale perform in the United States? Are keyboard support systems shipped to customers by Humanscale in an assembled, partially assembled, or disassembled state?

4. If the "articles protected by the patent" under 19 U.S.C. 1337(a)(2) are the entire keyboard support systems, what portion of Humanscale's (a) investment in plant and equipment and (b) employment of labor and capital in the United States can be attributed to the manufacture and processing of these articles? Out of this portion, what part is attributed to the process of assembling the keyboard support system as opposed to manufacturing the keyboard and mouse support platforms?

5. According to respondents, since 2003, Humanscale has sold a certain number of units of "its allegedly patented mechanisms either as a separate article of commerce or as a component of bundled keyboard support systems." *See* Reply of Respondents CompX in Response to the Commission's Notice to Review an Initial Determination of the Economic Prong of the Domestic Industry Requirement, at 6; *see also* RX–005C. Is respondents' statement of the figure accurate based on the record?

6. Of the total number of units of the patented mechanisms sold by Humanscale, how many units were sold individually and how many units were sold as components of a bundled keyboard support system?

7. Sales of the patented mechanism by itself constitute what percent of Humanscale's total revenue, and sales of the patented mechanism as components of a bundled keyboard support system constitute what percentage of the total revenue?

8. Does section 337(a)(3)(c) allow the Commission to consider investments in research and development or engineering related to technology not covered by the '097 patent when addressing the domestic industry requirement? Are Humanscale's investments in research and development or engineering related to the keyboard and mouse support platforms investments in the exploitation of the '097 patent? Are Humanscale's investments in research and development or engineering related to assembling the keyboard and mouse support platforms with the patented support means investments in the exploitation of the '097 patent? What are Humanscale's investments for each?

9. Under section 337(a)(3)(C), can Humanscale's activities relating to its domestically manufactured keyboard and mouse platforms be considered "investment" in the "exploitation" of the '097 patent that is not "engineering, research and development, or licensing"?"

10. If foot 4 of Kompauer corresponds to the "second element" of claim 7, does Kompauer disclose the limitation "pivotally mounted" under the ALJ's construction? Also, does Kompauer disclose each and every limitation of claim 7 under the ALJ's construction of the disputed claim terms? Please cite to evidence from the record as support.

11. If one or more limitations is not disclosed by Kompauer under the ALJ's constructions, does Adam, Holtz, or Hood make up for this deficiency under the ALJ's construction? Please cite to evidence from the record as support.

12. If the answer is yes to Question 11, does the record explain why a person of ordinary skill in the relevant field would have had a reason to combine the elements in the way claim 7 does?

13. What evidentiary standard should the Commission apply to the affirmative defense of intervening rights, clear and convincing evidence or a preponderance of the evidence?

14. Does the evidence of record show that the scope of reexamined claim 34 has substantively changed from the original claims of the '097 patent? Please provide any relevant claim constructions for the original claim terms of the '097 patent as well as any relevant discussions during the reexamination proceeding regarding amendments to these claims.

15. Does the evidence of record show that the "specific thing," *i.e.,* the specific accused products, were "made, purchased, offered [for sale], or used within the United States, or imported into the United States" prior to the grant of the reexamination certificate to the '097 patent? 35 U.S.C. 252.

16. Does the evidence of record show that respondents made "substantial preparation[s]" before the grant of the reexamination certificate to "manufacture, use, offer for sale, or [sell] in the United States" the accused products in their current form? 35 U.S.C. 252. In addition, does the evidence of record show that respondents made investments or commenced business related to the accused products prior to the grant of the reexamination certificate? *Id.*

17. If the answer to Question 15 or 16 is yes, does the evidence of record show that the accused products did not infringe or would not have infringed any of the original claims of the '097 patent?

In connection with the final disposition of this investigation, the Commission may (1) issue an order that could result in the exclusion of the

subject articles from entry into the United States, and/or (2) issue one or more cease and desist orders that could result in a respondent being required to cease and desist from engaging in unfair acts in the importation and sale of such articles. Accordingly, the Commission is interested in receiving written submissions that address the form of remedy, if any, that should be ordered. If a party seeks exclusion of an article from entry into the United States for purposes other than entry for consumption, the party should so indicate and provide information establishing that activities involving other types of entry either are adversely affecting it or likely to do so. For background, *see In the Matter of Certain Devices for Connecting Computers via Telephone Lines,* Inv. No. 337–TA–360, USITC Pub. No. 2843 (December 1994) (Commission Opinion).

If the Commission contemplates some form of remedy, it must consider the effects of that remedy upon the public interest. The factors the Commission will consider include the effect that an exclusion order and/or cease and desist orders would have on (1) the public health and welfare, (2) competitive conditions in the U.S. economy, (3) U.S. production of articles that are like or directly competitive with those that are subject to investigation, and (4) U.S. consumers. The Commission is therefore interested in receiving written submissions that address the aforementioned public interest factors in the context of this investigation.

If the Commission orders some form of remedy, the United States Trade Representative, as delegated by the President, has 60 days to approve or disapprove the Commission's action. *See* Presidential Memorandum of July 21, 2005, 70 FR 43251 (July 26, 2005). During this period, the subject articles would be entitled to enter the United States under bond, in an amount determined by the Commission and prescribed by the Secretary of the Treasury. The Commission is therefore interested in receiving submissions concerning the amount of the bond that should be imposed if a remedy is ordered.

Written Submissions: The parties to the investigation are requested to file written submissions on the issues identified in this notice. Parties to the investigation, interested government agencies, and any other interested parties are encouraged to file written submissions on the issues of remedy, the public interest, and bonding. Such submissions should address the recommended determination by the ALJ on remedy and bonding. Complainant and the Commission investigative attorney are also requested to submit proposed remedial orders for the Commission's consideration. Complainant is also requested to state the date that the patent expires and the HTSUS numbers under which the accused products are imported. The written submissions and proposed remedial orders must be filed no later than close of business on May 10, 2010. Reply submissions must be filed no later than the close of business on May 17, 2010. The written submissions must be no longer than 60 pages and the reply submissions must be no longer than 30 pages. No further submissions on these issues will be permitted unless otherwise ordered by the Commission.

Persons filing written submissions must file the original document and 12 true copies thereof on or before the deadlines stated above with the Office of the Secretary. Any person desiring to submit a document to the Commission in confidence must request confidential treatment unless the information has already been granted such treatment during the proceedings. All such requests should be directed to the Secretary of the Commission and must include a full statement of the reasons why the Commission should grant such treatment. *See* 19 CFR 210.6. Documents for which confidential treatment by the Commission is sought will be treated accordingly. All nonconfidential written submissions will be available for public inspection at the Office of the Secretary.

The authority for the Commission's determination is contained in section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), and in sections 210.42–46 and 210.50 of the Commission's Rules of Practice and Procedure (19 CFR 210.42–46 and 210.50).

Issued: April 26, 2010.

By order of the Commission.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. 2010–10108 Filed 4–29–10; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigation Nos. 701–TA–462 and 731–TA–1156–1158 (Final)]

Polyethylene Retail Carrier Bags From Indonesia, Taiwan, and Vietnam

Determinations

On the basis of the record [1] developed in the subject investigations, the United States International Trade Commission (Commission) determines, pursuant to section 705(b) of the Tariff Act of 1930 (19 U.S.C. 1671d(b)) (the Act), that an industry in the United States is threatened with material injury by reason of imports from Vietnam of polyethylene retail carrier bags (PRCBs), provided for in subheading 3923.21.00 of the Harmonized Tariff Schedule of the United States, that have been found by the Department of Commerce (Commerce) to be subsidized by the Government of Vietnam.[2] The Commission further determines, pursuant to section 735(b) of the Act (19 U.S.C. 1673d(b)), that an industry in the United States is threatened with material injury by reason of imports from Indonesia, Taiwan, and Vietnam of PRCBs that have been found by Commerce to be sold in the United States at less than fair value (LTFV).[3] In addition, the Commission determines that it would not have found material injury but for the suspension of liquidation.

Background

The Commission instituted these investigations effective March 31, 2009, following receipt of petitions filed with the Commission and Commerce by Hilex Poly Co., LLC, Hartsville, SC and Superbag Corp., Houston, TX. The final phase of these investigations was scheduled by the Commission following notification of preliminary determinations by Commerce that imports of PRCBs from Indonesia, Taiwan, and Vietnam were being sold at LTFV within the meaning of section 733(b) of the Act (19 U.S.C. 1673b(b)) and that imports of PRCBs from Vietnam were being subsidized within the meaning of section 703(b) of the Act (19 U.S.C. 1671b(b)). Notice of the scheduling of the final phase of the Commission's investigations and of a public hearing to be held in connection therewith was given by posting copies of the notice in the Office of the

[1] The record is defined in sec. 207.2(f) of the Commission's Rules of Practice and Procedure (19 CFR 207.2(f)).

[2] Vice Chairman Daniel R. Pearson dissenting.

[3] Vice Chairman Daniel R. Pearson dissenting.

Secretary, U.S. International Trade Commission, Washington, DC, and by publishing the notice in the **Federal Register** of December 3, 2009 (74 FR 63410). The hearing was held in Washington, DC, on March 16, 2010, and all persons who requested the opportunity were permitted to appear in person or by counsel.

The Commission transmitted its determinations in these investigations to the Secretary of Commerce on April 26, 2010. The views of the Commission are contained in USITC Publication 4144 (April 2010), entitled Polyethylene Retail Carrier Bags from Indonesia, Taiwan, and Vietnam: Investigation Nos. 701–TA–462 and 731–TA–1156–1158 (Final).

Issued: April 27, 2010.

By order of the Commission.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. 2010–10114 Filed 4–29–10; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Under the Comprehensive Environmental Response, Compensation and Liability Act

Notice is hereby given that on April 22, 2010, a proposed Partial Consent Decree ("CD") in *United States* v. *James Y. Saporito and Paul Carr,* Civil Action No. 07–cv–03169, was lodged with the United States District Court for the Northern District of Illinois, Eastern Division.

In this action, the United States seeks on behalf of the United States Environmental Protection Agency recovery of response costs incurred at the Crescent Plating Works Superfund Site (the "Site") in Chicago, Illinois, pursuant to Section 107 of the Comprehensive Environmental Response, Compensation and Liability Act ("CERCLA"), 42 U.S.C. 9607. The CD resolves a claim that Paul Carr ("Settling Defendant"), as current operator of the Site, is liable to the United States for reimbursement of costs incurred as a result of responding to a release, or threat of release, of hazardous substances from the Site. Based upon the Settling Defendant's ability to pay, he will not be required to pay any response costs related to the Site. Contingent on the veracity of the Settling Defendant's certifications made in the Partial Consent Decree and his fulfilling any obligations required in the Partial Consent Decree, the United States covenants not to sue the settling defendant's pursuant to CERCLA Sections 106 and 107, 42 U.S.C. 9606 and 9607.

The Department of Justice will receive comments relating to this CD for a period of thirty (30) days from the date of this publication. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, and either e-mailed to *pubcomment-ees.enrd@usdoj.gov* or mailed to P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611, and should refer to *United States* v. *James Y. Saporito and Paul Carr,* D.J. Ref. 90–11–3–08304/1.

The CD may be examined at the Office of the United States Attorney, Northern District of Illinois, Eastern Division, 219 S. Dearborn St., 5th Floor, Chicago, IL 60604 and at U.S. EPA Region 5, 77 W. Jackson Blvd., Chicago, IL 60604. During the public comment period, the CD may also be examined on the following Department of Justice Web site, *http://www.usdoj.gov/enrd/Consent_Decrees.html.* A copy of the CD may also be obtained by mail from the Consent Decree Library, U.S. Department of Justice, P.O. Box 7611, Washington, DC 20044–7611 or by faxing or e-mailing a request to Tonia Fleetwood (*tonia.fleetwood@usdoj.gov),* fax number (202) 514–0097, phone confirmation number (202) 514–1547. In requesting a copy from the Consent Decree Library, please enclose a check in the amount of $5.25 (25 cents per page reproduction cost) payable to the U.S. Treasury or, if by e-mail or fax, forward a check in that amount to the Consent Decree Library at the stated address.

Maureen Katz,

Assistant Section Chief, Environmental Enforcement Section, Environment and Natural Resources Division, United States Department of Justice.

[FR Doc. 2010–10088 Filed 4–29–10; 8:45 am]

BILLING CODE 4410–15–P

DEPARTMENT OF JUSTICE

Office of Justice Programs

[OMB Number 1121–0269]

Agency Information Collection Activities: Revision of a Currently Approved Collection; Comments Requested

ACTION: 30-Day Notice of Information Collection Under Review: Revision of a Currently Approved Collection 2009 Census of Publicly Funded Forensic Crime Laboratories.

The Department of Justice (DOJ), Office of Justice Programs, Bureau of Justice Statistics (BJS) will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995. The proposed information collection is published to obtain comments from the public and affected agencies. This proposed information collection was previously published in the **Federal Register** Volume 75, Number 38, page 8993 on February 26, 2010, allowing for a 60-day comment period.

The purpose of this notice is to allow for an additional 30 days for public comment until June 1, 2010. This process is conducted in accordance with 5 CFR 1320.10.

Written comments and/or suggestions regarding the items contained in this notice, especially the estimated public burden and associated response time, should be directed to The Office of Management and Budget, Office of Information and Regulatory Affairs, Attention Department of Justice Desk Officer, Washington, DC 20503. Additionally, comments may be submitted to OMB via facsimile to (202) 395–7285.

Request written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

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

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

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

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

Overview of This Information Collection

(1) *Type of Information Collection:* Revision of a currently approved collection.

(2) *Title of the Form/Collection:* 2009 Census of Publicly Funded Forensic Crime Laboratories.

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection:* The form number is CFCL–1, Bureau of Justice Statistics, Office of Justice Programs, U.S. Department of Justice.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Respondents will represent Federal, State, and local governments. This information collection is a census of public crime laboratories that perform forensic analyses on criminal evidence. The information will provide statistics on laboratories' capacity to analyze forensic crime evidence, the number, types, and sources of evidence received per year, and the number, types, and cost of analyses completed.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* It is estimated that 405 respondents will complete a 4.1 hour form.

(6) *An estimate of the total public burden (in hours) associated with the collection:* The total hour burden to complete the data collection is 1,660.5 annual burden hours.

If additional information is required contact: Lynn Bryant, Department Clearance Officer, United States Department of Justice, Information Management and Security Staff, Justice Management Division, Suite 1600, Patrick Henry Building, 601 D Street, NW., Washington, DC 20530.

Dated: April 27, 2010.

Lynn Bryant,

Department Clearance Officer, PRA, United States Department of Justice.

[FR Doc. 2010–10142 Filed 4–29–10; 8:45 am]

BILLING CODE 4410–18–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Importer of Controlled Substances; Notice of Application

This is notice that on March 15, 2010, Penick Corporation, 33 Industrial Park Road, Pennsville, New Jersey 08070, made application by renewal to the Drug Enforcement Administration (DEA) for registration as an importer of the basic classes of controlled substances listed in schedule II.

Drug	Schedule
Coca Leaves (9040)	II
Raw Opium (9600)	II
Poppy Straw (9650)	II
Concentrate of Poppy Straw (9670).	II

The company plans to import the listed controlled substances to manufacture bulk controlled substance intermediates for sale to its customers.

As explained in the Correction to Notice of Application pertaining to Rhodes Technologies, 72 FR 3417 (2007), comments and requests for hearings on applications to import narcotic raw material are not appropriate.

As noted in a previous notice published in the **Federal Register** on September 23, 1975, (40 FR 43745), all applicants for registration to import a basic class of any controlled substance in schedule I or II are, and will continue to be, required to demonstrate to the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration, that the requirements for such registration pursuant to 21 U.S.C. 958(a); 21 U.S.C. 823(a); and 21 CFR 1301.34(b), (c), (d), (e), and (f) are satisfied.

Dated: April 26, 2010.

Joseph T. Rannazzisi,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 2010–10115 Filed 4–29–10; 8:45 am]

BILLING CODE 4410–09–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Manufacturer of Controlled Substances; Notice of Application

Pursuant to § 1301.33(a) of Title 21 of the Code of Federal Regulations (CFR), this is notice that on March 16, 2010, Lonza Riverside, 900 River Road, Conshohocken, Pennsylvania 19428, made application by renewal to the Drug Enforcement Administration (DEA) to be registered as a bulk manufacturer of the basic classes of controlled substances listed in schedules I and II:

Drug	Schedule
Gamma hydroxybutyric acid (2010).	I
Amphetamine (1100)	II
Methylphenidate (1724)	II

The company plans to manufacture bulk active pharmaceutical ingredients (APIs) for distribution to its customers.

Any other such applicant, and any person who is presently registered with DEA to manufacture such substances, may file comments or objections to the issuance of the proposed registration pursuant to 21 CFR 1301.33(a).

Any such written comments or objections should be addressed, in quintuplicate, to the Drug Enforcement Administration, Office of Diversion Control, Federal Register Representative (ODL), 8701 Morrissette Drive, Springfield, Virginia 22152; and must be filed no later than June 29, 2010.

Dated: April 26, 2010.

Joseph T. Rannazzisi,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 2010–10116 Filed 4–29–10; 8:45 am]

BILLING CODE 4410–09–P

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

[Docket No. OSHA–2010–0008]

Construction Fall Protection Systems Criteria and Practices and Training Requirements; Extension of the Office of Management and Budget's (OMB) Approval of Information Collection (Paperwork) Requirements

AGENCY: Occupational Safety and Health Administration (OSHA), Labor.

ACTION: Request for public comment.

SUMMARY: OSHA solicits public comments concerning its proposal to extend OMB approval of the information collection requirements contained in the construction standards on Fall Protection Systems Criteria and Practices (29 CFR 1926.502) and Training Requirements (29 CFR 1926.503).

DATES: Comments must be submitted (postmarked, sent, or received) by June 29, 2010.

ADDRESSES: *Electronically:* You may submit comments and attachments electronically at *http://www.regulations.gov,* which is the Federal eRulemaking Portal. Follow the instructions online for submitting comments.

Facsimile: If your comments, including attachments, are not longer than 10 pages, you may fax them to the OSHA Docket Office at (202) 693–1648.

Mail, hand delivery, express mail, messenger, or courier service: When using this method, you must submit three copies of your comments and attachments to the OSHA Docket Office,

OSHA Docket No. OSHA–2010–0008, U.S. Department of Labor, Room N–2625, 200 Constitution Avenue, NW., Washington, DC 20210. Deliveries (hand, express mail, messenger, and courier service) are accepted during the Department of Labor's and Docket Office's normal business hours, 8:15 a.m. to 4:45 p.m., e.t.

Instructions: All submissions must include the Agency name and OSHA docket number for this Information Collection Request (ICR) (OSHA Docket No. OSHA–2010–0008). All comments, including any personal information you provide, are placed in the public docket without change, and may be made available online at *http://www.regulations.gov.* For further information on submitting comments, see the "Public Participation" heading in the section of this notice titled **SUPPLEMENTARY INFORMATION.**

Docket: To read or download comments or other material in the docket, go to *http://www.regulations.gov* or the OSHA Docket Office at the address above. All documents in the docket (including this **Federal Register** notice) are listed in the *http://www.regulations.gov* index; however, some information (*e.g.,* copyrighted material) is not publicly available to read or download through the Web site. All submissions, including copyrighted material, are available for inspection and copying at the OSHA Docket Office. You may also contact Theda Kenney or Todd Owen at the address below to obtain a copy of the ICR.

FOR FURTHER INFORMATION CONTACT: Michael Buchet, Office of Construction Services, Directorate of Construction, OSHA, U.S. Department of Labor, Room N–3476, 200 Constitution Avenue, NW., Washington, DC 20210; telephone (202) 693–2020.

SUPPLEMENTARY INFORMATION:

I. Background

The Department of Labor, as part of its continuing effort to reduce paperwork and respondent (*i.e.,* employer) burden, conducts a pre-clearance consultation program to provide the public with an opportunity to comment on proposed and continuing information collection requirements in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3506(c)(2)(A)). This program ensures that information is in the desired format, reporting burden (time and costs) is minimal, collection instruments are understandable, and OSHA's estimate of the information collection burden is correct. The Occupational Safety and Health Act of 1970 (the OSH Act) authorizes information collection by employers as necessary or appropriate for enforcement of the OSH Act, or for developing information regarding the causes and prevention of occupational injuries, illnesses, and accidents (29 U.S.C. 657).

The Standards on Construction Fall Protection Systems Criteria and Practices (29 CFR 1926.502) and Training Requirements (29 CFR 1926.503) ensure that employers provide the required fall protection for their workers. Accordingly, these standards have the following paperwork requirements: Paragraphs (c)(4)(ii) and (k) of 29 CFR 1926.502, which specify certification of safety nets and development of fall protection plans, respectively, and paragraph (b) of 29 CFR 1926.502, which requires employers to certify training records. The training certification requirement specified in paragraph (b) of 29 CFR 1926.503 documents the training provided to workers potentially exposed to fall hazards. A competent person must train these workers to recognize fall hazards and in the use of procedures and equipment that minimize these hazards. An employer must verify compliance with this training requirement by preparing and maintaining a written certification record that contains the name or other identifier of the worker receiving the training, the date(s) of the training, and the signature of the competent person who conducted the training, or of the employer.

II. Special Issues for Comment

OSHA has a particular interest in comments on the following issues:

- Whether the proposed information collection requirements are necessary for the proper performance of the Agency's functions, including whether the information is useful;
- The accuracy of OSHA's estimate of the burden (time and costs) of the information collection requirements, including the validity of the methodology and assumptions used;
- The quality, utility, and clarity of the information collected; and
- Ways to minimize the burden on employers who must comply; for example, by using automated or other technological information collection and transmission techniques.

III. Proposed Actions

OSHA is requesting that OMB extend its approval of the collection of information requirements contained in the construction standards on Fall Protection Systems Criteria and Practices (29 CFR 1926.502) and Training Requirements (29 CFR 1926.503). OSHA is requesting a 26,974 burden hour reduction, from 484,082 hours to 457,108 as a result of new information indicating that the estimates of the number of safety net certifications, safety net installations, and fall protection plans should be lowered. The Agency will summarize the comments submitted in response to this notice, and will include this summary in its request to OMB to extend the approval of these information collection requirements.

Type of Review: Extension of a currently approved collection.

Title: Construction Fall Protection Systems Criteria and Practices (29 CFR 1926.502) and Training Requirements (29 CFR 1926.503).

OMB Number: 1218–0197.

Affected Public: Business or other for-profits; Federal Government; State, Local, or Tribal Government.

Number of Responses: 5,702,775.

Frequency of Recordkeeping: On occasion, annually.

Average Time per Response: Time per response ranges from 5 minutes (.08 hour) to certify a safety net to 1 hour to develop a fall protection plan.

Estimated Total Burden Hours: 457,108.

Estimated Cost (Operation and Maintenance): $0.

IV. Public Participation—Submission of Comments on This Notice and Internet Access to Comments and Submissions

You may submit comments in response to this document as follows: (1) Electronically at *http://www.regulations.gov,* which is the Federal eRulemaking Portal; (2) by facsimile; (fax) or (3) by hard copy. All comments, attachments, and other material must identify the Agency name and the OSHA docket number for this ICR (Docket No. OSHA–2010–0008). You may supplement electronic submissions by uploading document files electronically. If you wish to mail additional materials in reference to an electronic or facsimile submission, you must submit them to the OSHA Docket Office (*see* the section of this notice titled **ADDRESSES**). The additional materials must clearly identify your electronic comments by your full name, date, and docket number so the Agency can attach them to your comments.

Because of security procedures, the use of regular mail may cause a significant delay in the receipt of comments. For information about security procedures concerning the delivery of materials by hand, express delivery, messenger, or courier service, please contact the OSHA Docket Office

at (202) 693–2350, (TTY (877) 889–5627).

Comments and submissions are posted without change at *http://www.regulations.gov.* Therefore, OSHA cautions commenters about submitting personal information such as social security numbers and date of birth. Although all submissions are listed in the *http://www.regulations.gov* index, some information (*e.g.,* copyrighted material) is not publicly available to read or download through this Web site. All submissions, including copyrighted material, are available for inspection and copying at the OSHA Docket Office. Information on using the *http://www.regulations.gov* Web site to submit comments and access the docket is available at the Web site's "User Tips" link. Contact the OSHA Docket Office for information about materials not available through the Web site, and for assistance in using the Internet to locate docket submissions.

V. Authority and Signature

David Michaels, Ph.D., MPH, Assistant Secretary of Labor for Occupational Safety and Health, directed the preparation of this notice. The authority for this notice is the Paperwork Reduction Act of 1995 (44 U.S.C. 3506 *et seq.*) and Secretary of Labor's Order No. 5–2007 (72 FR 31160).

Signed at Washington, DC, on April 26, 2010.

David Michaels,

Assistant Secretary of Labor for Occupational Safety and Health.

[FR Doc. 2010–10036 Filed 4–29–10; 8:45 am]

BILLING CODE 4510–26–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–72,524]

Norgren Automation Solutions, Including Workers Whose Unemployment Insurance (UI) Wages Are Paid Through Syron Engineering Erie Engineering and Automation Division, A Subsidiary of Norgren, Inc.: Clinton Township, MI; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974, as amended ("Act"), 19 U.S.C. 2273, the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance on January 29, 2010, applicable to workers of Norgren Automation Solutions, Erie Engineering and Automation Division, a subsidiary of Norgren, Inc., Clinton Township, Michigan. The notice was published in the **Federal Register** on March 5, 2010 (75 FR 10320).

At the request of the state, the Department reviewed the certification for workers of the subject firm. The workers produced automation design and build components.

New information shows that in April 2009 Norgren Automation Solutions purchased Syron Engineering. Some workers separated from employment at the subject firm had their wages reported under a separated unemployment insurance (UI) tax account under the name Syron Engineering.

Accordingly, the Department is amending this certification to property reflect this matter.

The intent of the Department's certification is to include all workers of the subject firm who were adversely affected by an increase in imports of automation design and build components.

The amended notice applicable to TA–W–72,524 is hereby issued as follows:

All workers of Norgren Automation Solutions, including workers whose unemployment insurance (UI) wages are paid through Syron Engineering, Erie Engineering and Automation Division, a subsidiary of Norgren, Inc., Clinton Township, Michigan, who became totally or partially separated from who became totally or partially separated from employment on or after October 1, 2008, through January 29, 2012, and all workers in the group threatened with total or partial separation from employment on date of certification through two years from the date of certification, are eligible to apply for adjustment assistance under Chapter 2 of Title II of the Trade Act of 1974, as amended.

Signed at Washington, DC this 21st day of April 2010.

Elliott S. Kushner

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 2010–9923 Filed 4–29–10; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Mine Safety and Health Administration

Petition for Modification

AGENCY: Mine Safety and Health Administration (MSHA), Labor.

ACTION: Notice of petition for modification of existing mandatory safety standard.

SUMMARY: Section 101(c) of the Federal Mine Safety and Health Act of 1977 and 30 CFR part 44 govern the application, processing, and disposition of petitions for modification. This notice is a summary of a petition for modification filed by the party listed below to modify the application of existing mandatory safety standard published in Title 30 of the Code of Federal Regulations.

DATES: All comments on the petition must be received by the Office of Standards, Regulations and Variances on or before June 1, 2010.

ADDRESSES: You may submit your comments, identified by "docket number" on the subject line, by any of the following methods:

1. *Electronic Mail: Standards-Petitions@dol.gov.*

2. *Facsimile:* 1–202–693–9441.

3. *Regular Mail:* MSHA, Office of Standards, Regulations and Variances, 1100 Wilson Boulevard, Room 2350, Arlington, Virginia 22209–3939, Attention: Patricia W. Silvey, Director, Office of Standards, Regulations and Variances.

4. *Hand-Delivery or Courier:* MSHA, Office of Standards, Regulations and Variances, 1100 Wilson Boulevard, Room 2350, Arlington, Virginia 22209–3939, Attention: Patricia W. Silvey, Director, Office of Standards, Regulations and Variances.

MSHA will consider only comments postmarked by the U.S. Postal Service or proof of delivery from another delivery service such as UPS or Federal Express on or before the deadline for comments. Individuals who submit comments by hand-delivery are required to check in at the receptionist desk on the 21st floor.

Individuals may inspect a copy of the petition and comments during normal business hours at the address listed above.

FOR FURTHER INFORMATION CONTACT: Barbara Barron, Office of Standards, Regulations and Variances at 202–693–9447 (Voice), *barron.barbara@dol.gov* (E-mail), or 202–693–9441 (Telefax). [These are not toll-free numbers].

SUPPLEMENTARY INFORMATION:

I. Background

Section 101(c) of the Federal Mine Safety and Health Act of 1977 (Mine Act) allows the mine operator or representative of miners to file a petition to modify the application of any mandatory safety standard to a coal or other mine if the Secretary determines that: (1) An alternative method of achieving the result of such standard exists which will at all times guarantee no less than the same measure of

protection afforded the miners of such mine by such standard; or (2) that the application of such standard to such mine will result in a diminution of safety to the miners in such mine. In addition, the regulations at 30 CFR 44.10 and 44.11 establish the requirements and procedures for filing petitions for modification.

II. Petition for Modification

Docket No: M–2010–017–C.

Petitioner: Brooks Run Mining Company, LLC, 208 Business Street, Beckley, West Virginia 25801.

Mine: Horse Creek No. 1 Mine, MSHA I.D. No. 46–09348, located in McDowell County, West Virginia.

Regulation Affected: 30 CFR 75.1101–1(b) (Deluge-type water spray systems).

Modification Request: The petitioner proposes as an alternative method that in lieu of providing nozzles for blow-off dust covers, weekly inspection and functional testing of the complete deluge-type water spray system will be continued and blow-off dust covers will be removed from the nozzles. The petitioner states that: (1) Weekly inspection and functional tests are conducted of its complete deluge-type water spray system; (2) each nozzle is provided with a blow-off dust cover; (3) in view of the frequent inspections and functional testing of the system, the dust covers are not necessary because the nozzles can be maintained in an unclogged condition through weekly use; and (4) it is burdensome to recap the large number of covers weekly after each inspection and functional test. The petitioner asserts that the proposed alternative method will at all times guarantee no less than the same measure of protection afforded the miners as the existing standard.

Patricia W. Silvey,

Director, Office of Standards, Regulations and Variances.

[FR Doc. 2010–10109 Filed 4–29–10; 8:45 am]

BILLING CODE 4510–43–P

DEPARTMENT OF LABOR

Employee Benefits Security Administration

Prohibited Transaction Exemptions and Grant of Individual Exemptions Involving: 2010–13, Putnam Fiduciary Trust Company, D–11425; 2010–14, UBS Financial Services Inc. and its Affiliates (UBS), D–11502; and 2010–15, Subaru of America, Inc. (Subaru), D–11531

AGENCY: Employee Benefits Security Administration, Labor.

ACTION: Grant of Individual Exemptions.

SUMMARY: This document contains exemptions issued by the Department of Labor (the Department) from certain of the prohibited transaction restrictions of the Employee Retirement Income Security Act of 1974 (ERISA or the Act) and/or the Internal Revenue Code of 1986 (the Code).

A notice was published in the **Federal Register** of the pendency before the Department of a proposal to grant such exemption. The notice set forth a summary of facts and representations contained in the application for exemption and referred interested persons to the application for a complete statement of the facts and representations. The application has been available for public inspection at the Department in Washington, DC. The notice also invited interested persons to submit comments on the requested exemption to the Department. In addition the notice stated that any interested person might submit a written request that a public hearing be held (where appropriate). The applicant has represented that it has complied with the requirements of the notification to interested persons. No requests for a hearing were received by the Department. Public comments were received by the Department as described in the granted exemption.

The notice of proposed exemption was issued and the exemption is being granted solely by the Department because, effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978, 5 U.S.C. App. 1 (1996), transferred the authority of the Secretary of the Treasury to issue exemptions of the type proposed to the Secretary of Labor.

Statutory Findings

In accordance with section 408(a) of the Act and/or section 4975(c)(2) of the Code and the procedures set forth in 29 CFR Part 2570, Subpart B (55 FR 32836, 32847, August 10, 1990) and based upon the entire record, the Department makes the following findings:

(a) The exemption is administratively feasible;

(b) The exemption is in the interests of the plan and its participants and beneficiaries; and

(c) The exemption is protective of the rights of the participants and beneficiaries of the plan.

Putnam Fiduciary Trust Company (PFTC), Located in Boston, Massachusetts.

[Prohibited Transaction Exemption 2010–13; Exemption Application No. D–11425.]

Exemption

Section I—Exemption

Effective as of January 19, 2010, the restrictions of section 406(a) and (b) of the Act, and the taxes imposed by section 4975(a) and (b) of the Code, by reason of section 4975(c)(1)(A) through (F) of the Code, shall not apply to either (a) the purchase or sale by a Collective Fund (as defined in Section III(b) below) of shares of a Mutual Fund (as defined in Section III(d) below) where Putnam Fiduciary Trust Company ("PFTC" or the "Applicant") or its affiliate (PFTC and its affiliates are referred to herein as "Putnam") is the investment advisor of the Mutual Fund as well as a fiduciary with respect to the Collective Fund (or an affiliate of such fiduciary) or (b) the receipt of fees by Putnam from a Mutual Fund for acting as an investment advisor for the Mutual Fund and/or for providing other services to the Mutual Fund which are Secondary Services (as defined in Section III(g) below) in connection with the investment by the Collective Fund in shares of the Mutual Fund, provided that the following conditions and the general conditions of Section II are met:

(a) Each Collective Fund satisfies either (but not both) of the following:

(1) The Collective Fund receives a cash credit equal to such Collective Fund's proportionate share of all fees charged to the Mutual Fund by Putnam for investment advisory services. Such credit shall be paid to the Collective Fund no later than the same day on which such investment advisory fees are paid to Putnam. The crediting of all such fees to the Collective Funds by Putnam is audited by an independent accounting firm on at least an annual basis to verify the proper crediting of the fees to each Collective Fund. The audit report shall be completed not later than six months after the period to which it relates; or

(2) No management fees, investment advisory fees, or similar fees are paid to Putnam with respect to any of the assets of such Collective Fund that are invested in shares of the Mutual Fund. This condition does not preclude the payment of investment advisory or similar fees by the Mutual Fund to Putnam under the terms of an investment management agreement adopted in accordance with section 15 of the Investment Company Act of 1940 (the 1940 Act), nor does it preclude the payment of fees for Secondary Services to Putnam pursuant to a duly adopted agreement between Putnam and the Mutual Fund if the conditions of this exemption are otherwise met.

(b) The price paid or received by a Collective Fund for shares in the Mutual Fund is the net asset value (NAV) per share (as defined in Section III(h)) and is the same price that would have been paid or received for the shares by any other investor in the Mutual Fund at that time, and all other dealings between the Collective Funds and the Mutual Fund will be on a basis no less favorable to the Collective Fund than such dealings will be with the other shareholders of the same class of shares of the Mutual Fund.[1]

(c) Putnam, including any officer or director of Putnam, does not purchase or sell shares of the Mutual Fund from or to any Collective Fund; provided that this condition shall not preclude the purchase or redemption of such shares between a Collective Fund and an affiliate of PFTC acting solely in its capacity as underwriter for the Mutual Fund, if such affiliate acts as a riskless principal, the purchase or redemption is at NAV at the time of the transaction, and the affiliate does not receive any direct or indirect compensation, spread or other consideration in connection with such purchase or redemption.

(d) No sales commissions, redemption fees, or other similar fees are paid by the Collective Funds in connection with the purchase or sale of shares of the Mutual Fund.

(e) For each Collective Fund, the combined total of all fees received by Putnam for the provision of services to the Collective Fund, and in connection with the provision of services to the Mutual Fund in which the Collective Fund may invest, are not in excess of "reasonable compensation" within the meaning of section 408(b)(2) of the Act.

(f) Putnam does not receive any fees payable pursuant to Rule 12b–1 under the 1940 Act in connection with the transactions covered by this exemption.

(g) The Second Fiduciary (as defined in Section III (f) below) with respect to each plan having an interest in a Collective Fund (a "Client Plan") receives in writing, in advance of any investment by the Collective Fund in the Mutual Fund, full and detailed disclosure of information concerning the Mutual Fund, including but not limited to: (1) A current prospectus issued by the Mutual Fund; (2) a statement describing the fees for investment advisory or similar services, any Secondary Services and all other fees to be charged to or paid by (or with respect to) the Collective Fund and by the Mutual Fund, including the nature and extent of any differential between the rates of such fees; (3) the reasons why PFTC may consider such investment to be appropriate for the Collective Fund; (4) a statement describing whether there are any limitations applicable to PFTC with respect to which Collective Fund assets may be invested in shares of the Mutual Fund and, if so, the nature of such limitations; and (5) upon request of the Second Fiduciary, a copy of both the notice of proposed exemption and a copy of the final exemption, and any other reasonably available information regarding the transactions covered by this exemption.

(h) On the basis of the information described in paragraph (g) above, the Second Fiduciary authorizes in writing the investment of assets of the Collective Fund in the Mutual Fund and the fees to be paid by the Mutual Fund to Putnam.

(i) Except as otherwise indicated in this paragraph (i), on an annual basis, Putnam will provide to the Second Fiduciary of each Client Plan having an interest in the Collective Fund: (1) a current prospectus issued by the Mutual Fund in which the Collective Fund invests, and, upon the Second Fiduciary's request, a copy of the Statement of Additional Information for such Mutual Fund that contains a description of all fees paid by the Mutual Fund to Putnam; (2) a copy of the annual financial disclosure report prepared by Putnam that includes information about the Mutual Fund portfolios, as well as audit findings of an independent auditor, within 60 days of the preparation of the report; (3) oral or written responses to inquiries of the Second Fiduciary as they arise; (4) a statement (i) of the approximate percentage (which may be in the form of a range) of the assets of the Collective Fund that were invested in the Mutual Fund during the year and (ii) that, if the Second Fiduciary objects to the continued investment by the Collective Fund in the Mutual Fund, the Client Plan may withdraw from the Collective Fund; and (5) a form (Termination Form) expressly providing an election to withdraw from the Collective Fund, together with instructions on the use of such form. The instructions will inform the Second Fiduciary that: (i) The prior written authorization is terminable at will by the Plan, without penalty to the Plan, upon receipt by Putnam of written notice from the Second Fiduciary, and (ii) failure to return the form will result in continued authorization for Putnam to engage in the transactions described above on behalf of the Plan.

However, if the Termination Form has been provided to the Second Fiduciary pursuant to Section I(j), the Termination Form need not be provided again for an annual reauthorization pursuant to this Section I(i) unless at least six months has elapsed since the form was previously provided.

(j) Except as provided in Section I(j)(E), paragraph (h) of this Section I does not apply if:

(A) The purchase, holding and sale of Mutual Fund shares by the Collective Fund is performed subject to the prior and continuing authorization, in the manner described in this paragraph (j), of a Second Fiduciary with respect to each Client Plan whose assets are invested in the Collective Fund.

(B) (1) For each Collective Fund using the fee structure described in paragraph (a)(2) above with respect to investments in the Mutual Fund, in the event of an increase in the rate of fees paid by the Mutual Fund to Putnam regarding any investment management services, investment advisory services, or similar services that Putnam provides to the Mutual Fund over an existing rate for such services that had been authorized by a Second Fiduciary in accordance with paragraph (h) above or this paragraph (j); or

(2) For each Collective Fund under this exemption (regardless of whether the fee structure described in paragraph (a)(1) or (a)(2) is used), in the event an additional Secondary Service is provided by Putnam to the Mutual Fund for which a fee is charged, or an increase in the rate of any fee paid by the Mutual Fund to Putnam for any Secondary Service that results either from an increase in the rate of such fee or from a decrease in the number or kind of services performed by Putnam for such fee over an existing rate for such Secondary Service that had been authorized by a Second Fiduciary in accordance with paragraph (h) above or this paragraph (j):

Putnam will, at least 30 days in advance of the implementation of any direct or indirect increase in fees described in this paragraph (j), provide a written notice (which may take the form of a letter or similar communication that is separate from the prospectus of the Fund and that explains the nature and amount of the additional service for which a fee is

[1] The selection of a particular class of shares of a Mutual Fund as an investment for a Collective Fund is a fiduciary decision that must be made in accordance with the provisions of section 404(a) of the Act. In this exemption, the Department is not addressing any issues under section 404 or 406 of the Act resulting from the selection of one class of shares of a Mutual Fund over another class of shares (*e.g.*, where there may be higher fees or prices associated with one or more of the classes of shares). Consistent with the above duties, the Applicant has represented that the Collective Fund will invest in the lowest priced class of shares in the Mutual Fund.

charged or of the increase in the rate of fee) to the Second Fiduciary of each Client Plan having an interest in the Collective Fund. Such written notice will include a Termination Form expressly providing an election to withdraw from the Collective Fund, together with instructions on the use of such form.

(C) In the event a Second Fiduciary submits a notice in writing to PFTC objecting to the initial investment by the Collective Fund in the Mutual Fund or the implementation of such additional service for which a fee is charged or such rate of fee increase, whichever is applicable, the Client Plan on whose behalf the objection was intended is given the opportunity to terminate its investment in the Collective Fund, without penalty to such Client Plan, within such time as may be necessary to effect the withdrawal in an orderly manner that is equitable to all withdrawing Client Plans and to the non-withdrawing Client Plans. In the case of a Client Plan that elects to withdraw under this subparagraph (C), the withdrawal shall be effected prior to the initial investment by the Collective Fund in the Mutual Fund or the implementation of such additional service for which a fee is charged or such rate of fee increase, whichever is applicable.

(D) Notwithstanding the foregoing subparagraphs (B) and (C), Putnam may commence providing an additional Secondary Service for a fee or implement any increase in the rate of fee paid by the Mutual Fund to Putnam prior to providing the notice referred to in subparagraph (B) above or prior to the withdrawal of an objecting Client Plan, whichever is applicable, provided that, in either such event, the Collective Fund receives a cash credit equal to the Collective Fund's proportionate share of the fee for the additional Secondary Service or such fee increase charged to the Mutual Fund by Putnam, whichever is applicable, for the period from the date of such commencement or implementation to the later of the date that is 30 days after the notice referred to in subparagraph (B) above has been provided or, if applicable, the date on which any Client Plan that objects to the provision of such additional Secondary Service or to such fee increase has withdrawn from the Collective Fund pursuant to subparagraph (C) above. Any such cash credits shall be paid to the Collective Fund, with interest thereon at the prevailing Federal funds rate plus two percent (2%), no later than the fifth business day following the receipt of the increased fee by Putnam.[2] The crediting of all such fees to the Collective Fund by Putnam will be audited by an independent accounting firm on at least an annual basis to verify the proper crediting of the fees and interest to the Collective Fund. The audit report shall be completed not later than six months after the period to which it relates.

(E) In the case of a Client Plan whose assets are proposed to be invested in the Collective Fund subsequent to the implementation of the arrangement and that has not authorized the investment of assets of the Collective Fund in the Mutual Fund, the Client Plan's investment in the Collective Fund is subject to: (1) The receipt by a Second Fiduciary of the full and detailed disclosures concerning the Mutual Fund pursuant to Section I(g), above, and (2) the prior written authorization of a Second Fiduciary pursuant to Section I(h), above (*i.e.,* the authorization must be provided by such new Client Plan investor in advance of the initial investment).

(k) For each Collective Fund using the fee structure described in paragraph (a)(1) above with respect to investments in the Mutual Fund, the Second Fiduciary of the Client Plan receives full written disclosure in a Fund prospectus or otherwise of any increases in the rates of fees charged by Putnam to the Mutual Fund for investment advisory services, or of a decrease in the number or kind of services performed by Putnam.

Section II—General Conditions

(a) PFTC maintains for a period of six years the records necessary to enable the persons described in paragraph (b) below to determine whether the conditions of this exemption have been met, except that:

(1) A separate prohibited transaction will not be considered to have occurred if, solely because of circumstances beyond the control of PFTC, the records are lost or destroyed prior to the end of the six-year period; and

(2) No party in interest other than Putnam shall be subject to the civil penalty that may be assessed under Section 502(i) of the Act or to the taxes imposed by Section 4975(a) and (b) of the Code, if the records are not maintained or are not available for examination as required by paragraph (b) below.

(b)(1) Except as provided in paragraph (b)(2) below and notwithstanding any provisions of Section 504(a)(2) of the Act, the records referred to in paragraph (a) above are unconditionally available at their customary location for examination during normal business hours by:

(i) Any duly authorized employee or representative of the Department, the Internal Revenue Service, or the Securities & Exchange Commission,

(ii) Any fiduciary of a Client Plan who has authority to acquire or dispose of the interest in the Collective Fund owned by such Client Plan, or any duly authorized employee or representative of such fiduciary, and

(iii) Any participant or beneficiary of a Client Plan having an interest in the Collective Fund or duly authorized employee or representative of such participant or beneficiary.

(2) None of the persons described in paragraph (b)(1)(ii) or (iii) above shall be authorized to examine trade secrets of Putnam, or commercial or financial information that is privileged or confidential.

Section III—Definitions

(a) An "affiliate" of a person includes:

(1) Any person directly or indirectly through one or more intermediaries, controlling, controlled by, or under common control with the person;

(2) Any officer, director, employee, relative, or partner in any such person; and

(3) Any corporation or partnership of which such person is an officer, director, partner, or employee.

(b) The term "Collective Fund" means any common or collective trust fund maintained by PFTC.

(c) The term "control" means the power to exercise a controlling influence over the management or policies of a person other than an individual.

(d) The term "Mutual Fund" means the Putnam Money Market Liquidity Fund and any other money market fund that is a diversified open-end investment company registered under the 1940 Act and operated in accordance with Rule 2a–7 under the 1940 Act as to which Putnam serves as an investment adviser. Putnam may also serve as a custodian, dividend disbursing agent, shareholder servicing agent, transfer agent, fund accountant, or provider of some other "Secondary Service" (as defined below in paragraph (g) below).

(e) The term "relative" means a "relative" as that term is defined in section 3(15) of the Act (or a "member of the family") as that term is defined in section 4975(e)(6) of the Code), or a

[2] Putnam will pay interest on any such amounts from the date it receives such incremental amounts to the date it makes the rebate payment to the Collective Fund.

brother, a sister, or a spouse of a brother or a sister.

(f) The term "Second Fiduciary" means a fiduciary of a Client Plan who is independent of, and unrelated to, Putnam. For purposes of this exemption, the Second Fiduciary will not be deemed to be independent of and unrelated to Putnam if:

(1) Such fiduciary directly or indirectly controls, is controlled by, or is under common control with Putnam;

(2) Such fiduciary, or any officer, director, partner, employee, or relative of the fiduciary is an officer, director, partner or employee of Putnam (or is a relative of such persons); or

(3) Such fiduciary directly or indirectly receives any compensation or other consideration for his or her own personal account in connection with any transaction described in this exemption.

If an officer, director, partner or employee of Putnam (or a relative of such a person), is a director of such Second Fiduciary, and if he or she abstains from participation in (i) the decision of the Client Plan to invest in, and remain invested in, the Collective Fund and (ii) the granting of any authorization contemplated by Section I(h) or any deemed authorization contemplated by Section I(i) and (j) with respect to the Collective Fund, then paragraph (f)(2) above shall not apply.

(g) The term "Secondary Service" means a service other than an investment management, investment advisory, or similar service, which is provided by Putnam to the Mutual Fund, including but not limited to custodial, accounting, administrative, or any other service.

(h) The term "net asset value (*i.e.,* NAV)" means the amount for purposes of pricing all purchases and sales, calculated by dividing the value of all securities, determined by a method as set forth in a Mutual Fund's prospectus and statement of additional information, and other assets belonging to the Mutual Fund or portfolio of the Mutual Fund, less the liabilities charged to each such portfolio or Mutual Fund, by the number of outstanding shares.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption, refer to the notice of proposed exemption published on January 19, 2010 at 75 FR 3054.

Written Comments and Hearing Requests

The Department received one written comment letter in response to the notice of proposed exemption, which was submitted by the Applicant. There were no requests for a hearing.

In its comment letter, the Applicant requested that the Department make three changes to the operative language of the proposed exemption. First, the Applicant asked the Department to revise section I(b) in order to reflect the possibility that a Mutual Fund might have more than one class of shares. The Department has made the requested change by adding the words, "of the same class of shares" to the condition. The Applicant also suggested that the Department clarify the language of section I(j)(B)(2), and agreed with the Department's re-wording of the condition which requires that Putnam will, at least 30 days in advance of the implementation of any direct or indirect increase in fees described in paragraph (j), provide a written notice to the Second Fiduciary of each Client Plan having an interest in the Collective Fund. Third, the Applicant asked the Department to revise section III(d) to reflect the fact that the Putnam Prime Money Market Fund is no longer in existence.

In addition, the Applicant provided the following changes and updated information for the "Summary of Facts and Representations" (the Summary) section of the proposed exemption:

(1) PFTC became a New Hampshire (not Massachusetts) trust company on April 3, 2009 and, as such, is subject to supervision by the New Hampshire Banking Department;

(2) As a result of an internal corporate reorganization, which occurred on August 3, 2007, PFTC is now a wholly-owned subsidiary of Putnam U.S. Holdings, LLC (not of Putnam, LLC). Accordingly, all references to Putnam, LLC should be read to mean Putnam U.S. Holdings, LLC;

(3) Putnam U.S. Holdings, LLC has been an indirect majority-owned subsidiary of Great-West Lifeco U.S. Inc. at all times since Great-West Lifeco U.S. Inc. acquired Putnam on August 3, 2007;

(4) In paragraph 2 of the Summary, the word "2006" should be deleted;

(5) Paragraph 5 of the Summary refers to the Putnam Prime Money Market Fund. As noted above, this fund was terminated subsequent to the filing of the exemption application. The successor to this fund is the Putnam Money Market Liquidity Fund, which was established in 2009. As a result of the foregoing, the reference in the first sentence of paragraph 5 of the Summary should be changed from Putnam Prime Money Market Fund to Putnam Money Market Liquidity Fund. The third sentence of paragraph 5 of the Summary should be revised to state that, "The Applicant represents that since January 2006, the yields generated by the institutional money market funds managed by Putnam have generally been superior to the yield generated by the STIF"; and

(6) In paragraph 19 of the Summary, the reference to other shareholders should be to other shareholders "of the same class of shares" of the Mutual Fund.

The Department has given full consideration to the entire record, including the comment letter received. The Department has determined to grant the exemption, with the changes as noted above.

FOR FURTHER INFORMATION CONTACT: Mr. Gary H. Lefkowitz of the Department, telephone (202) 693–8546. (This is not a toll-free number.)

UBS Financial Services Inc. and Its Affiliates (UBS), Located in Weehawken, New Jersey.

[Prohibited Transaction Exemption 2010–14; Exemption Application No. D–11502.]

Exemption

Section I. Transactions Involving Plans Described in Both Title I and Title II of ERISA

The restrictions of sections 406(a)(1)(A) through (D) and section 406(b) of the Act, and the taxes imposed by sections 4975(a) and (b) of the Code, by reason of section 4975(c)(1) of the Code, shall not apply, effective February 1, 2008, to the following transactions, if the conditions set forth in Section III have been met: [3]

(a) The sale or exchange of an Auction Rate Security (as defined in Section IV(b)) by a Plan (as defined in Section IV(h)) to the Sponsor (as defined in Section IV(g)) of such Plan; or

(b) A lending of money or other extension of credit to a Plan in connection with the holding of an Auction Rate Security by the Plan, from: (1) UBS; (2) an Introducing Broker (as defined in Section IV(f)); or (3) a Clearing Broker (as defined in Section IV(d)); where the loan is: (i) repaid in accordance with its terms; and (ii) guaranteed by the Sponsor.

Section II. Transactions Involving Plans Described in Title II of ERISA Only

The sanctions resulting from the application of sections 4975(a) and (b) of the Code, by reason of section 4975(c)(1) of the Code, shall not apply,

[3] For purposes of this exemption, references to section 406 of the Act should be read to refer as well to the corresponding provisions of section 4975 of the Code.

effective February 1, 2008, to the following transactions, if the conditions set forth in Section III have been met:

(a) The sale or exchange of an Auction Rate Security by a Title II Only Plan (as defined in Section IV(i)) to the Beneficial Owner (as defined in Section IV(c)) of such Plan; or

(b) A lending of money or other extension of credit to a Title II Only Plan in connection with the holding of an Auction Rate Security by the Title II Only Plan, from: (1) UBS; (2) an Introducing Broker; or (3) a Clearing Broker; where the loan is: (i) repaid in accordance with its terms and; (ii) guaranteed by the Beneficial Owner.

Section III. Conditions

(a) UBS acted as a broker or dealer, non-bank custodian, or fiduciary in connection with the acquisition or holding of the Auction Rate Security that is the subject of the transaction;

(b) For transactions involving a Plan (including a Title II Only Plan) not sponsored by UBS for its own employees, the decision to enter into the transaction is made by a Plan fiduciary who is independent (as defined in Section IV(e)). For transactions involving a Plan sponsored by UBS for its own employees, UBS may direct such Plan to engage in a transaction described in Section I if all of the other conditions of this Section III have been met. Notwithstanding the foregoing, an employee of UBS who is the Beneficial Owner of a Title II Only Plan may direct such Plan to engage in a transaction described in Section II, if all of the other conditions of this Section III have been met;

(c) The last auction for the Auction Rate Security was unsuccessful;

(d) The Plan does not waive any rights or claims in connection with the loan or sale as a condition of engaging in the above-described transaction;

(e) The Plan does not pay any fees or commissions in connection with the transaction;

(f) The transaction is not part of an arrangement, agreement or understanding designed to benefit a party in interest;

(g) With respect to any sale described in Section I(a) or Section II(a):

(1) The sale is for no consideration other than cash payment against prompt delivery of the Auction Rate Security; and

(2) For purposes of the sale, the Auction Rate Security is valued at par, plus any accrued but unpaid interest;[4]

(h) With respect to an in-kind exchange described in Section I(a) or Section II(a), the exchange involves the transfer by a Plan of an Auction Rate Security in return for a Delivered Security, as such term is defined in Section IV(j), where:

(1) The exchange is unconditional;

(2) For purposes of the exchange, the Auction Rate Security is valued at par, plus any accrued but unpaid interest;

(3) The Delivered Security is valued at fair market value, as determined at the time of the in-kind exchange by a third party pricing service or other objective source;

(4) The Delivered Security is appropriate for the Plan and is a security that the Plan is otherwise permitted to hold under applicable law; [5] and

(5) The total value of the Auction Rate Security (*i.e.,* par plus any accrued but unpaid interest) is equal to the fair market value of the Delivered Security;

(i) With respect to a loan described in Sections I(b) or II(b):

(1) The loan is documented in a written agreement that contains all of the material terms of the loan, including the consequences of default;

(2) The Plan does not pay an interest rate that exceeds one of the following three rates as of the commencement of the loan:

(A) The coupon rate for the Auction Rate Security;

(B) The Federal Funds Rate; or

(C) The Prime Rate;

(3) The loan is unsecured; and

(4) The amount of the loan is not more than the total par value of the Auction Rate Securities held by the Plan.

Section IV. Definitions

(a) The term "affiliate" means: Any person directly or indirectly, through one or more intermediaries, controlling, controlled by, or under common control with such other person;

(b) The term "Auction Rate Security" or "ARS" means a security:

(1) That is either a debt instrument (generally with a long-term nominal maturity) or preferred stock; and

(2) With an interest rate or dividend that is reset at specific intervals through a Dutch auction process;

(c) The term "Beneficial Owner" means: The individual for whose benefit the Title II Only Plan is established and includes a relative or family trust with respect to such individual;

(d) The term "Clearing Broker" means: A member of a securities exchange that acts as a liaison between an investor and a clearing corporation and that helps to ensure that a trade is settled appropriately, that the transaction is successfully completed and that is responsible for maintaining the paper work associated with the clearing and executing of a transaction;

(e) The term "independent" means a person who is: (1) Not UBS or an affiliate; and (2) not a relative (as defined in section 3(15) of the Act) of the party engaging in the transaction;

(f) The term "Introducing Broker" means: A registered broker that is able to perform all the functions of a broker except for the ability to accept money, securities, or property from a customer;

(g) The term "Sponsor" means: A plan sponsor as described in section 3(16)(B) of the Act and any affiliates;

(h) The term "Plan" means: Any plan described in section 3(3) of the Act and/or section 4975(e)(1) of the Code;

(i) The term "Title II Only Plan" means: Any plan described in section 4975(e)(1) of the Code which is not an employee benefit plan covered by Title I of the Act; and

(j) The term "Delivered Security" means a security that is: (1) Listed on a national securities exchange (excluding OTC Bulletin Board-eligible securities and Pink Sheets-quoted securities); (2) a U.S. Treasury obligation; (3) a fixed income security that has a rating at the time of the exchange that is in one of the two highest generic rating categories from an independent nationally recognized statistical rating organization (*e.g.,* a highly rated municipal bond or a highly rated corporate bond); or (4) a certificate of deposit insured by the Federal Deposit Insurance Corporation. Notwithstanding the above, the term "Delivered Security" shall not include any Auction Rate Security, or any

[4] This exemption does not address tax issues. The Department has been informed by the Internal Revenue Service (the Service) and the Department of the Treasury that they are considering providing limited relief from the requirements of sections 72(t)(4), 401(a)(9), and 4974 of the Code with respect to retirement plans that hold Auction Rate Securities. The Department has also been informed by the Service that if Auction Rate Securities are purchased from a Plan in a transaction described in Sections I and II at a price that exceeds the fair market value of those securities, then the excess value would be treated as a contribution for purposes of applying applicable contribution and deduction limits under sections 219, 404, 408, and 415 of the Code.

[5] The Department notes that the Act's general standards of fiduciary conduct also would apply to the transactions described herein. In this regard, section 404 of the Act requires, among other things, that a fiduciary discharge his duties respecting a plan solely in the interest of the plan's participants and beneficiaries and in a prudent manner. Accordingly, a Plan fiduciary must act prudently with respect to, among other things: (1) The decision to exchange an Auction Rate Security for a Delivered Security; and (2) the negotiation of the terms of such exchange (or a cash sale or loan described above), including the pricing of such securities. The Department further emphasizes that it expects Plan fiduciaries, prior to entering into any of the transactions, to fully understand the risks associated with these types of transactions following disclosure by UBS of all relevant information.

related Auction Rate Security, including derivatives or securities materially comprised of Auction Rate Securities or any illiquid securities.

Effective Date: This exemption is effective as of February 1, 2008.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption, refer to the notice of proposed exemption published on January 19, 2010 at 75 FR 3071.

For Further Information Contact: Brian Shiker of the Department, telephone (202) 693–8552. (This is not a toll-free number.)

Subaru of America, Inc. (Subaru), Located in Cherry Hill, New Jersey.

[Prohibited Transaction Exemption 2010–15; Exemption Application No. D–11531.]

Exemption

The restrictions of sections 406(a) and (b) of the Act shall not apply to the reinsurance of risks and the receipt of premiums therefrom by Pleiades Insurance Company, Ltd. (PIC) in connection with an insurance contract sold by Minnesota Life Insurance Company (MN Life) or any successor insurance company to MN Life which is unrelated to Subaru, to provide group-term life insurance to employees of Subaru under the Subaru of America, Inc. Welfare Benefit Plan (the Plan), provided the following conditions are met:

(a) PIC—

(1) Is a party in interest with respect to the Plan by reason of a stock or partnership affiliation with Subaru that is described in section 3(14)(E) or (G) of the Act,

(2) Is licensed to sell insurance or conduct reinsurance operations in at least one State as defined in section 3(10) of the Act,

(3) Has a U.S. branch, the Pleiades Insurance Company Ltd. (U.S. Branch), which has obtained a Certificate of Authority from the Insurance Commissioner of its domiciliary State which has neither been revoked nor suspended,

(4)(A) Has undergone and shall continue to undergo an examination by an independent certified public accountant for its last completed taxable year immediately prior to the taxable year of the reinsurance transaction; or

(B) Has undergone a financial examination (within the meaning of the law of its domiciliary State, the District of Columbia) by the Insurance Commissioner of the District of Columbia within 5 years prior to the end of the year preceding the year in which the reinsurance transaction occurred, and

(5) Is licensed to conduct reinsurance transactions by a State whose law requires that an actuarial review of reserves be conducted annually by an independent firm of actuaries and reported to the appropriate regulatory authority;

(b) The Plan pays no more than adequate consideration for the insurance contracts;

(c) In subsequent years, the formula used to calculate premiums by MN Life or any successor insurer will be similar to formulae used by other insurers providing comparable coverage under similar programs. Furthermore, the premium charge calculated in accordance with the formula will be reasonable and will be comparable to the premium charged by the insurer and its competitors with the same or a better rating providing the same coverage under comparable programs;

(d) The Plan only contracts with insurers with a rating of A or better from A.M. Best Company. The reinsurance arrangement between the insurer and PIC will be indemnity insurance only, *i.e.,* the insurer will not be relieved of liability to the Plan should PIC be unable or unwilling to cover any liability arising from the reinsurance arrangement;

(e) No commissions are paid with respect to the reinsurance of such contracts; and

(f) For each taxable year of PIC, the gross premiums and annuity considerations received in that taxable year by PIC for life and health insurance or annuity contracts for all employee benefit plans (and their employers) with respect to which PIC is a party in interest by reason of a relationship to such employer described in section 3(14)(E) or (G) of the Act does not exceed 50% of the gross premiums and annuity considerations received for all lines of insurance (whether direct insurance or reinsurance) in that taxable year by PIC. For purposes of this condition (f):

(1) The term "gross premiums and annuity considerations received" means as to the numerator the total of premiums and annuity considerations received, both for the subject reinsurance transactions as well as for any direct sale or other reinsurance of life insurance, health insurance or annuity contracts to such plans (and their employers) by PIC. This total is to be reduced (in both the numerator and the denominator of the fraction) by experience refunds paid or credited in that taxable year by PIC.

(2) All premium and annuity considerations written by PIC for plans which it alone maintains are to be excluded from both the numerator and the denominator of the fraction.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption, refer to the notice of proposed exemption published on February 23, 2010 at 75 FR 8132.

For Further Information Contact: Gary H. Lefkowitz of the Department, telephone (202) 693–8546. (This is not a toll-free number.)

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 408(a) of the Act and/or section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest or disqualified person from certain other provisions to which the exemption does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which among other things require a fiduciary to discharge his duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(B) of the Act; nor does it affect the requirement of section 401(a) of the Code that the plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) This exemption is supplemental to and not in derogation of, any other provisions of the Act and/or the Code, including statutory or administrative exemptions and transactional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction; and

(3) The availability of this exemption is subject to the express condition that the material facts and representations contained in the application accurately describes all material terms of the transaction which is the subject of the exemption.

Signed at Washington, DC, this 26th day of April 2010.

Ivan Strasfeld,

Director of Exemption Determinations, Employee Benefits Security Administration, U.S. Department of Labor.

[FR Doc. 2010–10064 Filed 4–29–10; 8:45 am]

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DEPARTMENT OF LABOR

Employee Benefits Security Administration

D–11456, PNC Financial Services Group, Inc.; and D–11602, State Street Bank and Trust Company, et al.

AGENCY: Employee Benefits Security Administration, Department of Labor.

ACTION: Notice of Proposed Exemptions.

SUMMARY: This document contains notices of pendency before the Department of Labor (the Department) of proposed exemptions from certain of the prohibited transaction restrictions of the Employee Retirement Income Security Act of 1974 (ERISA or the Act) and/or the Internal Revenue Code of 1986 (the Code).

Written Comments and Hearing Requests

All interested persons are invited to submit written comments or requests for a hearing on the pending exemptions, unless otherwise stated in the Notice of Proposed Exemption, within 45 days from the date of publication of this **Federal Register** Notice. Comments and requests for a hearing should state: (1) The name, address, and telephone number of the person making the comment or request, and (2) the nature of the person's interest in the exemption and the manner in which the person would be adversely affected by the exemption. A request for a hearing must also state the issues to be addressed and include a general description of the evidence to be presented at the hearing.

ADDRESSES: All written comments and requests for a hearing (at least three copies) should be sent to the Employee Benefits Security Administration (EBSA), Office of Exemption Determinations, Room N–5700, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210. Attention: Application No. _____, stated in each Notice of Proposed Exemption. Interested persons are also invited to submit comments and/or hearing requests to EBSA via e-mail or FAX. Any such comments or requests should be sent either by e-mail to: *moffitt.betty@dol.gov,* or by FAX to (202) 219–0204 by the end of the scheduled comment period. The applications for exemption and the comments received will be available for public inspection in the Public Documents Room of the Employee Benefits Security Administration, U.S. Department of Labor, Room N–1513, 200 Constitution Avenue, NW., Washington, DC 20210.

Warning: If you submit written comments or hearing requests, do not include any personally-identifiable or confidential business information that you do not want to be publicly-disclosed. All comments and hearing requests are posted on the Internet exactly as they are received, and they can be retrieved by most Internet search engines. The Department will make no deletions, modifications or redactions to the comments or hearing requests received, as they are public records.

Notice to Interested Persons

Notice of the proposed exemptions will be provided to all interested persons in the manner agreed upon by the applicant and the Department within 15 days of the date of publication in the **Federal Register**. Such notice shall include a copy of the notice of proposed exemption as published in the **Federal Register** and shall inform interested persons of their right to comment and to request a hearing (where appropriate).

SUPPLEMENTARY INFORMATION: The proposed exemptions were requested in applications filed pursuant to section 408(a) of the Act and/or section 4975(c)(2) of the Code, and in accordance with procedures set forth in 29 CFR Part 2570, Subpart B (55 FR 32836, 32847, August 10, 1990). Effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978, 5 U.S.C. App. 1 (1996), transferred the authority of the Secretary of the Treasury to issue exemptions of the type requested to the Secretary of Labor. Therefore, these notices of proposed exemption are issued solely by the Department.

The applications contain representations with regard to the proposed exemptions which are summarized below. Interested persons are referred to the applications on file with the Department for a complete statement of the facts and representations.

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in 29 CFR part 2570, subpart B (55 FR 32836, 32847, August 10, 1990):

Section I—Exemption for Receipt of Fees

In connection with the investment in an open-end investment company (a Fund(s)), as defined, below, in Section III, by certain employee benefit plans (Client Plan(s)) for which PNC (PNC or the Applicant), as defined below, serves as a fiduciary and is a party in interest with respect to such Client Plan, the restrictions of section 406(a)(1)(D) and 406(b) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(D) through (F) [1] of the Code, shall not apply, effective February 1, 2008 to:

(a) The receipt of fees by PNC and its affiliate PNC Capital Advisors, Inc. (PCA) from the Funds in connection with the investment by the Client Plans in shares of the Funds where PNC or its affiliate PCA acts as an investment advisor for such Funds; and

(b) the receipt of fees by PNC or its affiliates from the Funds in connection with providing certain secondary services, as defined below, (Secondary Services) to such Funds in which a Client Plan invests; provided that the conditions of Section II are met.

Section II—General Conditions

(a) PNC, which serves as a fiduciary for a Client Plan, satisfies any one (but not all) of the following:

(1) A Client Plan invested in a Fund does not pay any plan-level investment management fee, investment advisory fee, or similar fee (Plan-Level Fee(s)) to PNC or its affiliates with respect to any of the assets of such Client Plan which are invested in shares of such Fund for the entire period of such investment (the Offset Fee Method). This condition does not preclude the payment of investment advisory fees by the Funds to PNC under the terms of an investment management agreement adopted in accordance with section 15 of the Investment Company Act of 1940 (the "1940 Act");

(2) A Client Plan invested in the Funds pays an investment management fee or similar fee based on total Client Plan assets from which a credit has been subtracted representing such Client Plan's pro rata share of investment advisory fees paid by the Funds to PNC (the Subtraction Fee Method). If, during any fee period for which a Client Plan has prepaid its investment management or similar fee, the Client Plan purchases shares of such Fund, the requirement of this Section II(a)(2) shall be deemed to have been met with respect to such prepaid fee if, by a method reasonably designed to accomplish the same, the amount of the prepaid fee that constitutes the fee with respect to plan assets invested in shares of such Fund

[1] For purposes of this exemption reference to specific provisions of Title I of the Act, unless otherwise specified, refer also to the corresponding provisions of the Code.

(i) is anticipated and subtracted from the prepaid fee at the time of payment of such fee, (ii) is returned to the Client Plan no later than during the immediately following fee period, or (iii) is offset against the prepaid fee for the immediately following fee period or for the fee period immediately following thereafter. For purposes of this Section II(a)(2), a fee shall be deemed to have been prepaid for any fee period if the amount of such fee is calculated as of a date not later than the first day of such period; or

(3) A Client Plan invested in a Fund receives a "credit" [2] (the Credit Fee Method) of such Plan's proportionate share of all fees charged to the Funds by PNC for investment advisory or similar services, on a date which is no later than one business day after receipt of such fees by PNC from the Fund. The crediting of all such fees to such Client Plan by PNC is audited by an independent accountant firm (the Auditor) on at least an annual basis to verify the proper crediting of such fees to such Client Plan.

(b) The price paid or received by a Client Plan for shares in a Fund is the net asset value per share at the time the transaction, as defined, below in Section III, and is the same price which would have been paid or received for such shares by any other investor in such Fund at that time;

(c) PNC, including any officer or director of PNC, does not purchase or sell shares of the Funds from or to any Client Plan;

(d) A Client Plan does not pay sales commissions in connection with any purchase or sale of shares of a Fund, and a Client Plan does not pay redemption fees in connection with any sale of shares to a Fund, unless

(1) Such redemption fee is paid only to a Fund, and

(2) The existence of such redemption fee is disclosed in the prospectus for such Fund in effect both at the time of the purchase of such shares and at the time of such sale;

(e) The combined total of all fees received by PNC for the provision of services by PNC to Client Plans and to Funds in which a Client Plan invests, is not in excess of "reasonable compensation" within the meaning of section 408(b)(2) of the Act;

(f) PNC does not receive any fees payable pursuant to Rule 12b–1 under the 1940 Act in connection with the transactions;

(g) No Client Plan is an employee benefit plan sponsored or maintained by PNC;

(h) A second fiduciary (Second Fiduciary), as defined below in Section III, who is acting on behalf of a Client Plan receives, in advance of any initial investment by a Plan Client in a Fund, full and detailed written disclosure of information concerning such Fund including but not limited to:

(1) A current prospectus for each Fund in which a Client Plan is considering investing;

(2) A statement describing the fees, including the nature and extent of any differential between the rates of such fees for:

(i) Any investment advisory or similar services to be paid by such Fund,

(ii) Any Secondary Services to be paid by such Fund to PNC, and

(iii) All other fees to be charged to or paid by the Client Plan and by such Fund;

(3) The reason why PNC, acting as a fiduciary for such Client Plan, considers investment in such Fund to be appropriate for such Client Plan;

(4) A statement describing whether there are any limitations applicable to PNC with respect to which assets of a Client Plan may be invested in such Fund, and if so, the nature of such limitations; and

(5) Upon the request of the Second Fiduciary, acting on behalf of a Client Plan, a copy of the proposed exemption and/or copy of the final exemption, if granted, once such documents are published in the **Federal Register**.

(i) On the basis of the information described, above, in Section II(h), a Second Fiduciary, acting on behalf of a Client Plan, authorizes in writing: (1) The investment of the assets of such Client Plan in shares of each particular Fund; and (2) the fees received by PNC in connection with services provided by PNC to such Fund. Such authorization by a Second Fiduciary must be consistent with the responsibilities, obligations, and duties imposed on fiduciaries by Part 4 of Title I of the Act.

(j)(1) All authorizations described above, in Section II(i), made by a Second Fiduciary, regarding:

(i) Investments by a Client Plan in a Fund;

(ii) Fees paid to PNC for investment management advisory services or similar services; and

(iii) Fees paid for Secondary Services shall be terminable at will by the Second Fiduciary, acting on behalf of such Client Plan, without penalty to such Client Plan, upon receipt by PNC, acting as fiduciary on behalf of such Client Plan, of a written notice of termination. A form (the Termination Form), as defined, below, in Section III(j), expressly providing an election to terminate the authorizations, described, above, in Section II(i), with instructions on the use of such Termination Form must be provided to such Second Fiduciary at least annually. However, if a Termination Form has been provided to such Second Fiduciary, pursuant to Section II(k) and (l), below, then a Termination Form need not be provided again, pursuant to this Section II(j), unless at least six (6) months but no more than twelve (12) months have elapsed, since a Termination Form was provided, pursuant to Section II(k) and (l), below.

With respect to j(1)(i), (ii), and (iii) above, all such investments and fees shall be terminable at will by the Second Fiduciary acting on behalf of such Client Plan.

(2) The instructions for the Termination Form must include the following information:

(i) The authorization, described above in Section II(i), is terminable at will by the Second Fiduciary acting on behalf of a Client Plan, without penalty to the Client Plan, upon receipt by PNC of written notice from such Second Fiduciary; and

(ii) Failure by such Second Fiduciary to return the Termination Form will be deemed to be an approval by the Second Fiduciary and will result in the continued authorization, as described above, in Section II(i) of PNC to engage in the transactions described in this proposed exemption;

(k) For a Client Plan invested in a Fund which uses one of the fee methods described, above, in Section II(a)(1), (a)(2), or (a)(3) in the event of a proposed change from one of the fee methods to another or in the event of a proposed increase in the rate of any fee paid by such Fund to PNC for any investment advisory service or similar service that PNC provides to a Fund over an existing rate for such service or method of determining the fee for such service, which had been authorized by the Second Fiduciary for such Client Plan, in accordance with Section II(i), above, PNC, at least thirty (30) days in advance of the implementation of such change and/or such increase, provides a written notice (which may take the form of a proxy statement, letter, or similar communication that is separate from the prospectus of such Fund and which explains the nature and amount of such change from one of the fee methods to

[2] PNC represents that it would be accurate to describe "the credit" as a "credited dollar amount" to cover situations in which the "credited amount" is used to acquire additional shares of a Fund, rather than being held by a Client Plan in the form of cash. It is represented that the standard practice is to reinvest the "credited dollar amount" in additional shares of the same Fund with respect to which the fees were credited.

another or increase in fee) to the Second Fiduciary of each Client Plan affected by such change from one fee method to another fee method or increase in fee. Such notice shall be accompanied by a Termination Form, with instructions on the use of such Termination Form, as described, above, in Section II(j).

(l) In the event of:

(i) A proposed addition of a Secondary Service for which an additional fee is charged; or

(ii) A proposed increase in the rate of any fee paid by a Fund to PNC for any Secondary Service, or

(iii) A proposed increase in the rate of any fee paid for Secondary Services that results from the decrease in the number or kind of services performed by PNC for such fee over an existing rate for services which had been authorized, in accordance with Section II(i), by the Second Fiduciary for a Client Plan invested in such Fund, PNC will at least thirty (30) days in advance of the implementation of such fee increase or additional service for which an additional fee is charged or a decrease in the number or kind of services being performed, provide a written notice (which may take the form of a proxy statement, letter, or similar communication that is separate from the prospectus of such Fund and which explains the nature and amount of the additional service for which an additional fee is charged or the nature and amount of the increase in fees or the decrease in the number or kind of services) to the Second Fiduciary of each Client Plan invested in such Fund which is proposing to increase fees or add services for which an additional fee is charged or decreasing the number or kind of services being performed. Such notice shall be accompanied by a Termination Form, with instructions on the use of such Termination Form, as described, above in Section II(j);

(m) On an annual basis, PNC provides the Second Fiduciary of such Client Plan invested in a Fund with:

(1) A copy of the current prospectus for such Fund in which such Client Plan invests,

(2) Upon the request of such Second Fiduciary, a copy of the Statement of Additional Information for such Fund which contains a description of all fees paid by such Fund to PNC;

(3) A copy of the annual financial disclosure report which includes information about Fund portfolios, as well as the audit findings of an independent auditor, within sixty (60) days of the preparation of such report; and

(4) Oral or written responses to inquiries of the Second Fiduciary of such Client Plan, as such inquiries arise.

(n) All dealings between a Client Plan and a Fund are on a basis no less favorable to such Client Plan than dealings between such Fund and other shareholders invested in such Fund.

(o) PNC maintains for a period of six (6) years the records necessary to enable the persons described, below, in Section II(p) to determine whether the conditions of this exemption have been met, except that:

(1) A prohibited transaction will not be considered to have occurred, if solely because of circumstances beyond the control of PNC, the records are lost or destroyed prior to the end of the six-year period, and

(2) No party in interest other than PNC shall be subject to the civil penalty that may be assessed under section 502(i) of the Act or to the taxes imposed by section 4975(a) and (b) of the Code if the records are not maintained or are not available for examination as required by Section II(p), below.

(p)(1) Except as provided in Section II(p)(2) and notwithstanding any provisions of section 504(a)(2) of the Act, the records referred to in Section II(o) are unconditionally available at their customary location for examination during normal business hours by—

(i) Any duly authorized employee or representative of the Department or the Internal Revenue Service,

(ii) Any fiduciary of a Client Plan who has authority to acquire or dispose of shares of a Fund owned by such Client Plan, or any duly authorized employee or representative of such fiduciary, and

(iii) Any participant or beneficiary of a Client Plan or duly authorized employee or representative of such participant or beneficiary.

(2) None of the persons described in Section II(p)(1)(ii) and (iii) shall be authorized to examine trade secrets of PNC, or commercial or financial information which is privileged or confidential.

Section III—Definitions

For purposes of this exemption:

(a) The term "PNC" means The PNC Financial Services Group, Inc., and any affiliate thereof as defined below in paragraph (b) of this section.

(b) An "affiliate" of a person includes:

(1) Any person directly or indirectly through one or more intermediaries, controlling, controlled by, or under common control with the person;

(2) Any officer, director, employee, relative, or partner in any such person; and

(3) Any corporation or partnership of which such person is an officer, director, partner, or employee.

(c) The term "control" means the power to exercise a controlling influence over the management or policies of a person other than an individual.

(d) The term "Client Plan" means any employee benefit plan as defined in section 3(3) of the Act; as well as Keogh plans and individual retirement accounts, for which PNC is a fiduciary as defined in section 3(21) of the Act (excluding any employee benefit plans sponsored by PNC or its affiliates).

(e) The term "Fund" or "Funds" shall mean the PNC Funds, Inc. or any other diversified open-end investment company or companies registered under the 1940 Act for which PNC serves as an investment advisor, but not sub-advisor, and for which PNC may serve as a custodian, dividend disbursing agent, shareholder servicing agent, transfer agent, fund accountant, or provide some other "Secondary Service," as defined below in Section III which has been approved by such Funds.

(f) The term "net asset value" means the amount for purposes of pricing all purchases and sales of shares of a Fund calculated by dividing the value of all securities, determined by a method as set forth in the Fund's prospectus and statement of additional information, and other assets belonging to the Fund or portfolio of the Fund, less the liabilities charged to each such portfolio or Fund, by the number of outstanding shares.

(g) The term "relative," means a relative as that term is defined in section 3(15) of the Act (or a member of the family as that term is defined in section 4975(e)(6) of the Code), or a brother, a sister, or a spouse of a brother or a sister.

(h) The term, "Second Fiduciary(ies)," means a fiduciary of a Client Plan who is independent of and unrelated to PNC. For purposes of this exemption, the Second Fiduciary will not be deemed to be independent of and unrelated to PNC if:

(1) Such fiduciary, directly or indirectly controls, through one or more intermediaries, is controlled by, or is under common control with PNC;

(2) Such fiduciary, or any officer, director, partner, employee, or relative of the fiduciary, is an officer, director, partner, or employee of PNC (or is a relative of such persons); or

(3) Such fiduciary, directly or indirectly, receives any compensation or other consideration for his or her personal account in connection with

any transaction described in this exemption.

If an officer, director, partner, or employee of PNC (or relative of such persons) is a director of such Second Fiduciary, and if he or she abstains from participation in (i) the choice of such Client Plan's investment advisor, (ii) the approval of any such purchase or sale between such Client Plan and a Fund, and (iii) the approval of any change in fees charged to or paid by such Client Plan in connection with any of the transactions described in Section I above, then Section III(h)(2), above, shall not apply.

(i) The term, "Secondary Service(s)," means a service which is provided by PNC to a Fund, including custodial, accounting, and/or administrative services. The fees for providing Secondary Services to a Fund are paid to PNC by such Fund.

(j) The term, "Termination Form," means the form supplied to a Second Fiduciary which expressly provides an election to such Second Fiduciary to terminate on behalf of a Client Plan the authorization described, above, in Section II(i).

(k) The term, "business day," means any day that:

(1) PNC is open for conducting all or substantially or substantially all of its banking functions, and

(2) The New York Stock Exchange (or any successor exchange) is open for trading.

Effective Dates: If granted, this proposed exemption will be effective February 1, 2008.

Summary of Facts and Representations

1. PNC is a bank holding company that owns or controls PNC Bank, National Association (PNC Bank, NA), PNC Bank, Delaware, and Yardville National Bank and a number of non-bank subsidiaries. PNC provides, through its subsidiaries, a wide variety of trust and banking services to individuals, corporations and institutions. Through its banking subsidiaries, PNC provides investment management, fiduciary and trustee services to employee benefit plans and charitable and endowment assets, and provides non-discretionary services and investment options for defined contribution plans.

On March 2, 2007, PNC acquired Mercantile Bankshares Corporation (Mercantile), the parent company of eleven Mercantile subsidiary banks (the Mercantile Subsidiary Banks). PNC merged the Mercantile Subsidiary Banks with and into PNC Bank, NA on September 14, 2007, pursuant to an application filed with and approved by the Office of the Comptroller of the Currency. Immediately after consummation of the merger, PNC Bank, NA transferred to PNC Bank, Delaware, nine Delaware branches previously held by two of the Mercantile Subsidiary Banks, pursuant to a Bank Merger Act application filed with and approved by the Federal Reserve Bank of Cleveland.

2. After October 1, 2007, the Mercantile Funds Inc. became the Funds or the PNC Funds, Inc. The Funds are diversified open-end investment company or companies registered under the 1940 Act. Each of the individual Funds constitutes a distinct investment vehicle, which has its own prospectus or joint prospectus with one or more other Funds. The shares of each Fund represent proportionate interests in the assets of that Fund. The Funds have 14 individual funds that offer portfolios of equity, fixed income and money market investments. The Funds that will be available for investment in connection with the transactions described in this proposal include the following: Prime Money Market Fund, Government Money Market Fund, Limited Maturity Bond Fund, Total Return Bond Fund, Capital Opportunities Fund, International Equity Fund, Growth & Income Fund, Diversified Real Estate Fund, Equity Income Fund, and Equity Growth Fund.

The overall management of the Funds, including the negotiation of investment advisory contracts, rests with the Board of Directors of the Funds. The Applicant represents that all of the Board's current Directors are independent of PNC and its affiliates.

3. PNC, through its affiliate PCA, serves as the investment advisor to each Fund within the meaning of section 2(20) of the 1940 Act. Prior to September 17, 2007, PCA was called Mercantile Capital Advisors, Inc. PCA has retained unaffiliated sub-advisors to manage certain Funds. PNC represents that PCA pays for the fees charged by its sub-advisors so that such sub-advisor fees are not an additional expense for such Funds. PNC receives maximum gross investment advisory fees from each Fund that vary between .20% and 1.30% of the Fund's average net assets on a daily basis. These fees are subject to waivers and reimbursements and currently the maximum advisory fee charged is 1.06%. The Funds charge a Rule 12b–1 distribution fee of between .50% and a 1.00% with respect to their Class A and Class C shares. Client Plans invest only in Fund institutional shares which do not pay 12b–1 fees.

PCA also serves as administrator for the Funds. As administrator, PCA maintains the Fund's office, prepares filings with state securities commissions, coordinates federal and state tax returns and performs other administrative functions. In its capacity as administrator, PCA is entitled to an administrative fee, computed daily and paid monthly. On February 1, 2008, the Fund began using service providers which are PNC affiliates. However, the custodian for the Client Plans is not a PNC affiliate.

4. Employee benefit plans, as defined in section 3(3) of the Act, and plans, as defined in section 4975(e)(1) of the Code, as to which PNC serves as fiduciary, are the subject plans of the proposed transaction. PNC, through its subsidiaries and affiliates, serves as trustee, investment manager, and in other similar fiduciary capacities with respect to retirement plans qualified under 401(a) of the Code, individual retirement accounts (IRA) described in section 408 of the Code, and welfare and or other employee benefit plans that constitute "employee plans" as defined in section 3(3) of the Act and/or "plans" as defined in section 4975(e)(1) of the Code. The specific Client Plans of PNC for which this exemption is being requested are those to which PNC is a fiduciary with investment discretion and whose assets either (1) are currently invested in the Funds or (2) may in the future be invested in the Funds.

5. As of June 30, 2007, PNC performed discretionary management services for over 940 employee benefit accounts with total assets in excess of $6.2 billion. These services include discretionary investment management programs under which PNC invests assets of Client Plans in securities, including shares of open-end investment companies (i.e., mutual funds) registered under the 1940 Act, the investment advisors to which may or may not be affiliated with PNC.

When PNC is acting as discretionary trustee or investment manager, PNC has investment discretion over the Client Plan's assets and is responsible for implementing the Plan's investment discretion objectives within the guidelines established by the Plan sponsor or named fiduciary. PNC may serve as a Plan custodian, in which capacity it is responsible for maintaining custody over all or a portion of the Client Plan's assets, for providing trust accounting and valuation services, for asset and transaction reporting, and for execution and settlement of transactions.

The Client Plans pay fees in accordance with fee schedules established or negotiated with PNC. Fees for custodian, trustee, and

investment management services are based on a percentage of assets in the account, subject to certain minimum fee amounts. PNC may also provide other services to a Client Plan, as selected by other Plan sponsors or named fiduciaries. Fees may be paid by the Client Plan or the Client Plan sponsor, depending on the particular circumstances. Where PNC provides discretionary investment management services for Client Plans, it may invest Plan assets in the Funds as a means of obtaining more specialized management along with enhanced liquidity, economies of scale, and greater diversification than would be available through a separate account investment.

6. Investments by Client Plans in the Funds occur through direct purchases of shares of the Funds on an ongoing basis. These investments are made in the institutional shares classes of the Funds, which are not subject to 12b–1 fees. There are no sales commissions, loads, or transaction fees imposed on the Client Plans for buying or selling shares of the Funds. The Funds may impose redemption fees not to exceed 2% of the value of the shares redeemed, provided that such fees are imposed only in accordance with Rule 22c–2 of the 1940 Act and the conditions of PTE 77–4, 42 FR 18732, (April 8, 1977).

7. Section 406(a)(1)(D) of the Act prohibits a fiduciary with respect to a plan from causing such plan to engage in a transaction, if he knows or should know, that such transaction constitutes a transfer to, or use by or for the benefit of, a party in interest, of any assets of such plan.

Sections 3(14)(A) and (B) of the Act define the term, "party in interest," to include, respectively, any fiduciary of a plan and any person providing services to a plan. Under section 3(21)(A)(i) of the Act, a person is a fiduciary with respect to a plan to the extent such person exercises authority or control with respect to the management or disposition of a plan's assets.

Under section 406(b) of the Act, a fiduciary with respect to a plan may not: (1) Deal with the assets of a plan in his own interest or for his own account, (2) in his individual or in any other capacity act in any transaction involving a plan on behalf of a party (or represent a party) whose interests are adverse to the interests of such plan or the interests of its participants or beneficiaries, or (3) receive any consideration for his own personal account from any party dealing with a plan in connection with a transaction involving the assets of such plan.

Reliance on PTE 77–4

8. PTE 77–4 provides an exemption from section 406 of the Act and section 4975 of the Code for a plan's purchase or sale of mutual fund shares where such fund's investment advisor: (1) Is a plan fiduciary or affiliated with a plan fiduciary; and (2) is not an employer of employees covered by the plan. The conditions of PTE 77–4 prohibit the payment of commissions by a plan, limit the payment of redemption fees by such plan, prohibit the payment of double investment advisory fees, and require prior disclosure to and approval by a Second Fiduciary.

In order to meet the condition of PTE 77–4 that a Client Plan does not pay duplicative fees for investment advisory services, PNC has not charged a Client Plan any direct fees for investment management services for assets that are invested in the Funds. With respect to such assets, these Client Plans have paid fees to PNC solely for non-investment trust or custody services. The fees PNC has received for investment management of a Client Plan's assets that were invested in the Funds have come from the Funds in accordance with relevant investment advisory and sub-advisory agreements with such Fund. Where PNC is a fiduciary with respect to a Client Plan, the investment of that Client Plan's assets in a Fund advised by an affiliate of PNC may potentially raise issues under sections 406(a)(1)(D), 406(b)(1), 406(b)(2) and 406(b)(3) of the Act, unless an exemption is available.

9. Client Plans have not paid any commissions or other sales charges in connection with their investments in the Funds, as required under PTE 77–4. In addition, PNC has satisfied certain conditions in PTE 77–4. These conditions include advance written disclosure of information to a Client Plan regarding the fees to be received by PNC from each Fund as well as advance written authorization from an independent and unrelated Second Fiduciary of such Client Plan for investment in the Fund. The Second Fiduciary is generally the Plan's named fiduciary or sponsoring employer, and in the case of an IRA, the Second Fiduciary is generally the owner of the IRA.

10. PNC is requesting an exemption similar to PTE 77–4, with respect to the receipt of fees by PNC and related entities from the Funds for acting as investment advisor, as well as for providing non-advisory Secondary Services. The requested exemption, however, contains two differences from PTE 77–4. First, beginning on February 1, 2008, use of a "Termination Form" took the place of the PTE 77–4 requirement that an independent fiduciary approve any change in mutual fund fees—substituting a "negative consent" requirement for those fee changes in place of affirmative approval. Second, the requested exemption would permit a Credit Fee Method with respect to PNC's receipt of Plan and Fund-Level Fees. As a result, the requested exemption would allow three ways to deal with duplicative fee—a Client Plan may use the (a) Offset Fee Method, (b) Credit Fee Method, or (c) the Subtraction Fee Method.

Receipt of Fees Pursuant to the Fee Methods

11. PNC will charge investment advisory fees to the Funds in accordance with the investment advisory agreement between PNC and the Funds, payable monthly. This agreement is approved annually by the independent members of the Board of Directors of the Funds, in accordance with the applicable provisions of the 1940 Act, and any subsequent changes in the gross fees will have to be approved by such Directors. These fees will not be increased without the approval of the shareholders of the affected Funds. PNC represents that as of February 1, 2008, the following fee methods dealing with duplicative fees were in place: (a) The Offset Fee Method, (b) the Subtraction Fee Method, and (c) the Credit Fee Method,[3] as described in Section II(a)(1), (a)(2), and (a)(3) of this proposed exemption.

Offset Fee Method

12. With regard to the Offset Fee Method, PNC represents that it does not charge a Client Plan any direct fees for investment management with respect to such Client Plan's assets invested in the Funds. Such Client Plan pays fees to PNC solely for non-investment trust or custody services. The fees a Client Plan pays for those assets invested in the Funds come solely from the Funds in accordance with certain advisory agreements. The result is that the Plan-Level Fees are offset, and the Client Plan pays only an investment advisory or similar Fund-Level Fee with respect to those plan assets invested in a Fund.

[3] 77–4 for PNC's. It is the view of PNC that the Credit Fee Method is covered by PTE 77–4. The Department does not concur with PNC's view that the Credit Fee Method is covered under PTE 77–4. Accordingly, the Department has determined that no relief is available under use of the Credit Fee Method.

Subtraction Fee Method

13. Under this method, PNC charges the Client Plan a direct investment management fee, but credits to the benefit of such client Plan, as a subtraction to such Client Plan's Plan-Level Fees, its proportionate share of the investment advisory fee of Client Plan assets invested in the Funds and paid to PNC, including the Client Plan's share of any investment advisory fees paid by PNC to sub-advisors, as reduced by any waiver or rebate by PNC of such fees to the Funds, such as a waiver or rebate due to state law or other limits on Fund expenses.[4] The result is that the Client Plan pays only one investment management fee with respect to those assets. The subtraction is solely against those Plan-Level Fees charged by PNC for serving as investment manager, and does not include non-investment management trustee fees.

The credit under this Subtraction Fee Method and the Credit Fee Method, below, will not include the fees for "Secondary Services" payable by the Funds to PNC, because such services rendered at the Fund level will not be duplicative of any services provided directly to the Client Plan. The services to the Client Plan may involve maintaining custody over all or a portion of the Client Plan's assets (which may include Fund shares, but not the assets underlying the Fund shares), providing trust accounting, asset and transaction reporting, execution and settlement of transactions, processing benefit payments and loans, valuing loan assets, and producing statement and reports regarding overall plan holdings. PNC represents that these Plan-level services will be necessary regardless of whether such Client Plan's assets are invested in the Funds.

Credit Fee Method

14. Under this method, PNC will charge standard (or negotiated) fees, as applicable to each Client Plan, for serving as trustee and/or investment manager. At the beginning of each month, and in no event later than one business day after the payment of investment advisory fees by the Funds to PNC for the previous month, PNC will pay a "credited dollar amount" to a Client Plan that constituted its proportionate share of all investment advisory fees charged by PNC to the Funds for the previous month. The standard practice will be to reinvest this "credited dollar amount" in additional shares of the same Fund with respect to which the fees were credited. The additional shares so acquired will be valued at the net asset value on the date the purchase request is transmitted to the Fund, which is the same day the "credited dollar amount" is made to the Client Plan's account.

It is represented that a Client Plan could request that a rebate be made in cash. The cash would be invested in a money market account pending investment direction from the investment officer for the account. PNC does not anticipate notifying Client Plans in each instance that they have the option to request that credits be made in cash rather than additional shares.

15. PNC, as a trustee and investment manager for Client Plans in connection with the decision to invest Client Plan assets in the Funds, will monitor all fees paid by a Fund to PNC and third parties for services provided to the Fund, to ensure that there will not be any payment of "double" fees for duplicative services to the Fund.

For each Client Plan, the combined total of all fees PNC receives directly and indirectly from Client Plans for the provision of services to the Plans and/or to the Funds will not be in excess of "reasonable compensation" within the meaning of section 408(b)(2) of the Act.

Audit of the Credit Fee Method

16. It is represented that there are sufficient safeguards to permit exemptive relief for the use by PNC of the Credit Fee Method. Accordingly, PNC will maintain a system of internal accounting controls for the rebating of investment advisory fees to Client Plans. In addition, PNC will retain the services of an independent Auditor to audit annually the crediting of fees to the Client Plans under the Credit Fee Method. Such audits will provide independent verification of the proper crediting to such Client Plans. In the annual audit of the Credit Fee Method, the Auditor will use procedures designed to review and test compliance with the specific operational controls and procedures established by PNC for making the credits. Specifically, the Auditor will: (i) Verify on a test basis the investment advisory fees paid by the Funds to PNC; (ii) verify on a test basis the monthly factors used to determine the investment advisory fees; (iii) verify on a test basis the credits paid in total for a one-month period; (iv) re-compute, on a test basis, using the monthly factors described above, the amount of the credit determined for selected Client Plans; (v) verify on a test basis the proper assignment of identification fields for receipt of fee credits to the Client Plans; and (vi) verify on a test basis that the credits were posted to the Client Plans within the required time frame.

In the event either the internal audit made by PNC or the independent audit made by the Auditor identifies an error in the crediting of fees to a Client Plan, PNC will correct the error. With respect to any shortfall in credited fees to a Client Plan, PNC will make a cash payment to such Client Plan equal to the amount of the error, plus interest paid at money market rates offered by PNC for the period involved. Any excess credits made to a Client Plan will be corrected by an appropriate deduction from such Client Plan or reallocation of cash during the next payment period after discovery of the error to reflect accurately the amount of total credits due to such Client Plan for the period involved.

Receipt of Secondary Services Fees

As described in Representation 3 above, on February 1, 2008, the Funds used PNC-affiliated service providers for secondary services. Accordingly, PNC requests an administrative exemption, effective as of February 1, 2008 for receipt of fees by PNC for the provision of Secondary Services to the Funds.

In the Interest of Client Plans

17. The applicant represents that the proposed exemption is in the interest of the Client Plans and their participants and beneficiaries. In this regard, the Funds provide advantages for Client Plans, including professional management, the ability to monitor performance on a daily basis, and the flexibility to purchase and redeem shares on a daily basis. It is represented that no sales commissions are charged to Client Plans in connection with the purchase or sale of shares in any of the Funds. In addition, these investments in the Funds by Client Plans are made in certain classes of shares, which are not subject to 12b–1 fees. Redemption fees are charged only if disclosed in the prospectuses in effect at both the time of the original investment in the shares of a Fund and the time of redemption.

It is further represented that the Funds provide a means for Client Plans with limited assets to achieve diversification of investment in a manner that may not be attainable through direct investment. For these reasons, the applicant maintains that the availability of the Funds as investments

[4] While fees above a certain limit may be waived or rebated by PNC, as a technical matter, the Funds may pay the excess fees and then simultaneously receive a credit of the excess amount. For purposes of the fee structure described in this section, PNC intends to credit to Client Plans only the net fees that it receives, and not to credit any of the excess fees that have been rebated to the Funds.

enables PNC, as investment manager, to better meet the investment goals and strategies of a Client Plan.

Protective of Client Plans

18. It is represented that the proposed exemption contains sufficient safeguards for the protection of the Client Plans invested in the Funds. In this regard, prior to any investment by a Client Plan in a Fund, the investment must be authorized in writing by the Second Fiduciary of such Client Plan, based on full and detailed written disclosure concerning such Fund.

In addition to the initial disclosures received by the Second Fiduciary of a Client Plan invested in a Fund, PNC provides to such Second Fiduciary ongoing disclosures regarding such Fund and the fee methods. Specifically, on an annual basis, such Second Fiduciary receives copies of the current Fund prospectuses, as well as copies of the annual financial disclosure reports containing information about the Funds and audit findings of the Auditor within sixty (60) days of the preparation of such report.

It is represented that PNC or an appropriate affiliate, thereof, will respond to inquiries from a Second Fiduciary. In addition, a Second Fiduciary, upon request, will receive copies of the Statements of Additional Information for the Funds and a copy of the proposed exemption and a copy of the final exemption, if granted, once such documents are published in the **Federal Register**.

Furthermore, each investment of the assets of a Client Plan in a Fund will be subject to the ongoing ability of the Second Fiduciary of such Client Plan to terminate the investment in such Fund without penalty to such Client Plan at any time upon written notice of termination to PNC. In this regard, a Termination Form, expressly providing an election to terminate the authorization, with instructions on the use of such Termination Form, will be supplied to the Second Fiduciary at least annually.

The Termination Form may be used to notify PNC, in writing to effect a termination by selling the shares of the Funds held by a Client Plan. Such sales are to occur within one (1) business day, as defined in Section III(k) of this exemption, following receipt by PNC of the Termination Form. If, due to circumstances beyond the control of PNC, the sale cannot be executed within one (1) business day, PNC will be obligated to complete the sale within the next business day.

By using the Termination Form that PNC provides thirty (30) days in advance of any increase in the rate of fees and change in services, the Second Fiduciary will have sufficient opportunity to terminate a Client Plan's investment in a Fund, without penalty to the Client Plan, and withdraw the Client Plan's investment from such Fund in advance of any such increase in fee and change in services.

Feasibility

19. PNC represents that the proposed exemption is feasible in that compliance with the terms of the exemption will be monitored by the Second Fiduciary of a Client Plan who is independent of PNC. Further, PNC provides internal accounting safeguards to ensure the accuracy of the calculation of the "credited dollar amounts" under the Credit Fee Method, and an independent Auditor will provide assurance that the Credit Fee Method is properly administered. For these reasons, the applicant maintains that the Department will not have to monitor the implementation and enforcement of the exemption.

It is represented that the negative consent procedure, as described herein, for obtaining the approval from the Second Fiduciary of each Client Plan invested in a Fund for increases in fees and the addition of services for which a fee is charged is more efficient, cost effective, and administratively feasible than written affirmative consent approval, as described in PTE 77–4.

Under PTE 77–4, an increase in fees and any change in services may not be implemented until written approval of such increase or change is obtained from every Second Fiduciary of Client Plans invested in a Fund. A communication failure that results in not obtaining an affirmative written approval from a Second Fiduciary of a Client Plan could force PNC to transfer a Client Plan's investments out of a Fund.

Under the negative consent procedure, as set forth herein, the difficulties of obtaining written affirmative approval from the Second Fiduciary of each Client Plan and coordinating any fee increases and any additional services for which a fee is charged will be avoided while such Second Fiduciary will still receive the necessary disclosures. Specifically, each Second Fiduciary of a Client Plan invested in a Fund will receive advance notice in a statement separate from such Fund's prospectus of any proposed change from one fee method to another or any proposed increase in a rate of fee for investment advisory services, or similar services, paid to PCA that was previously disclosed in the Fund prospectus. In addition, each Second Fiduciary will receive advance notice of any additional Secondary Service for which a fee is charged and any increase of any rate of any fee paid for Secondary Services to PNC or an increase in a rate of any fee that results from a decrease in the number or kind of service performed by PNC in connection with a previously authorized fee for such service. With regard to the affected Fund, the advance notice will contain an explanation of the nature and amount of the increase in fees and the nature and amount of the addition (or elimination) of a service for which an additional fee is charged. The Second Fiduciary will receive such advance notice thirty (30) days prior to the effective date of such increase in the rate of fees and change in services with respect to a Client Plan's investment in a Fund. Such advance notice must be accompanied by a Termination Form that would allow the Second Fiduciary to terminate, without penalty to the Client Plan, the authorization to invest in the Funds. The notice requirement would not apply if an increase is the result of the cessation of a voluntary temporary waiver of fees by PNC, and the full fee level had previously been described in writing to and authorized by the Second Fiduciary. Failure to return the Termination Form by the thirtieth (30th) day will result in the negative consent of the Second Fiduciary to the increase in fees or to the increase in the fees that results from an addition or elimination in the number or kind of service performed by PNC in connection with a previously authorized fee for such service and to the addition of services for which an additional fee is charged.

20. In summary, the proposed transactions satisfy or will satisfy the statutory criteria of section 408(a) of ERISA for the following reasons:

a. The Funds provide the Client Plans with an effective investment vehicle.

b. Client Plan investments in the Funds and the payment of any fees by the Funds to PNC in connection with such investments will require an advance authorization in writing by the Second Fiduciary after full written disclosure, including current prospectuses for the Funds and a statement describing the fee method to be used.

c. Any authorization made by the Second Fiduciary will be terminable at will by that fiduciary, without penalty to the Client Plan, within one business day following receipt by PNC of written notice of termination from the fiduciary on a form expressly providing an election to terminate the authorization,

which will be supplied to the Second Fiduciary no less than annually, or in any other written notice of termination.

d. No sales commissions will be paid by the Client Plans in connection with the acquisition or sale of shares of the Funds. Redemption fees not to exceed two percent (2%) of the value of the shares redeemed may be paid only in accordance with Rule 22c–2 of the 1940 Act and the conditions imposed on such fees by PTE 77–4.

e. All dealings among the Client Plans, any of the Funds, PCA, as well as PNC and its affiliates will be on a basis no less favorable to the Client Plans than such dealings with the other shareholders of the Funds.

f. Plans investing in the Funds would pay only a single level of investment advisory-type fees with respect to their assets so invested, either receiving a rebate of the Fund investment advisory fees or not being charged the Plan-Level investment management fees.

g. PNC will require annual audits by an independent accounting firm to verify that the Client Plan using the Credit Fee Method receives proper credits for the fees paid to the Funds.

For Further Information Contact: Mr. Anh-Viet Ly of the Department, telephone (202) 693–8648. (This is not a toll-free number.)

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code, in accordance with the procedures set forth in 29 CFR Part 2570, Subpart B (55 FR 32836, 32847, August 10, 1990).[5]

If the proposed exemption is granted, the restrictions of sections 406(a), 406(b)(1) and 406(b)(2) of the Act (or ERISA) and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code, shall not apply as of December 22, 2009 to the cash sale of certain fixed income securities (the Securities) for an aggregate purchase price of $113,977,880.15 by the Quality D Short-Term Investment Fund (the Fund) to State Street, a fiduciary with respect to the Fund and a party in interest with respect to employee benefit plans (the Plans) invested, directly or indirectly, in the Fund, provided that the following conditions are met:

(a) The sale was a one-time transaction for cash;

(b) The Fund received an amount which was equal to the sum of (1) the aggregate current amortized cost of the Securities as of the date of the transaction plus (2) the aggregate accrued interest on the Securities through the date of the transaction, calculated at the applicable contract rate for each of the Securities;

(c) The Fund did not bear any commissions, fees, transaction costs, or other expenses in connection with the sale;

(d) The amount received by the Fund with respect to each of the Securities was no less than the fair market value of each such Security, based upon the closing price obtained from an independent pricing service, as of the close of business on the date prior to the date of the transaction;

(e) State Street, as trustee of the Fund, determined that the sale of the Securities was appropriate for and in the best interests of the Fund, and the Plans invested, directly or indirectly, in the Fund, at the time of the transaction;

(f) State Street took all appropriate actions necessary to safeguard the interests of the Fund and the Plans invested, directly or indirectly, in the Fund, in connection with the transaction;

(g) State Street and its affiliates, as applicable, maintain, or cause to be maintained, for a period of six (6) years from the date of any covered transaction such records as are necessary to enable the person described below in paragraph (h)(1), to determine whether the conditions of this exemption have been met, except that:

(1) No party in interest with respect to a Plan which engages in the covered transaction, other than State Street and its affiliates, as applicable, shall be subject to a civil penalty under section 502(i) of the Act or the taxes imposed by sections 4975(a) and (b) of the Code, if such records are not maintained, or not available for examination, as required, below, by paragraph (h)(1); and

(2) A separate prohibited transaction shall not be considered to have occurred solely because, due to circumstances beyond the control of State Street or its affiliates, as applicable, such records are lost or destroyed prior to the end of the six-year period.

(h)(1) Except as provided, in paragraph (h)(2), and notwithstanding any provisions of subsections (a)(2) and (b) of section 504 of the Act, the records referred to in paragraph (g) are unconditionally available at their customary location for examination during normal business hours by:

(A) Any duly authorized employee or representative of the Department, the Internal Revenue Service, or the Securities and Exchange Commission;

(B) Any fiduciary of any Plan that engages in the covered transaction, or any duly authorized employee or representative of such fiduciary;

(C) Any employer of participants and beneficiaries and any employee organization whose members are covered by a Plan that engages in the covered transaction, or any authorized employee or representative of these entities; or

(D) Any participant or beneficiary of a Plan that engages in the covered transaction, or duly authorized employee or representative of such participant or beneficiary;

(2) None of the persons described, above, in paragraphs (h)(1)(B)–(D) shall be authorized to examine trade secrets of State Street or its affiliates, or commercial or financial information which is privileged or confidential; and

(3) Should State Street refuse to disclose information on the basis that such information is exempt from disclosure, State Street shall, by the close of the thirtieth (30th) day following the request, provide a written notice advising that person of the reasons for the refusal and that the Department may request such information.

Effective Date: If granted, this exemption will be effective as of December 22, 2009.

Summary of Facts and Representations

1. State Street is a Massachusetts state-chartered trust company subject to regulation by the Massachusetts Division of Banks. As of December 31, 2009, State Street managed assets in excess of $1.9 trillion. State Street provides a wide range of banking and fiduciary services to a broad array of clients, including employee benefit plans subject to the Act and plans subject to Section 4975 of the Code. State Street is a subsidiary of State Street Corporation, a financial holding company organized under the laws of Massachusetts.

2. The Fund is a group trust that is exempt from federal income tax pursuant to Rev. Rul. 81–100. State Street serves as a trustee and investment manager for the Fund. The Fund is a short-term investment fund that values its assets based on their amortized cost, and seeks to maintain a constant unit value equal to $1.00. The Fund invests primarily in fixed income investments, including certificates of deposit, asset-backed securities, commercial paper, corporate notes, asset-backed

[5] For purposes of this proposed exemption, references to section 406 of the Act should be read to refer as well to the corresponding provisions of section 4975 of the Code.

commercial paper, bank notes, time deposits and repurchase agreements. The Fund is maintained in connection with State Street's securities lending program, and it is maintained exclusively for the purposes of investing cash collateral generated by that program.

3. As of December 21, 2009, the value of the Fund's portfolio was approximately $48,594,086,914. As of December 21, 2009, there were approximately 136 direct investors in the Fund, a substantial number of which were employee benefit plans or trusts subject to the Act, with the remaining investors being government-sponsored employee benefit plans, church-sponsored employee benefit plans and unaffiliated group trusts.[6] No in-house Plan of State Street invested in the Fund. Of the ERISA-covered Plans investing in the Fund, none had a greater that 20% interest (direct or indirect) therein.

4. On December 22, 2009, the Fund held the following asset backed securities, which it valued at their amortized cost:

CUSIP No.	Issuer	Acquisition date	Original face value	Maturity date
78442GPR1	SLM Student Loan Trust	08/19/05	$26,132,000.00	10/25/40
14041NCR0	Capital One Multi-Asset Execution	03/02/06	22,581,000.00	12/16/13
161571BB9	Chase Issuance Trust	02/21/06	64,371,000.00	04/15/13
78453VAA7	Superannuation Members Home	11/18/03	9,900,000.00	05/09/30
Total			$122,984,000.00	

The decision to invest in the Securities was made by State Street. Prior to each investment, State Street conducted an investigation of the potential investment, examining and considering the economic and other terms of the Securities. State Street represents that each investment in the Securities was consistent with the applicable investment policies and objectives of the Fund, including the Fund's desire to maintain a constant unit value equal to $1.00. At the time the Fund acquired each of the Securities, each Security was rated at least "A–1+" by Standard & Poor's Corporation and "P–1" by Moody's Investor Services, Inc. Based on its consideration of the relevant facts and circumstances, State Street states that it was prudent and appropriate for the Fund to acquire the Securities.[7] State Street also represents that none of the issuers or sellers of the Securities were related to State Street.

5. State Street represents that prior to December 22, 2009, the market value of the Securities had decreased and the Securities had been consistently trading below their amortized cost. In addition, market conditions with respect to the Securities reflected a diminished degree of liquidity with respect to the Securities.

6. In view of the foregoing, State Street, as trustee of the Fund, determined that it would be appropriate and in the best interest of the Fund to sell each of the Securities to State Street at a price equal to the greater of (a) the fair market value of such Security (determined based on the closing price of such Security on the day prior to the date of the sale transaction, as obtained from an independent pricing service) or (b) the sum of (i) the Fund's current amortized cost of the applicable Security on the date of the sale transaction, plus (ii) accrued interest on the applicable Security through the date of the sale transaction, calculated at the applicable contract rate for such Security. State Street determined that such a sale would protect the Fund from any potential investment loss with respect to the Securities, enhance the liquidity of the Fund, be consistent with the Fund maintaining a constant unit value equal to $1.00, and alleviate any concerns the investors in the Fund might have regarding the foregoing matters. Finally, State Street determined that the purchase of the Securities would be permissible under applicable banking law.

7. On December 21, 2009, prior to consummation of the transaction, State Street sent written notice to the designated representative of each of the investors having a direct interest in the Fund of State Street's intent to cause the Fund to sell the Securities to State Street. While such notice did not contemplate or require any response, it should be noted that this notice did not generate any negative reaction from any of the recipients thereof.

8. State Street represents that on December 22, 2009, it purchased the Securities from the Fund for an aggregate lump sum cash payment of $113,977,880.15, which amount represented the sum of (a) the aggregate current amortized cost of the Securities ($113,959,596.43) on the date of the sale transaction plus (b) the aggregate accrued interest on the Securities through the date of the sale transaction, calculated at the applicable contract rate for each of the Securities ($18,283.72). Three of the four Securities had a current amortized cost equal to their face value. The fourth Security had a current amortized cost slightly less than the purchase price because it was

[6] It is represented that section 408(b)(8) of the Act would apply to the investment by the ERISA-covered Plans in the Fund. Section 408(b)(8) of the Act provides a statutory exemption for any transactions between a plan and a common or collective trust fund maintained by a party in interest which is a bank or trust company supervised by a State or Federal agency if certain requirements are met.

[7] The Department is expressing no opinion in this proposed exemption regarding whether the acquisition and holding of the Securities by the Fund violated any of the fiduciary responsibility provisions of Part 4 of Title I of the Act. In this regard, the Department notes that section 404(a) of the Act requires, among other things, that a fiduciary of a plan act prudently, solely in the interest of the plan's participants and beneficiaries, and for the exclusive purpose of providing benefits to participants and beneficiaries when making investment decisions on behalf of a plan. Section 404(a) of the Act also states that a plan fiduciary should diversify the investments of a plan so as to minimize the risk of large losses, unless under the circumstances it is clearly prudent not to do so.

Moreover, the Department is not providing any opinion as to whether a particular category of investments or investment strategy would be considered prudent or in the best interests of a plan as required by section 404 of the Act. The determination of the prudence of a particular investment or investment course of action must be made by a plan fiduciary after appropriate consideration of those facts and circumstances that, given the scope of such fiduciary's investment duties, the fiduciary knows or should know are relevant to the particular investment or investment course of action involved, including a plan's potential exposure to losses and the role the investment or investment course of action plays in that portion of the plan's portfolio with respect to which the fiduciary has investment duties (see 29 CFR 2550.404a–1). The Department also notes that in order to act prudently in making investment decisions, a plan fiduciary must consider, among other factors, the availability, risks and potential return of alternative investments for the plan. Thus, a particular investment by a plan, which is selected in preference to other alternative investments, would generally not be prudent if such investment involves a greater risk to the security of a plan's assets than other comparable investments offering a similar return or result.

purchased on the secondary market at a discount to face value. The purchase price of each Security was determined as follows:

CUSIP No.	Face value as of 12/22/09	Amortized cost	Accrued interest	Net proceeds
78442GPR1	$26,132,000.00	$26,131,247.84	$12,917.07	$26,144,164.91
14041NCR0	22,581,000.00	22,581,000.00	1,999.25	22,582,199.25
161571BB9	64,371,000.00	64,371,000.00	3,418.65	64,374,418.65
78453VAA7	876,348.59	876,348.59	748.75	877,097.34
Total	113,960,348.59	113,959,596.43	18,283.72	113,977,880.15

The contract rate used to calculate the applicable accrued interest for each Security was a floating rate based on a LIBOR-based formula that resets on a monthly or quarterly basis.

9. Prior to its consummation of the foregoing transaction, State Street represents that it contacted Interactive Data Corporation (IDC), an independent pricing service, to obtain the closing price of each of the Securities on December 21, 2009 (the day preceding the date of the transaction) and determined that such closing price for each Security was less than the price State Street would pay for each such Security. The information provided by IDC was as follows:

CUSIP No.	Market price	Fair market value
78442GPR1	83.5324	$21,828,058.47
14041NCR0	99.30296	22,423,601.40
161571BB9	99.54217	64,076,290.25
78453VAA7	99.7209	873,902.70
Total	.....	109,201,852.82

10. State Street, as trustee of the Fund, believed that the sale of the Securities by the Fund to State Street was in the best interests of the Fund and the Plans invested, directly or indirectly, in the Fund, at the time of the transaction. State Street states that any sale of the Securities on the open market at that time would have produced losses for the Fund and for the participating investors in the Fund.

11. State Street represents that the sale of the Securities by the Fund to State Street benefited the Plan investors in the Fund because the purchase price paid by State Street for each Security exceeded the fair market value of such Security. In addition, State Street represents that the transaction was a one-time sale for cash in connection with which the Fund did not bear any commissions, fees, transaction costs or other expenses. State Street further represents that it took all appropriate actions necessary to safeguard the interests of the Fund and its participating investors in connection with the sale of the Securities.

Accordingly, State Street requests an administrative exemption from the Department with respect to the sale of the Securities by the Fund to State Street. If granted, the exemption will be effective as of December 22, 2009.

12. In summary, State Street represents that the transaction satisfied the statutory criteria of section 408(a) of the Act and section 4975 of the Code because: (a) The sale of the Securities by the Fund to State Street was a one-time transaction for cash; (b) the Fund received an amount equal to the sum of (i) the aggregate current amortized cost of the Securities as of the date of the transaction, plus (ii) the aggregate accrued interest on the Securities through the date of the transaction, calculated at the applicable contract rate for each of the Securities, which amount was greater than the closing price of each of the Securities as of the close of business on the date immediately prior to the date of the sale transaction, as determined based on information obtained from IDC, an independent pricing service; (c) the Fund did not pay any commissions, fees, transaction costs, or other expenses with respect to the sale; (d) the amount received by the Fund with respect to each of the Securities was no less than the fair market value of each such Security as of the close of business on the date prior to the date of the transaction; and (e) State Street, as trustee of the Fund, determined that the sale of the Securities by the Fund to State Street was in the best interests of the Fund and the Plans invested, directly or indirectly, in the Fund, at the time of the transaction.

For Further Information Contact: Mr. Brian Shiker of the Department, telephone (202) 693–8552. (This is not a toll-free number.)

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 408(a) of the Act and/or section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest or disqualified person from certain other provisions of the Act and/or the Code, including any prohibited transaction provisions to which the exemption does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which, among other things, require a fiduciary to discharge his duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(b) of the Act; nor does it affect the requirement of section 401(a) of the Code that the plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) Before an exemption may be granted under section 408(a) of the Act and/or section 4975(c)(2) of the Code, the Department must find that the exemption is administratively feasible, in the interests of the plan and of its participants and beneficiaries, and protective of the rights of participants and beneficiaries of the plan;

(3) The proposed exemptions, if granted, will be supplemental to, and

not in derogation of, any other provisions of the Act and/or the Code, including statutory or administrative exemptions and transitional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction; and

(4) The proposed exemptions, if granted, will be subject to the express condition that the material facts and representations contained in each application are true and complete, and that each application accurately describes all material terms of the transaction which is the subject of the exemption.

Signed at Washington, DC, this 26th day of April 2010.

Ivan Strasfeld,

Director of Exemption Determinations, Employee Benefits Security Administration.

[FR Doc. 2010–10065 Filed 4–29–10; 8:45 am]

BILLING CODE 4510–29–P

OFFICE OF MANAGEMENT AND BUDGET

Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Office of Management and Budget, Office of Federal Financial Management.

ACTION: Notice; request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), the Office of Management and Budget (OMB) invites the general public and Federal agencies to comment on the renewal without change of two standard forms: SF–270, Request for Advance or Reimbursement and SF–271, Outlay and Request for Reimbursement for Construction Programs. We are particularly interested in comments on whether the information collected in the forms could be more consistent with other governmentwide grant-related information collections.

DATES: Comments must be received by June 29, 2010. Due to potential delays in OMB's receipt and processing of mail sent through the US Postal Service, we encourage respondents to submit comments electronically to ensure timely receipt. We cannot guarantee that comments mailed will be received before the comment closing date.

ADDRESSES: Comments may be sent to *regulations.gov,* a Federal E-Government Web site that allows the public to find, review, and submit comments on documents that agencies have published in the **Federal Register** and that are open for comment. Simply type "SF–270 PRA" (in quotes) in the Comment or Submission search box, click Go, and follow the instructions for submitting comments. Comments received by the date specified above will be included as part of the official record. Marguerite Pridgen, Office of Federal Financial Management, Office of Management and Budget, 725 17th Street, NW., Washington, DC 20503; telephone 202–395–7844; fax 202–395–3952; e-mail *mpridgen@omb.eop.gov.*

FOR FURTHER INFORMATION CONTACT: Marguerite Pridgen at the addresses noted above.

OMB Control No.: 0348–0004.

Title: Request for Advance or Reimbursement.

Form No.: SF–270.

Type of Review: Extension of a currently approved collection.

Respondents: States, Local Governments, universities, non-profit organizations.

Number of Responses: 100,000.

Estimated Time Per Response: 60 minutes.

Needs and Uses: The SF–270 is used to request funds for all nonconstruction grant programs when letters of credit or predetermined advance payment methods are not used. The Federal awarding agencies use information reported on this form for the award and general management of Federal assistance program awards.

OMB Control No.: 0348–0002.

Title: Outlay and Request for Reimbursement for Construction Programs.

Form No.: SF–271.

Type of Review: Extension of a currently approved collection.

Respondents: States, Local Governments, Universities, Non-Profit Organizations.

Number of Responses: 40,000.

Estimated Time Per Response: 60 minutes.

Needs and Uses: The SF–271 is used to request reimbursement for all construction grant programs. The Federal awarding agencies use information reported on this form for the award and general management of Federal assistance program awards.

Debra J. Bond,

Deputy Controller.

[FR Doc. 2010–10112 Filed 4–29–10; 8:45 am]

BILLING CODE P

NATIONAL SCIENCE FOUNDATION

Astronomy and Astrophysics Advisory Committee #13883; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting:

Name: Astronomy and Astrophysics Advisory Committee (#13883).

Date and Time: May 20, 2010, 12 p.m.–5 p.m.

Place: Teleconference National Science Foundation, Room 1020, Stafford I Building, 4201 Wilson Blvd., Arlington, VA 22230.

Type of Meeting: Open.

Contact Person: Dr. James S. Ulvestad, Director, Division of Astronomical Sciences, Suite 1045, National Science Foundation, 4201 Wilson Blvd., Arlington, VA 22230. Telephone: 703–292–4909.

Purpose of Meeting: To provide advice and recommendations to the National Science Foundation (NSF), the National Aeronautics and Space Administration (NASA) and the U.S. Department of Energy (DOE) on issues within the field of astronomy and astrophysics that are of mutual interest and concern to the agencies.

Agenda: To hear presentations of current programming by representatives from NSF, NASA, DOE and other agencies relevant to astronomy and astrophysics; to discuss current and potential areas of cooperation between the agencies; to formulate recommendations for continued and new areas of cooperation and mechanisms for achieving them.

Dated: April 27, 2010.

Susanne E. Bolton,

Committee Management Officer.

[FR Doc. 2010–10083 Filed 4–29–10; 8:45 am]

BILLING CODE 7555–01–P

NATIONAL SCIENCE FOUNDATION

Notice of Permit Applications Received Under the Antarctic Conservation Act of 1978 (Pub. L. 95–541)

AGENCY: National Science Foundation.

ACTION: Notice of permit applications received under the Antarctic Conservation Act of 1978, Public Law 95–541.

SUMMARY: The National Science Foundation (NSF) is required to publish notice of permit applications received to conduct activities regulated under the Antarctic Conservation Act of 1978. NSF has published regulations under the Antarctic Conservation Act at Title 45 Part 670 of the Code of Federal Regulations. This is the required notice of permit applications received.

DATES: Interested parties are invited to submit written data, comments, or views with respect to this permit

application by June 1, 2010. This application may be inspected by interested parties at the Permit Office, address below.

ADDRESSES: Comments should be addressed to Permit Office, Room 755, Office of Polar Programs, National Science Foundation, 4201 Wilson Boulevard, Arlington, Virginia 22230.

FOR FURTHER INFORMATION CONTACT: Nadene G. Kennedy at the above address or (703) 292–7405.

SUPPLEMENTARY INFORMATION: The National Science Foundation, as directed by the Antarctic Conservation Act of 1978 (Pub. L. 95–541), as amended by the Antarctic Science, Tourism and Conservation Act of 1996, has developed regulations for the establishment of a permit system for various activities in Antarctica and designation of certain animals and certain geographic areas a requiring special protection. The regulations establish such a permit system to designate Antarctic Specially Protected Areas.

The applications received are as follows:

Permit Application No. 2011–001

1. *Applicant:* Stevem D. Emslie, Department of Biology and Marine Biology, University of North Carolina, Wilmington, NC 28403.

Activity for Which Permit Is Requested

Take and Import into the U.S.A. The applicant plans to salvage sediments from abandoned and active penguin colonies by excavation of small pits, no larger than 1×1 meter, in each area. In addition, the applicant will collect 10 each organic remains (bones, tissue, feathers, eggshell fragments, otoliths, squid beaks, and other prey remains) from sediments in abandoned colonies of Adelie, Chinstrap, Gentoo, Emperor, and Macaroni penguins, Southern Giant Petrel, Antarctic Petrel, Cape Petrel, Snow Petrel, Blue Petrel, Antarctic Fulmar, White-chinned petrel, Sooty shearwater, Wilson's Storm-petrel, Black-bellied storm-petrel, Blue-eyed shag, Greater sheathbill, South Polar Skua, Brown Skua, Kelp gull, and Antarctic Tern.

The applicant also plans to capture 100 each of adult or juvenile Adelie, Chinstrap and Gentoo penguins to collect some breast feathers and blood samples for analysis of carbon and nitrogen isotope values to examine diets, and for mercury (Hg). All captured birds will be released.

Location

ASPA 102-Rookery Islands, Holme Bay, ASPA 103-Ardery and Odbert Islands, ASPA 104-Sabrina Island, Balleny Island, ASPA 105-Beaufort Island, ASPA 106-Cape Hallett, Victoria Land, ASPA 107-Dion Islands, ASPA 108-Green Island, Berthelot Islands, ASPA 109-Moa Island, South Orkneys, ASPA 110-Lynch Island, South Orkneys, ASPA 111-Southern Powell Island and adjacent islands, South Orkneys, ASPA 112-Coppermine Peninsula, Robert Island, ASPA 113-Litchfield Island, Arthur Harbor, Palmer Archipelago, ASPA 114-North Coronation Island, ASPA 115-Lagotellerie Island, Marguerite Bay, ASPA 116-New College Valley, Caughley Beach, Cape Bird ASPA 117-Avian Island, northwest Marguerite Bay, ASPA 121-Cape Royds, Ross Island, ASPA 124-Cape Crozier, Ross Island, ASPA 125-Fildes Peninsula, King George Island, South Shetland Islands, ASPA 126-Byers Peninsula, Livingston Island, ASPA 127-Haswell Island, ASPA 128-Western shore of Admiralty Bay, King George Island, ASPA 129-Rothera Point, Adelaide Island, ASPA 132-Potter Peninsula, King George Island, ASPA 133-Harmony Point, Nelson Island, ASPA 134-Cierva Point, Danco Coast, ASPA 135-Bailey Peninsula, Budd Coast, ASPA 136-Clark Peninsula, Budd Coast, ASPA 139-Biscoe Point, Anvers Island, Palmer Archipelago, ASPA 143-Marine Plain, Mule Peninsula, Vestfold Hills, ASPA 149-Cape Shirreff, Livingston Island, and ASPA 150-Ardley Island, King George Island.

Dates

October 1, 2010 to September 30, 2012.

Nadene G. Kennedy,

Permit Officer, Office of Polar Programs.

[FR Doc. 2010–10068 Filed 4–29–10; 8:45 am]

BILLING CODE 7555–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 150–00017; NRC–2010–0164; EA–08–184]

In the Matter of CAN USA, Inc., Harvey, Louisiana; General License Pursuant to 10 CFR 150.20; Confirmatory Order (Effective Immediately)

I

CAN USA, Inc. (CAN USA or Licensee) is the holder of State of Louisiana Materials License LA–10258–01, which authorizes possession and use of sealed sources for industrial radiography. Louisiana is an Agreement State under Section 274b of the Atomic Energy Act of 1954, as amended. Therefore, pursuant to 10 CFR 150.20(a)(1), CAN USA is granted a general license by the U.S. Nuclear Regulatory Commission (NRC or Commission) to conduct the same activities authorized by its Louisiana license in offshore Federal waters. CAN USA has performed licensed activities in offshore Federal waters under its general NRC license at various times during calendar years 2001 to 2010.

This Confirmatory Order is the result of an agreement reached during an alternative dispute resolution (ADR) mediation session conducted on March 9, 2010.

The Appendix to this Order contains Sensitive Unclassified Non-Safeguards Information (SUNSI). When separated from the Appendix, this Order is decontrolled.

II

On June 12, 2008, the NRC conducted a routine inspection of CAN USA's radiographic operations onboard a Chevron USA platform located in offshore Federal waters. The NRC's Office of Investigations (OI) initiated an investigation on August 13, 2008.

Based on the inspection and the evidence developed during the associated investigation, apparent violations of NRC requirements were identified. First, it appeared that a radiographer conducted radiographic operations without a second qualified individual present. Second, it appeared that the radiographer failed to supervise and maintain direct observation of a radiographer's assistant during the assistant's use of a radiographic exposure device, and that the assistant used the device while not under the personal supervision of the radiographer. Third, it appeared that both individuals failed to control and maintain constant surveillance of licensed material that was in a controlled or unrestricted area and not in storage. The NRC also identified an apparent violation of NRC security requirements that is described in the Appendix to this Order (Appendix). (The Appendix includes security-related information; therefore, it is not publicly available.) In addition, the NRC was concerned that willfulness may have been associated with three of those apparent violations. The NRC described the results of the inspection and investigation in a letter to CAN USA dated January 27, 2010. In response to the NRC's January 27, 2010, letter, CAN USA requested ADR to resolve these issues.

On March 9, 2010, the NRC and CAN USA met in an ADR session mediated by a professional mediator, arranged through Cornell University's Institute on Conflict Resolution. Alternative dispute resolution is a process in which a neutral mediator with no decision-making authority assists the parties in reaching an agreement on resolving any differences regarding the dispute. This Confirmatory Order is issued pursuant

to the agreement reached during the ADR process.

III

In response to the NRC's offer, CAN USA requested use of the NRC ADR process to resolve issues associated with the apparent violations identified by the NRC. During that ADR session, a preliminary settlement agreement was reached. The elements of that preliminary agreement are described below, except for those portions of the agreement that include security-related information and, therefore, are not publicly available. The security-related elements of the agreement, as well as those portions of this Confirmatory Order that address those security-related elements, are described in an Appendix to this Confirmatory Order. The following description of the preliminary ADR agreement, and the required actions described in Section V of this Confirmatory Order include references to the Appendix to allow for public release of this Confirmatory Order.

Pursuant to the NRC Office of Enforcement's ADR program, the following are the terms and conditions agreed upon in principle by CAN USA and the NRC relating to NRC Inspection Report 150–00017/2008–001 issued by the NRC to CAN USA on January 27, 2010.

Whereas, the NRC's inspection and investigation conducted between June 12, 2008, and January 27, 2010, identified apparent violations of NRC requirements;

Whereas, the apparent violations involved were:

(1) The failure to have present during radiographic operations a radiographer and at least one other qualified radiographer or an individual who has at a minimum met the requirements of 10 CFR 34.43(c);

(2) The failure to have a radiographer supervise and maintain direct observation of a radiographer's assistant during the assistant's use of a radiographic exposure device;

(3) The failure to control and maintain constant surveillance of licensed material that is in a controlled or unrestricted area and that is not in storage; and

(4) The failure to comply with NRC security-related requirements, as described in the Appendix to this Order.

Whereas, the NRC is concerned that willfulness may be associated with three of the apparent violations above;

Whereas, CAN USA agrees that apparent violations 1–4 did occur, but denies any willfulness was involved;

Whereas, the NRC acknowledges the corrective actions CAN USA has already implemented associated with the apparent violations, which include:

(1) Providing additional training to radiographers, assistant radiographers and trainees;

(2) Implementing a checklist to be reviewed by each radiography crew prior to departing for a temporary job site. The checklist includes:

a. Surveillance and security of exposure devices,

b. A security-related provision that is described in the Appendix to this Order

c. A security-related provision that is described in the Appendix to this Order.

(3) A security-related corrective action that is described in the Appendix to this Order;

(4) Conducting monthly audits of offshore radiographic operations as customer transport allowed; and

(5) Providing more "real-time" notifications of changes in work schedules originally submitted in NRC–241 forms. These notifications consisted of detailed changes or clarified information via fax or e-mail.

Whereas, the NRC is interested in obtaining comprehensive corrective actions by CAN USA that would prevent recurrence of the apparent violations noted above;

Whereas, these terms and conditions shall not be binding on either party until memorialized in a Confirmatory Order issued by the NRC to CAN USA relating to this matter;

Therefore, the parties agree to the following terms and conditions:

(1) Within 140 days of the date of the Confirmatory Order, CAN USA will develop, implement and provide training on new and/or revised operating procedures. This training shall be provided to new employees prior to working with licensed material for the first time, and to existing employees. Refresher training will be provided annually (at intervals not to exceed 12 months) thereafter for all employees involved in licensed activities. Records of training materials and course attendees shall be maintained for 5 years. The procedures shall address:

- Use of Radiography Checklist. Use procedures for the "Radiography Checklist" prior to departure from the licensee's land-based facilities. Additionally, the radiography crew will complete the checklist after arrival on the offshore facility. A radiography crew member will send documentation of the jobsite review by FAX or other available method to the RSO or another designated CAN USA individual at CAN USA's corporate offices no later than 8 hours after the completion of the checklist.
- Information to offshore "customer." Use of the above checklist shall include a sign-off by the onsite Team Leader (Instructor/Radiographer) attesting that she/he has briefed the offshore facility jobsite sponsor, or other responsible individual on the offshore facility regarding CAN USA's proposed licensed activities.
- A security-related topic that is described in the Appendix to this Order.
- Radiographer's supervisory responsibilities (10 CFR 34.46).
- Security of Licensed Material.
- Potential consequences for wrongdoing.

CAN USA will provide an outline of the training to the NRC for review and approval within 90 days of the date of the Confirmatory Order.

CAN USA will implement the training within 30 days of receipt of the NRC's approval of the training.

(2) CAN USA will provide the following one-time training session(s) to employees involved in licensed activities before these individuals can participate in radiographic operations, until the training program described in Item 1 is implemented.

- Radiography Checklist—The radiography checklist is to be completed prior to departure for offshore jobsites and upon arrival at offshore jobsites.
- A security-related training session that is described in the Appendix to this Order.

(3) CAN USA will develop, implement, and provide training on a procedure for additional oversight of radiography crews on offshore facilities. The RSO or another independent individual with audit and radiography experience, as designated by the RSO, must conduct the audits. Audits must be unannounced (by the Licensee) and conducted during actual industrial radiographic operations on an offshore facility. Offshore audit requirements and audit frequency will be included in the procedure.

(4) CAN USA will provide an outline of the procedure for additional oversight of radiography crews working on offshore facilities to the NRC for review and approval prior to conducting any such audit.

CAN USA will audit each individual involved in radiographic operations on offshore platforms between March 10, 2010 and September 30, 2011.

Audit records will contain, at a minimum, the following information:

- Date of audit.
- Name of person(s) who conducted the audit.
- Names of persons contacted by the auditor(s).
- Areas audited.

• Audit findings.

For the years 2010–2014, CAN USA shall send a copy of its audit results to the Director, Division of Nuclear Materials Safety, U.S. NRC, Region IV, within 30 days of the completion of each audit.

(5) CAN USA will pursue development and implementation of a written agreement with the Owner/Operator of offshore facilities prior to conducting radiographic operations on those facilities. In general, this agreement will include:

• A person may not attempt to hinder the conduct of radiographic operations and response to incidents occurring in accordance with 10 CFR part 34 and the requirements of the NRC general license granted pursuant to 10 CFR 150.20;

• A security-related provision that is described in the Appendix to this Order; and

• The employing customer or operator will facilitate direct CAN USA oversight (company audits) of radiography personnel on the operator's facilities.

Appropriate CAN USA management, the RSO, or the Team Leader (Instructor/Radiographer) on the offshore facility will provide a copy of the agreement to the jobsite sponsor.

CAN USA will provide a boilerplate agreement to the NRC for review and approval within 90 days of the date of the Confirmatory Order.

Within 30 days of receipt of the NRC's approval of the boilerplate, CAN USA will implement the use of the agreement. If an Owner/Operator does not accept the agreement, CAN USA will document the refusal to accept the agreement and the Owner/Operator's reason for the refusal.

(6) In consideration of the above actions on the part of CAN USA, the NRC agrees to limit the civil penalty amount in this enforcement action to $7,000. Accordingly, within 60 days of the date of the Confirmatory Order, CAN USA shall pay the civil penalty of $7,000 in accordance with NUREG/BR–0254 and submit to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, Washington, DC 20555, a statement indicating when and by what method payment was made. CAN USA will provide a copy of said statement to the Regional Administrator, NRC Region IV.

(7) The NRC agrees not to pursue any further enforcement action in connection with NRC Inspection Report 150–00017/08–001, issued by the NRC to CAN USA on January 27, 2010.

(8) Apparent violations in this matter will, however, be considered as previous enforcement for the purposes of assessing potential future enforcement action civil penalty assessments in accordance with Section VI.C. of the Enforcement Policy.

(9) The NRC will consider the resulting Confirmatory Order for any assessment of CAN USA's performance, as appropriate.

On April 12, 2010, CAN USA consented to issuing this Confirmatory Order with the commitments as described in Section V below. The Licensee further agreed that this Confirmatory Order is to be effective upon issuance and that it has waived its right to a hearing.

IV

Since the Licensee has agreed to take additional actions to address NRC concerns, as set forth in Item III above, the NRC has concluded that its concerns can be resolved through issuance of this Confirmatory Order.

I find that the Licensee's commitments as set forth in Section V are acceptable and necessary and conclude that with these commitments the public health and safety are reasonably assured. In view of the foregoing, I have determined that public health and safety require that the Licensee's commitments be confirmed by this Confirmatory Order. Based on the above and the Licensee's consent, this Confirmatory Order is immediately effective upon issuance.

V

Accordingly, pursuant to Sections 81, 161b, 161i, 161o, 182 and 186 of the Atomic Energy Act of 1954, as amended, and the Commission's regulations in 10 CFR 2.202 and 10 CFR parts 20, 30, 34, and 150, *it is hereby ordered,* effective immediately, that:

(1) Within 140 days of the date of this Confirmatory Order, CAN USA will develop, implement and provide training on new and/or revised operating procedures. This training shall be provided to new employees prior to working with licensed material for the first time, and to existing employees. Refresher training will be provided annually (at intervals not to exceed 12 months) thereafter for all employees involved in licensed activities. Records of training materials and course attendees shall be maintained for 5 years. The procedures shall address:

• Use of Radiography Checklist. Use procedures for the "Radiography Checklist" prior to departure from the licensee's land-based facilities. Additionally, the radiography crew will complete the checklist after arrival on the offshore facility. A radiography crew member will send documentation of the jobsite review by FAX or other available method to the RSO or another designated CAN USA individual at CAN USA's corporate offices no later than 8 hours after the completion of the checklist.

• Information to offshore "customer." Use of the above checklist shall include a sign-off by the onsite Team Leader (Instructor/Radiographer) attesting that s/he has briefed the offshore facility jobsite sponsor, or other responsible individual on the offshore facility regarding CAN USA's proposed licensed activities.

• A security-related topic that is described in the Appendix to this Order.

• Radiographer's supervisory responsibilities (10 CFR 34.46).

• Security of Licensed Material.

• Potential consequences for wrongdoing.

CAN USA will provide an outline of the training to the NRC for review and approval within 90 days of the date of this Confirmatory Order. CAN USA will implement the training within 30 days of receipt of the NRC's approval of the training.

(2) CAN USA will provide the following one-time training session(s) to employees involved in licensed activities before these individuals can participate in radiographic operations, until the training program in Item 1 is implemented.

• Radiography Checklist—The radiography checklist is to be completed prior to departure for offshore jobsites and upon arrival at offshore jobsites.

• A security-related training session that is described in the Appendix to this Order.

(3) CAN USA will develop, implement, and provide training on a procedure for additional oversight of radiography crews on offshore facilities. The RSO or another independent individual with audit and radiography experience, as designated by the RSO, must conduct the audits. Audits must be unannounced (by the Licensee) and conducted during actual industrial radiographic operations on an offshore facility. Offshore audit requirements and audit frequency will be included in the procedure.

(4) CAN USA will provide an outline of the procedure for additional oversight of radiography crews working on offshore facilities to the NRC for review and approval prior to conducting any such audit.

CAN USA will audit each individual involved in radiographic operations on offshore platforms between March 10, 2010 and September 30, 2011.

Audit records will contain, at a minimum, the following information:

- Date of audit.
- Name of person(s) who conducted the audit.
- Names of persons contacted by the auditor(s).
- Areas audited.
- Audit findings.

For the years 2010–2014, CAN USA shall send a copy of its audit results to the Director, Division of Nuclear Materials Safety, U.S. NRC, Region IV, within 30 days of the completion of each audit.

(5) CAN USA will pursue development and implementation of a written agreement with the Owner/Operator of offshore facilities prior to conducting radiographic operations on those facilities. In general, this agreement will include:

- A person may not attempt to hinder the conduct of radiographic operations and response to incidents occurring in accordance with 10 CFR part 34 and the requirements of the NRC general license granted pursuant to 10 CFR 150.20;
- A security-related provision that is described in the Appendix to this Order; and
- The employing customer or operator will facilitate/direct CAN USA oversight (company audits) of radiography personnel on the operator's facilities.

Appropriate CAN USA management, the RSO or the Team Leader (Instructor/Radiographer) on the offshore facility will provide a copy of the agreement to the jobsite sponsor.

CAN USA will provide a boilerplate agreement to the NRC for review and approval within 90 days of the date of this Confirmatory Order.

Within 30 days of receipt of the NRC's approval of the boilerplate, CAN USA will implement the use of the agreement. If an Owner/Operator does not accept the agreement, CAN USA will document the refusal to accept the agreement and the Owner/Operator's reason for the refusal.

(6) In consideration of the above actions on the part of CAN USA, NRC agrees to limit the civil penalty amount in this enforcement action to $7,000. Accordingly, within 60 days of the date of this Confirmatory Order, CAN USA shall pay the civil penalty of $7,000 in accordance with NUREG/BR–0254 and submit to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, Washington, DC 20555, a statement indicating when and by what method payment was made. CAN USA will provide a copy of said statement to the Regional Administrator, NRC Region IV.

The Regional Administrator, NRC Region IV, may, in writing, relax or rescind any of the above conditions upon demonstration by the Licensee of good cause.

VI

Any person adversely affected by this Confirmatory Order, other than the Licensee, may request a hearing within 20 days of its publication in the **Federal Register**. Where good cause is shown, consideration will be given to extending the time to request a hearing. A request for extension of time must be directed to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and include a statement of good cause for the extension.

All documents filed in NRC adjudicatory proceedings, including a request for hearing, a petition for leave to intervene, any motion or other document filed in the proceeding prior to the submission of a request for hearing or petition to intervene, and documents filed by interested governmental entities participating under 10 CFR 2.315(c), must be filed in accordance with the NRC E–Filing rule (72 FR 49139, August 28, 2007). The E–Filing process requires participants to submit and serve all adjudicatory documents over the Internet, or in some cases to mail copies on electronic storage media. Participants may not submit paper copies of their filings unless they seek an exemption in accordance with the procedures described below.

To comply with the procedural requirements of E–Filing, at least ten (10) days prior to the filing deadline, the participant should contact the Office of the Secretary by e-mail at *hearing.docket@nrc.gov,* or by telephone at (301) 415–1677, to request (1) a digital ID certificate, which allows the participant (or its counsel or representative) to digitally sign documents and access the E–Submittal server for any proceeding in which it is participating; and (2) advise the Secretary that the participant will be submitting a request or petition for hearing (even in instances in which the participant, or its counsel or representative, already holds an NRC-issued digital ID certificate). Based upon this information, the Secretary will establish an electronic docket for the hearing in this proceeding if the Secretary has not already established an electronic docket.

Information about applying for a digital ID certificate is available on NRC's public Web site at *http://www.nrc.gov/site-help/e-submittals/apply-certificates.html.* System requirements for accessing the E–Submittal server are detailed in NRC's "Guidance for Electronic Submission," which is available on the agency's public Web site at *http://www.nrc.gov/site-help/e-submittals.html.* Participants may attempt to use other software not listed on the Web site, but should note that the NRC's E–Filing system does not support unlisted software, and the NRC Meta System Help Desk will not be able to offer assistance in using unlisted software.

If a participant is electronically submitting a document to the NRC in accordance with the E–Filing rule, the participant must file the document using the NRC's online, Web-based submission form. In order to serve documents through the Electronic Information Exchange (EIE), users will be required to install a Web browser plug-in from the NRC Web site. Further information on the Web-based submission form, including the installation of the Web browser plug-in, is available on the NRC's public Web site at *http://www.nrc.gov/site-help/e-submittals.html.*

Once a participant has obtained a digital ID certificate and a docket has been created, the participant can then submit a request for hearing or petition for leave to intervene. Submissions should be in Portable Document Format (PDF) in accordance with NRC guidance available on the NRC public Web site at *http://www.nrc.gov/site-help/e-submittals.html.* A filing is considered complete at the time the documents are submitted through the NRC's E–Filing system. To be timely, an electronic filing must be submitted to the E–Filing system no later than 11:59 p.m. Eastern Time on the due date. Upon receipt of a transmission, the E–Filing system time-stamps the document and sends the submitter an e-mail notice confirming receipt of the document. The E–Filing system also distributes an e-mail notice that provides access to the document to the NRC Office of the General Counsel and any others who have advised the Office of the Secretary that they wish to participate in the proceeding, so that the filer need not serve the documents on those participants separately. Therefore, applicants and other participants (or their counsel or representative) must apply for and receive a digital ID certificate before a hearing request/petition to intervene is filed so that they can obtain access to the document via the E–Filing system.

A person filing electronically using the agency's adjudicatory E–Filing system may seek assistance by

contacting the NRC Meta System Help Desk through the "Contact Us" link located on the NRC Web site at *http://www.nrc.gov/site-help/e-submittals.html,* by e-mail at *MSHD.Resource@nrc.gov,* or by a toll-free call at (866) 672–7640. The NRC Meta System Help Desk is available between 8 a.m. and 8 p.m., Eastern Time, Monday through Friday, excluding government holidays.

Participants who believe that they have a good cause for not submitting documents electronically must file an exemption request, in accordance with 10 CFR 2.302(g), with their initial paper filing requesting authorization to continue to submit documents in paper format. Such filings must be submitted by: (1) First class mail addressed to the Office of the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemaking and Adjudications Staff; or (2) courier, express mail, or expedited delivery service to the Office of the Secretary, Sixteenth Floor, One White Flint North, 11555 Rockville Pike, Rockville, Maryland, 20852, Attention: Rulemaking and Adjudications Staff. Participants filing a document in this manner are responsible for serving the document on all other participants. Filing is considered complete by first-class mail as of the time of deposit in the mail, or by courier, express mail, or expedited delivery service upon depositing the document with the provider of the service. A presiding officer, having granted an exemption request from using E–Filing, may require a participant or party to use E–Filing if the presiding officer subsequently determines that the reason for granting the exemption from use of E–Filing no longer exists.

Documents submitted in adjudicatory proceedings will appear in NRC's electronic hearing docket which is available to the public at *http://ehd.nrc.gov/EHD_Proceeding/home.asp,* unless excluded pursuant to an order of the Commission, or the presiding officer. Participants are requested not to include personal privacy information, such as social security numbers, home addresses, or home phone numbers in their filings, unless an NRC regulation or other law requires submission of such information. With respect to copyrighted works, except for limited excerpts that serve the purpose of the adjudicatory filings and would constitute a Fair Use application, participants are requested not to include copyrighted materials in their submission.

If a person other than the Licensee requests a hearing, that person shall set forth with particularity the manner in which his interest is adversely affected by this Confirmatory Order and shall address the criteria set forth in 10 CFR 2.309(d) and (f).

If the hearing is requested by a person whose interest is adversely affected, the Commission will issue an order designating the time and place of any hearing. If a hearing is held, the issue to be considered at such hearing shall be whether this Confirmatory Order should be sustained.

In the absence of any request for hearing, or written approval of an extension of time in which to request a hearing, the provisions specified in Section V above shall be final 20 days from the date this Confirmatory Order was published in the **Federal Register**, without further order or proceedings. If an extension of time for requesting a hearing has been approved, the provisions specified in Section V shall be final when the extension expires if a hearing request has not been received. A request for hearing shall not stay the immediate effectiveness of this order.

Dated this 16th day of April 2010.

For the Nuclear Regulatory Commission.

Elmo E. Collins,

Regional Administrator.

[FR Doc. 2010–9956 Filed 4–29–10; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[NRC–2010–0167]

Withdrawal of Regulatory Guide

AGENCY: Nuclear Regulatory Commission.

ACTION: Withdrawal of Regulatory Guide (RG) 1.165, "Identification and Characterization of Seismic Sources and Determination of Safe Shutdown Earthquake Ground Motion."

FOR FURTHER INFORMATION CONTACT: Rebecca L. Karas, Geosciences & Geotechnical Engineering Branch 1, Division of Site & Environmental Reviews, Office of New Reactors, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, telephone 301–415–7533 or e-mail *Rebecca.Karas@nrc.gov*.

SUPPLEMENTARY INFORMATION:

I. Introduction

The U.S. Nuclear Regulatory Commission (NRC) is withdrawing RG 1.165, "Identification and Characterization of Seismic Sources and Determination of Safe Shutdown Earthquake Ground Motion," dated March 1997. RG 1.165 provides general procedures to satisfy the requirements of Title 10 of the Code of Federal Regulations, part 100.23, "Geologic and Seismic Siting Criteria" (10 CFR 100.23) for siting and licensing new reactors or new reactor plant sites. It has been replaced with RG 1.208, "A Performance-Based Approach to Define the Site-Specific Earthquake Ground Motion."

The withdrawal of Regulatory Guide 1.165 does not alter the licensing basis of any currently operating reactor or any of the currently issued early site permits under 10 CFR part 52, subpart A. The siting decision is final for all licenses and early site permits that were reviewed and approved prior to this withdrawal of this guide. Additionally, the withdrawal of Regulatory Guide 1.165 does not affect the approval of any currently approved design certification under 10 CFR part 52, Appendix B. The design basis for each design certification, including seismic and earthquake design, were established and approved as part of the issuance of each design certification and, in accordance with 10 CFR 52.63, may not be changed except through rulemaking amending a design certification rule.

The withdrawal of Regulatory Guide 1.165 may affect applications, design certifications or design certification amendments currently under active consideration by the NRC or any future applications for new, amended, or renewed design certifications. If the applications were prepared (or are being prepared) to comply with RG 1.165, the NRC may request the applicant to demonstrate how the proposed design compares with a design meeting the guidance in Regulatory Guide 1.208. Finally, withdrawal of Regulatory Guide 1.165 may affect the NRC's consideration of any current combined license application under 10 CFR part 52, subpart C if the application was prepared to meet the withdrawn regulatory guide. The NRC may request that the applicant demonstrate how the proposed design meeting the guidance in Regulatory Guide 1.165 compares with a design meeting the guidance in new Regulatory Guide 1.208.

Regulatory Guide 1.165 is being withdrawn and replaced with the improved guidance in RG 1.208 which incorporates new developments in ground motion estimation models; updated models for earthquake sources; methods for determining site response; and new methods for defining a site-specific, performance-based ground motion response spectrum (GMRS).

The outmoded guidance in RG 1.165 was based on site and region-specific investigations combined with a probabilistic seismic hazard assessment. The new guidance in RG 1.208 incorporates developments in ground motion estimation models and new methods for defining site specific ground motion response spectrum which allows for approximately consistent performance of structures, systems, and components across a range of seismic environments.

II. Further Information

The withdrawal of Regulatory Guide 1.165 does not alter any prior or existing licensing commitments based on its use. The guidance provided in this regulatory guide is no longer necessary. Regulatory guides may be withdrawn when their guidance is superseded by congressional action or no longer provides useful information.

Regulatory guides are available for inspection or downloading through the NRC's public Web site under "Regulatory Guides" in the NRC's Electronic Reading Room at *http://www.nrc.gov/reading-rm/doc-collections*. Regulatory guides are also available for inspection at the NRC's Public Document Room (PDR), Room O–1 F21, One White Flint North, 11555 Rockville Pike, Rockville, MD 20852–2738. The PDR's mailing address is US NRC PDR, Washington, DC 20555–0001. You can reach the staff by telephone at 301–415–4737 or 800- 397–4209, by fax at 301–415–3548, and by e-mail to *pdr.resource@nrc.gov*.

Regulatory guides are not copyrighted, and NRC approval is not required to reproduce them.

Dated at Rockville, Maryland, this 23rd day of April, 2010.

For the Nuclear Regulatory Commission.

Robert G. Carpenter,

Acting Chief, Regulatory Guide Development Branch, Division of Engineering, Office of Nuclear Regulatory Research.

[FR Doc. 2010–10113 Filed 4–29–10; 8:45 am]

BILLING CODE 7590–01–P

PENSION BENEFIT GUARANTY CORPORATION

Proposed Submission of Information Collection for OMB Review; Comment Request; Reconsideration of Initial Determinations

AGENCY: Pension Benefit Guaranty Corporation.

ACTION: Notice of intent to request extension of OMB approval of information collection.

SUMMARY: The Pension Benefit Guaranty Corporation ("PBGC") intends to request the Office of Management and Budget ("OMB") to extend approval, under the Paperwork Reduction Act, of a collection of information under its regulation on Rules for Administrative Review of Agency Decisions. This notice informs the public of PBGC's intent and solicits public comment on the collection of information.

DATES: Comments should be submitted by June 29, 2010.

ADDRESSES: Comments may be submitted by any of the following methods:

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

E-mail: paperwork.comments@pbgc.gov.

Fax: 202–326–4224.

Mail or Hand Delivery: Legislative and Regulatory Department, Pension Benefit Guaranty Corporation, 1200 K Street, NW., Washington, DC 20005–4026.

PBGC will make all comments available on its Web site, *http://www.pbgc.gov.*

Copies of the collection of information may also be obtained without charge by writing to the Disclosure Division of the Office of the General Counsel of PBGC at the above address or by visiting the Disclosure Division or calling 202–326–4040 during normal business hours. (TTY and TDD users may call the Federal relay service toll-free at 1–800–877–8339 and ask to be connected to 202–326–4040.) PBGC's regulation on Administrative Appeals may be accessed on PBGC's Web site at *http://www.pbgc.gov.*

FOR FURTHER INFORMATION CONTACT: Catherine B. Klion, Manager, or Donald McCabe, Attorney, Regulatory and Policy Division, Legislative and Regulatory Department, Pension Benefit Guaranty Corporation, 1200 K Street, NW., Washington, DC 20005–4026, 202–326–4024. (For TTY and TDD, call 800–877–8339 and request connection to 202–326–4024).

SUPPLEMENTARY INFORMATION: PBGC's regulation on Rules for Administrative Review of Agency Decisions (29 CFR part 4003) prescribes rules governing the issuance of initial determinations by PBGC and the procedures for requesting and obtaining administrative review of initial determinations through reconsideration or appeal. Subpart A of the regulation specifies which initial determinations are subject to reconsideration. Subpart C prescribes rules on who may request reconsideration, when to make such a request, where to submit it, form and content of reconsideration requests, and other matters relating to reconsiderations.

Any person aggrieved by an initial determination of PBGC under § 4003.1(b)(1) (determinations that a plan is covered by section 4021 of ERISA), § 4003.1(b)(2) (determinations concerning premiums, interest, and late payment penalties under section 4007 of ERISA), § 4003.1(b)(3) (determinations concerning voluntary terminations), or § 4003.1(b)(4) (determinations concerning allocation of assets under section 4044 of ERISA) may request reconsideration of the initial determination. Requests for reconsideration must be in writing, be clearly designated as requests for reconsideration, contain a statement of the grounds for reconsideration and the relief sought, and contain or reference all pertinent information.

OMB has approved the reconsiderations collection of information under control number 1212–0063 through September 30, 2010. PBGC intends to request that OMB extend approval of this collection of information for three years. 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.

PBGC estimates that an average of 796 appellants per year will respond to this collection of information. PBGC further estimates that the average annual burden of this collection of information is 0.30 hours and $601 per person, with an average total annual burden of 231 hours and $478,575.

PBGC is soliciting public comments to—

- Evaluate whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the 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.

Issued in Washington, DC, this 26th day of April 2010.

John H. Hanley,

Director, Legislative and Regulatory Department, Pension Benefit Guaranty Corporation.

[FR Doc. 2010–10025 Filed 4–29–10; 8:45 am]

BILLING CODE 7709–01–P

OFFICE OF PERSONNEL MANAGEMENT

Submission for OMB Review; Comment Request for Review of a Revised Information Collection: (OMB Control No. 3206–0143; Form RI 30–1)

AGENCY: Office of Personnel Management.

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, May 22, 1995), this notice announces that the Office of Personnel Management (OPM) has submitted to the Office of Management and Budget (OMB) a request for review of a revised information collection. "Request to Disability Annuitant for Information on Physical Condition and Employment" (OMB Control No. 3206–0143; Form RI 30–1), is used by persons who are not yet age 60 and who are receiving a disability annuity and are subject to inquiry regarding their medical condition as OPM deems reasonably necessary. RI 30–1 collects information as to whether the disabling condition has changed.

We estimate 8,000 RI 30–1 forms will be completed annually. We estimate it takes approximately 60 minutes to complete the form. The annual burden is 8,000 hours.

For copies of this proposal, contact Cyrus S. Benson on (202) 606–4808, FAX (202) 606–0910 or via e-mail to *Cyrus.Benson@opm.gov.* Please include a mailing address with your request.

DATES: Comments on this proposal should be received within 30 calendar days from the date of this publication.

ADDRESS: Send or deliver comments to—

James K. Freiert (Acting), Deputy Associate Director, Retirement Operations, Retirement and Benefits, U.S. Office of Personnel Management, 1900 E Street, NW., Room 3305, Washington, DC 20415–3500, and

OPM Desk Officer, Office of Information & Regulatory Affairs, Office of Management and Budget, New Executive Office Building, NW., 725 17th Street, NW., Room 10235, Washington, DC 20503.

FOR INFORMATION REGARDING ADMINISTRATIVE COORDINATION CONTACT: Cyrus S. Benson, Team Leader, Publications Team, R&B/Resource Management/Support Group, U.S. Office of Personnel Management, 1900 E Street, NW., Room 4H28, Washington, DC 20415, (202) 606–4808.

U.S. Office of Personnel Management.

John Berry,

Director.

[FR Doc. 2010–10150 Filed 4–29–10; 8:45 am]

BILLING CODE 6325–38–P

OFFICE OF PERSONNEL MANAGEMENT

Submission for OMB Review; Comment Request for Review of a Revised Information Collection: (OMB Control No. 3206–0179; Form RI 30–10)

AGENCY: Office of Personnel Management.

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, May 22, 1995), this notice announces that the Office of Personnel Management (OPM) has submitted to the Office of Management and Budget (OMB) a request for review of a revised information collection. This information collection, "Disabled Dependent Questionnaire" (OMB Control No. 3206–0179; Form RI 30–10), is used to collect sufficient information about the medical condition and earning capacity for the Office of Personnel Management to be able to determine whether a disabled adult child is eligible for health benefits coverage and/or survivor annuity payments under the Civil Service Retirement System or the Federal Employees Retirement System.

Approximately 2,500 RI 30–10 forms are completed annually. The form takes approximately 1 hour to complete. The annual estimated burden is 2,500 hours.

For copies of this proposal, contact Cyrus S. Benson on (202) 606–4808, FAX (202) 606–0910 or via e-mail to *Cyrus.Benson@opm.gov.* Please include a mailing address with your request.

DATES: Comments on this proposal should be received within 30 calendar days from the date of this publication.

ADDRESSES: Send or deliver comments to—

James K. Freiert (Acting), Deputy Associate Director, Retirement Operations, Retirement and Benefits, U.S. Office of Personnel Management, 1900 E Street, NW., Room 3305, Washington, DC 20415–3500 and

OPM Desk Officer, Office of Information & Regulatory Affairs, Office of Management and Budget, New Executive Office Building, NW., 725 17th Street, NW., Room 10235, Washington, DC 20503.

For information regarding administrative coordination contact: Cyrus S. Benson, Team Leader, Publications Team, R&B/Resource Management/Support Group, U.S. Office of Personnel Management, 1900 E Street, NW., Room 4H28, Washington, DC 20415, (202) 606–4808.

U.S. Office of Personnel Management

John Berry,

Director.

[FR Doc. 2010–10153 Filed 4–29–10; 8:45 am]

BILLING CODE 6325–38–P

OFFICE OF PERSONNEL MANAGEMENT

[OMB Control No. 3206–0208; Form RI 38–115]

Submission for OMB Review; Request for Comments on a Revised Information Collection

AGENCY: Office of Personnel Management.

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, May 22, 1995), this notice announces that the Office of Personnel Management (OPM) has submitted to the Office of Management and Budget (OMB) a request for review of a revised information collection. This information collection, "Representative Payee Survey" (OMB Control No. 3206–0208; Form RI 38–115), is used to collect information about how the benefits paid to a representative payee have been used or conserved for the benefit of the incompetent annuitant.

Approximately 11,000 forms are completed annually. We estimate it takes approximately 20 minutes to complete the form. The annual estimated burden is 3,667 hours.

For copies of this proposal, contact Cyrus S. Benson on (202) 606–4808, FAX (202) 606–0910 or via E-mail to *Cyrus.Benson@opm.gov.* Please include a mailing address with your request.

DATES: Comments on this proposal should be received within 30 calendar days from the date of this publication.

ADDRESSES: Send or deliver comments to—

James K. Freiert (Acting), Deputy Associate Director, Retirement Operations, Retirement and Benefits, U.S. Office of Personnel Management, 1900 E Street, NW., Room 3305, Washington, DC 20415–3500, and

OPM Desk Officer, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, 725 17th Street, NW., Room 10235, Washington, DC 20503.

For information regarding administrative coordination contact: Cyrus S. Benson, Team Leader, Publications Team, Retirement & Benefits, RM, Administration, U.S. Office of Personnel Management, 1900 E Street, NW., Room 4H28, Washington, DC 20415. (202) 606–4808.

John Berry,

Director, U.S. Office of Personnel Management.

[FR Doc. 2010–10152 Filed 4–29–10; 8:45 am]

BILLING CODE 6325–38–P

OFFICE OF PERSONNEL MANAGEMENT

National Council on Federal Labor-Management Relations Meeting

AGENCY: Office of Personnel Management.

ACTION: Notice of meeting.

SUMMARY: The National Council on Federal Labor-Management Relations plans to meet on the following dates—

Wednesday, June 2, 2010.
Wednesday, July 7, 2010.
Wednesday, August 4, 2010.
Wednesday, September 1, 2010.
Wednesday, October 6, 2010.
Wednesday, November 3, 2010.
Wednesday, December 1, 2010.

The meetings will start at 10 a.m. and will be held in Room 1416, U.S. Office of Personnel Management, 1900 E Street, NW., Washington, DC. The Council is an advisory body composed of representatives of Federal employee organizations, Federal management organizations, and senior government officials. The Council was established by Executive Order 13522, entitled, "Creating Labor-Management Forums to Improve Delivery of Government Services," which was signed by the President on December 9, 2009. Along with its other responsibilities, the Council assists in the implementation of Labor Management Forums throughout the government and makes recommendations to the President on innovative ways to improve delivery of services and products to the public while cutting costs and advancing employee interests. The Council is co-chaired by the Director of the Office of Personnel Management and the Deputy Director for Management of the Office of Management and Budget.

At its meetings, the Council will continue its work in promoting cooperative and productive relationships between labor and management in the executive branch, by carrying out the responsibilities and functions listed in Section 1(b) of the Executive Order. The meetings are open to the public. Please contact the Office of Personnel Management at the address shown below if you wish to present material to the Council at the meeting. The manner and time prescribed for presentations may be limited, depending upon the number of parties that express interest in presenting information.

FOR FURTHER INFORMATION CONTACT: Thomas Wachter, Acting Deputy Associate Director for Partnership and Labor Relations, Office of Personnel Management, 1900 E Street, NW., Room 7H28–E, Washington, DC 20415. Phone (202) 606–2930; FAX (202) 606–2613; or e-mail at *PLR@opm.gov.*

For the National Council.

John Berry,

Director.

[FR Doc. 2010–10151 Filed 4–29–10; 8:45 am]

BILLING CODE 6325–39–P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration # 12140 and # 12141]

West Virginia Disaster # WV–00018

AGENCY: U.S. Small Business Administration.

ACTION: Notice.

SUMMARY: This is a Notice of the Presidential declaration of a major disaster for Public Assistance Only for the State of West Virginia (FEMA–1903–DR), dated 04/23/2010.

Incident: Severe winter storms and snowstorms.

Incident Period: 02/05/2010 through 02/11/2010.

Effective Date: 04/23/2010.

Physical Loan Application Deadline Date: 06/22/2010.

Economic Injury (EIDL) Loan Application Deadline Date: 01/24/2011.

ADDRESSES: Submit completed loan applications to: U.S. Small Business Administration, Processing and Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

FOR FURTHER INFORMATION CONTACT: A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street, SW., Suite 6050, Washington, DC 20416.

SUPPLEMENTARY INFORMATION: Notice is hereby given that as a result of the President's major disaster declaration on 04/23/2010, Private Non-Profit organizations that provide essential services of governmental nature may file disaster loan applications at the address listed above or other locally announced locations.

The following areas have been determined to be adversely affected by the disaster:

Primary Counties: Berkeley, Brooke, Doddridge, Hampshire, Hancock, Hardy, Jefferson, Marion, Marshall, Morgan, Ohio, Pocahontas, Preston, Ritchie, Tucker, Tyler, Wetzel.

The Interest Rates are:

	Percent
For Physical Damage:	
Non-Profit Organizations with Credit Available Elsewhere ...	3.625
Non-Profit Organizations without Credit Available Elsewhere	3.000
For Economic Injury:	
Non-Profit Organizations without Credit Available Elsewhere	3.000

The number assigned to this disaster for physical damage is 12140B and for economic injury is 12141B.

(Catalog of Federal Domestic Assistance Numbers 59002 and 59008)

Joseph P. Loddo,

Acting Associate Administrator for Disaster Assistance.

[FR Doc. 2010–10072 Filed 4–29–10; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration # 12142 and # 12143]

Connecticut Disaster # CT–00015

AGENCY: U.S. Small Business Administration.

ACTION: Notice.

SUMMARY: This is a Notice of the Presidential declaration of a major disaster for Public Assistance Only for the State of Connecticut (FEMA—1904—DR), dated 04/23/2010.

Incident: Severe storms and flooding.

Incident Period: 03/12/2010 and continuing.

Effective Date: 04/23/2010.

Physical Loan Application Deadline Date: 06/22/2010.

Economic Injury (EIDL) Loan Application Deadline Date: 01/24/2011.

ADDRESSES: Submit completed loan applications to: U.S. Small Business Administration, Processing and

Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

FOR FURTHER INFORMATION CONTACT: A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street, SW., Suite 6050, Washington, DC 20416.

SUPPLEMENTARY INFORMATION: Notice is hereby given that as a result of the President's major disaster declaration on 04/23/2010, Private Non-Profit organizations that provide essential services of governmental nature may file disaster loan applications at the address listed above or other locally announced locations.

The following areas have been determined to be adversely affected by the disaster:

Primary Counties: Fairfield, Middlesex, New London.

The Interest Rates are:

	Percent
For Physical Damage:	
Non-Profit Organizations With Credit Available Elsewhere	3.625
Non-Profit Organizations Without Credit Available Elsewhere	3.000
For Economic Injury:	
Non-Profit Organizations Without Credit Available Elsewhere	3.000

The number assigned to this disaster for physical damage is 121426 and for economic injury is 121436.

(Catalog of Federal Domestic Assistance Numbers 59002 and 59008)

Joseph P. Loddo,

Acting Associate Administrator for Disaster Assistance.

[FR Doc. 2010–10073 Filed 4–29–10; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration # 12130 and # 12131]

California Disaster # CA–00154

AGENCY: U.S. Small Business Administration.

ACTION: Notice.

SUMMARY: This is a notice of an Administrative declaration of a disaster for the State of California dated 04/21/2010.

Incident: Northern Baja California Earthquake.

Incident Period: 04/04/2010 and continuing.

Effective Date: 04/21/2010.

Physical Loan Application Deadline Date: 06/21/2010.

Economic Injury (EIDL) Loan Application Deadline Date: 01/21/2011.

ADDRESSES: Submit completed loan applications to: U.S. Small Business Administration, Processing and Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

FOR FURTHER INFORMATION CONTACT: A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street, SW., Suite 6050, Washington, DC 20416.

SUPPLEMENTARY INFORMATION: Notice is hereby given that as a result of the Administrator's disaster declaration, applications for disaster loans may be filed at the address listed above or other locally announced locations.

The following areas have been determined to be adversely affected by the disaster:

Primary Counties: Imperial.

Contiguous Counties:

California: Riverside, San Diego.

Arizona: La Paz, Yuma.

The Interest Rates are:

	Percent
For Physical Damage:	
Homeowners with Credit Available Elsewhere	5.250
Homeowners without Credit Available Elsewhere	2.625
Businesses with Credit Available Elsewhere	6.000
Businesses without Credit Available Elsewhere	4.000
Non-Profit Organizations with Credit Available Elsewhere ...	3.625
Non-Profit Organizations without Credit Available Elsewhere	3.000
For Economic Injury:	
Businesses and Small Agricultural Cooperatives without Credit Available Elsewhere ...	4.000
Non-Profit Organizations without Credit Available Elsewhere	3.000

The number assigned to this disaster for physical damage is 12130 2 and for economic injury is 12131 0.

The States which received an EIDL Declaration # are California, Arizona.

(Catalog of Federal Domestic Assistance Numbers 59002 and 59008)

April 21, 2010.

Karen G. Mills,

Administrator.

[FR Doc. 2010–10051 Filed 4–29–10; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #12098 and #12099]

Rhode Island Disaster Number RI–00006

AGENCY: U.S. Small Business Administration.

ACTION: Amendment 2.

SUMMARY: This is an amendment of the Presidential declaration of a major disaster for the State of Rhode Island (FEMA–1894–DR), dated 03/29/2010.

Incident: Severe storms and flooding.

Incident Period: 03/12/2010 and continuing through 04/12/2010.

Effective Date: 04/12/2010.

Physical Loan Application Deadline Date: 05/28/2010.

EIDL Loan Application Deadline Date: 12/29/2010.

ADDRESSES: Submit completed loan applications to: U.S. Small Business Administration, Processing And Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

FOR FURTHER INFORMATION CONTACT: A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street, SW., Suite 6050, Washington, DC 20416.

SUPPLEMENTARY INFORMATION: The notice of the President's major disaster declaration for the State of Rhode Island, dated 03/29/2010 is hereby amended to establish the incident period for this disaster as beginning 03/12/2010 and continuing through 04/12/2010.

All other information in the original declaration remains unchanged.

(Catalog of Federal Domestic Assistance Numbers 59002 and 59008)

James E. Rivera,

Associate Administrator

for Disaster Assistance.

[FR Doc. 2010–10050 Filed 4–29–10; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration # 12134 and # 12135]

North Dakota Disaster # ND–00021

AGENCY: U.S. Small Business Administration.

ACTION: Notice.

SUMMARY: This is a Notice of the Presidential declaration of a major disaster for Public Assistance Only for the State of North Dakota (FEMA–1901–DR), dated 04/21/2010.

Incident: Severe winter storm.

Incident Period: 04/01/2010 through 04/03/2010.

Effective Date: 04/21/2010.

Physical Loan Application Deadline Date: 06/21/2010.

Economic Injury (EIDL) Loan Application Deadline Date: 01/21/2011.

ADDRESSES: Submit completed loan applications to: U.S. Small Business Administration, Processing and Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

FOR FURTHER INFORMATION CONTACT: A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street, SW., Suite 6050, Washington, DC 20416.

SUPPLEMENTARY INFORMATION: Notice is hereby given that as a result of the President's major disaster declaration on 04/21/2010, Private Non-Profit organizations that provide essential services of governmental nature may file disaster loan applications at the address listed above or other locally announced locations.

The following areas have been determined to be adversely affected by the disaster:

Primary Counties: Adams; Benson; Burleigh; Grant; Mchenry; Mclean; Mercer; Morton; Oliver; Sheridan; Sioux; Wells; and the Standing Rock Indian Reservation.

The Interest Rates are:

	Percent
For Physical Damage:	
Non-Profit Organizations With Credit Available Elsewhere: ..	3.625
Non-Profit Organizations Without Credit Available Elsewhere:	3.000
For Economic Injury:	
Non-Profit Organizations Without Credit Available Elsewhere:	3.000

The number assigned to this disaster for physical damage is 12134B and for economic injury is 12135B.

(Catalog of Federal Domestic Assistance Numbers 59002 and 59008)

James E. Rivera,

Associate Administrator for Disaster Assistance.

[FR Doc. 2010–10043 Filed 4–29–10; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration # 12136 and # 12137]

Nebraska Disaster # NE–00035

AGENCY: U.S. Small Business Administration.

ACTION: Notice.

SUMMARY: This is a Notice of the Presidential declaration of a major disaster for Public Assistance Only for the State of Nebraska (FEMA–1902–DR), dated 04/21/2010.

Incident: Severe storms, ice jams, and flooding.

Incident Period: 03/06/2010 through 04/03/2010.

Effective Date: 04/21/2010.

Physical Loan Application Deadline Date: 06/21/2010.

Economic Injury (EIDL) Loan Application Deadline Date: 01/21/2011.

ADDRESSES: Submit completed loan applications to: U.S. Small Business Administration, Processing and Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

FOR FURTHER INFORMATION CONTACT: A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street, SW., Suite 6050, Washington, DC 20416.

SUPPLEMENTARY INFORMATION: Notice is hereby given that as a result of the President's major disaster declaration on 04/21/2010, Private Non-Profit organizations that provide essential services of governmental nature may file disaster loan applications at the address listed above or other locally announced locations.

The following areas have been determined to be adversely affected by the disaster:

Primary Counties: Antelope, Arthur, Boone, Boyd, Butler, Cass, Colfax, Cuming, Dakota, Gage, Greeley, Hayes, Holt, Howard, Jefferson, Johnson, Lancaster, Loup, Madison, Nance, Nemaha, Nuckolls, Otoe, Pawnee, Pierce, Platte, Polk, Richardson, Saline, Seward, Stanton, Thurston, Valley, Wheeler, York

The Interest Rates are:

	Percent
For Physical Damage:	
Non-Profit Organizations With Credit Available Elsewhere ...	3.625
Non-Profit Organizations Without Credit Available Elsewhere	3.000
For Economic Injury:	
Non-Profit Organizations Without Credit Available Elsewhere	3.000

The number assigned to this disaster for physical damage is 12136B and for economic injury is 12137B

(Catalog of Federal Domestic Assistance Numbers 59002 and 59008)

James E. Rivera,

Associate Administrator for Disaster Assistance.

[FR Doc. 2010–10045 Filed 4–29–10; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration # 12116 and # 12117]

Rhode Island Disaster Number RI–00007

AGENCY: U.S. Small Business Administration.

ACTION: Amendment 1.

SUMMARY: This is an amendment of the Presidential declaration of a major disaster for Public Assistance Only for the State of Rhode Island (FEMA–1894–DR), dated 04/08/2010.

Incident: Severe storms and flooding.

Incident Period: 03/12/2010 through 04/12/2010.

Effective Date: 04/12/2010.

Physical Loan Application Deadline Date: 06/07/2010.

Economic Injury (EIDL) Loan Application Deadline Date: 01/04/2011.

ADDRESSES: Submit completed loan applications to: U.S. Small Business Administration, Processing and Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

FOR FURTHER INFORMATION CONTACT: A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street, SW., Suite 6050, Washington, DC 20416.

SUPPLEMENTARY INFORMATION: The notice of the President's major disaster declaration for Private Non-Profit organizations in the State of Rhode Island, dated 04/08/2010, is hereby amended to establish the incident period for this disaster as beginning 03/12/2010 and continuing through 04/12/2010.

All other information in the original declaration remains unchanged.

(Catalog of Federal Domestic Assistance Numbers 59002 and 59008)

James E. Rivera,

Associate Administrator for Disaster Assistance.

[FR Doc. 2010–10049 Filed 4–29–10; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #12138 and #12139]

Massachusetts Disaster # MA–00027

AGENCY: U.S. Small Business Administration.

ACTION: Notice.

SUMMARY: This is a Notice of the Presidential declaration of a major disaster for Public Assistance Only for the State of Massachusetts (FEMA–1895–DR), dated 04/22/2010.

Incident: Severe storms and flooding.

Incident Period: 03/12/2010 and continuing.

Effective Date: 04/22/2010.

Physical Loan Application Deadline Date: 06/21/2010.

Economic Injury (EIDL) Loan Application Deadline Date: 01/24/2011.

ADDRESSES: Submit completed loan applications to: U.S. Small Business Administration, Processing And Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

FOR FURTHER INFORMATION CONTACT: A Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street, SW., Suite 6050, Washington, DC 20416.

SUPPLEMENTARY INFORMATION: Notice is hereby given that as a result of the President's major disaster declaration on 04/22/2010, Private Non-Profit organizations that provide essential services of governmental nature may file disaster loan applications at the address listed above or other locally announced locations.

The following areas have been determined to be adversely affected by the disaster:

Primary Counties: Bristol, Essex, Middlesex, Norfolk, Plymouth, Suffolk, Worcester.

The Interest Rates are:

	Percent
For Physical Damage:	
Non-Profit Organizations With Credit Available Elsewhere	3.625
Non-Profit Organizations Without Credit Available Elsewhere	3.000
For Economic Injury:	
Non-Profit Organizations Without Credit Available Elsewhere	3.000

The number assigned to this disaster for physical damage is 121386 and for economic injury is 121396.

(Catalog of Federal Domestic Assistance Numbers 59002 and 59008)

James E. Rivera,

Associate Administrator for Disaster Assistance.

[FR Doc. 2010–10047 Filed 4–29–10; 8:45 am]

BILLING CODE 8025–01–P

SECURITIES AND EXCHANGE COMMISSION

Proposed Collection; Comment Request

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of Investor Education and Advocacy, Washington, DC 20549–0213.

Extension:

Form 10–D, OMB Control No. 3235–0604, SEC File No. 270–544.

Notice is hereby given that, pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission ("Commission") is soliciting comments on this collection of information summarized below. The Commission plans to submit this existing collection of information to the Office of Management Budget for approval.

Form 10–D (17 CFR 249.312) is used by asset-backed issuers to file periodic distribution reports pursuant to Section 13 or 15(d) under the Securities Exchange Act 1934 ("Exchange Act") (15 U.S.C. 78a *et seq.*) within 15 days after each required distribution date. The information provided by Form 10–D is mandatory and all information is made available to the public upon request. Form 10–D takes approximately 30 hours per response to prepare and is filed by approximately 1,000 respondents. Each respondent files an estimated 10 Form 10–Ds per year for a total of 10,000 responses. We estimate that 75% of the 30 hours per response (22.5 hours) is prepared by the company for a total annual reporting burden of 225,000 hours (22.5 hours per response × 10,000 responses).

Written comments are invited on: (a) Whether this proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of the burden imposed by the collection of information; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted in writing within 60 days of this publication.

Please direct your written comments to Charles Boucher, Director/CIO, Securities and Exchange Commission, C/O Shirley Martinson, 6432 General Green Way, Alexandria, VA 22312; or send an e-mail to: *PRA_Mailbox@sec.gov.*

Dated: April 26, 2010.

Florence E. Harmon,

Deputy Secretary.

[FR Doc. 2010–10032 Filed 4–29–10; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 29256; File No. 812–13534]

Claymore Exchange-Traded Fund Trust 3, et al.; Notice of Application

April 23, 2010.

AGENCY: Securities and Exchange Commission ("Commission").

ACTION: Notice of an application for an order under section 6(c) of the Investment Company Act of 1940 ("Act") for an exemption from sections 2(a)(32), 5(a)(1), 22(d) and 22(e) of the Act and rule 22c–1 under the Act, and under sections 6(c) and 17(b) of the Act for an exemption from sections 17(a)(1) and (a)(2) of the Act, and under section 12(d)(1)(J) for an exemption from sections 12(d)(1)(A) and (B) of the Act.

Applicants: Claymore Exchange-Traded Fund Trust 3 (the "Trust"), Claymore Securities, Inc. (the "Distributor") and Claymore Advisors, LLC (the "Adviser").

Summary of Application: Applicants request an order that permits: (a) Series of certain actively managed open-end management investment companies to issue shares ("Shares") redeemable in large aggregations only ("Creation Units"); (b) secondary market transactions in Shares to occur at negotiated market prices; (c) certain series to pay redemption proceeds under certain circumstances more than seven days from the tender of Shares for redemption; (d) certain affiliated persons of the series to deposit securities into, and receive securities from, the series in connection with the purchase and redemption of Creation Units; and (e) certain registered management investment companies and unit investment trusts outside of the

same group of investment companies as the series to acquire Shares.

Filing Dates: The application was filed on May 20, 2008 and amended on September 24, 2008, June 9, 2009, December 17, 2009 and April 23, 2010.

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 May 17, 2010, and should be accompanied by proof of service on applicants, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the Commission's Secretary.

ADDRESSES: Secretary, U.S. Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090. Applicants, 2455 Corporate West Drive, Lisle, IL 60532.

FOR FURTHER INFORMATION CONTACT: Laura L. Solomon, Senior Counsel, at (202) 551–6915, or Julia Kim Gilmer, Branch Chief, at (202) 551–6871 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained via the Commission's Web site by searching for the file number, or an applicant using the Company name box, at *http://www.sec.gov/search/search.htm* or by calling (202) 551–8090.

Applicants' Representations

1. The Trust is organized as a Delaware statutory trust and is registered under the Act as an open-end management investment company. The Trust will offer the Claymore Active National Municipal ETF (the "Initial Fund"). The Initial Fund's investment objectives are to seek current income exempt from regular federal income tax and outperform the fund's performance benchmark, the Barclays Capital 7-Year Municipal Bond Index.

2. Applicants request that the order apply to any future series of the Trust or any series of Claymore Exchange-Traded Fund Trust or Claymore Exchange-Traded Fund Trust 2 or other open-end management investment companies that may utilize active management investment strategies ("Future Funds" and together with the Initial Fund, the "Funds").[1] Funds may invest in equity securities or fixed income securities ("Fixed Income Funds") traded in U.S. markets, or securities traded on global markets only (such Funds, the "Foreign Funds").[2] Any Future Fund will (a) be advised by the Adviser or an entity controlling, controlled by, or under common control with the Adviser, and (b) comply with the terms and conditions of the application.

3. The Adviser, a Delaware limited liability company, is registered as an investment adviser under the Investment Advisers Act of 1940 ("Advisers Act") and will be the investment adviser to the Funds. The Adviser may retain subadvisers (each, a "Fund Sub-Adviser") in connection with the Funds. Any Fund Sub-Adviser will be registered under the Advisers Act. The Distributor, a Kansas corporation, is registered as a broker-dealer under the Securities Exchange Act of 1934 ("Exchange Act") and will serve as the principal underwriter and distributor for each of the Funds. The Distributor is an affiliated person of the Adviser within the meaning of section 2(a)(3)(C) of the Act.

4. The Funds will issue Shares in Creation Units of at least 50,000 Shares. All orders to purchase Creation Units must be placed with the Distributor by or through a party that has entered into an agreement with the Trust, the Distributor and the transfer agent to the Trust ("Authorized Participant"). An Authorized Participant must be either: (a) A broker-dealer or other participant in the continuous net settlement system of the National Securities Clearing Corporation, a clearing agency registered with the Commission; or (b) a participant in the Depository Trust Company ("DTC," and such participant, "DTC Participant"). Shares of each Fund generally will be purchased in Creation Units in exchange for an in-kind deposit by the purchaser of a portfolio of securities (the "Deposit Securities"), designated by the Adviser, together with the deposit of a specified cash payment ("Cash Component" together with the Deposit Securities, the "Fund Deposit"). The Cash Component is an amount equal to the difference between: (a) The net asset value ("NAV") per Creation Unit of the Fund; and (b) the total aggregate market value per Creation Unit of the Deposit Securities.[3] Applicants state that operating on an exclusively "in-kind" basis for one or more Funds may present operational problems for such Funds. Each Fund may permit, under certain circumstances, an in-kind purchaser to substitute cash-in-lieu of depositing some or all of the Deposit Securities.

5. An investor purchasing or redeeming a Creation Unit from a Fund will be charged a fee ("Transaction Fee") to prevent the dilution of the interests of the remaining shareholders resulting from costs in connection with the purchase or sale of Creation Units.[4] The Transaction Fees relevant to each Fund and the method of calculating Transaction Fees will be fully disclosed in the prospectus ("Prospectus")[5] or statement of additional information ("SAI"), respectively, of such Fund. All orders to purchase Creation Units will be placed with the Distributor by or through an Authorized Participant and it will be the Distributor's responsibility to transmit such orders to the Funds. The Distributor also will be responsible for delivering the Prospectus to those persons purchasing Creation Units, and for maintaining records of both the orders placed with it and the confirmations of acceptance furnished by it.

6. Purchasers of Shares in Creation Units may hold such Shares or may sell such Shares into the secondary market. Shares will be listed and traded at negotiated prices on a national

[1] All entities that currently intend to rely on the order are named as applicants. Any other entity that relies on the order in the future will comply with the terms and conditions of the application. An Investing Fund (as defined below) may rely on the order only to invest in the Funds and not in any other registered investment company.

[2] Neither the Initial Fund nor any Future Fund will invest in options contracts, futures contracts, or swap agreements.

[3] In addition to the list of names and amount of each security constituting the current Deposit Securities, it is intended that, on each day that a Fund is open, including as required by section 22(e) of the Act ("Business Day"), the Cash Component effective as of the previous Business Day, as well as the estimated Cash Component for the current day, will be made available. The Stock Exchange will disseminate, every 15 seconds throughout the trading day through the facilities of the Consolidated Tape Association, an amount representing on a per Share basis, the sum of the current value of the Deposit Securities and the estimated Cash Component.

[4] Where a Fund permits a purchaser to substitute cash-in-lieu of depositing a portion of the Deposit Securities, the purchaser may be assessed a higher Transaction Fee to cover the cost of purchasing such Deposit Securities, including brokerage costs, and part or all of the spread between the expected bid and the offer side of the market relating to such Deposit Securities.

[5] All representations and conditions contained in the application that require a Fund to disclose particular information in the Fund's Prospectus and/or annual report shall remain effective with respect to the Fund until the time that the Fund complies with the disclosure requirements adopted by the Commission in Investment Co. Act Release No. 28584 (Jan. 13, 2009).

securities exchange as defined in section 2(a)(26) of the Act ("Stock Exchange"). It is expected that a Stock Exchange specialist ("Specialist") or market maker ("Market Maker") will be assigned to Shares and maintain a market for Shares.[6] The price of Shares trading on the Stock Exchange will be based on a current bid/offer market. Shares sold in the secondary market will be subject to customary brokerage commissions and charges.

7. Applicants expect that purchasers of Creation Units will include arbitrageurs. A Specialist or Market Maker, in providing a fair and orderly secondary market for the Shares, also may purchase Creation Units for use in its market-making activities. Applicants expect that secondary market purchasers of Shares will include both institutional investors and retail investors.[7] Applicants expect that the price at which the Shares trade will be disciplined by arbitrage opportunities created by the ability to continually purchase or redeem Creation Units at their NAV, which should ensure that the Shares will not trade at a material discount or premium in relation to their NAV.

8. Shares will not be individually redeemable, and owners of Shares may acquire those Shares from a Fund, or tender such Shares for redemption to the Fund, in Creation Units only. To redeem, an investor must accumulate enough Shares to constitute a Creation Unit. Redemption requests must be placed by or through an Authorized Participant.[8] An investor redeeming a Creation Unit generally will receive: (a) A portfolio of securities ("Fund Securities"), designated to be delivered for Creation Unit redemptions on the date that the request for redemption is submitted; and (b) a "Cash Redemption Amount" (together with the Fund Securities, the "Fund Redemption") equal to the difference between the NAV of the Shares being redeemed and the market value of the Fund Securities. An investor may receive the cash equivalent of a Fund Security in certain circumstances, such as if the investor is restrained from effecting transactions in the security by regulation or policy. The redeeming investor also must pay to the Fund a Transaction Fee.

9. Applicants state that in accepting Deposit Securities and satisfying redemptions with Fund Securities, the relevant Funds will comply with the federal securities laws, including that the Deposit Securities and Fund Securities are sold in transactions that would be exempt from registration under the Securities Act of 1933 ("Securities Act").[9] To the extent in-kind purchases and redemptions are utilized, a Creation Unit will be purchased or redeemed from the Funds for a basket of Deposit Securities or Fund Securities that corresponds *pro rata,* to the extent practicable, to the Fund portfolio plus a specified cash amount.[10]

10. Neither the Trust nor any Fund will be advertised or marketed as an "open-end investment company" or a "mutual fund." Instead, each Fund will be marketed as an "actively-managed exchange-traded fund." Any advertising material where features of obtaining, buying or selling Creation Units are described or where there is reference to redeemability will prominently disclose that Shares are not individually redeemable and that owners of Shares may acquire Shares from a Fund and tender those Shares for redemption to a Fund in Creation Units only. The same approach will be followed in the SAI, shareholder reports and any marketing or advertising materials issued or circulated in connection with the Shares.

11. The Funds' Web site, which will be publicly available prior to the public offering of Shares, will include the Prospectus and other information about the Funds that is updated on a daily basis, including, for each Fund, the mid-point of the bid-ask spread at the time of the calculation of NAV ("Bid/Ask Price"). On each Business Day, before the commencement of trading in Shares on the Stock Exchange, the Fund will disclose on its Web site the identities and quantities of the equity or fixed income securities in its portfolio ("Portfolio Securities") and other assets held by the Fund that will form the basis for the Fund's calculation of NAV at the end of the Business Day.[11]

Applicants' Legal Analysis

1. Applicants request an order under section 6(c) of the Act granting an exemption from sections 2(a)(32), 5(a)(1), 22(d) and 22(e) of the Act and rule 22c-1 under the Act, and under sections 6(c) and 17(b) of the Act granting an exemption from sections 17(a)(1) and (a)(2) of the Act, and under section 12(d)(1)(J) for an exemption from sections 12(d)(1)(A) and (B) of the Act.

2. Section 6(c) of the Act provides that the Commission may exempt any person, security or transaction, or any class of persons, securities or transactions, from any provision of the Act, if and to the extent that such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act. Section 17(b) of the Act authorizes the Commission to exempt a proposed transaction from section 17(a) of the Act if evidence establishes that the terms of the transaction, including the consideration to be paid or received, are reasonable and fair and do not involve overreaching on the part of any person concerned, and the proposed transaction is consistent with the policies of the registered investment company and the general provisions of the Act. Section 12(d)(1)(J) of the Act provides that the Commission may exempt any person, security, or transaction, or any class or classes of persons, securities or transactions, from any provision of section 12(d)(1) if the exemption is consistent with the public interest and the protection of investors.

[6] If Shares are listed on The NASDAQ Stock Market ("Nasdaq"), no Specialist will be contractually obligated to make a market in Shares. Rather, under Nasdaq's listing requirements two or more Market Makers will be registered in Shares and required to make a continuous, two-sided market or face regulatory sanctions.

[7] Shares will be registered in book-entry form only. DTC or its nominee will be the record registered owner of all outstanding Shares. Beneficial ownership of Shares will be shown on the records of DTC or DTC Participants.

[8] Applicants state that any Fund that is a Fixed Income Fund also intends to substitute a cash-in-lieu amount to replace any Deposit Security or Fund Security (defined below) that is a "to-be-announced transaction" or "TBA Transaction." A TBA transaction is a method of trading mortgage-backed securities. In a TBA Transaction, the buyer and seller agree upon general trade parameters such as agency, settlement date, par amount and price. The actual pools delivered generally are determined two days prior to the settlement date. The amount of substituted cash in the case of a TBA Transaction will be equivalent to the value of the TBA Transaction listed as a Deposit Security or Fund Security.

[9] In accepting Deposit Securities and satisfying redemptions with Fund Securities that are restricted securities eligible for resale pursuant to rule 144A under the Securities Act, the Fund will comply with the conditions of rule 144A. The Prospectus for a Fund will also state that an Authorized Participant that is not a "Qualified Institutional Buyer" as defined in rule 144A under the Securities Act will not be able to receive, as part of a redemption, restricted securities eligible for resale under rule 144A.

[10] In some cases, for example, applicants state that it is impossible to break up bonds beyond certain minimum sizes needed for transfer and settlement, so there may be minor differences between a basket of Deposit Securities or Fund Securities and a true *pro rata* slice of a Fund's portfolio.

[11] Applicants note that under accounting procedures followed by the Funds, trades made on the prior Business Day ("T") will be booked and reflected in NAV on the current Business Day ("T + 1"). Accordingly, the Funds will be able to disclose at the beginning of the Business Day the portfolio that will form the basis for the NAV calculation at the end of the Business Day.

Sections 5(a)(1) and 2(a)(32) of the Act

3. Section 5(a)(1) of the Act defines an "open-end company" as a management investment company that is offering for sale or has outstanding any redeemable security of which it is the issuer. Section 2(a)(32) of the Act defines a redeemable security as any security, other than short-term paper, under the terms of which the holder, upon its presentation to the issuer, is entitled to receive approximately a proportionate share of the issuer's current net assets, or the cash equivalent. Because Shares will not be individually redeemable, applicants request an order that would permit each Fund, as a series of an open-end management investment company, to issue Shares that are redeemable in Creation Units only. Applicants state that investors may purchase Shares in Creation Units from each Fund and redeem Creation Units from each Fund. Applicants further state that because the market price of Shares will be disciplined by arbitrage opportunities, investors should be able to sell Shares in the secondary market at prices that do not vary substantially from their NAV.

Section 22(d) of the Act and Rule 22c–1 under the Act

4. Section 22(d) of the Act, among other things, prohibits a dealer from selling a redeemable security, which is currently being offered to the public by or through a principal underwriter, except at a current public offering price described in the prospectus. Rule 22c–1 under the Act generally requires that a dealer selling, redeeming, or repurchasing a redeemable security do so only at a price based on its NAV. Applicants state that secondary market trading in Shares will take place at negotiated prices, not at a current offering price described in the prospectus, and not at a price based on NAV. Thus, purchases and sales of Shares in the secondary market will not comply with section 22(d) of the Act and rule 22c–1 under the Act. Applicants request an exemption under section 6(c) from these provisions.

5. Applicants assert that the concerns sought to be addressed by section 22(d) of the Act and rule 22c–1 under the Act with respect to pricing are equally satisfied by the proposed method of pricing Shares. Applicants maintain that while there is little legislative history regarding section 22(d), its provisions, as well as those of rule 22c–1, appear to have been designed to (a) prevent dilution caused by certain riskless-trading schemes by principal underwriters and contract dealers, (b) prevent unjust discrimination or preferential treatment among buyers resulting from sales at different prices, and (c) assure an orderly distribution of investment company shares by eliminating price competition from non-contract dealers offering shares at less than the published sales price and repurchasing shares at more than the published redemption price.

6. Applicants believe that none of these purposes will be thwarted by permitting Shares to trade in the secondary market at negotiated prices. Applicants state that (a) secondary market trading in Shares does not involve the Funds as parties and cannot result in dilution of an investment in Shares, and (b) to the extent different prices exist during a given trading day, or from day to day, such variances occur as a result of third-party market forces, such as supply and demand. Therefore, applicants assert that secondary market transactions in Shares will not lead to discrimination or preferential treatment among purchasers. Finally, applicants contend that the proposed distribution system will be orderly because arbitrage activity will ensure that the difference between the market price of Shares and their NAV remains narrow.

Section 22(e) of the Act

7. Section 22(e) of the Act generally prohibits a registered investment company from suspending the right of redemption or postponing the date of payment of redemption proceeds for more than seven days after the tender of a security for redemption. Applicants state that settlement of redemptions for Foreign Funds will be contingent not only on the settlement cycle of the United States securities markets, but also on delivery cycles in local markets for underlying foreign securities held by the Foreign Funds. Applicants state that current delivery cycles for transferring Portfolio Securities to redeeming investors, coupled with local market holiday schedules, in certain circumstances, will cause the delivery process for Foreign Funds to be longer than seven calendar days. Applicants request relief under section 6(c) of the Act from section 22(e) to allow Foreign Funds only to pay redemption proceeds up to 12 calendar days after the tender of a Creation Unit for redemption. Except as disclosed in the relevant Foreign Fund's Prospectus and/or SAI, applicants expect that each Foreign Fund will be able to deliver redemption proceeds within seven days.[12]

8. Applicants state that section 22(e) was designed to prevent unreasonable, undisclosed and unforeseen delays in the payment of redemption proceeds. Applicants assert that the requested relief will not lead to the problems that section 22(e) was designed to prevent. Applicants state that the SAI will disclose those local holidays (over the period of at least one year following the date of the SAI), if any, that are expected to prevent the delivery of redemption proceeds in seven calendar days, and the maximum number of days, up to 12 calendar days, needed to deliver the proceeds for each Foreign Fund. Applicants are not seeking relief from section 22(e) with respect to Foreign Funds that do not effect creations and redemptions of Creation Units in-kind.

Section 12(d)(1) of the Act

9. Section 12(d)(1)(A) of the Act prohibits a registered investment company from acquiring shares of an investment company if the securities represent more than 3% of the total outstanding voting stock of the acquired company, more than 5% of the total assets of the acquiring company, or, together with the securities of any other investment companies, more than 10% of the total assets of the acquiring company. Section 12(d)(1)(B) of the Act prohibits a registered open-end investment company, its principal underwriter, or any other broker or dealer from selling its shares to another investment company if the sale will cause the acquiring company to own more than 3% of the acquired company's voting stock, or if the sale will cause more than 10% of the acquired company's voting stock to be owned by investment companies generally.

10. Applicants request relief to permit Investing Funds (as defined below) to acquire Shares in excess of the limits in section 12(d)(1)(A) of the Act and to permit the Funds, their principal underwriters and any broker or dealer registered under the Exchange Act ("Broker") to sell Shares to Investing Funds in excess of the limits in section 12(d)(l)(B) of the Act. Applicants request that these exemptions apply to: (a) Any Fund that is currently or subsequently part of the same "group of investment companies" as the Initial Fund within the meaning of section 12(d)(1)(G)(ii) of the Act as well as any principal underwriter for the Fund and

[12] Rule 15c6–1 under the Exchange Act requires that most securities transactions be settled within three business days of the trade date. Applicants acknowledge that no relief obtained from the requirements of section 22(e) will affect any obligations that they may otherwise have under rule 15c6–1.

any Brokers selling Shares of a Fund to an Investing Fund; and (b) each management investment company or unit investment trust registered under the Act that is not part of the same "group of investment companies" as the Funds within the meaning of section 12(d)(1)(G)(ii) of the Act and that enters into a FOF Participation Agreement (as defined below) with a Fund (such management investment companies are referred to herein as "Investing Management Companies," such unit investment trusts are referred to herein as "Investing Trusts," and Investing Management Companies and Investing Trusts together are referred to herein as "Investing Funds"). Investing Funds do not include the Funds. Each Investing Trust will have a sponsor ("Sponsor") and each Investing Management Company will have an investment adviser within the meaning of section 2(a)(20)(A) of the Act ("Investing Fund Adviser") that does not control, is not controlled by or under common control with the Adviser. Each Investing Management Company may also have one or more investment advisers within the meaning of section 2(a)(20)(B) of the Act (each, a "Sub-Adviser").

11. Applicants assert that the proposed transactions will not lead to any of the abuses that section 12(d)(1) was designed to prevent. Applicants submit that the proposed conditions to the requested relief address the concerns underlying the limits in section 12(d)(1), which include concerns about undue influence, excessive layering of fees and overly complex structures.

12. Applicants believe that neither the Investing Funds nor an Investing Fund Affiliate would be able to exert undue influence over a Fund.[13] To limit the control that an Investing Fund may have over a Fund, applicants propose a condition prohibiting the Investing Fund Adviser, Sponsor or any person controlling, controlled by, or under common with the Investing Fund Adviser or Sponsor; and any investment company and any issuer that would be an investment company but for sections 3(c)(1) or 3(c)(7) of the Act that is advised or sponsored by the Investing Fund Adviser, the Sponsor, or any person controlling, controlled by, or under common control with the Investing Fund Adviser or Sponsor ("Investing Fund's Advisory Group") from controlling (individually or in the aggregate) a Fund within the meaning of section 2(a)(9) of the Act. The same prohibition would apply to any Sub-Adviser, any person controlling, controlled by, or under common control with the Sub-Adviser, and any investment company or issuer that would be an investment company but for section 3(c)(1) or 3(c)(7) of the Act (or portion of such investment company or issuer) advised or sponsored by the Sub-Adviser or any person controlling, controlled by, or under common control with the Sub-Adviser ("Investing Fund's Sub-Advisory Group").

13. Applicants propose other conditions to limit the potential for undue influence over the Funds, including that no Investing Fund or Investing Fund Affiliate (except to the extent it is acting in its capacity as an investment adviser to a Fund) will cause a Fund to purchase a security in any offering of securities during the existence of any underwriting or selling syndicate of which a principal underwriter is an Underwriting Affiliate ("Affiliated Underwriting"). An "Underwriting Affiliate" is a principal underwriter in any underwriting or selling syndicate that is an officer, director, member of an advisory board, Investing Fund Adviser, Sub-Adviser, employee or Sponsor of the Investing Fund, or a person of which any such officer, director, member of an advisory board, Investing Fund Adviser, Sub-Adviser, employee, or Sponsor is an affiliated person (except any person whose relationship to the Fund is covered by section 10(f) of the Act is not an Underwriting Affiliate).

14. Applicants do not believe that the proposed arrangement will involve excessive layering of fees. The board of directors or trustees of any Investing Management Company, including a majority of the directors or trustees who are not "interested persons" within the meaning of section 2(a)(19) of the Act ("disinterested directors or trustees"), will be required to find that the advisory fees charged under the contract are based on services provided that will be in addition to, rather than duplicative of, services provided under the advisory contract of any Fund in which the Investing Management Company may invest. In addition, the Investing Fund Adviser, an Investing Trust's trustee ("Trustee") or Sponsor, as applicable, will waive fees otherwise payable to it by the Investing Fund in an amount at least equal to any compensation (including fees received pursuant to any plan adopted by a Fund under rule 12b-1 under the Act) received from a Fund by the Investing Fund Adviser, Trustee or Sponsor, or an affiliated person of the Investing Fund Adviser, Trustee or Sponsor (other than any advisory fees paid to the Investing Fund Adviser, Trustee or Sponsor or its affiliated person by a Fund), in connection with the investment by the Investing Fund in the Funds. Applicants also state that any sales charges and/or service fees charged with respect to shares of an Investing Fund will not exceed the limits applicable to a fund of funds as set forth in NASD Conduct Rule 2830.[14]

15. Applicants submit that the proposed arrangement will not create an overly complex fund structure. Applicants note that a Fund will be prohibited from acquiring securities of any investment company, or of any company relying on section 3(c)(1) or 3(c)(7) of the Act, in excess of the limits contained in section 12(d)(1)(A) of the Act.

16. To ensure that an Investing Fund is aware of the terms and conditions of the requested order, the Investing Fund must enter into an agreement with the respective Funds ("FOF Participation Agreement"). The FOF Participation Agreement will include an acknowledgement from the Investing Fund that it may rely on the order only to invest in the Funds and not in any other investment company.

Section 17(a) of the Act

17. Section 17(a) of the Act generally prohibits an affiliated person of a registered investment company, or an affiliated person of such person ("second tier affiliates"), from selling any security to or purchasing any security from the company. Section 2(a)(3) of the Act defines "affiliated person" to include any person directly or indirectly owning, controlling, or holding with power to vote 5% or more of the outstanding voting securities of the other person and any person directly or indirectly controlling, controlled by, or under common control with, the other person. Section 2(a)(9) of the Act provides that a control relationship will be presumed where one person owns more than 25% of another person's voting securities. The Funds may be deemed to be controlled by the Adviser or an entity controlling, controlled by or under common control with the Adviser and hence affiliated persons of each other. In addition, the Funds may be deemed to be under common control

[13] An "Investing Fund Affiliate" is an Investing Fund Adviser, Sub-Adviser, Sponsor, promoter, and principal underwriter of an Investing Fund, and any person controlling, controlled by, or under common control with any of these entities. "Fund Affiliate" is an investment adviser, promoter, or principal underwriter of a Fund or any person controlling, controlled by or under common control with any of these entities.

[14] All references to NASD Conduct Rule 2830 also include any successor or replacement rule that may be adopted by the Financial Industry Regulatory Authority.

with any other registered investment company (or series thereof) advised by the Adviser or an entity controlling, controlled by or under common control with the Adviser (an "Affiliated Fund").

18. Applicants request an exemption under sections 6(c) and 17(b) of the Act from section 17(a) of the Act in order to permit in-kind purchases and redemptions of Creation Units by persons that are affiliated persons or second tier affiliates of the Funds solely by virtue of one or more of the following: (1) Holding 5% or more, or more than 25%, of the Shares of the Trust or one or more Funds; (2) an affiliation with a person with an ownership interest described in (1); or (3) holding 5% or more, or more than 25%, of the shares of one or more Affiliated Funds. Applicants also request an exemption in order to permit each Fund to sell Shares to and redeem Shares from, and engage in the in-kind transactions that would accompany such sales and redemptions with, any Investing Fund of which the Fund is an affiliated person or second tier affiliate.[15]

19. Applicants contend that no useful purpose would be served by prohibiting such affiliated persons from making in-kind purchases or in-kind redemptions of Shares of a Fund in Creation Units. All shareholders of Creation Units, regardless of affiliation, will be given the same opportunities with respect to creations and redemptions in-kind. Fund Deposits and Fund Redemptions will be valued in the same manner as those Portfolio Securities currently held by the relevant Funds. Therefore, applicants state that in-kind purchases and redemptions will afford no opportunity for the specified affiliated persons of a Fund to effect a transaction detrimental to the other holders of Shares. Applicants also believe that in-kind purchases and redemptions will not result in abusive self dealing or overreaching of the Fund.

20. Applicants also submit that the sale of Shares to and redemption of Shares from an Investing Fund satisfies the standards for relief under sections 17(b) and 6(c) of the Act. Applicants note that any consideration paid for the purchase or redemption of Shares directly from a Fund will be based on the NAV of the Fund in accordance with policies and procedures set forth in the Fund's registration statement.[16]

Applicants also state that the proposed transactions will be consistent with the policies of each Investing Fund and Fund and with the general purposes of the Act.

Applicants' Conditions

The applicants agree that any order of the Commission granting the requested relief will be subject to the following conditions:[17]

A. Actively-Managed Exchange-Traded Fund Relief

1. Each Prospectus will clearly disclose that, for purposes of the Act, Shares are issued by a registered investment company and that the acquisition of Shares by investment companies and companies relying on sections 3(c)(1) or 3(c)(7) of the Act is subject to the restrictions of section 12(d)(1) of the Act, except as permitted by an exemptive order that permits registered investment companies to invest in a Fund beyond the limits in section 12(d)(1), subject to certain terms and conditions, including that the registered investment company enter into a FOF Participation Agreement with the Fund regarding the terms of the investment.

2. As long as the Funds operate in reliance on the requested order, the Shares of the Funds will be listed on a Stock Exchange.

3. Neither the Trust nor any Fund will be advertised or marketed as an open-end investment company or a mutual fund. Each Fund's Prospectus will prominently disclose that the Fund is an actively managed exchange-traded fund. Each Prospectus will prominently disclose that the Shares are not individually redeemable shares and will disclose that the owners of the Shares may acquire those Shares from the Fund and tender those Shares for redemption to the Fund in Creation Units only. Any advertising material that describes the purchase or sale of Creation Units or refers to redeemability will prominently disclose that the Shares are not individually redeemable and that owners of the Shares may acquire those Shares from the Fund and tender those Shares for redemption to the Fund in Creation Units only.

4. The Web site for the Funds, which is and will be publicly accessible at no charge, will contain the following information, on a per Share basis, for each Fund: (a) The prior Business Day's NAV and the Bid/Ask Price, and a calculation of the premium or discount of the Bid/Ask Price against such NAV; and (b) data in chart format displaying the frequency distribution of discounts and premiums of the daily Bid/Ask Price against the NAV, within appropriate ranges, for each of the four previous calendar quarters (or for the life of the Fund, if shorter).

5. The Prospectus and annual report for each Fund will also include: (a) The information listed in condition A.4(b), (i) in the case of the Prospectus, for the most recently completed year (and the most recently completed quarter or quarters, as applicable) and (ii) in the case of the annual report, for the immediately preceding five years (or for the life of the Fund, if shorter), and (b) calculated on a per Share basis for one-, five- and ten-year periods (or for the life of the Fund, if shorter), the cumulative total return and the average annual total return based on NAV and Bid/Ask Price.

6. On each Business Day, before commencement of trading in Shares on the Stock Exchange, the Fund will disclose on its Web site the identities and quantities of the Portfolio Securities and other assets held by the Fund that will form the basis for the Fund's calculation of NAV at the end of the Business Day.

7. The Adviser or Fund Sub-Adviser, directly or indirectly, will not cause any Authorized Participant (or any investor on whose behalf an Authorized Participant may transact with the Fund) to acquire any Deposit Security for the Fund through a transaction in which the Fund could not engage directly.

8. The requested relief to permit ETF operations will expire on the effective date of any Commission rule under the Act that provides relief permitting the operation of actively managed exchange-traded funds.

B. Section 12(d)(1) Relief

1. The members of the Investing Fund's Advisory Group will not control (individually or in the aggregate) a Fund within the meaning of section 2(a)(9) of the Act. The members of the Investing Fund's Sub-Advisory Group will not control (individually or in the aggregate) a Fund within the meaning of section 2(a)(9) of the Act. If, as a result of a decrease in the outstanding voting securities of a Fund, the Investing Fund's Advisory Group or the Investing Fund's Sub-Advisory Group, each in the aggregate, becomes a holder of more than 25 percent of the outstanding

[15] Applicants state that although they believe that an Investing Fund generally will purchase Shares in the secondary market, an Investing Fund might seek to transact in Creation Units directly with a Fund.

[16] Applicants acknowledge that the receipt of compensation by (a) an affiliated person of an Investing Fund, or an affiliated person of such person, for the purchase by the Investing Fund of Shares of a Fund or (b) an affiliated person of a Fund, or an affiliated person of such person, for the sale by the Fund of its Shares to an Investing Fund, may be prohibited by section 17(e)(1) of the Act. The FOF Participation Agreement also will include this acknowledgment.

[17] See note 5, supra.

voting securities of a Fund, it will vote its Shares of the Fund in the same proportion as the vote of all other holders of the Fund's Shares. This condition does not apply to the Investing Fund's Sub-Advisory Group with respect to a Fund for which the Sub-Adviser or a person controlling, controlled by or under common control with the Sub-Adviser acts as the investment adviser within the meaning of section 2(a)(20)(A) of the Act.

2. No Investing Fund or Investing Fund Affiliate will cause any existing or potential investment by the Investing Fund in a Fund to influence the terms of any services or transactions between the Investing Fund or an Investing Fund Affiliate and the Fund or a Fund Affiliate.

3. The board of directors or trustees of an Investing Management Company, including a majority of the disinterested directors or trustees, will adopt procedures reasonably designed to assure that the Investing Fund Adviser and any Sub-Adviser are conducting the investment program of the Investing Management Company without taking into account any consideration received by the Investing Management Company or an Investing Fund Affiliate from a Fund or a Fund Affiliate in connection with any services or transactions.

4. Once an investment by an Investing Fund in the securities of a Fund exceeds the limit in section l2(d)(1)(A)(i) of the Act, the board of trustees ("Board") of a Fund, including a majority of the disinterested Board members, will determine that any consideration paid by the Fund to the Investing Fund or an Investing Fund Affiliate in connection with any services or transactions: (a) Is fair and reasonable in relation to the nature and quality of the services and benefits received by the Fund; (b) is within the range of consideration that the Fund would be required to pay to another unaffiliated entity in connection with the same services or transactions; and (c) does not involve overreaching on the part of any person concerned. This condition does not apply with respect to any services or transactions between a Fund and its investment adviser(s), or any person controlling, controlled by or under common control with such investment adviser(s).

5. The Investing Fund Adviser, or Trustee or Sponsor, as applicable, will waive fees otherwise payable to it by the Investing Fund in an amount at least equal to any compensation (including fees received pursuant to any plan adopted by a Fund under rule 12b–l under the Act) received from a Fund by the Investing Fund Adviser, or Trustee or Sponsor, or an affiliated person of the Investing Fund Adviser, or Trustee or Sponsor, other than any advisory fees paid to the Investing Fund Adviser, or Trustee or Sponsor, or its affiliated person by the Fund, in connection with the investment by the Investing Fund in the Fund. Any Sub-Adviser will waive fees otherwise payable to the Sub-Adviser, directly or indirectly, by the Investing Management Company in an amount at least equal to any compensation received from a Fund by the Sub-Adviser, or an affiliated person of the Sub-Adviser, other than any advisory fees paid to the Sub-Adviser or its affiliated person by the Fund, in connection with the investment by the Investing Management Company in the Fund made at the direction of the Sub-Adviser. In the event that the Sub-Adviser waives fees, the benefit of the waiver will be passed through to the Investing Management Company.

6. No Investing Fund or Investing Fund Affiliate (except to the extent it is acting in its capacity as an investment adviser to a Fund) will cause a Fund to purchase a security in an Affiliated Underwriting.

7. The Board of the Fund, including a majority of the disinterested Board members, will adopt procedures reasonably designed to monitor any purchases of securities by the Fund in an Affiliated Underwriting, once an investment by an Investing Fund in the securities of the Fund exceeds the limit of section 12(d)(1)(A)(i) of the Act, including any purchases made directly from an Underwriting Affiliate. The Board will review these purchases periodically, but no less frequently than annually, to determine whether the purchases were influenced by the investment by the Investing Fund in the Fund. The Board will consider, among other things: (a) Whether the purchases were consistent with the investment objectives and policies of the Fund; (b) how the performance of securities purchased in an Affiliated Underwriting compares to the performance of comparable securities purchased during a comparable period of time in underwritings other than Affiliated Underwritings or to a benchmark such as a comparable market index; and (c) whether the amount of securities purchased by the Fund in Affiliated Underwritings and the amount purchased directly from an Underwriting Affiliate have changed significantly from prior years. The Board will take any appropriate actions based on its review, including, if appropriate, the institution of procedures designed to assure that purchases of securities in Affiliated Underwritings are in the best interest of shareholders.

8. Each Fund will maintain and preserve permanently in an easily accessible place a written copy of the procedures described in the preceding condition, and any modifications to such procedures, and will maintain and preserve for a period of not less than six years from the end of the fiscal year in which any purchase in an Affiliated Underwriting occurred, the first two years in an easily accessible place, a written record of each purchase of securities in Affiliated Underwritings once an investment by an Investing Fund in the securities of the Fund exceeds the limit of section 12(d)(1)(A)(i) of the Act, setting forth from whom the securities were acquired, the identity of the underwriting syndicate's members, the terms of the purchase, and the information or materials upon which the Board's determinations were made.

9. Before investing in a Fund in excess of the limit in section 12(d)(1)(A), an Investing Fund will execute a FOF Participation Agreement with the Fund stating that their respective boards of directors or trustees and their investment advisers, or Trustee and Sponsor, as applicable, understand the terms and conditions of the order, and agree to fulfill their responsibilities under the order. At the time of its investment in shares of a Fund in excess of the limit in section 12(d)(1)(A)(i), an Investing Fund will notify the Fund of the investment. At such time, the Investing Fund will also transmit to the Fund a list of the names of each Investing Fund Affiliate and Underwriting Affiliate. The Investing Fund will notify the Fund of any changes to the list as soon as reasonably practicable after a change occurs. The Fund and the Investing Fund will maintain and preserve a copy of the order, the FOF Participation Agreement, and the list with any updated information for the duration of the investment and for a period of not less than six years thereafter, the first two years in an easily accessible place.

10. Before approving any advisory contract under section 15 of the Act, the board of directors or trustees of each Investing Management Company, including a majority of the disinterested directors or trustees, will find that the advisory fees charged under such contract are based on services provided that will be in addition to, rather than duplicative of, the services provided under the advisory contract(s) of any Fund in which the Investing Management Company may invest. These findings and their basis will be

recorded fully in the minute books of the appropriate Investing Management Company.

11. Any sales charges and/or service fees charged with respect to shares of an Investing Fund will not exceed the limits applicable to a fund of funds as set forth in NASD Conduct Rule 2830.

12. No Fund will acquire securities of any investment company or company relying on section 3(c)(1) or 3(c)(7) of the Act in excess of the limits contained in section 12(d)(1)(A) of the Act.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Florence E. Harmon,

Deputy Secretary.

[FR Doc. 2010–10033 Filed 4–29–10; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–61961; File No. SR–Phlx–2010–61]

Self-Regulatory Organizations; NASDAQ OMX PHLX, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change Relating to Fees and Rebates for Adding and Removing Liquidity

April 22, 2010.

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 April 22, 2010, NASDAQ OMX PHLX, Inc. ("Phlx" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. Phlx has designated this proposal as one establishing or changing a member due, fee, or other charge imposed under Section 19(b)(3)(A)(ii) of the Act [3] and Rule 19b–4(f)(2) thereunder,[4] which renders the proposal effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend the fees and rebates for adding and removing liquidity for options overlying various select symbols.

While changes to the Fee Schedule pursuant to this proposal are effective upon filing, the Exchange has designated these changes to be operative for transactions settling on or after May 3, 2010.

The text of the proposed rule change is available on the Exchange's Web site at *http://nasdaqtrader.com/micro.aspx?id=PHLXfilings,* at the principal office of the Exchange, at the Commission's Public Reference Room, and on the Commission's Web site at *http://www.sec.gov.*

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend its current fees and rebates for adding and removing liquidity by eliminating the fees for adding liquidity. Specifically, the Exchange proposes to eliminate the current $0.45 Firm and $0.45 Broker-Dealer per-contract fees for adding liquidity.

The Exchange currently assesses a per-contract transaction charge in various select symbols [5] on six different categories of market participants that submit orders and/or quotes that remove, or "take," liquidity from the Exchange: (i) Specialists, Registered Options Traders ("ROTs"), Streaming Quote Traders ("SQTs") [6] and Remote Streaming Quote Traders ("RSQTs"); [7] (ii) customers; [8] (iii) specialists, SQTs and RSQTs that receive Directed Orders ("Directed Participants" [9] or "Directed Specialists, RSQTs, or SQTs" [10]); (iv) Firms; (v) broker-dealers; and (vi) Professionals.[11] The current per-contract transaction charge depends on the category of market participant submitting an order or quote to the Exchange that removes liquidity.

The per-contract transaction charges that are currently assessed on participants who submit proprietary quotes and/or orders that remove liquidity in the applicable Symbols are, by category:

Category	Charge (per contract)
Customer	$0.25
Directed Participants	0.30
Specialist, ROT, SQT, RSQT	0.32
Firms	0.45
Broker-Dealers	0.45
Professional	0.40

The Exchange also currently assesses a per-contract rebate relating to transaction charges for orders or quotations that add liquidity in the select Symbols. The amount of the rebate depends on the category of participant whose order or quote was executed as part of the Phlx Best Bid and Offer. Specifically, the per-contract rebates are, by category:

Category	Rebate (per contract)
Customer	$0.20
Directed Participants	0.25

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A)(ii).

[4] 17 CFR 240.19b–4(f)(2).

[5] The fees and rebates for adding and removing liquidity are applicable to executions in options overlying AA, AAPL, AIG, ALL, AMD, AMR, AMZN, BAC, C, CAT, CSCO, DELL, DIA, DRYS, EK, F, FAS, FAZ, GDX, GE, GLD, GS, INTC, IWM, JPM, LVS, MGM, MSFT, MU, NEM, PALM, PFE, POT, QCOM, QQQQ, RIMM, SBUX, SKF, SLV, SMH, SNDK, SPY, T, UAUA, UNG, USO, UYG, VZ, WYNN, X and XLF ("Symbols").

[6] An SQT is an Exchange Registered Options Trader ("ROT") who has received permission from the Exchange to generate and submit option quotations electronically through an electronic interface with AUTOM via an Exchange approved proprietary electronic quoting device in eligible options to which such SQT is assigned. *See* Exchange Rule 1014(b)(ii)(A).

[7] An RSQT is an ROT that is a member or member organization with no physical trading floor presence who has received permission from the Exchange to generate and submit option quotations electronically through AUTOM in eligible options to which such RSQT has been assigned. An RSQT may only submit such quotations electronically from off the floor of the Exchange. *See* Exchange Rule 1014(b)(ii)(B).

[8] This applies to all customer orders, directed and non-directed.

[9] For purposes of the fees and rebates related to adding and removing liquidity, A Directed Participant is a Specialist, SQT, or RSQT that executes a customer order that is directed to them by an Order Flow Provider and is executed electronically on PHLX XL II.

[10] *See* Exchange Rule 1080(l), " * * * The term 'Directed Specialist, RSQT, or SQT' means a specialist, RSQT, or SQT that receives a Directed Order." A Directed Participant has a higher quoting requirement as compared with a specialist, SQT or RSQT who is not acting as a Directed Participant. *See* Exchange Rule 1014.

[11] The Exchange defines a "professional" as any person or entity that (i) is not a broker or dealer in securities, and (ii) places more than 390 orders in listed options per day on average during a calendar month for its own beneficial account(s) (hereinafter "Professional").

Category	Rebate (per contract)
Specialist, ROT, SQT, RSQT	0.23
Firms	0.00
Broker-Dealers	0.00
Professional	0.20

The Exchange also currently assesses a transaction charge of $0.45 per contract to Firms and $0.45 per contract to broker-dealers that add liquidity, which this proposal seeks to eliminate.

The Exchange also proposes to amend the Fee Schedule to remove all references to the fees for adding liquidity.

While changes to the Fee Schedule pursuant to this proposal are effective upon filing, the Exchange has designated these changes to be operative for transactions settling on or after May 3, 2010.

2. Statutory Basis

The Exchange believes that its proposal to amend its Fee Schedule is consistent with Section 6(b) of the Act [12] in general, and furthers the objectives of Section 6(b)(4) of the Act [13] in particular, in that it is an equitable allocation of reasonable fees and other charges among Exchange members. The Exchange believes that the elimination of the fees for adding liquidity is reasonable because the proposal is consistent with the current Fee Schedule and industry fee assessments of member firms that allow for different rates to be charged for different order types originated by dissimilarly classified market participants.[14] Additionally, the impact of the proposal upon the net fees paid by a particular market participant will depend on a number of variables, including its monthly volumes, the order types it uses, and the prices of its quotes and orders (*i.e.,* its propensity to add or remove liquidity).

The Exchange operates in a highly competitive market in which market participants can readily direct order flow to competing venues if they deem fee levels at a particular venue to be excessive. The Exchange believes that the fees it charges for options overlying the various Symbols remain competitive with fees charged by other venues and therefore continue to be reasonable and equitably allocated to those members that opt to direct orders to the Exchange rather than competing venues.

[12] 15 U.S.C. 78f(b).

[13] 15 U.S.C. 78f(b)(4).

[14] *See* International Securities Exchange, LLC Schedule of Fees.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act [15] and paragraph (f)(2) of Rule 19b–4 [16] thereunder. At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate 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.

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 e-mail to *rule-comments@sec.gov.* Please include File Number SR–Phlx–2010–61 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, Station Place, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–Phlx–2010–61. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make publicly available. All submissions should refer to File Number SR–Phlx-2010–61 and should be submitted on or before May 21, 2010.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[17]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. 2010–10029 Filed 4–29–10; 8:45 am]

BILLING CODE 8011–01–P

[15] 15 U.S.C. 78s(b)(3)(A)(ii).

[16] 17 CFR 240.19b 4(f)(2).

[17] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–61971; File No. SR–Phlx–2010–62]

Self-Regulatory Organizations; NASDAQ OMX PHLX, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to Routing Fees

April 23, 2010.

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 April 16, 2010, NASDAQ OMX PHLX, Inc. ("Phlx" or "Exchange") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I, II, and III, below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

[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 its fees governing pricing for Exchange members using the Phlx XL II system,[3] for routing standardized equity and index option customer orders to away markets for execution.

While changes to the Exchange's Fee Schedule pursuant to this proposal are effective upon filing, the Exchange has designated this proposal to be operative for trades settling on or after April 19, 2010.

The text of the proposed rule change is available on the Exchange's Web site at *http://nasdaqtrader.com/micro.aspx?id=PHLXfilings,* on the Commission's Web site at *http://www.sec.gov,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the proposed rule change is to recoup costs that the Exchange incurs for routing and executing customer orders in equity and index options to away markets.

In May 2009, the Exchange adopted Rule 1080(m)(iii)(A) to establish Nasdaq Options Services LLC ("NOS"), a member of the Exchange, as the Exchange's exclusive order router.[4] NOS is utilized by the Phlx XL II system solely to route orders in options listed and open for trading on the Phlx XL II system to destination markets.

The Exchange proposes to add a "professional" fee category to its Routing Fees. The Exchange defines a "professional" as any person or entity that (i) is not a broker or dealer in securities, and (ii) places more than 390 orders in listed options per day on average during a calendar month for its own beneficial account(s) [5] (hereinafter "Professional").

The Exchange proposes to charge the following Professional Routing Fees: (i) A $0.26 per contract side fee for Professional orders routed to NYSE Amex LLC ("NYSE Amex") in all options; (ii) a $0.36 per contract side fee for Professional orders routed to BATS Exchange, Inc. ("BATS") in all options; (iii) a $.06 per contract side fee for Professional orders routed to the Boston Options Exchange Group LLC ("BOX") in all options; (iv) a $0.26 per contract fee for Professional orders routed to the Chicago Board of Options Exchange, Inc. ("CBOE") in all options; (v) a $.06 per contract side fee for Professional orders routed to the International Securities Exchange, LLC ("ISE") in all options; (vi) a $0.50 per contract side fee for Professional orders routed to NYSE Arca, Inc. ("NYSEArca") in penny options; (vii) a $.06 per contract side fee for Professional orders routed to NYSEArca in all other options (excluding penny options); (viii) a $.40 per contract side fee for Professional orders routed to NASDAQ Options Market ("NOM") in penny options; and (ix) a $.56 per contract side fee for Professional orders routed to NOM in the NASDAQ 100 Index Option ("NDX") and the mini NASDAQ 100 Index Option ("MNX"). The proposed Professional Routing Fees for NYSE Amex and CBOE are higher for a Professional as opposed to a customer ($0.26 versus $0.06) because of the $.20 transaction fees that both NYSE Amex and CBOE assess for Professional orders.[6] Since these transaction charges do not exist for customer orders, the customer Routing Fees are lower for these away markets as compared to the Professional Routing Fees.[7]

Currently, the Exchange's Fee Schedule includes Routing Fees to the aforementioned exchanges for customer orders. Professional orders are currently assessed these customer Routing Fees.[8] The existing customer routing fees will be unchanged.

The Exchange is proposing these charges in order to recoup clearing and transaction charges which are incurred by the Exchange when orders are routed to these away markets.[9] As with all fees, the Exchange may adjust these Routing Fees in response to competitive conditions by filing a new proposed rule change.

While changes to the Exchange's Fee Schedule pursuant to this proposal are effective upon filing, the Exchange has designated this proposal to be operative for trades settling on or after April 19, 2010.

2. Statutory Basis

The Exchange believes that its proposal to amend its schedule of fees is consistent with Section 6(b) of the Act [10] in general, and furthers the objectives of Section 6(b)(4) of the Act [11] in particular, in that it is an equitable allocation of reasonable fees and other charges among Exchange members because Exchange members would equally be assessed the costs incurred by the Exchange to route customer orders to away markets on behalf of its members.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were either solicited or received.

[3] For a complete description of Phlx XL II, *see* Securities Exchange Act Release No. 59995 (May 28, 2009), 74 FR 26750 (June 3, 2009) (SR–Phlx–2009–32). The instant proposed fees will apply only to option orders entered into, and routed by, the Phlx XL II system.

[4] *See* Securities Exchange Act Release No. 59995 (May 28, 2009), 74 FR 26750 (June 3, 2009) (SR–Phlx–2009–32).

[5] A Professional will be treated in the same manner as an off-floor broker-dealer for purposes of Rules 1014(g) (except with respect to all-or-none orders, which will be treated like customer orders), 1033(e), 1064.02 (except professional orders will be considered customer orders subject to facilitation), and 1080.08 as well as Options Floor Procedure Advices B–6, B–11 and F–5. Member organizations must indicate whether orders are for professionals.

[6] *See* NYSE Amex Options Fee Schedule and CBOE Fees Schedule.

[7] *See* E-mail from Angela S. Dunn, Assistant General Counsel, Phlx, to Richard R. Holley, Senior Special Counsel, Johnna B. Dumler, Special Counsel, and Daniel T. Gien, Staff Attorney, Division of Trading and Markets, Commission, dated April 22, 2010 (making clarifying changes to this paragraph).

[8] *See* Securities Exchange Act Release No. 61905 (April 14, 2010), 75 FR 20871 (April 21, 2010) (SR–Phlx–2010–55).

[9] Each destination market's transaction charge varies and there is a standard clearing charge for each transaction incurred by the Exchange. The Exchange basis [sic] the above fees on the total of these costs for each destination market in assessing fees.

[10] 15 U.S.C. 78f(b).

[11] 15 U.S.C. 78f(b)(4).

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act [12] and paragraph (f)(2) of Rule 19b–4 [13] thereunder. At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate 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.

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 e-mail to *rule-comments@sec.gov*. Please include File Number SR–Phlx–2010–62 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–Phlx–2010–62. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–Phlx–2010–62 and should be submitted on or before May 21, 2010.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[14]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. 2010–10030 Filed 4–29–10; 8:45 am]

BILLING CODE 8011–01–P

[12] 15 U.S.C. 78s(b)(3)(A)(ii).

[13] 17 CFR 240.19b–4(f)(2).

[14] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–61977; File No. SR–NYSEArca–2010–30]

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Amending Rule 6.4 and Adopting Rule 6.4A

April 23, 2010.

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 April 16, 2010, NYSE Arca, Inc. ("NYSE Arca" or the "Exchange") filed with the Securities and Exchange Commission (the "Commission") the proposed rule change as described in Items I, II, and III, below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend Rule 6.4 and adopt Rule 6.4A to apply uniform objective standards to the range of options series exercise (or strike) prices available for trading on the Exchange, and to amend Rule 6.4(e) to delineate the timing for adding new Long Term Equity Option Series. The text of the proposed rule change is attached as Exhibit 5 to the 19b–4 form. A copy of this filing is available on the Exchange's Web site at *http://www.nyse.com,* at the Exchange's principal office, at the Commission's Public Reference Room, and on the Commission's Web site at *http://www.sec.gov.*

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 purpose of this filing is to amend Rule 6.4 and adopt Rule 6.4A to apply uniform objective standards to the range of options series exercise (or strike) prices available for trading on the Exchange, and to amend Rule 6.4(e) to delineate the timing for adding new Long Term Equity Option Series.

The Options Listing Procedures Plan ("OLPP") was approved by the Securities and Exchange Commission (the "Commission") on July 6, 2001 and has been amended several times.[3] The OLPP provides procedures for: (i) Listing and trading new option classes; (ii) selecting new options series; (iii) petitioning The Options Clearing Corporation ("OCC") to review the eligibility, pursuant to the exchanges' listing standards, of a selected option class without delaying the trading of that option class; (iv) determining operational details for option contracts adjusted pursuant to OCC By-Laws; (v) admitting new sponsors; and (vi) losing eligibility to participate in the OLPP.

This current filing is primarily concerned with codifying certain provisions of the OLPP pertaining to selecting new option series and certain

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See e.g.,* Securities Exchange Act Release Nos. 44521 (July 6, 2001), 66 FR 36809 (July 13, 2001) (order approving OLPP); 58205 (July 22, 2008), 73 FR 43798 (July 28, 2008) (order granting permanent approval to amendment no. 1 to the OLPP); 58630 (September 24, 2008) 73 FR 57166 (October 1, 2008) (order granting permanent approval to amendment no. 2 to the OLPP); and 60531 (August 19, 2009), 74 FR 43173 (August 26, 2009) (order approving amendment no. 3 to the OLPP).

strike setting parameters that have been adopted under the OLPP. The Exchange believes that it is helpful to codify select provisions into NYSE Arca's rules so that all applicable rules governing series selection and applicable strike setting parameters are located in a single place. In addition, the Exchange understands that other Sponsor Exchanges to the OLPP will be submitting similar filings to codify portions of the OLPP in their respective rulebooks. Below the Exchange briefly describes the provisions of the OLPP that the Exchange is proposing to codify into NYSE Arca's rules.

OLPP Amendments Pertaining to LEAPS

Amendments 1 and 2 to the OLPP adopted provisions governing the listing of Long-Term Equity Option Series ("LEAPS"). Amendment 1 provided for a uniform time frame for the introduction of new LEAPS on equity option classes, options on exchange traded funds ("ETFs"), or options on Trust Issued Receipts ("TIRs"). Amendment 2 provided for a uniform minimum volume threshold per underlying class to qualify for the introduction of a new expiration year of LEAPs on equity, ETF and TIR classes. The Exchange is proposing to codify the changes made to the OLPP by Amendments 1 and 2 by amending Rule 6.4(e).

Strike Setting Parameters

Amendment 3 to the OLPP adopted uniform objective standards to the range of options series exercise (or strike) prices available for trading on Sponsor Exchanges to the OLPP as a quote mitigation strategy. The Exchange is proposing to codify the changes made to the OLPP by Amendment 3 by inserting a reference in Rule 6.4 and by adopting new Rule 6.4A, Select Provisions of Options Listing Procedures Plan. The Exchange is proposing to create a new rule that can be easily amended in the future if other amendments to the OLPP are made which similarly warrant being codified into NYSE Arca's rules.

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with Section 6(b)[4] of the Securities Exchange Act of 1934 (the "Act"), in general, and furthers the objectives of Section 6(b)(5)[5] in particular in that it is designed to promote just and equitable principles of trade, to prevent fraudulent and manipulative acts, to remove impediments to and to perfect the mechanism for a free and open market and a national market system and, in general, to protect investors and the public interest. The Exchange believes that codifying certain provisions of the OLPP, as amended, serves to foster investor protection.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The Exchange has filed the proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act[6] and Rule 19b–4(f)(6) thereunder.[7] Because the proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative prior to 30 days from the date on which it was filed, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act[8] and Rule 19b–4(f)(6)(iii) thereunder.[9]

At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate 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.

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 e-mail to *rule-comments@sec.gov*. Please include File Number SR–NYSEArca–2010–30 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NYSEArca–2010–30. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NYSEArca–2010–30 and should be submitted on or before May 21, 2010.

[4] 15 U.S.C. 78f(b).

[5] 15 U.S.C. 78f(b)(5).

[6] 15 U.S.C. 78s(b)(3)(A)(iii).

[7] 17 CFR 240.19b–4(f)(6).

[8] 15 U.S.C. 78s(b)(3)(A).

[9] 17 CFR 240.19b–4(f)(6)(iii). In addition, Rule 19b–4(f)(6)(iii) requires the Exchange to give the Commission written notice of the Exchange's intent to file the proposed rule change along with a brief description and the text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied the pre-filing requirement.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[10]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. 2010–10031 Filed 4–29–10; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–61978; File No. SR–NYSEAmex–2010–39]

Self-Regulatory Organizations; NYSE Amex LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Amending Rule 903 and Adopting Rule 903A

April 23, 2010.

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 April 16, 2010, NYSE Amex LLC ("NYSE Amex" or the "Exchange") filed with the Securities and Exchange Commission (the "Commission") the proposed rule change as described in Items I, II, and III, below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend Rule 903 and adopt Rule 903A to apply uniform objective standards to the range of options series exercise (or strike) prices available for trading on the Exchange, and to amend Rule 903 Commentary .03 to delineate the timing for adding new Long Term Equity Option Series. The text of the proposed rule change is attached as Exhibit 5 to the 19b–4 form. A copy of this filing is available on the Exchange's Web site at *http://www.nyse.com,* at the Exchange's principal office, at the Commission's Public Reference Room, and on the Commission's Web site at *http://www.sec.gov.*

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 purpose of this filing is to amend Rule 903 and adopt Rule 903A to apply uniform objective standards to the range of options series exercise (or strike) prices available for trading on the Exchange, and to amend Rule 903 Commentary .03 to delineate the timing for adding new Long Term Equity Option Series. The Exchange is also proposing to remove provisions in Commentary .03 related to Short Term Option Series and place those provisions in new Commentary .10. Commentary .10 will only contain provisions previously approved by the Commission.[3]

The Options Listing Procedures Plan ("OLPP") was approved by the Securities and Exchange Commission (the "Commission") on July 6, 2001 and has been amended several times.[4] The OLPP provides procedures for: (i) Listing and trading new option classes; (ii) selecting new options series; (iii) petitioning The Options Clearing Corporation ("OCC") to review the eligibility, pursuant to the exchanges' listing standards, of a selected option class without delaying the trading of that option class; (iv) determining operational details for option contracts adjusted pursuant to OCC By-Laws; (v) admitting new sponsors; and (vi) losing eligibility to participate in the OLPP.

This current filing is primarily concerned with codifying certain provisions of the OLPP pertaining to selecting new option series and certain strike setting parameters that have been adopted under the OLPP. The Exchange believes that it is helpful to codify select provisions into NYSE Amex's rules so that all applicable rules governing series selection and applicable strike setting parameters are located in a single place. In addition, the Exchange understands that other Sponsor Exchanges to the OLPP will be submitting similar filings to codify portions of the OLPP in their respective rulebooks. Below the Exchange briefly describes the provisions of the OLPP that the Exchange is proposing to codify into NYSE Amex's rules.

OLPP Amendments Pertaining to LEAPS

Amendments 1 and 2 to the OLPP adopted provisions governing the listing of Long-Term Equity Option Series ("LEAPS"). Amendment 1 provided for a uniform time frame for the introduction of new LEAPS on equity option classes, options on exchange traded funds ("ETFs"), or options on Trust Issued Receipts ("TIRs"). Amendment 2 provided for a uniform minimum volume threshold per underlying class to qualify for the introduction of a new expiration year of LEAPs on equity, ETF and TIR classes. The Exchange is proposing to codify the changes made to the OLPP by Amendments 1 and 2 by amending Rule 903 Commentary .03.

Strike Setting Parameters

Amendment 3 to the OLPP adopted uniform objective standards to the range of options series exercise (or strike) prices available for trading on Sponsor Exchanges to the OLPP as a quote mitigation strategy. The Exchange is proposing to codify the changes made to the OLPP by Amendment 3 by inserting a reference in Rule 903 and by adopting new Rule 903A, Select Provisions of Options Listing Procedures Plan. The Exchange is proposing to create a new rule that can be easily amended in the future if other amendments to the OLPP are made which similarly warrant being codified into NYSE Amex's rules.

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with Section 6(b) [5] of the Securities Exchange Act of 1934 (the "Act"), in general, and furthers the objectives of Section 6(b)(5) [6] in particular in that it is designed to promote just and equitable principles of trade, to prevent fraudulent and manipulative acts, to remove impediments to and to perfect the mechanism for a free and open market and a national market system and, in general, to protect investors and the

[10] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] See Securities Exchange Act Release No. 52014 (July 12, 2005) 70 FR 41244 (July 18, 2005).

[4] See *e.g.,* Securities Exchange Act Release Nos. 44521 (July 6, 2001), 66 FR 36809 (July 13, 2001) (order approving OLPP); 58205 (July 22, 2008), 73 FR 43798 (July 28, 2008) (order granting permanent approval to amendment no. 1 to the OLPP); 58630 (September 24, 2008) 73 FR 57166 (October 1, 2008) (order granting permanent approval to amendment no. 2 to the OLPP); and 60531 (August 19, 2009), 74 FR 43173 (August 26, 2009) (order approving amendment no. 3 to the OLPP).

[5] 15 U.S.C. 78f(b).

[6] 15 U.S.C. 78f(b)(5).

public interest. The Exchange believes that codifying certain provisions of the OLPP, as amended, serves to foster investor protection.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The Exchange has filed the proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act[7] and Rule 19b–4(f)(6) thereunder.[8] 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[9] and Rule 19b–4(f)(6)(iii) thereunder.[10]

At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate 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.

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 e-mail to *rule-comments@sec.gov*. Please include File Number SR–NYSEAmex–2010–39 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NYSEAmex–2010–39. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NYSEAmex–2010–39 and should be submitted on or before May 21, 2010.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[11]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. 2010–10081 Filed 4–29–10; 8:45 am]

BILLING CODE 8011–01–P

[7] 15 U.S.C. 78s(b)(3)(A)(iii).

[8] 17 CFR 240.19b–4(f)(6).

[9] 15 U.S.C. 78s(b)(3)(A).

[10] 17 CFR 240.19b–4(f)(6)(iii). In addition, Rule 19b–4(f)(6)(iii) requires the Exchange to give the Commission written notice of the Exchange's intent to file the proposed rule change along with a brief description and the text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied the pre-filing requirement.

[11] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–61981; File No. SR–NASDAQ–2010–051]

Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Concerning Intermarket Option Linkage

April 26, 2010.

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 April 20, 2010, The NASDAQ Stock Market LLC ("Nasdaq" or the "Exchange") filed with the Securities and Exchange Commission (the "Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Nasdaq. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange is filing with the Commission a proposed rule change to delete its Temporary Rule Governing Phase-Out of P and P/A Orders[3] and amend several references in the rules to the Plan for the Purpose of Creating and Operating an Intermarket Linkage ("Linkage Plan").[4] In addition, the Exchange also proposes to amend its fees in Rule 7050, NASDAQ Options Market, to discontinue its current pilot program (the "pilot") relating to options

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Chapter XII, Intermarket Linkage Rules, Section 4, Temporary Rule Governing Phase-Out of P and P/A Orders.

[4] *See* Securities Exchange Act Release No. 57545 (March 21, 2008), 73 FR 16394 (March 27, 2008). On July 28, 2000, the Commission approved a national market system plan for the purpose of creating and operating an intermarket options market linkage ("Linkage") proposed by the then American Stock Exchange LLC, now NYSE Amex LLC ("NYSE Amex"), Chicago Board Options Exchange, Inc. ("CBOE"), and International Securities Exchange LLC ("ISE"). *See* Securities Exchange Act Release No. 43086 (July 28, 2000), 65 FR 48023, (August 4, 2000). Subsequently, Philadelphia Stock Exchange, Inc., now NASDAQ OMX PHLX, Inc. ("Phlx"), Pacific Exchange, Inc., now NYSE Arca, Inc. ("NYSE Arca") and Boston Stock Exchange, Inc., now NASDAQ OMX BX, Inc. ("BSX") joined the Linkage Plan. *See* Securities Exchange Act Release Nos. 43573 (November 16, 2000), 65 FR 70851, (November 28, 2000); 43574 (November 16, 2000), 65 FR 70850, (November 28, 2000); and 49198 (February 5, 2004), 69 FR 7029, (February 12, 2004). The Exchange was added as a Participant to the Linkage Plan. Linkage was governed by the Options Linkage Authority under the conditions set forth under the Plan for the Purpose of Creating and Operating an Intermarket Option Linkage approved by the Commission.

transaction fees for trades executed via the Intermarket Option Linkage ("Linkage") on the Exchange.

The text of the proposed rule change is available on the Exchange's Web site at *http://www.nasdaqtrader.com,* on the Commission's Web site at *http://www.sec.gov,* at Nasdaq, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the proposed rule change is to eliminate existing references to the Linkage Plan and also replace some references to the Linkage Plan with references to the Options Order Protection and Locked/Crossed Market Plan ("Plan") in order to clarify the current rules in effect.

On June 17, 2008, the Exchange filed the Plan, joining all other approved options markets in adopting the Plan.[5] The Plan requires each options exchange to adopt rules implementing various requirements specified in the Plan. The Plan replaces the former Linkage Plan. The Linkage Plan required Participating Exchanges to operate a stand-alone system or "Linkage" for sending order-flow between exchanges to limit trade-throughs.[6] The Options Clearing Corporation ("OCC") operated the Linkage system (the "System").[7] The Exchange adopted various new rules in connection with the Plan to avoid trade-throughs and locked markets, among other things.[8] The Exchange currently offers private routing directly to away markets.[9]

The Exchange adopted a temporary rule entitled Temporary Rule Governing Phase-Out of P and P/A Orders ("Temporary Rule"),[10] in order to facilitate the participation of certain Participating Exchanges who may require the use of Principal Acting as Agent Orders ("P/A Orders") [11] and Principal Orders ("P") [12] after implementation of the Plan.[13] Certain Participating Exchanges required a temporary transition period during which they continued to utilize these order types that existed under the Linkage Plan. The Exchange proposed substantially similar rules with that of the other Participating Exchanges to accommodate the possibility of continued use of P/A Orders and P Orders. At this time all Participating Exchanges have discontinued use of the Linkage Plan. The Exchange proposes at this time to delete this Temporary Rule because it is no longer necessary in light of the discontinued use of the Linkage Plan. The Exchange also proposes to delete a reference to the Linkage Plan in Chapter VII, Market Participants, Section 5, Obligations of Market Makers. Additionally, the Exchange proposes to amend Section 1, Definitions, in Chapter XII, Intermarket Linkage Rules, to redefine "Plan" to comport with the new Plan.

The Exchange proposes to discontinue the current pilot program related to transaction fees sent to the Exchange via Linkage. The current pilot is set to expire July 31, 2010.[14]

Under the Exchange's current rule, the fee for members or non-members entering orders via Linkage that execute on the Exchange is $0.45 per executed contract. Because there are no longer any participant exchanges to the Linkage Plan, the Exchange proposes to discontinue the pilot. The Exchange also proposes to amend Rule 7050, NASDAQ Options Market, to remove all references to Linkage fees.

2. Statutory Basis

The Exchange believes that its 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, in that it is designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general to protect investors and the public interest, by proposing the elimination of its Temporary Rule, which reflects usage of a former Linkage Plan that has since been replaced by a new Plan. In addition, the Exchange believes that amending its Rules to refer to the current Plan and by proposing to discontinue its pilot, to clarify that Linkage fees are no longer applicable, will provide its members clarity.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant

[5] *See* Securities Exchange Act Release Nos. 60405 (July 30, 2009), 74 FR 39362 (August 6, 2009) (National Market System Plan Relating to Options Order Protection and Locked/Crossed Markets). The Plan is a national market system plan proposed by the seven existing options exchanges and approved by the Commission. *See* Securities Exchange Act Release No. 59647 (March 30, 2009), 74 FR 15010 (April 2, 2009) ("Plan Notice") and 60405 (July 30, 2009), 74 FR 39362 (August 6, 2009) ("Plan Approval"). The seven options exchanges are: Chicago Board Options Exchange, Incorporated ("CBOE"); International Securities Exchange LLC ("ISE"); NASDAQ OMX BX, Inc. ("BOX"); The NASDAQ Stock Market LLC ("Nasdaq"); NYSE Amex LLC ("NYSE Amex"); NYSE Arca, Inc. ("NYSE Arca"); and Phlx (each exchange individually a "Participant" and, together, the "Participating Options Exchanges").

[6] *See* footnote 4.

[7] *See* footnote 4.

[8] *See* footnote 5.

[9] *See* Chapter VI, Trading Systems, Section 11, Order Routing.

[10] *See* Chapter XII, Intermarket Linkage Rules, Section 4, Temporary Rule Governing Phase-Out of P and P/A Orders.

[11] A P/A Order is an order for the principal account of a Primary Market Maker (or equivalent entity on another Eligible Exchange that is authorized to represent Public Customer orders), reflecting the terms of a related unexecuted Public Customer order for which the Primary Market Maker is acting as agent. *See* Chapter XII, Section 4(d)(4)(i).

[12] A Principal Order is an order for the principal account of a market maker (or equivalent entity on another Eligible Exchange) and is not a P/A Order. *See* Chapter XII, Section 4 (d)(ii).

[13] *See* Securities Exchange Act Release No. 60525 (August 18, 2009), 74 FR 43188 (August 26, 2009) (SR–NASDAQ–2009–056). Linkage was governed by the Options Linkage Authority under the conditions set forth under the Plan for the Purpose of Creating and Operating an Intermarket Option Linkage approved by the Commission. The registered U.S. options markets were linked together on a real-time basis through a network capable of transporting orders and messages to and from each market.

[14] *See* Securities Exchange Act Release No. 60407 (July 30, 2009), 74 FR 39720 (August 7, 2009) (SR–NASDAQ–2009–073).

[15] 15 U.S.C. 78f(b).

[16] 15 U.S.C. 78f(b)(5).

burden on competition; and (iii) become operative for 30 days after the date of the filing, or such shorter time as the Commission may designate, it has become effective pursuant to 19(b)(3)(A) of the Act [17] and Rule 19b–4(f)(6) [18] thereunder.

At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate 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.

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 e-mail to *rule-comments@sec.gov*. Please include File Number SR–NASDAQ–2010–051 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NASDAQ–2010–051. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NASDAQ–2010–051 and should be submitted on or before May 21, 2010.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[19]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. 2010–10082 Filed 4–29–10; 8:45 am]

BILLING CODE 8011–01–P

[17] 15 U.S.C. 78s(b)(3)(A).

[18] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. Nasdaq has satisfied this requirement.

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–61972; File No. SR–ISE–2010–32]

Self-Regulatory Organizations; International Securities Exchange, LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to Fee Changes

April 23, 2010.

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 April 14, 2010, the International Securities Exchange, LLC (the "Exchange" or the "ISE") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which items have been prepared by the 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 is proposing to amend its Schedule of Fees. The text of the proposed rule change is available on the Exchange's Web site (*http://www.ise.com*), at the principal office of the Exchange, on the Commission's Web site at *http://www.sec.gov,* and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections A, B and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

In SR–ISE–2009–26, the Exchange adopted the term 'Singly Listed ETFs' to identify those ETF products that are listed only on ISE and for which the Exchange charges a fee of $0.18 per contract for customer transactions. Currently, the First Trust ISE Water ETF ("FIW"), the Claymore China Technology ETF ("CQQQ"), the ProShares UltraPro Short Dow30 ("SDOW"), the ProShares UltraPro Dow30 ("UDOW"), the ProShares UltraPro Short MidCap400 ("SMDD"), the ProShares UltraPro MidCap400 ("UMDD"), the ProShares UltraPro Short Russell2000 ("SRTY") and the ProShares UltraPro Russell2000 ("URTY") are the only such ETFs listed on the Exchange's fee schedule. On April 14, 2010, ISE began listing options on the First Trust ISE Global Copper Index Fund ("CU") and the First Trust ISE Global Platinum Index Fund ("PLTM"). As of the date of this filing, CU and PLTM are both singly listed on ISE. The Exchange therefore proposes to charge a fee of $0.18 per contract for customer transactions in options on CU and PLTM. The Exchange also proposes to charge a Payment for Order Flow fee for transactions in options on these products.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the objectives of Section 6 of the Act,[3] in general, and furthers the objectives of Section 6(b)(4),[4] in particular, in that it is designed to provide for the equitable allocation of reasonable dues, fees and

[19] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78f.

[4] 15 U.S.C. 78f(b)(4).

other charges among its members and other persons using its facilities.

B. Self-Regulatory Organization's Statement on Burden on Competition

The proposed rule change does not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

The Exchange has not solicited, and does not intend to solicit, comments on this proposed rule change. The Exchange has not received any unsolicited written comments from members or other interested parties.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3) of the Act [5] and Rule 19b–4(f)(2) [6] thereunder. At any time within 60 days of the filing of such proposed rule change, the Commission may summarily abrogate 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.

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 E-mail to *rule-comments@sec.gov.* Please include File No. SR–ISE–2010–32 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–ISE–2010–32. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–ISE–2010–32 and should be submitted by May 21, 2010.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[7]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. 2010–10080 Filed 4–29–10; 8:45 am]

BILLING CODE 8011–01–P

[5] 15 U.S.C. 78s(b)(3)(A).

[6] 17 CFR 19b–4(f)(2).

[7] 17 CFR 200.30–3(a)(12).

DEPARTMENT OF STATE

[Public Notice 6981]

Notice of Extension of Public Comment Period for the Proposed Keystone XL Pipeline Project Draft Environmental Impact Statement

AGENCY: Department of State.

ACTION: Notice—Extension of public comment period.

SUMMARY: In response to requests from several organizations, the Department of State (DOS) is extending the public comment period for the Keystone XL Pipeline Project Draft Environmental Impact Statement (DEIS). The Department of State had originally set the end of the comment period at May 31, 2010. The Department has decided, in response to the requests noted above, to extend the comment period until Wednesday, June 16, 2010. The original notice of availability of the DEIS was published by EPA in the **Federal Register** on April 16, 2010 [75 FR 19969]. A second notice that listed the public comment meetings and additional information on the DEIS was published in the **Federal Register** on April 20, 2010 [75 FR 20653].

DATES: Comments on the DEIS should be received or postmarked no later than Wednesday, June 16, 2010.

ADDRESSES: You may submit written comments by the following methods:

- *Electronically,* using the online comment form, available on the Keystone XL Project Web site: *http://www.keystonepipeline-xl.state.gov.* This is the preferred method for commenting.
- *By mail addressed to:* Elizabeth Orlando, Keystone XL Project Manager, U.S. Department of State, OES/ENV Room 2657, Washington, DC 20520. Please note that DOS mail can be delayed due to security screening.
- *Fax to:* (202) 647–1052, attention Elizabeth Orlando.

FOR FURTHER INFORMATION CONTACT: For information on the proposed Project or the DEIS contact Elizabeth Orlando, OES/ENV Room 2657, U.S. Department of State, Washington, DC 20520, or by telephone (202) 647–4284, or by fax at (202) 647–1052. You may also visit the Project Web site: *http://www.keystonepipeline-xl.state.gov.*

Dated: April 23, 2010.

Willem H. Brakel,

Director, Office of Environmental Policy, Bureau of Oceans and International Environmental and Scientific Affairs, U.S. Department of State.

[FR Doc. 2010–10165 Filed 4–29–10; 8:45 am]

BILLING CODE 4710–07–P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

[Docket No. DOT–OST–2010–01–02]

Notice of Requests for Renewal of a Currently Approved Information Collection

AGENCY: Office of the Secretary.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, Public Law 104–13, the Department of Transportation (DOT) announces its intention to request the Office of Management and Budget's (OMB) approval to renew an information collection. The collection involved here requests only information concerning

the subsidy-eligible flights (which generally constitute only a small percentage of the carriers' total operations) of a small number of air carriers. The collection permits the Department to timely pay air carriers for providing essential air service to certain eligible communities that would not otherwise receive scheduled passenger air service. The Department provides that subsidy to air carriers monthly, and payments will vary according to the actual amount of service performed during the monthly billing cycle. The reports of subsidized air carriers of essential air service are performed on the Department's Form 398, "Air Carrier's Claim for Subsidy."

DATES: Written comments should be submitted by June 29, 2010.

ADDRESSES: You may submit comments [identified by Docket No. DOT–OST–2010–01–02] through one of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov*. Follow the online instructions for submitting comments.
- *Fax:* 1–202–493–2251.
- *Mail or Hand Delivery:* Docket Management Facility, U.S. Department of Transportation, 1200 New Jersey Avenue, SE., West Building, Room W12–140, Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except on Federal holidays.

FOR FURTHER INFORMATION CONTACT: Gregory Frazier, 202–366–0473, Office of Resource Directorate, Office of the Secretary, U.S. Department of Transportation, 1200 New Jersey Avenue, SE., Washington, DC 20590.

SUPPLEMENTARY INFORMATION:

OMB Control Number: 2106–0044.

Title: Air Carrier's Claim for Subsidy.

Form Numbers: OST Form 398.

Type of Review: Renewal of a currently approved information collection.

Background: In accordance with 14 CFR 271 of its Aviation Economic Regulations, the Department provides subsidy to air carriers for providing essential air service in small rural communities. Funding will be paid to the air carriers monthly and those payments will vary according to the actual amount of service performed during the month. The report of subsidized air carriers of essential air service performed on the Department's Form 398 "Air Carrier's Claim for Subsidy," establishes the fundamental basis for paying these air carriers on a timely basis. Typically, subsidized air carriers are small businesses and operate only aircraft of limited size over a limited geographical area. The collection permits subsidized air carriers to submit their monthly claims in a concise, orderly, easy-to process form, without having to devise their own means of submitting support for these claims.

Respondents: Small air carriers selected by the Department in docketed cases to provide subsidized essential air service.

Number of Respondents: 24.

Number of Responses: 1560 annually.

Frequency: Monthly.

Estimated Total Burden on Respondents: 5,413 annually.

Public Comments Invited: You are asked to comment on any aspect of this information collection, including (a) whether the proposed collection of information is necessary for the Department's performance; (b) the accuracy of the estimated burden; (c) ways for the Department to enhance the quality, utility and clarity of the information collection; and (d) ways that the burden could be minimized without reducing the quality of the collected information. The agency will summarize and/or include your comments in the request for OMB's clearance of this information collection.

Authority: The Paperwork Reduction Act of 1995; 44 U.S.C. Chapter 35, as amended; and 49 CFR 1:48.

Issued in Washington, DC, on April 21, 2010.

John DiLuccio,

Director, Resource Directorate.

[FR Doc. 2010–9819 Filed 4–29–10; 8:45 am]

BILLING CODE 4910–62–P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

Notice of Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits Filed under Subpart B (Formerly Subpart Q) During the Week Ending April 17, 2010

The following Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits were filed under Subpart B (formerly Subpart Q) of the Department of Transportation's Procedural Regulations (*See* 14 CFR 301.201 *et seq*.). The due date for Answers, Conforming Applications, or Motions To Modify Scope are set forth below for each application. Following the Answer period DOT may process the application by expedited procedures. Such procedures may consist of the adoption of a show-cause order, a tentative order, or in appropriate cases a final order without further proceedings.

Docket Number: DOT–OST–2010–0093.

Date Filed: April 13, 2010.

Due Date for Answers, Conforming Applications, or Motion To Modify Scope: May 4, 2010.

Description: Application of Open Joint Stock Company Transaero Airlines ("Transaero") requesting an foreign air carrier permit and exemption authorizing Transaero to provide: (i) Scheduled foreign air transportation of persons, property and mail between Moscow, Russian Federation, on the one hand, and New York, New York and Miami, Florida, on the other hand; and (ii) charter foreign air transportation of persons, property and mail between a point(s) in the Russian Federation, on the one hand, and a point(s) in the United States, on the other hand, and other charter flights as permitted.

Docket Number: DOT–OST–2005–21533.

Date Filed: April 12, 2010.

Due Date for Answers, Conforming Applications, or Motion To Modify Scope: May 3, 2010.

Description: Application of Friendship Airways, Inc., d/b/a Yellow Air Taxi reapplying for issuance of commuter air authority to enable Yellow Air Taxi to engage in interstate and foreign scheduled air transportation operations utilizing small aircraft.

Renee V. Wright,

Program Manager, Docket Operations, Federal Register Liaison.

[FR Doc. 2010–10094 Filed 4–29–10; 8:45 am]

BILLING CODE 4910–9X–P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

Notice of Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits Filed Under Subpart B (Formerly Subpart Q) During the Week Ending April 10, 2010

The following Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits were filed under subpart B (formerly subpart Q) of the Department of Transportation's Procedural Regulations (*See* 14 CFR 301.201 *et seq*.). The due date for Answers, Conforming Applications, or Motions to Modify Scope are set forth below for each application. Following the Answer period DOT may process the application by expedited procedures. Such procedures may consist of the adoption of a show-cause order, a tentative order, or in appropriate cases a final order without further proceedings.

Docket Number: DOT–OST–2010–0086.

Date Filed: April 6, 2010.

Due Date for Answers, Conforming Applications, or Motion to Modify Scope: April 27, 2010.

Description: Application of Nova Airlines AB requesting an exemption and a foreign air carrier permit to engage in charter foreign air transportation of persons, property and mail to the full extent authorized by the Air Transport Agreement between the European Community and its Member States, and the United States ("EU–US Agreement"), as follows: (i) From any point or points behind any Member States of the European Union via any point or points in any Member State and via intermediate points to any point or points in the United States and beyond; (ii) between any point or points in the United States and any point or points in any member of the European Common Aviation Area, including Norway; and (ii) other charters.

Renee V. Wright,

Program Manager, Docket Operations, Federal Register Liaison.

[FR Doc. 2010–10096 Filed 4–29–10; 8:45 am]

BILLING CODE 4910–9X–P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

Aviation Proceedings, Agreements Filed the Week Ending April 17, 2010

The following Agreements were filed with the Department of Transportation under the sections 412 and 414 of the Federal Aviation Act, as amended (49 U.S.C. 1382 and 1384) and procedures governing proceedings to enforce these provisions. Answers may be filed within 21 days after the filing of the application.

Docket Number: DOT–OST–2010–0098.

Date Filed: April 16, 2010.

Parties: Members of the International Air Transport Association.

Subject:

CSC/32/Meet/006/2010 dated 9 April 2010.

Expedited Finally Adopted Resolutions: 600b, 600f, 600g, 600h,601, 607, 660, 670, and 683, and Recommended Practices

1650, 1675 and 1676.

Intended effective date: 1 July 2010.

Renee V. Wright,

Program Manager, Docket Operations, Federal Register Liaison.

[FR Doc. 2010–10098 Filed 4–29–10; 8:45 am]

BILLING CODE 4910–9X–P

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Environmental Impact Statement: Salt Lake County, UT

AGENCY: Federal Highway Administration (FHWA), USDOT.

ACTION: Notice of Intent.

SUMMARY: The FHWA is issuing this notice to advise the public that an Environmental Impact Statement (EIS) will be prepared for a proposed transportation improvement project in Salt Lake County, Utah.

FOR FURTHER INFORMATION CONTACT: Edward Woolford, Environmental Program Manager, Federal Highway Administration, 2520 West 4700 South, Suite 9A, Salt Lake City, UT 84118, telephone (801) 963–0182, e-mail *Edward.Woolford@dot.gov.* The Utah Department of Transportation (UDOT) contact is Brandon Weston, Project Manager, 2010 South 2760 West, Salt Lake City, UT 84104, telephone (801) 887–3470, e-mail *brandonweston@utah.gov.*

SUPPLEMENTARY INFORMATION: The FHWA, in cooperation with UDOT, will prepare an EIS for a proposal to address projected transportation demand and safety on Bangerter Highway in the area of 600 West in the city of Draper in Salt Lake County. The EIS will evaluate methods to reduce congestion and improve safety on the exit ramps from Interstate 15 (I–15) onto Bangerter Highway and at the intersection of 200 West and Bangerter Highway in Draper. Other transportation needs and economic development opportunities will be considered in the evaluation. The need for improvements in this project area is identified in the regional transportation plan developed by the local metropolitan planning organization, the Wasatch Front Regional Council (WFRC).

Improvements are necessary to meet the projected travel demand in 2030 in the project area and to improve safety and regional mobility. Alternatives under consideration include (1) taking no action (no-build), (2) using access control and transportation system management/travel demand management to improve the efficiency of the existing network, and (3) build alternatives. A multi-modal evaluation of transportation improvements will be considered. Transportation build alternatives to be studied include but are not limited to (1) a new interchange or intersection on Bangerter Highway in the area of 600 West, (2) improvements to the existing roadway configuration without constructing a new interchange or intersection, (3) transit, (4) combinations of any of the above, and (5) other feasible alternatives identified during the scoping process.

Letters describing the proposed action and soliciting comments will be sent to appropriate Federal, State, and local agencies and to private organizations and citizens who have previously expressed or are known to have an interest in this proposed action. A public scoping meeting will be held in the project area June or July 2010. Public notices announcing the meeting will be published in the region. In addition to the public scoping meeting, public hearings will be held after the draft EIS has been prepared. The draft EIS will be available for public and agency review and comments before the public hearing.

To ensure that a full range of issues related to the proposed action are addressed and all significant issues identified, comments and suggestions are invited from all interested parties. Comments or questions concerning the proposed action and the EIS should be directed to the FHWA at the address provided above by July 30, 2010.

(Catalog of Federal and Domestic Assistance Program Number 20.205, Highway Research, Planning, and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on federal programs and activities apply to this program.)

Issued on: April 26, 2010.

James C. Christian,

Division Administrator, Federal Highway Administration, Salt Lake City, Utah.

[FR Doc. 2010–10178 Filed 4–29–10; 8:45 am]

BILLING CODE 4910–22–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Air Traffic Procedures Advisory Committee

AGENCY: Federal Aviation Administration (FAA), DOT.

SUMMARY: The FAA is issuing this notice to advise the public that a meeting of the Federal Aviation Administration Air Traffic Procedures Advisory Committee (ATPAC) will be held to review present air traffic control procedures and practices for standardization, revision, clarification, and upgrading of terminology and procedures.

DATES: The meeting will be held Tuesday, May 18, and Wednesday, May 19, 2010 from 8:30 a.m. to 5 p.m.

ADDRESSES: The meeting will be held at CGH Headquarters, 600 Maryland Ave., SW., Suite 800 West, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Mr. Richard Jehlen, ATPAC Executive Director, 800 Independence Avenue, SW., Washington, DC 20591. Telephone (202) 493–4527.

SUPPLEMENTARY INFORMATION: Pursuant to Section 10(a) (2) of the Federal Advisory Committee Act (Pub. L. 92–463; 5 U.S.C. App.2), notice is hereby given of a meeting of the ATPAC to be held Tuesday, May 18, and Wednesday, May 19, 2010, from 8:30 a.m. to 5 p.m.

The agenda for this meeting will cover a continuation of the ATPAC's review of present air traffic control procedures and practices for standardization, revision, clarification, and upgrading of terminology and procedures. It will also include:

1. Approval of Minutes;
2. Submission and Discussion of Areas of Concern;
3. Discussion of Potential Safety Items;
4. Report from Executive Director;
5. Items of Interest; and
6. Discussion and agreement of location and dates for subsequent meetings.

Attendance is open to the interested public but limited to space available. With the approval of the Chairperson, members of the public may present oral statements at the meeting. Persons desiring to attend and persons desiring to present oral statement should notify Mr. Richard Jehlen no later than May 3, 2010. Any member of the public may present a written statement to the ATPAC at any time at the address given above.

Issued in Washington, DC, on April 23, 2010.

Richard Jehlen,

Executive Director, Air Traffic Procedures Advisory Committee.

[FR Doc. 2010–10042 Filed 4–29–10; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF THE TREASURY

Submission for OMB Review; Comment Request

April 26, 2010.

The Department of the Treasury will submit the following public information collection requirement to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13 on or after the publication date of this notice. A copy of the submission may be obtained by calling the Treasury Departmental Office Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury PRA Clearance Officer, Department of the Treasury, 1750 Pennsylvania Avenue, NW., Suite 11010, Washington, DC 20220.

Dates: Written comments should be received on or before June 1, 2010 to be assured of consideration.

Community Development Financial Institutions (CDFI) Fund

OMB Number: 1559–0032.

Type of Review: Reinstatement with change of a previously approved collection.

Title: BEA Program Award Report Form.

Form No.: CDFI 0002.

Description: The Fund implements the Bank Enterprise Award (BEA) Program that provides incentives to insured depository institutions to increase their support of CDFIs and their activities in economically distressed communities. Beginning in the FY 2009 funding round, the CDFI Fund will require that BEA awards be used for future CDFI support and community development activities as defined under the BEA Program regulations. An applicant receiving an award over $50,000 will be subject to new compliance and reporting requirements as part of the terms and conditions of the BEA Program Award Agreement.

Respondents: Private Sector: Businesses or other for-profits.

Estimated Total Burden Hours: 40 hours.

CDFI Fund Clearance Officer: Ashanti McCallum, Community Development Financial Institutions Fund, Department of the Treasury, 601 13th Street, NW., Suite 200 South, Washington, DC 20005; (202) 622–9018.

OMB Reviewer: Shagufta Ahmed, Office of Management and Budget, New Executive Office Building, Room 10235, Washington, DC 20503; (202) 395–7873.

Dawn D. Wolfgang,

Treasury PRA Clearance Officer.

[FR Doc. 2010–10162 Filed 4–29–10; 8:45 am]

BILLING CODE 4810–70–P



Federal Register

Friday,
April 30, 2010

Part II

Environmental Protection Agency

40 CFR Parts 80, 85, 86, et al.
Control of Emissions From New Marine Compression-Ignition Engines at or Above 30 Liters per Cylinder; Final Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 80, 85, 86, 94, 1027, 1033, 1039, 1042, 1043, 1045, 1048, 1051, 1054, 1060, 1065, and 1068

[EPA–HQ–OAR–2007–0121; FRL–9097–4]

RIN 2060–AO38

Control of Emissions From New Marine Compression-Ignition Engines at or Above 30 Liters per Cylinder

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is finalizing emission standards for new marine diesel engines with per-cylinder displacement at or above 30 liters (called Category 3 marine diesel engines) installed on U.S. vessels. These emission standards are equivalent to those adopted in the amendments to Annex VI to the International Convention for the Prevention of Pollution from Ships (MARPOL Annex VI). The emission standards apply in two stages—near-term standards for newly built engines will apply beginning in 2011; long-term standards requiring an 80 percent reduction in NO_X emissions will begin in 2016. We are also finalizing a change to our diesel fuel program that will allow for the production and sale of 1,000 ppm sulfur fuel for use in Category 3 marine vessels. In addition, the new fuel requirements will generally forbid the production and sale of other fuels above 1,000 ppm sulfur for use in most U.S. waters, unless alternative devices, procedures, or compliance methods are used to achieve equivalent emissions reductions. We are adopting further provisions under the Act to Prevent Pollution from Ships, especially to apply the emission standards to engines covered by MARPOL Annex VI that are not covered by the Clean Air Act, and to require that these additional engines use the specified fuels (or equivalents).

The final regulations also include technical amendments to our motor vehicle and nonroad engine regulations; many of these changes involve minor adjustments or corrections to our recently finalized rule for new nonroad spark-ignition engines, or adjustment to other regulatory provisions to align with this recent final rule.

DATES: This final rule is effective on June 29, 2010. The incorporation by reference of certain publications listed in this regulation is approved by the Director of the Federal Register as of June 29, 2010.

ADDRESSES: EPA has established a docket for this action under Docket ID No. EPA–HQ–OAR–2007–0121. All documents in the docket are listed on the *http://www.regulations.gov* Web site. Although listed in the index, some information is not publicly available, *e.g.,* CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically in *http://www.regulations.gov* or in hard copy at the EPA–HQ–OAR–2007–0121 Docket, EPA/DC, EPA West, Room 3334, 1301 Constitution Ave., NW., Washington, DC. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the EPA–HQ–OAR–2007–0121 is (202) 566–1742.

FOR FURTHER INFORMATION CONTACT: Amy Kopin, U.S. EPA, Office of Transportation and Air Quality, Assessment and Standards Division (ASD), Environmental Protection Agency, 2000 Traverwood Drive, Ann Arbor, MI 48105; telephone number: (734) 214–4417; fax number: (734) 214–4050; e-mail address: *Kopin.Amy@epa.gov*, or Assessment and Standards Division Hotline; telephone number: (734) 214–4636.

SUPPLEMENTARY INFORMATION:

General Information

Does This Action Apply to Me?

This action affects companies that manufacture, sell, or import into the United States new marine compression-ignition engines with per cylinder displacement at or above 30 liters for use on vessels flagged or registered in the United States; companies and persons that make vessels that will be flagged or registered in the United States and that use such engines; and the owners or operators of such U.S. vessels. Additionally, this action may affect companies and persons that rebuild or maintain these engines. Finally, this action may also affect those that manufacture, import, distribute, sell, and dispense fuel for use by Category 3 marine vessels. Affected categories and entities include the following:

Category	NAICS Code [a]	Examples of potentially affected entities
Industry	333618	Manufacturers of new marine diesel engines.
Industry	336611	Manufacturers of marine vessels.
Industry	811310	Engine repair and maintenance.
Industry	483	Water transportation, freight and passenger.
Industry	324110	Petroleum Refineries.
Industry	424710, 424720	Petroleum Bulk Stations and Terminals; Petroleum and Petroleum Products Wholesalers.
Industry	483113	Coastal and Great Lakes Freight Transportation
Industry	483114	Coastal and Great Lakes Passenger Transportation

Note:
[a] North American Industry Classification System (NAICS).

This table is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be regulated by this action. This table lists the types of entities that EPA is now aware will be regulated by this action. Other types of entities not listed in the table may also be regulated. To determine whether your company is regulated by this action, you should carefully examine the applicability criteria in 40 CFR 80.501, 94.1, 1042.1, and 1065.1, and the final regulations. If you have questions, consult the person listed in the preceding **FOR FURTHER INFORMATION CONTACT** section.

Table of Contents

I. Overview
A. What Are the Elements of EPA's Coordinated Strategy for Ships?
B. Why Is EPA Making This Rule?
C. Statutory Basis for Action
II. Air Quality, Health and Welfare Impacts
A. Public Health Impacts
B. Environmental Impacts
C. Air Quality Modeling Results
D. Emissions From Ships With Category 3 Engines
III. Engine Standards
A. What Category 3 Marine Engines Are Covered?

B. What Standards Are We Finalizing for Newly Manufactured Engines?
C. Are the Standards Feasible?
IV. Fuel Standards
A. Background
B. Diesel Fuel Standards Prior to This Final Rule
C. Applicability
D. Fuel Sulfur Standards
E. Technical Amendments to the Current Diesel Fuel Sulfur Program Regulations
V. Emission Control Areas for U.S. Coasts
A. What Is an ECA?
B. U.S. Emission Control Area Designation
C. Technological Approaches To Comply With Fuel Standards
D. ECA Designation and Foreign-Flagged Vessels
VI. Certification and Compliance Program
A. Compliance Provisions for Category 3 Engines
B. Compliance Provisions To Implement Annex VI NO_X Regulation and the NO_X Technical Code
C. Changes to the Requirements Specific to Engines Below 30 Liters per Cylinder
D. Other Regulatory Issues
E. U.S. Vessels Enrolled in the Maritime Security Program
VII. Costs and Economic Impacts
A. Estimated Fuel Costs
B. Estimated Engine Costs
C. Cost Effectiveness
D. Economic Impact Analysis
VIII. Benefits
A. Overview
B. Quantified Human Health Impacts
C. Monetized Benefits
D. What Are the Limitations of the Benefits Analysis?
E. Comparison of Costs and Benefits
IX. Public Participation
X. Statutory and Executive Order Reviews
A. Executive Order 12866: Regulatory Planning and Review
B. Paperwork Reduction Act
C. Regulatory Flexibility Act
D. Unfunded Mandates Reform Act
E. Executive Order 13132: Federalism
F. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments
G. Executive Order 13045: Protection of Children From Environmental Health and Safety Risks
H. Executive Order 13211: Actions That Significantly Affect Energy Supply, Distribution, or Use
I. National Technology Transfer Advancement Act
J. Executive Order 12898: Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations
K. Congressional Review Act
XI. Statutory Provisions and Legal Authority

I. Overview

This final rule is part of a coordinated strategy to address emissions from ocean-going vessels and is an important step in EPA's ongoing National Clean Diesel Campaign. In recent years, we have adopted major new programs designed to reduce emissions from new diesel engines, including those used in highway (66 FR 5001, January 18, 2001), nonroad (69 FR 38957, June 29, 2004), locomotive, and marine applications (73 FR 25098, May 6, 2008). When fully phased in, these programs will significantly reduce emissions of harmful pollutants from these categories of engines and vehicles. This final rule sets out the next step in this ambitious effort by addressing emissions from the largest marine diesel engines, called Category 3 marine diesel engines. These are engines with per-cylinder displacement at or above 30 liters per cylinder, which are used primarily for propulsion power on ocean-going vessels (OGV).[1]

Emissions from Category 3 engines remain at high levels. These engines use emission control technology that is comparable to that used by nonroad engines in the early 1990s, and use fuel that can have a sulfur content of 30,000 ppm or more. As a result, these engines emit high levels of pollutants that contribute to unhealthy air in many areas of the U.S. Nationally, in 2009, emissions from Category 3 engines account for about 10 percent of mobile source emissions of nitrogen oxides (NO_X), about 24 percent of mobile source diesel $PM_{2.5}$ emissions (with $PM_{2.5}$ referring to particles with a nominal mean aerodynamic diameter less than or equal to 2.5 μm), and about 80 percent of mobile source emissions of sulfur oxides (SO_X). As we look into the future, however, emissions from Category 3 engines are expected to become an even more dominant inventory source. This will be due to both emission reductions from other mobile sources as new emission controls go into effect and to the anticipated activity growth for ocean transportation. Without new controls, we anticipate the contribution of Category 3 engines to national emission inventories to increase to about 24 percent, 34 percent, and 93 percent of mobile source NO_X, $PM_{2.5}$, and SO_X emissions, respectively in 2020, growing to 40 percent, 48 percent, and 95 percent respectively in 2030. The coordinated emission control strategy will lead to significant reductions in these emissions and important benefits to public health.

The evolution of EPA's strategy to control mobile source diesel emissions has followed a technology progression, beginning with the application of high-efficiency advanced aftertreatment approaches and lower sulfur fuel requirements first to highway vehicles, then to nonroad engines and equipment, followed by locomotives and smaller marine diesel engines. The benefits of this approach include maximizing air quality benefits by focusing on the largest populations of sources with the shortest service lives, allowing engine manufacturers to spread initial research and development costs over a larger population of engines, and allowing manufacturers to address the challenges of applying advanced emission controls on smaller engines first.

This approach also allowed us and the shipping community sufficient lead time to resolve technical issues with the use of advanced emission control technology and lower-sulfur fuel on the largest of these engines on vessels engaged in international trade. To that end, EPA has been working with engine manufacturers and other industry stakeholders for many years to identify and resolve challenges associated with applying advanced diesel engine technology to Category 3 engines to achieve significant NO_X emission reductions and using lower-sulfur fuels to achieve significant PM and SO_X emission reductions. This work was fundamental in developing the emission limits for Category 3 engines that we are finalizing in this action and informed the position advocated by the United States in the international negotiations for more stringent tiers of international engine emission limits.

Our coordinated strategy to control emissions from ocean-going vessels consists of actions at both the national and international levels. It includes: (1) The engine and fuel controls we are finalizing in this action under our Clean Air Act authority; (2) the proposal [2] submitted by the U.S. Government to the International Maritime Organization (IMO) to amend Annex VI of the

[1] This final rule generally applies to vessels with the largest marine diesel engines, which are called Category 3 engines in our regulations. In this preamble, we often refer to vessels using these engines as Category 3 vessels. We also refer to them as ocean-going vessels although this intended to be only a descriptive term. While the large majority of these vessels operate in the oceans, some operate solely in our internal waters such as in the Great Lakes. Therefore, we do not use the term ocean-going vessels to exclude the few vessels with Category 3 engines that operate only in fresh-water lakes or rivers or to exclude ocean-going vessels with Category 2 or Category 1 engines, but rather to reflect the way the vessels being regulated are more commonly known to the general public. Note also that, pursuant to 40 CFR 1043 which implements APPS, the fuel requirements described in this rule, unless otherwise specified, generally apply also to fuel used in gas turbines and steam boilers on marine vessels.

[2] *Proposal to Designate an Emission Control Area for Nitrogen Oxides, Sulphur Oxides and Particulate Matter,* Submitted by the United States and Canada. IMO Document MEPC59/6/5, 27 March, 2009. A copy of this document can be found at *http://www.epa.gov/otaq/regs/nonroad/marine/ci/mepc-59-eca-proposal.pdf.*

International Convention for the Prevention of Pollution from Ships (MARPOL Annex VI) to designate U.S. coasts as an Emission Control Area (ECA) [3] in which all vessels, regardless of flag, would be required to meet the most stringent engine and marine fuel sulfur requirements in Annex VI; and (3) the new engine emission and fuel sulfur limits contained in the amendments to Annex VI that are applicable to all vessels regardless of flag through the Act to Prevent Pollution from Ships (APPS), as well as clarification on implementation of those standards, application to domestic and foreign-flagged vessels in internal waters, and application to nonparty foreign-flagged vessels.

The amendments to APPS to incorporate Annex VI require compliance with MARPOL Annex VI by U.S. and foreign vessels that enter U.S. ports or operate in U.S. waters. In light of this, we are deciding not to revisit our existing approach with respect to foreign vessels in this rule. However, the MARPOL Annex VI Tier III NO_X and stringent fuel sulfur limits are geographically based and would not become effective absent designation of U.S. coasts as an ECA. As noted above, the United States forwarded a proposal to IMO to amend Annex VI to designate U.S. coasts as an ECA. This proposal to amend Annex VI was approved in principle and circulated for adoption. We expect the proposed ECA amendment will be adopted at MEPC 60, in March 2010. If this amendment is not adopted in a timely manner by IMO, we intend to take supplemental action to control emissions from vessels that affect U.S. air quality.

Our coordinated strategy for ocean-going vessels will significantly reduce emissions from foreign and domestic vessels that affect U.S. air quality, and the impacts on human health and welfare will be substantial. We project that by 2030 this program will reduce annual emissions of NO_X, SO_X, and particulate matter (PM) by 1.2 million, 1.3 million, and 143,000 tons, respectively, and the magnitude of these reductions would continue to grow well beyond 2030.[4] These reductions are estimated to annually prevent between 12,000 and 30,000 PM-related premature deaths, between 210 and 920 ozone-related premature deaths, 1,400,000 work days lost, and 9,600,000 minor restricted-activity days. The estimated annual monetized health benefits of this coordinated strategy in 2030 would be between $110 and $270 billion, assuming a 3-percent discount rate (or between $99 and $240 billion assuming a 7-percent discount rate). The annual cost of the overall program in 2030 would be significantly less, at approximately $3.1 billion.

A. What Are the Elements of EPA's Coordinated Strategy for Ships?

Our coordinated strategy for ocean-going vessels, including the emission standards finalized in this action under the Clean Air Act, continues EPA's program to progressively apply advanced aftertreatment emission control standards to diesel engines and reflects the evolution of this technology from the largest inventory source (highway engines), to land-based nonroad engines, to locomotives and marine diesel engines up to 30 liters per cylinder. The results of these forerunner programs are dramatic reductions in NO_X and $PM_{2.5}$ emissions on the order of 80 to 90 percent, which will lead to significant improvements in national air quality.

The combination of controls in the coordinated strategy for ocean-going vessels will provide significant reductions in $PM_{2.5}$, NO_X, SO_X, and toxic compounds, both in the near term (as early as 2011) and in the long term. These reductions will be achieved in a manner that: (1) Is very cost effective compared to additional controls on portside vehicles and equipment and other land-based mobile sources that are already subject to stringent technology-forcing emission standards; (2) leverages the international program adopted by IMO to ensure that all ships that operate in areas that affect U.S. air quality are required to use stringent emission control technology; and (3) provides the lead time needed to deal with the engineering design workload that is involved in applying advanced high-efficiency aftertreatment technology to these very large engines. Overall, the coordinated strategy constitutes a comprehensive program that addresses the problems caused by ocean-going vessel emissions from both a near-term and long-term perspective. It does this while providing for an orderly and cost-effective implementation schedule for the vessel owners and manufacturers, and in a way that is consistent with the international requirements for these vessels.

The human health and welfare impacts of emissions from Category 3 vessels, along with estimates of their contribution to national emission inventories, are described in Section II. The new tiers of engine emission standards under the Clean Air Act for addressing these emissions, and our justifications for them, are discussed in Section III. Section IV contains changes to our existing marine diesel fuel program. In Section V, we describe a key component of the coordinated strategy: The recently-submitted proposal to amend MARPOL Annex VI to designate U.S. coasts as an ECA, as well as the IMO amendment process.

In addition to the new emission limits, we are finalizing several revisions to our Clean Air Act testing, certification, and compliance provisions to better ensure emission control in use. We are also finalizing regulations for the purpose of implementing MARPOL Annex VI pursuant to the Act to Prevent Pollution from Ships (33 U.S.C. 1901 *et seq.*). These revisions are described in Section VI. Sections VII and VIII present the estimated costs and benefits of our coordinated program to address OGV emissions.

(1) What CAA Standards Is EPA Finalizing?

We are finalizing new tiers of Category 3 marine diesel engine standards under our Clean Air Act authority, as well as certain revisions to our marine fuel program.

Category 3 Engine Standards. Previous standards for Category 3 engines were adopted in 2003. These Tier 1 standards are equivalent to the first tier of MARPOL Annex VI NO_X limits and require the use of control technology comparable to that used by nonroad engines in the early 1990s. We did not adopt PM standards at that time because the vast majority of PM emissions from Category 3 engines are the result of the sulfur content of the residual fuel they use and because of measurement issues.[5] The combination of the engine and fuel standards we are finalizing and the U.S. Government proposal for ECA designation will

[3] For the purpose of this final rule, the term "ECA" refers to both the ECA and internal U.S. waters. Refer to Section VI.B. for a discussion of the application of the fuel sulfur and engine emission limits to U.S. internal waters through APPS.

[4] These emission inventory reductions include reductions from ships operating within the 24 nautical mile regulatory zone off the California Coastline, beginning with the effective date of the Coordinated Strategy program elements. The California regulation contains a provision that would sunset the requirements of the rule if the Federal program achieves equivalent emission reductions. *See http://www.arb.ca.gov/regact/2008/fuelogv08/fro13.pdf* at 13 CCR 2299.2(j)(1).

[5] As explained in the proposed rule leading to the 2003 final rule, there were concerns about measuring PM from Category 3 marine engines (67 FR 37569, May 29, 2002). Specifically, established PM test methods showed unacceptable variability when sulfur levels exceed 0.8 weight percent. However, as described in Section VI, we now believe these measurement issues have been resolved.

require all vessels that operate in coastal areas that affect U.S. air quality to control emissions of NO_X, SO_X, and PM.

We are revising our engine requirements under the Clean Air Act to include two additional tiers of NO_X standards for new Category 3 marine diesel engines installed on vessels flagged or registered in the United States. The near-term Tier 2 standards will apply beginning in 2011 and will require more efficient use of engine technologies being used today, including engine timing, engine cooling, and advanced computer controls. The long-term Tier 3 standards will apply beginning in 2016 and will require the use of more advanced technology such as selective catalytic reduction.

Because much of the operation of U.S. vessels occurs in areas that will have little, if any, impact on U.S. air quality, our Clean Air Act program will allow the use of alternative emission control devices (AECDs) that will permit a ship to meet less stringent requirements on the open sea. The use of these devices will be subject to certain restrictions, including a requirement that the AECD not disable emission controls while operating in areas where emissions can reasonably be expected to adversely affect U.S. air quality, and that the engine is equipped with a NO_X emission monitoring device. In addition, the engine will be required to meet the Tier 2 NO_X limits when the AECD is implemented, and an AECD will not be allowed on any Tier 2 or earlier engine.

In addition to the NO_X emission limits, we are finalizing standards for emissions of hydrocarbons (HC) and carbon monoxide (CO) from new Category 3 engines. As explained in Section III.B.1, below, we are not setting a standard for PM emissions for Category 3 engines. However, significant PM emissions control will be achieved through the ECA fuel sulfur requirements that will apply through APPS to ships that operate in areas that affect U.S. air quality. We are also requiring engine manufacturers to measure and report PM emissions pursuant to our authority in section 208 of the Clean Air Act.

Fuel Sulfur Limits. We are finalizing fuel sulfur limits under section 211(c) of the Clean Air Act that match the limits that apply under Annex VI in ECAs. First, we are revising our existing diesel fuel program to allow for the production and sale of 1,000 ppm sulfur fuel for use in Category 3 marine vessels. This will allow production and distribution of fuel consistent with the new sulfur limits that will become applicable, under Annex VI, in ECAs beginning in 2015. Our current diesel fuel program sets a sulfur limit of 15 ppm that will be fully phased-in by December 1, 2014 for land-based nonroad, locomotive, and marine (NRLM) diesel fuel produced for distribution, sale and use in the United States. Without this change to our existing diesel fuel regulations, fuel with a sulfur content of up to 1,000 ppm could be used in Category 3 marine vessels, but it could not be legally produced in the U.S. after June 1, 2014. Second, we are generally forbidding the production and sale of fuel oil with a sulfur content above 1,000 ppm for use in the waters within the proposed ECA (*see* Note 3, *supra*). The exception to this is if the vessel uses alternative devices, procedures, or compliance methods that achieve equivalent emission control as operating on 1,000 ppm sulfur fuel.

(2) What Is the U.S. Government Proposal for Designation of an Emission Control Area?

MARPOL Annex VI contains international standards for air emissions from ships, including NO_X, SO_X, and PM emissions. The Annex VI NO_X and SO_X/PM limits are set out in Table I–1. Annex VI was adopted by the Parties in 1997 but did not go into force until 2005, after it was ratified by fifteen countries representing at least 50 percent of the world's merchant shipping tonnage. These Annex VI NO_X standards currently apply to all engines above 130 kW installed on a ship constructed on or after January 1, 2000 and reduce NO_X emissions by about 30 percent from uncontrolled levels. As originally adopted, Annex VI included two fuel sulfur limits: A global limit of 45,000 ppm and a more stringent 15,000 ppm limit for SO_X Emission Control Areas (SECAs). This approach ensures that the cleanest fuel is used in areas that demonstrate a need for additional SO_X reductions, while retaining the ability of ships to use higher-sulfur residual fuel on the open ocean.

Annex VI was amended in October 2008, adding two tiers of NO_X limits (Tier II and Tier III) and two sets of fuel sulfur standards.[6] These amendments will enter into force on July 1, 2010. The most stringent NO_X and fuel sulfur limits are regionally based and will apply only in designated ECAs.

TABLE I–1—ANNEX VI NO_X EMISSION STANDARDS AND FUEL SULFUR LIMITS

			Less than 130 RPM	130–2,000 RPM[a]	Over 2,000 RPM
NO_X g/kW-hr	Tier I	[b] 2004	17.0	$45.0 \cdot n^{(-0.20)}$	9.8
	Tier II	2011	14.4	$44.0 \cdot n^{(-0.23)}$	7.7
	Tier III	2016	3.4	$9.0 \cdot n^{(-0.23)}$	2.0
		Global		ECA	
Fuel Sulfur		2004	[c] 45,000 ppm	2005	[c] 15,000 ppm
		2012	[c] 35,000 ppm	2010	[c] 10,000 ppm
		2020	[c d] 5,000 ppm	2015	[c] 1,000 ppm

Notes:
[a] Applicable standards are calculated from n (maximum in-use engine speed in revolutions per minute (rpm)), rounded to one decimal place.
[b] Tier 1 NO_X standards apply for engines originally manufactured after 2004, and proposed also to certain earlier engines.
[c] Annex VI standards are in terms of percent sulfur. Global sulfur limits are 4.5%; 3.5%; 0.5%. ECA sulfur limits are 1.5%; 1.0%; 0.1%.
[d] Subject to a feasibility review in 2018; may be delayed to 2025.

To realize the benefits from the MARPOL Annex VI Tier III NO_X and most stringent fuel sulfur controls, areas must be designated as Emission Control Areas. On July 17, 2009, the IMO approved in principle a U.S.-Canada proposal to amend MARPOL Annex VI to designate North American coastal waters as an ECA (referred to as the

[6] Note that the MARPOL Annex VI standards are referred to as Tiers I, II, and III; EPA's Category 3 emission standards are referred to as Tiers 1, 2, and 3.

"U.S./Canada ECA" or the "North American ECA").[7] In addition, France has joined the ECA proposal on behalf of the Saint Pierre and Miquelon archipelago. A description of this proposal and the IMO ECA designation process is set out in Section V. ECA designation would ensure that ships that affect U.S. air quality meet stringent NO_X and fuel sulfur requirements while operating within 200 nautical miles of U.S. coasts. We expect the North American proposal will be adopted by the Parties to MARPOL Annex VI in March 2010, entering into force as early as 2012. If, however, the proposed amendment is not adopted in a timely manner, we intend to take supplemental action to control harmful emissions from vessels that affect U.S. air quality.

(3) Regulations To Implement Annex VI

The United States became a party to MARPOL Annex VI by depositing its instrument of ratification with IMO on October 8, 2008. This was preceded by the President signing into law the Maritime Pollution Prevention Act of 2008 (Pub. L. 110–280) on July 21, 2008, that contains amendments to the Act to Prevent Pollution from Ships (33 U.S.C. 1901 *et seq.*). These APPS amendments require compliance with Annex VI by all persons subject to the engine and vessel requirements of Annex VI. The amendments also authorize the U.S. Coast Guard and EPA to enforce the provisions of Annex VI against domestic and foreign vessels and to develop implementing regulations, as necessary. In addition, APPS gives EPA sole authority to certify engines installed on U.S. vessels to the Annex VI requirements. This final rule contains regulations codifying the Annex VI requirements and regulations to implement several aspects of the Annex VI engine and fuel regulations, which we are finalizing under that APPS authority. Our cost and benefit analyses for the coordinated strategy include the costs for U.S. vessels to implement the requirements of this MARPOL Annex VI program, including requirements that will apply upon entry into force of the North American ECA.

(4) Technical Amendments

The finalized regulations also include technical amendments to our motor vehicle and nonroad engine regulations. Many of these changes involve minor adjustments or corrections to our recently finalized rule for new nonroad spark-ignition engines, or adjustment to other regulatory provisions to align with this recent final rule.

(5) Summary

The emission control requirements in our coordinated strategy are the MARPOL Annex VI global Tier II NO_X standards included in the amendments to Annex VI and the ECA Tier III NO_X limits and fuel sulfur limits that will apply when the U.S. coasts are designated as an ECA through an additional amendment to Annex VI. The Annex VI requirements, including the future ECA requirements, will be enforceable for U.S. and foreign vessels operating in U.S. waters through the Act to Prevent Pollution from Ships.

We are also adopting the NO_X emission standards for Category 3 engines on U.S. vessels under section 213 of the Clean Air Act.

Finally, we are adopting additional requirements that are not part of the Annex VI program or the ECA. These are (1) limits on hydrocarbon and carbon monoxide emissions for Category 3 engines; (2) a PM measurement requirement to obtain data on PM emissions from engines operating on distillate fuel; and (3) changes to our diesel fuel program under the Clean Air Act to allow production and sale of ECA-compliant fuel. We are also changing our emission control program for smaller marine diesel engines to harmonize with the Annex VI NO_X requirements for U.S. vessels that operate internationally.

B. Why Is EPA Making This Rule?

(1) Category 3 Engines Contribute to Serious Air Quality Problems

Category 3 engines generate significant emissions of $PM_{2.5}$, SO_X, and NO_X that contribute to nonattainment of the National Ambient Air Quality Standards (NAAQS) for $PM_{2.5}$ and ground-level ozone (smog). NO_X and SO_X are both precursors to secondary $PM_{2.5}$ formation. Both $PM_{2.5}$ and NO_X adversely affect human health. NO_X is a key precursor to ozone as well. NO_X, SO_X and $PM_{2.5}$ emissions from ocean-going vessels also cause harm to public welfare, including contributing to deposition of nitrogen and sulfur, visibility impairment and other harmful environmental impacts across the U.S.

The health and environmental effects associated with these emissions are a classic example of a negative externality (an activity that imposes uncompensated costs on others). With a negative externality, an activity's social cost (the costs borne to society imposed as a result of the activity taking place) is not taken into account in the total cost of producing goods and services. In this case, as described in this section below and in Section II, emissions from ocean-going vessels impose public health and environmental costs on society, and these added costs to society are not reflected in the costs of providing the transportation services. The market system itself cannot correct this externality because firms in the market are rewarded for minimizing their production costs, including the costs of pollution control. In addition, firms that may take steps to use equipment that reduces air pollution may find themselves at a competitive disadvantage compared to firms that do not. To correct this market failure and reduce the negative externality from these emissions, we are setting a cap on the rate of emission production from these sources. EPA's coordinated strategy for ocean-going vessels will accomplish this since both domestic and foreign ocean-going vessels will be required to reduce their emissions to a technologically feasible limit.

Emissions from ocean-going vessels account for substantial portions of the country's ambient $PM_{2.5}$, SO_X and NO_X levels. We estimate that in 2009 these engines account for about 80 percent of mobile source sulfur dioxide (SO_2) emissions, 10 percent of mobile source NO_X emissions and about 24 percent of mobile source diesel $PM_{2.5}$ emissions. Emissions from ocean-going vessels are expected to dominate the mobile source inventory in the future, due to both the expected emission reductions from other mobile sources as a result of more stringent emission controls and due to growth in the demand for ocean transportation services. By 2030, the coordinated strategy will reduce annual SO_2 emissions from these diesel engines by 1.3 million tons, annual NO_X emissions by 1.2 million tons, and $PM_{2.5}$ emissions by 143,000 tons, and those reductions will continue to grow beyond 2030 as fleet turnover to the clean engines continues. While a share of these emissions occur at sea, our air quality modeling results described in Section II show they have a significant impact on ambient air quality far inland.

Both ozone and $PM_{2.5}$ are associated with serious public health problems, including premature mortality, aggravation of respiratory and cardiovascular disease (as indicated by increased hospital admissions and emergency room visits, school absences, lost work days, and restricted activity days), changes in lung function and increased respiratory symptoms, altered

[7] *Proposal to Designate an Emission Control Area for Nitrogen Oxides, Sulphur Oxides and Particulate Matter, Submitted by the United States and Canada.* IMO Document MEPC59/6/5, 27 March 2009. A copy of this document can be found at *http://www.epa.gov/otaq/regs/nonroad/marine/ci/mepc-59-eca-proposal.pdf.*

respiratory defense mechanisms, and chronic bronchitis. Diesel exhaust is of special public health concern, and since 2002 EPA has classified it as likely to be carcinogenic to humans by inhalation at environmental exposures. Recent studies are showing that populations living near large diesel emission sources such as major roadways, rail yards, and marine ports are likely to experience greater diesel exhaust exposure levels than the overall U.S. population, putting them at greater health risks.[8] [9] [10]

EPA recently updated its initial screening-level analysis [11] of selected marine port areas to better understand the populations that are exposed to diesel particulate matter emissions from these facilities.[12] [13] [14] [15] This screening-level analysis focused on a representative selection of national marine ports.[16] Of the 45 marine ports selected, the results indicate that at least 18 million people, including a disproportionate number of low-income households, African-Americans, and Hispanics, live in the vicinity of these facilities and are being exposed to ambient diesel PM levels that are 2.0 μg/m^3 and 0.2 μg/m^3 above levels found in areas further from these facilities. Considering only ocean-going marine engine diesel PM emissions, the results indicate that 6.5 million people are exposed to ambient diesel particulate matter (DPM) levels that are 2.0 μg/m^3 and 0.2 μg/m^3 above levels found in areas further from these facilities. Because those populations exposed to diesel PM emissions from marine ports are more likely to be low-income and minority residents, these populations would benefit from the controls being proposed in this action. The detailed findings of this study are available in the public docket for this rulemaking.

Even outside port areas, millions of Americans continue to live in areas that do not meet existing air quality standards today. With regard to $PM_{2.5}$ nonattainment, in 2005 EPA designated 39 nonattainment areas for the 1997 $PM_{2.5}$ NAAQS (70 FR 943, January 5, 2005). These areas are composed of 208 full or partial counties with a total population exceeding 88 million. The 1997 $PM_{2.5}$ NAAQS was recently revised and the 2006 $PM_{2.5}$ NAAQS became effective on December 18, 2006. As of December 22, 2008, there are 58 2006 $PM_{2.5}$ nonattainment areas composed of 211 full or partial counties. These numbers do not include individuals living in areas that may fail to maintain or achieve the $PM_{2.5}$ NAAQS in the future. Currently, ozone concentrations exceeding the 8-hour ozone NAAQS occur over wide geographic areas, including most of the nation's major population centers. As of December 2008, there are approximately 132 million people living in 57 areas (293 full or partial counties) designated as not in attainment with the 8-hour ozone NAAQS. These numbers do not include people living in areas where there is a potential that the area may fail to maintain or achieve the 8-hour ozone NAAQS.

In addition to public health impacts, there are serious public welfare and environmental impacts associated with $PM_{2.5}$ and ozone emissions. Specifically, NO_X and SO_X emissions from diesel engines contribute to the acidification, nitrification, and eutrophication of water bodies. NO_X, SO_X and direct emissions of $PM_{2.5}$ can contribute to the substantial impairment of visibility in many parts of the U.S. where people live, work, and recreate, including national parks, wilderness areas, and mandatory class I Federal areas.[17] The deposition of airborne particles can also reduce the aesthetic appeal of buildings and culturally important articles through soiling, and can contribute directly (or in conjunction with other pollutants) to structural damage by means of corrosion or erosion. Finally, ozone causes damage to vegetation which leads to crop and forestry economic losses, as well as harm to national parks, wilderness areas, and other natural systems.

EPA has already adopted many emission control programs that are expected to reduce ambient $PM_{2.5}$ and ozone levels, including the Nonroad Spark Ignition Engine rule (73 FR 59034, Oct 8, 2008), the Locomotive and Marine Diesel Engine Rule (73 FR 25098, May 6, 2008), the Clean Air Interstate Rule (CAIR) (70 FR 25162, May 12, 2005), the Clean Air Nonroad Diesel Rule (69 FR 38957, June 29, 2004), the Heavy Duty Engine and Vehicle Standards and Highway Diesel Fuel Sulfur Control Requirements (66 FR 5002, Jan. 18, 2001), and the Tier 2 Vehicle and Gasoline Sulfur Program (65 FR 6698, Feb. 10, 2000). The additional $PM_{2.5}$, SO_X, and NO_X emission reductions resulting from the coordinated approach described in this action will assist States in attaining and maintaining the $PM_{2.5}$ and ozone NAAQS near term and in the decades to come.

Our air quality modeling projects that in 2020 at least 13 counties with about 30 million people may violate the 1997 standards for $PM_{2.5}$ and 50 counties with about 50 million people may violate the 2008 standards for ozone. These numbers likely underestimate the impacted population since they do not include the people who live in areas which do not meet the 2006 $PM_{2.5}$ NAAQS. In addition, these numbers do not include the additional 13 million people in 12 counties who live in areas that have air quality measurements within 10 percent of the 1997 $PM_{2.5}$ NAAQS and the additional 80 million people in 135 counties who live in areas

[8] U. S. EPA (2004). *Final Regulatory Impact Analysis: Control of Emissions from Nonroad Diesel Engines, Chapter 3.* Report No. EPA420–R–04–007. *http://www.epa.gov/nonroad-diesel/2004fr.htm#ria.*

[9] State of California Air Resources Board. (2004). *Roseville Rail Yard Study.* Sacramento, CA: California EPA, California Air Resources Board (CARB). Stationary Source Division. This document is available electronically at: *http://www.arb.ca.gov/diesel/documents/rrstudy.htm.*

[10] Di, P., Servin, A., Rosenkranz, K., Schwehr, B., Tran, H., (2006). *Diesel Particulate Matter Exposure Assessment Study for the Ports of Los Angeles and Long Beach.* Sacramento, CA: California EPA, California Air Resources Board (CARB). Retrieved March 19, 2009 from *http://www.arb.ca.gov/regact/marine2005/portstudy0406.pdf.*

[11] This type of screening-level analysis is an inexact tool and not appropriate for regulatory decision-making; it is useful in beginning to understand potential impacts and for illustrative purposes. Additionally, the emissions inventories used as inputs for the analyses are not official estimates and likely underestimate overall emissions because they are not inclusive of all emission sources at the individual ports in the sample.

[12] ICF International. September 28, 2007. Estimation of diesel particulate matter concentration isopleths for marine harbor areas and rail yards. Memorandum to EPA under Work Assignment Number 0–3, Contract Number EP–C–06–094. This memo is available in Docket EPA–HQ–OAR–2007–0121.

[13] ICF International. September 28, 2007. Estimation of diesel particulate matter population exposure near selected harbor areas and rail yards. Memorandum to EPA under Work Assignment Number 0–3, Contract Number EP–C–06–094. This memo is available in Docket EPA–HQ–OAR–2007–0121.

[14] ICF International, December 10, 2008. Estimation of diesel particulate matter population exposure near selected harbor areas with revised harbor emissions. Memorandum to EPA under Work Assignment Number 2–9. Contract Number EP–C–06–094. This memo is available in Docket EPA–HQ–OAR–2007–0121.

[15] ICF International. December 1, 2008. Estimation of diesel particulate matter concentration isopleths near selected harbor areas with revised emissions. Memorandum to EPA under Work Assignment Number 1–9. Contract Number EP–C–06–094. This memo is available in Docket EPA–HQ–OAR–2007–0121.

[16] The Agency selected a representative sample from the top 150 U.S. ports including coastal and Great Lake ports.

[17] These areas are defined in section 162 of the Act as those national parks exceeding 6,000 acres, wilderness areas and memorial parks exceeding 5,000 acres, and all international parks which were in existence on August 7, 1977. Section 169 of the Clean Air Act provides additional authority to address existing visibility impairment and prevent future visibility impairment in the 156 national parks, forests and wilderness areas categorized as mandatory class I Federal areas.

that have air quality measurements within 10% of the 2008 ozone NAAQS. The emission reductions resulting from this coordinated strategy will assist these and other States to both attain and maintain the $PM_{2.5}$ and ozone NAAQS.

State and local governments are working to protect the health of their citizens and comply with requirements of the Clean Air Act. As part of this effort, they recognize the need to secure additional major reductions in diesel $PM_{2.5}$, SO_X and NO_X emissions by undertaking numerous State level actions, while also seeking Agency action, including the Category 3 engine standards being finalized in this final rule and the U.S. proposal to IMO to amend Annex VI to designate U.S. coastal areas as an ECA, and related certification and fuel provisions under the Clean Air Act to complement that ECA proposal. EPA's coordinated strategy to reduce OGV emissions through engine emission controls and fuel sulfur limits will play a critical part in State efforts to attain and maintain the NAAQS through the next two decades.

In addition to regulatory programs, the Agency has a number of innovative programs that partner government, industry, and local communities together to help address challenging air quality problems. Under the National Clean Diesel Campaign, EPA promotes a variety of emission reduction strategies such as retrofitting, repairing, replacing and repowering engines, reducing idling and switching to cleaner fuels.

In 2008, Congress appropriated funding for the Diesel Emission Reduction Program under the Energy Policy Act of 2005 (EPAct 2005) to reduce emissions from heavy-duty diesel engines in the existing fleet. The EPAct 2005 directs EPA to break the funding into two different components: a National competition and a State allocation program. The National Program, with 70 percent of the funding, consists of three separate competitions: (1) The National Clean Diesel Funding Assistance Program; (2) the National Clean Diesel Emerging Technologies Program; and (3) the SmartWay Clean Diesel Finance Program. The State Clean Diesel Grant and Loan Program utilizes the remaining 30 percent of the funding. In the first year of the program, EPA awarded 119 grants totaling $49.2 million for diesel emission reduction projects and programs across the country for cleaner fuels, verified technologies, and certified engine configurations.

Through $300 million in funding provided to the Diesel Emission Reduction Program under the American Reinvestment and Recovery Act of 2009, EPA will promote and preserve jobs while improving public health and achieving significant reductions in diesel emissions.

Furthermore, EPA's National Clean Diesel Campaign, through its Clean Ports USA program, is working with port authorities, terminal operators, shipping, truck, and rail companies to promote cleaner diesel technologies and strategies through education, incentives, and financial assistance for diesel emission reductions at ports. Part of these efforts involves clean diesel programs that can further reduce emissions from the existing fleet of diesel engines. Finally, many of the companies operating in States and communities suffering from poor air quality have voluntarily entered into Memoranda of Understanding (MOUs) designed to ensure that the cleanest technologies are used first in regions with the most challenging air quality issues.

Taken together, these voluntary approaches can augment the coordinated strategy and help States and communities achieve larger reductions sooner in the areas of our country that need them the most. The Agency remains committed to furthering these programs and others so that all of our citizens can breathe clean healthy air.

(2) Advanced Emission Technology Solutions Are Available

Air pollution from marine diesel exhaust is a challenging problem. However, we believe manufacturers can apply a combination of existing and new technologies to meet the emission standards we are adopting in this final rule. Optimizing air intake fuel injection systems can substantially reduce engine-out emissions. Further NO_X control can be achieved with advanced technology such as aftertreatment devices with high-efficiency catalysts. As discussed in greater detail in Section III.C, the development of these aftertreatment technologies for highway and nonroad diesel applications has advanced rapidly in recent years, so that very large emission reductions in NO_X emissions can be achieved. Manufacturers might also deploy other advanced technologies such as water-based in-cylinder controls to reduce NO_X emissions.

While aftertreatment technologies can be sensitive to sulfur, their use will be required only in ECAs designated under MARPOL Annex VI, and they are expected to be able to operate on ECA fuel meeting a 1,000 ppm fuel sulfur. With the lead time available and the assurance of 1,000 ppm fuel for ocean-going vessels in 2015, as would be required through ECA designation for U.S. coasts, we are confident the application of advanced NO_X technology to Category 3 marine engines will proceed at a reasonable rate of progress and will result in systems capable of achieving the finalized standards on schedule. Use of this lower sulfur fuel will also result in substantial PM emission reductions, since PM emissions from Category 3 engines come mostly from the use of high sulfur residual fuel. Note that vessels may be equipped with alternative devices, procedures, or compliance methods provided they achieve equivalent emissions reductions.

C. Statutory Basis for Action

Authority for the actions proposed in this documents is granted to the Environmental Protections Agency by sections 114, 203, 205, 206, 207, 208, 211, 213, 216, and 301(a) of the Clean Air Act as amended in 1990 (42 U.S.C. 7414, 7522, 7524, 7525, 7541, 7542, 7545, 7547, 7550 and 7601(a)), and by sections 1901–1915 of the Act to Prevent Pollution from Ships (33 U.S.C. 1909 *et seq.*).

(1) Clean Air Act Basis for Action

EPA is proposing the fuel requirements pursuant to its authority in section 211(c) of the Clean Air Act, which allows EPA to regulate fuels that contribute to air pollution that endangers public health or welfare (42 U.S.C. 7545(c)). As discussed previously in EPA's Clean Air Nonroad Diesel rule (69 FR 38958) and in Section II, the combustion of high sulfur diesel fuel by nonroad, locomotive, and marine diesel engines contributes to air quality problems that endanger public health and welfare. Section II also discusses the significant contribution to these air quality problems by Category 3 marine vessels. Additional support for the procedural and enforcement-related aspects of the fuel controls in the final rule, including the recordkeeping requirements, comes from Clean Air Act sections 114(a) and 301(a) (42 U.S.C. sections 7414(a) and 7601(a)).

EPA is finalizing emission standards for new Category 3 marine diesel engines pursuant to its authority under section 213(a)(3) of the Clean Air Act, which directs the Administrator to set standards regulating emissions of NO_X, volatile organic compounds (VOCs), or CO for classes or categories of engines, such as marine diesel engines, that contribute to ozone or carbon monoxide concentrations in more than one nonattainment area. These "standards shall achieve the greatest degree of

emission reduction achievable through the application of technology which the Administrator determines will be available for the engines or vehicles, giving appropriate consideration to cost, lead time, noise, energy, and safety factors associated with the application of such technology."

EPA is finalizing a PM measurement requirement for new Category 3 marine diesel engines pursuant to its authority under section 208, which requires manufacturers and other persons subject to Title II requirements to "provide information the Administrator may reasonably require * * * to otherwise carry out the provisions of this part * * *"

EPA is also acting under its authority to implement and enforce the Category 3 marine diesel emission standards. Section 213(d) provides that the standards EPA adopts for marine diesel engines "shall be subject to Sections 206, 207, 208, and 209" of the Clean Air Act, with such modifications that the Administrator deems appropriate to the regulations implementing these sections." In addition, the marine standards "shall be enforced in the same manner as [motor vehicle] standards prescribed under section 202" of the Act. Section 213(d) also grants EPA authority to promulgate or revise regulations as necessary to determine compliance with and enforce standards adopted under section 213.

As required under section 213(a)(3), we believe the evidence provided in Section III.C and in Chapter 4 of Final Regulatory Impact Analysis (RIA) indicates that the stringent NO_X emission standards finalized in this final rule for newly built Category 3 marine diesel engines are feasible and reflect the greatest degree of emission reduction achievable through the use of technology that will be available in the model years to which they apply. We have given appropriate consideration to costs in finalizing these standards. Our review of the costs and cost-effectiveness of these standards indicate that they are reasonable and comparable to the cost-effectiveness of other mobile source emission reduction strategies that have been required. We have also reviewed and given appropriate consideration to the energy factors of this rule in terms of fuel efficiency as well as any safety and noise factors associated with these standards.

The information in Section II and Chapter 2 of the Final Regulatory Impact Analysis regarding air quality and public health impacts provides strong evidence that emissions from Category 3 marine diesel engines significantly and adversely impact public health or welfare. EPA has already found in previous rules that emissions from new marine diesel engines contribute to ozone and CO concentrations in more than one area which has failed to attain the ozone and carbon monoxide NAAQS (64 FR 73300, December 29, 1999).

The NO_X and PM emission reductions achieved through the coordinated strategy will be important to States' efforts to attain and maintain the Ozone and the $PM_{2.5}$ NAAQS in the near term and in the decades to come, and will significantly reduce the risk of adverse effects to human health and welfare.

(2) APPS Basis for Action

EPA is finalizing regulations to implement MARPOL Annex VI pursuant to its authority in section 1903 of the Act to Prevent Pollution from Ships (APPS). Section 1903 gives the Administrator the authority to prescribe any necessary or desired regulations to carry out the provisions of Regulations 12 through 19 of Annex VI.

The Act to Prevent Pollution from Ships implements Annex VI and makes those requirements enforceable domestically. However, certain clarifications are necessary for implementing Regulation 13 and the requirements of the NO_X Technical Code with respect to issuance of Engine International Air Pollution Prevention (EIAPP) certificates and approval of alternative compliance methods. Clarification is also needed with respect to the application of the Annex VI requirements to certain U.S. and foreign vessels that operate in U.S. waters.

II. Air Quality, Health and Welfare Impacts

The coordinated strategy will significantly reduce emissions of NO_X, PM, and SO_X from ocean-going vessels. Emissions of these compounds contribute to PM and ozone nonattainment and environmental effects including deposition, visibility impairment and harm to ecosystems from ozone. In addition diesel particulate matter is associated with a host of adverse health effects, including cancer.

This section summarizes the general health and welfare effects of these emissions and the modeled projections of changes in air quality due to the coordinated strategy. Interested readers are encouraged to refer to the RIA for more in-depth discussions.

A. Public Health Impacts

(1) Particulate Matter

Particulate matter is a generic term for a broad class of chemically and physically diverse substances. It can be principally characterized as discrete particles that exist in the condensed (liquid or solid) phase spanning several orders of magnitude in size. Since 1987, EPA has delineated that subset of inhalable particles small enough to penetrate to the thoracic region (including the tracheobronchial and alveolar regions) of the respiratory tract (referred to as thoracic particles). Current NAAQS use $PM_{2.5}$ as the indicator for fine particles (with $PM_{2.5}$ referring to particles with a nominal mean aerodynamic diameter less than or equal to 2.5 μm), and use PM_{10} as the indicator for purposes of regulating the coarse fraction of PM_{10} (referred to as thoracic coarse particles or coarse-fraction particles; generally including particles with a nominal mean aerodynamic diameter greater than 2.5 μm and less than or equal to 10 μm, or $PM_{10-2.5}$). Ultrafine particles are a subset of fine particles, generally less than 100 nanometers (0.1 μm) in aerodynamic diameter.

Fine particles are produced primarily by combustion processes and by transformations of gaseous emissions (*e.g.,* SO_X, NO_X and VOC) in the atmosphere. The chemical and physical properties of $PM_{2.5}$ may vary greatly with time, region, meteorology, and source category. Thus, $PM_{2.5}$ may include a complex mixture of different pollutants including sulfates, nitrates, organic compounds, elemental carbon and metal compounds. These particles can remain in the atmosphere for days to weeks and travel hundreds to thousands of kilometers.

(a) Health Effects of PM

Scientific studies show ambient PM is associated with a series of adverse health effects. These health effects are discussed in detail in EPA's 2004 Particulate Matter Air Quality Criteria Document (PM AQCD) and the 2005 PM Staff Paper.[18] [19] [20] Further discussion of

[18] U.S. EPA (2004). *Air Quality Criteria for Particulate Matter.* Volume I EPA600/P–99/002aF and Volume II EPA600/P–99/002bF. Retrieved on March 19, 2009 from Docket EPA–HQ–OAR–2003–0190 at *http://www.regulations.gov/.*

[19] U.S. EPA (2005). *Review of the National Ambient Air Quality Standard for Particulate Matter: Policy Assessment of Scientific and Technical Information, OAQPS Staff Paper.* EPA–452/R–05–005a. Retrieved March 19, 2009 from *http://www.epa.gov/ttn/naaqs/standards/pm/data/pmstaffpaper_20051221.pdf.*

[20] The PM NAAQS is currently under review and the EPA is considering all available science on PM health effects, including information which has been published since 2004, in the development of the upcoming PM Integrated Science Assessment Document (ISA). A second draft of the PM ISA was completed in July 2009 and was submitted for

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health effects associated with PM can also be found in the RIA for this rule.

Health effects associated with short-term exposures (hours to days) to ambient PM include premature mortality, aggravation of cardiovascular and lung disease (as indicated by increased hospital admissions and emergency department visits), increased respiratory symptoms including cough and difficulty breathing, decrements in lung function, altered heart rate rhythm, and other more subtle changes in blood markers related to cardiovascular health.[21] Long-term exposure to $PM_{2.5}$ and sulfates has also been associated with mortality from cardiopulmonary disease and lung cancer, and effects on the respiratory system such as reduced lung function growth or development of respiratory disease. A new analysis shows an association between long-term $PM_{2.5}$ exposure and a subclinical measure of atherosclerosis.[22] [23]

Studies examining populations exposed over the long term (one or more years) to different levels of air pollution, including the Harvard Six Cities Study and the American Cancer Society Study, show associations between long-term exposure to ambient $PM_{2.5}$ and both all cause and cardiopulmonary premature mortality.[24] [25] [26] In addition, an extension of the American Cancer Society Study shows an association between $PM_{2.5}$ and sulfate concentrations and lung cancer mortality.[27]

(b) Health Effects of Diesel Particulate Matter

Marine diesel engines emit diesel exhaust (DE), a complex mixture composed of carbon dioxide, oxygen, nitrogen, water vapor, carbon monoxide, nitrogen compounds, sulfur compounds and numerous low-molecular-weight hydrocarbons. A number of these gaseous hydrocarbon components are individually known to be toxic, including aldehydes, benzene and 1,3-butadiene. The diesel particulate matter (DPM) present in DE consists of fine particles (< 2.5 μm), including a subgroup with a large number of ultrafine particles (< 0.1 μm). These particles have a large surface area which makes them an excellent medium for adsorbing organics and their small size makes them highly respirable. Many of the organic compounds present in the gases and on the particles, such as polycyclic organic matter (POM), are individually known to have mutagenic and carcinogenic properties. Diesel exhaust varies significantly in chemical composition and particle sizes between different engine types (heavy-duty, light-duty), engine operating conditions (idle, accelerate, decelerate), and fuel formulations (high/low sulfur fuel). Also, there are emissions differences between on-road and nonroad engines because the nonroad engines are generally of older technology. This is especially true for marine diesel engines.[28]

After being emitted in the engine exhaust, diesel exhaust undergoes dilution as well as chemical and physical changes in the atmosphere. The lifetime for some of the compounds present in diesel exhaust ranges from hours to days.[29]

(i) Diesel Exhaust: Potential Cancer Effects

In EPA's 2002 Diesel Health Assessment Document (Diesel HAD),[30] exposure to diesel exhaust was classified as likely to be carcinogenic to humans by inhalation from environmental exposures, in accordance with the revised draft 1996/1999 EPA cancer guidelines. A number of other agencies (National Institute for Occupational Safety and Health, the International Agency for Research on Cancer, the World Health Organization, California EPA, and the U.S. Department of Health and Human Services) have made similar classifications. However, EPA also concluded in the Diesel HAD that it is not possible currently to calculate a cancer unit risk for diesel exhaust due to a variety of factors that limit the current studies, such as limited quantitative exposure histories in occupational groups investigated for lung cancer.

For the Diesel HAD, EPA reviewed 22 epidemiologic studies on the subject of the carcinogenicity of workers exposed to diesel exhaust in various occupations, finding increased lung cancer risk, although not always statistically significant, in 8 out of 10 cohort studies and 10 out of 12 case-control studies within several industries. Relative risk for lung cancer associated with exposure ranged from 1.2 to 1.5, although a few studies show relative risks as high as 2.6. Additionally, the Diesel HAD also relied on two independent meta-analyses, which examined 23 and 30 occupational studies respectively, which found statistically significant increases in smoking-adjusted relative lung cancer risk associated with exposure to diesel exhaust of 1.33 to 1.47. These meta-analyses demonstrate the effect of pooling many studies and in this case show the positive relationship between

review by the Clean Air Scientific Advisory Committee (CASAC) of EPA's Science Advisory Board. Comments from the general public have also been requested. For more information, *see http://cfpub.epa.gov/ncea/cfm/recordisplay.cfm?deid=210586.*

[21] U.S. EPA (2006). *National Ambient Air Quality Standards for Particulate Matter.* 71 FR 61144, October 17, 2006.

[22] Künzli, N., Jerrett, M., Mack, W.J., *et al.* (2004). Ambient air pollution and atherosclerosis in Los Angeles. *Environ Health Perspect.,113,* 201–206

[23] This study is included in the 2006 Provisional Assessment of Recent Studies on Health Effects of Particulate Matter Exposure. The provisional assessment did not and could not (given a very short timeframe) undergo the extensive critical review by CASAC and the public, as did the PM AQCD. The provisional assessment found that the "new" studies expand the scientific information and provide important insights on the relationship between PM exposure and health effects of PM. The provisional assessment also found that "new" studies generally strengthen the evidence that acute and chronic exposure to fine particles and acute exposure to thoracic coarse particles are associated with health effects. Further, the provisional science assessment found that the results reported in the studies did not dramatically diverge from previous findings, and taken in context with the findings of the AQCD, the new information and findings did not materially change any of the broad scientific conclusions regarding the health effects of PM exposure made in the AQCD. However, it is important to note that this assessment was limited to screening, surveying, and preparing a provisional assessment of these studies. For reasons outlined in Section I.C of the preamble for the final PM NAAQS rulemaking in 2006 (*see* 71 FR 61148–49, October 17, 2006), EPA based its NAAQS decision on the science presented in the 2004 AQCD.

[24] Dockery, D.W., Pope, C.A. III, Xu, X, *et al.* (1993). An association between air pollution and mortality in six U.S. cities. *N Engl J Med, 329,* 1753–1759. Retrieved on March 19, 2009 from *http://content.nejm.org/cgi/content/full/329/24/1753.*

[25] Pope, C.A., III, Thun, M.J., Namboodiri, M.M., Dockery, D.W., Evans, J.S., Speizer, F.E., and Heath, C.W., Jr. (1995). Particulate air pollution as a predictor of mortality in a prospective study of U.S. adults. *Am. J. Respir. Crit. Care Med, 151,* 669–674.

[26] Krewski, D., Burnett, R.T., Goldberg, M.S., *et al.* (2000). *Reanalysis of the Harvard Six Cities study and the American Cancer Society study of particulate air pollution and mortality.* A special report of the Institute's Particle Epidemiology Reanalysis Project. Cambridge, MA: Health Effects Institute. Retrieved on March 19, 2009 from *http://es.epa.gov/ncer/science/pm/hei/Rean-ExecSumm.pdf.*

[27] Pope, C. A., III, Burnett, R.T., Thun, M.J., Calle, E.E., Krewski, D., Ito, K., Thurston, G.D., (2002). Lung cancer, cardiopulmonary mortality, and long-term exposure to fine particulate air pollution. *J. Am. Med. Assoc., 287,* 1132–1141.

[28] U.S. EPA (2002). *Health Assessment Document for Diesel Engine Exhaust.* EPA/600/8–90/057F Office of Research and Development, Washington DC. Retrieved on March 17, 2009 from *http://cfpub.epa.gov/ncea/cfm/recordisplay.cfm?deid=29060.* pp. 1–1 1–2.

[29] U.S. EPA (2002). *Health Assessment Document for Diesel Engine Exhaust.* EPA/600/8–90/057F Office of Research and Development, Washington, DC. Retrieved on March 17, 2009 from *http://cfpub.epa.gov/ncea/cfm/recordisplay.cfm?deid=29060.*

[30] U.S. EPA (2002). *Health Assessment Document for Diesel Engine Exhaust.* EPA/600/8–90/057F Office of Research and Development, Washington DC. Retrieved on March 17, 2009 from *http://cfpub.epa.gov/ncea/cfm/recordisplay.cfm?deid=29060.* pp. 1–1 1–2.

diesel exhaust exposure and lung cancer across a variety of diesel exhaust-exposed occupations.[31] [32]

In the absence of a cancer unit risk, the Diesel HAD sought to provide additional insight into the significance of the diesel exhaust-cancer hazard by estimating possible ranges of risk that might be present in the population. An exploratory analysis was used to characterize a possible risk range by comparing a typical environmental exposure level for highway diesel sources to a selected range of occupational exposure levels. The occupationally observed risks were then proportionally scaled according to the exposure ratios to obtain an estimate of the possible environmental risk. A number of calculations are needed to accomplish this, and these can be seen in the EPA Diesel HAD. The outcome was that environmental risks from diesel exhaust exposure could range from a low of 10^{-4} to 10^{-5} to as high as 10^{-3}, reflecting the range of occupational exposures that could be associated with the relative and absolute risk levels observed in the occupational studies. Because of uncertainties, the analysis acknowledged that the risks could be lower than 10^{-4} or 10^{-5}, and a zero risk from diesel exhaust exposure was not ruled out.

(ii) Diesel Exhaust: Other Health Effects

Noncancer health effects of acute and chronic exposure to diesel exhaust emissions are also of concern to the EPA. EPA derived a diesel exhaust reference concentration (RfC) from consideration of four well-conducted chronic rat inhalation studies showing adverse pulmonary effects.[33] [34] [35] [36] The RfC is 5 μg/m^3 for diesel exhaust as measured by DPM. This RfC does not consider allergenic effects such as those associated with asthma or immunologic effects. There is growing evidence, discussed in the Diesel HAD, that exposure to diesel exhaust can exacerbate these effects, but the exposure-response data are presently lacking to derive an RfC. The EPA Diesel HAD states, "With DPM [diesel particulate matter] being a ubiquitous component of ambient PM, there is an uncertainty about the adequacy of the existing DE [diesel exhaust] noncancer database to identify all of the pertinent DE-caused noncancer health hazards." (p. 9–19). The Diesel HAD concludes "that acute exposure to DE [diesel exhaust] has been associated with irritation of the eye, nose, and throat, respiratory symptoms (cough and phlegm), and neurophysiological symptoms such as headache, lightheadedness, nausea, vomiting, and numbness or tingling of the extremities." [37]

(iii) Ambient $PM_{2.5}$ Levels and Exposure to Diesel Exhaust PM

The Diesel HAD also briefly summarizes health effects associated with ambient PM and discusses the EPA's annual $PM_{2.5}$ NAAQS of 15 μg/m^3. There is a much more extensive body of human data showing a wide spectrum of adverse health effects associated with exposure to ambient PM, of which diesel exhaust is an important component. The $PM_{2.5}$ NAAQS is designed to provide protection from the noncancer and premature mortality effects of $PM_{2.5}$ as a whole.

(iv) Diesel Exhaust PM Exposures

Exposure of people to diesel exhaust depends on their various activities, the time spent in those activities, the locations where these activities occur, and the levels of diesel exhaust pollutants in those locations. The major difference between ambient levels of diesel particulate and exposure levels for diesel particulate is that exposure accounts for a person moving from location to location, proximity to the emission source, and whether the exposure occurs in an enclosed environment.

Occupational Exposures

Occupational exposures to diesel exhaust from mobile sources, including marine diesel engines, can be several orders of magnitude greater than typical exposures in the non-occupationally exposed population.

Over the years, diesel particulate exposures have been measured for a number of occupational groups. A wide range of exposures have been reported, from 2 μg/m^3 to 1,280 μg/m^3, for a variety of occupations. As discussed in the Diesel HAD, the National Institute of Occupational Safety and Health (NIOSH) has estimated a total of 1,400,000 workers are occupationally exposed to diesel exhaust from on-road and nonroad vehicles including marine diesel engines.

Elevated Concentrations and Ambient Exposures in Mobile Source-Impacted Areas

Regions immediately downwind of marine ports may experience elevated ambient concentrations of directly-emitted $PM_{2.5}$ from diesel engines. Due to the unique nature of marine ports, emissions from a large number of diesel engines are concentrated in a small area.

A 2006 study from the California Air Resources Board (CARB) evaluated air quality impacts of diesel engine emissions within the Ports of Long Beach and Los Angeles in California, one of the largest ports in the U.S.[38] The port study employed the ISCST3 dispersion model. With local meteorological data used in the modeling, annual average concentrations were substantially elevated over an area exceeding 200,000 acres. Because the ports are located near heavily-populated areas, the modeling indicated that over 700,000 people lived in areas with at least 0.3 μg/m^3 of port-related diesel PM in ambient air, about 360,000 people lived in areas with at least 0.6 μg/m^3 of diesel PM, and about 50,000 people lived in areas with at least 1.5 μg/m^3 of ambient diesel PM directly from the port. This study highlights the substantial contribution ports can make to elevated ambient concentrations in populated areas.

EPA recently updated its initial screening-level analysis of a representative selection of national marine port areas to better understand the populations that are exposed to DPM emissions from these facilities.[39] [40] [41] [42] As part of this study,

[31] Bhatia, R., Lopipero, P., Smith, A. (1998). Diesel exposure and lung cancer. *Epidemiology, 9(1),* 84–91.

[32] Lipsett, M. Campleman, S. (1999). Occupational exposure to diesel exhaust and lung cancer: a meta-analysis. *Am J Public Health, 80(7),* 1009–1017.

[33] Ishinishi, N. Kuwabara, N. Takaki, Y., *et al.* (1988). Long-term inhalation experiments on diesel exhaust. In: *Diesel exhaust and health risks.* Results of the HERP studies. Ibaraki, Japan: Research Committee for HERP Studies; pp.11–84.

[34] Heinrich, U., Fuhst, R., Rittinghausen, S., *et al.* (1995). Chronic inhalation exposure of Wistar rats and two different strains of mice to diesel engine exhaust, carbon black, and titanium dioxide. *Inhal Toxicol, 7,* 553–556.

[35] Mauderly, J.L., Jones, R.K., Griffith, W.C., *et al.* (1987). Diesel exhaust is a pulmonary carcinogen in rats exposed chronically by inhalation. *Fundam. Appl. Toxicol., 9,* 208–221.

[36] Nikula, K.J., Snipes, M.B., Barr, E.B., *et al.* (1995). Comparative pulmonary toxicities and carcinogenicities of chronically inhaled diesel exhaust and carbon black in F344 rats. *Fundam. Appl. Toxicol, 25,* 80–94.

[37] U.S. EPA (2002). *Health Assessment Document for Diesel Engine Exhaust.* EPA/600/8–90/057F Office of Research and Development, Washington, DC. Retrieved on March 17, 2009 from *http://cfpub.epa.gov/ncea/cfm/recordisplay.cfm?deid=29060.* p. 9–9.

[38] Di, P., Servin, A., Rosenkranz, K., Schwehr, B., Tran, H., (2006). *Diesel Particulate Matter Exposure Assessment Study for the Ports of Los Angeles and Long Beach.* Sacramento, CA: California EPA, California Air Resources Board (CARB). Retrieved March 19, 2009 from *http://www.arb.ca.gov/regact/marine2005/portstudy0406.pdf.*

[39] ICF International. September 28, 2007. Estimation of diesel particulate matter concentration isopleths for marine harbor areas and

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a computer geographic information system (GIS) was used to identify the locations and property boundaries of 45 marine ports.[43] Census information was used to estimate the size and demographic characteristics of the population living in the vicinity of the ports. The results indicate that at least 18 million people, including a disproportionate number of low-income households, African-Americans, and Hispanics, live in the vicinity of these facilities and are being exposed to annual average ambient DPM levels that are 2.0 μg/m^3 and 0.2 μg/m^3 above levels found in areas further from these facilities. These populations will benefit from the coordinated strategy. This study is discussed in greater detail in Chapter 2 of the RIA and detailed findings of this study are available in the public docket for this rulemaking.

(2) Ozone

Ground-level ozone pollution is typically formed by the reaction of VOC and NO_X in the lower atmosphere in the presence of heat and sunlight. These pollutants, often referred to as ozone precursors, are emitted by many types of pollution sources, such as highway and nonroad motor vehicles and engines, power plants, chemical plants, refineries, makers of consumer and commercial products, industrial facilities, and smaller area sources.

The science of ozone formation, transport, and accumulation is complex.[44] Ground-level ozone is produced and destroyed in a cyclical set of chemical reactions, many of which are sensitive to temperature and sunlight. When ambient temperatures and sunlight levels remain high for several days and the air is relatively stagnant, ozone and its precursors can build up and result in more ozone than typically occurs on a single high-temperature day. Ozone can be transported hundreds of miles downwind from precursor emissions, resulting in elevated ozone levels even in areas with low local VOC or NO_X emissions.

(a) Health Effects of Ozone

The health and welfare effects of ozone are well documented and are assessed in EPA's 2006 Air Quality Criteria Document (ozone AQCD) and 2007 Staff Paper.[45] [46] Ozone can irritate the respiratory system, causing coughing, throat irritation, and/or uncomfortable sensation in the chest. Ozone can reduce lung function and make it more difficult to breathe deeply; breathing may also become more rapid and shallow than normal, thereby limiting a person's activity. Ozone can also aggravate asthma, leading to more asthma attacks that require medical attention and/or the use of additional medication. In addition, there is suggestive evidence of a contribution of ozone to cardiovascular-related morbidity and highly suggestive evidence that short-term ozone exposure directly or indirectly contributes to non-accidental and cardiopulmonary-related mortality, but additional research is needed to clarify the underlying mechanisms causing these effects. In a recent report on the estimation of ozone-related premature mortality published by the National Research Council (NRC), a panel of experts and reviewers concluded that short-term exposure to ambient ozone is likely to contribute to premature deaths and that ozone-related mortality should be included in estimates of the health benefits of reducing ozone exposure.[47] Animal toxicological evidence indicates that with repeated exposure, ozone can inflame and damage the lining of the lungs, which may lead to permanent changes in lung tissue and irreversible reductions in lung function. People who are more susceptible to effects associated with exposure to ozone can include children, the elderly, and individuals with respiratory disease such as asthma. Those with greater exposures to ozone, for instance due to time spent outdoors (*e.g.,* children and outdoor workers), are of particular concern.

The 2006 ozone AQCD also examined relevant new scientific information that has emerged in the past decade, including the impact of ozone exposure on such health effects as changes in lung structure and biochemistry, inflammation of the lungs, exacerbation and causation of asthma, respiratory illness-related school absence, hospital admissions and premature mortality. Animal toxicological studies have suggested potential interactions between ozone and PM with increased responses observed to mixtures of the two pollutants compared to either ozone or PM alone. The respiratory morbidity observed in animal studies along with the evidence from epidemiologic studies supports a causal relationship between acute ambient ozone exposures and increased respiratory-related emergency room visits and hospitalizations in the warm season. In addition, there is suggestive evidence of a contribution of ozone to cardiovascular-related morbidity and non-accidental and cardiopulmonary mortality.

(3) NO_X and SO_X

Nitrogen dioxide (NO_2) is a member of the NO_X family of gases. Most NO_2 is formed in the air through the oxidation of nitric oxide (NO) emitted when fuel is burned at a high temperature. SO_2, a member of the sulfur oxide (SO_X) family of gases, is formed from burning fuels containing sulfur (*e.g.,* coal or oil derived), extracting gasoline from oil, or extracting metals from ore.

SO_2 and NO_2 can dissolve in water vapor and further oxidize to form sulfuric and nitric acid which react with ammonia to form sulfates and nitrates, both of which are important components of ambient PM. The health effects of ambient PM are discussed in Section II.A.1 of this preamble. NO_X along with non-methane hydrocarbon (NMHC) are the two major precursors of ozone. The health effects of ozone are covered in Section II.A.2.

(a) Health Effects of NO_X

Information on the health effects of NO_2 can be found in the U.S. Environmental Protection Agency

rail yards. Memorandum to EPA under Work Assignment Number 0–3, Contract Number EP–C–06–094. This memo is available in Docket EPA–HQ–OAR–2007–0121.

[40] ICF International. September 28, 2007. Estimation of diesel particulate matter population exposure near selected harbor areas and rail yards. Memorandum to EPA under Work Assignment Number 0–3, Contract Number EP–C–06–094. This memo is available in Docket EPA–HQ–OAR–2007–0121.

[41] ICF International, December 10, 2008. Estimation of diesel particulate matter population exposure near selected harbor areas with revised harbor emissions. Memorandum to EPA under Work Assignment Number 2–9. Contract Number EP–C–06–094. This memo is available in Docket EPA–HQ–OAR–2007–0121.

[42] ICF International. December 1, 2008. Estimation of diesel particulate matter concentration isopleths near selected harbor areas with revised emissions. Memorandum to EPA under Work Assignment Number 1–9. Contract Number EP–C–06–094. This memo is available in Docket EPA–HQ–OAR–2007–0121.

[43] The Agency selected a representative sample from the top 150 U.S. ports including coastal, inland, and Great Lake ports.

[44] U.S. EPA (2006). Air Quality Criteria for Ozone and Related Photochemical Oxidants (Final). EPA/600/R–05/004aF–cF. Washington, DC: U.S. EPA. Retrieved on March 19, 2009 from Docket EPA–HQ–OAR–2003–0190 at *http://www.regulations.gov/.*

[45] U.S. EPA (2006). Air Quality Criteria for Ozone and Related Photochemical Oxidants (Final). EPA/600/R–05/004aF–cF. Washington, DC: U.S. EPA. Retrieved on March 19, 2009 from Docket EPA–HQ–OAR–2003–0190 at *http://www.regulations.gov/.*

[46] U.S. EPA (2007). Review of the National Ambient Air Quality Standards for Ozone: Policy Assessment of Scientific and Technical Information, OAQPS Staff Paper. EPA–452/R–07–003. Washington, DC, U.S. EPA. Retrieved on March 19, 2009 from Docket EPA–HQ–OAR–2003–0190 at *http://www.regulations.gov/.*

[47] National Research Council (NRC), 2008. *Estimating Mortality Risk Reduction and Economic Benefits from Controlling Ozone Air Pollution.* The National Academies Press: Washington, DC.

Integrated Science Assessment (ISA) for Nitrogen Oxides.[48] The U.S. EPA has concluded that the findings of epidemiologic, controlled human exposure, and animal toxicological studies provide evidence that is sufficient to infer a likely causal relationship between respiratory effects and short-term NO_2 exposure. The ISA concludes that the strongest evidence for such a relationship comes from epidemiologic studies of respiratory effects including symptoms, emergency department visits, and hospital admissions. The ISA also draws two broad conclusions regarding airway responsiveness following NO_2 exposure. First, the ISA concludes that NO_2 exposure may enhance the sensitivity to allergen-induced decrements in lung function and increase the allergen-induced airway inflammatory response at exposures as low as 0.26 ppm NO_2 for 30 minutes. Second, exposure to NO_2 has been found to enhance the inherent responsiveness of the airway to subsequent nonspecific challenges in controlled human exposure studies of asthmatic subjects. Enhanced airway responsiveness could have important clinical implications for asthmatics since transient increases in airway responsiveness following NO_2 exposure have the potential to increase symptoms and worsen asthma control. Together, the epidemiologic and experimental data sets form a plausible, consistent, and coherent description of a relationship between NO_2 exposures and an array of adverse health effects that range from the onset of respiratory symptoms to hospital admission.

Although the weight of evidence supporting a causal relationship is somewhat less certain than that associated with respiratory morbidity, NO_2 has also been linked to other health endpoints. These include all-cause (nonaccidental) mortality, hospital admissions or emergency department visits for cardiovascular disease, and decrements in lung function growth associated with chronic exposure.

(b) Health Effects of SO_X

Information on the health effects of SO_2 can be found in the U.S. Environmental Protection Agency Integrated Science Assessment for Sulfur Oxides.[49] SO_2 has long been known to cause adverse respiratory health effects, particularly among individuals with asthma. Other potentially sensitive groups include children and the elderly. During periods of elevated ventilation, asthmatics may experience symptomatic bronchoconstriction within minutes of exposure. Following an extensive evaluation of health evidence from epidemiologic and laboratory studies, the EPA has concluded that there is a causal relationship between respiratory health effects and short-term exposure to SO_2. Separately, based on an evaluation of the epidemiologic evidence of associations between short-term exposure to SO_2 and mortality, the EPA has concluded that the overall evidence is suggestive of a causal relationship between short-term exposure to SO_2 and mortality.

B. Environmental Impacts

(1) Deposition of Nitrogen and Sulfur

Emissions of NO_X and SO_X from ships contribute to atmospheric deposition of nitrogen and sulfur in the U.S. Atmospheric deposition of nitrogen and sulfur contributes to acidification, altering biogeochemistry and affecting animal and plant life in terrestrial and aquatic ecosystems across the U.S. The sensitivity of terrestrial and aquatic ecosystems to acidification from nitrogen and sulfur deposition is predominantly governed by geology. Prolonged exposure to excess nitrogen and sulfur deposition in sensitive areas acidifies lakes, rivers and soils. Increased acidity in surface waters creates inhospitable conditions for biota and affects the abundance and nutritional value of preferred prey species, threatening biodiversity and ecosystem function. Over time, acidifying deposition also removes essential nutrients from forest soils, depleting the capacity of soils to neutralize future acid loadings and negatively affecting forest sustainability. Major effects include a decline in sensitive forest tree species, such as red spruce (*Picea rubens*) and sugar maple (*Acer saccharum*), and a loss of biodiversity of fishes, zooplankton, and macro invertebrates.

In addition to the role nitrogen deposition plays in acidification, nitrogen deposition also causes ecosystem nutrient enrichment leading to eutrophication that alters biogeochemical cycles. Excess nitrogen also leads to the loss of nitrogen sensitive lichen species as they are outcompeted by invasive grasses as well as altering the biodiversity of terrestrial ecosystems, such as grasslands and meadows. Nitrogen deposition contributes to eutrophication of estuaries and the associated effects including toxic algal blooms and fish kills. For a broader explanation of the topics treated here, refer to the description in Section 2.3.1 of the RIA.

There are a number of important quantified relationships between nitrogen deposition levels and ecological effects. Certain lichen species are the most sensitive terrestrial taxa to nitrogen with species losses occurring at just 3 kg N/ha/yr in the Pacific Northwest, southern California and Alaska. A United States Forest Service study conducted in areas within the Tongass Forest in Southeast Alaska found evidence of sulfur emissions impacting lichen communities.[50] The authors concluded that the main source of nitrogen and sulfur found in lichens from Mt. Roberts (directly north of the City of Juneau in southeastern Alaska) is likely the burning of fossil fuels by cruise ships and other vehicles and equipment in Juneau. According to the Alaska DEC, damage to lichen populations has widespread effects in Alaskan ecosystems.[51]

Across the U.S., there are many terrestrial and aquatic ecosystems that have been identified as particularly sensitive to nitrogen deposition. The most extreme effects resulting from nitrogen deposition on aquatic ecosystems are due to nitrogen enrichment which contributes to "hypoxic" zones devoid of life. Three hypoxia zones of special concern in the U.S. are the zones located in the Gulf of Mexico, the Chesapeake Bay in the mid-Atlantic region, and Long Island Sound in the northeast U.S.[52]

(2) Deposition of Particulate Matter and Air Toxics

The coordinated strategy will reduce NO_X, SO_X, and $PM_{2.5}$ emissions from ships. Ship emissions of $PM_{2.5}$ contain small amounts of metals: Nickel,

[48] U.S. EPA (2008). *Integrated Science Assessment for Oxides of Nitrogen—Health Criteria (Final Report).* EPA/600/R–08/071. Washington, DC: U.S. EPA. Retrieved on March 19, 2009 from *http://cfpub.epa.gov/ncea/cfm/recordisplay.cfm?deid=194645.*

[49] U.S. EPA (2008). *Integrated Science Assessment (ISA) for Sulfur Oxides—Health Criteria (Final Report).* EPA/600/R–08/047F. Washington, DC: U.S. Environmental Protection Agency. Retrieved on March 18, 2009 from *http://cfpub.epa.gov/ncea/cfm/recordisplay.cfm?deid=198843.*

[50] Dillman, K., Geiser, L., & Brenner, G. (2007). *Air Quality Bio-Monitoring with Lichens.* The Togass National Forest. USDA Forest Service. Retrieved March 18, 2009 from *http://gis.nacse.org/lichenair/?page=reports.*

[51] Alaska Department of Environmental Conservation, "Statement in Support of EPA Considering Alaska as Part of a Marine Emission Control Area," October 1, 2008.

[52] U.S. EPA (2008). *Nitrogen Dioxide/Sulfur Dioxide Secondary NAAQS Review: Integrated Science Assessment (ISA).* Washington, DC: U.S. Environmental Protection Agency. Retrieved on March 18, 2009 from *http://cfpub.epa.gov/ncea/cfm/recordisplay.cfm?deid=180903.*

vanadium, cadmium, iron, lead, copper, zinc, and aluminum.[53] [54] [55] Investigations of trace metals near roadways and industrial facilities indicate that a substantial burden of heavy metals can accumulate on vegetative surfaces. Copper, zinc, and nickel are directly toxic to vegetation under field conditions.[56] While metals typically exhibit low solubility, limiting their bioavailability and direct toxicity, chemical transformations of metal compounds occur in the environment, particularly in the presence of acidic or other oxidizing species. These chemical changes influence the mobility and toxicity of metals in the environment. Once taken up into plant tissue, a metal compound can undergo chemical changes, accumulate and be passed along to herbivores, or can re-enter the soil and further cycle in the environment.

Although there has been no direct evidence of a physiological association between tree injury and heavy metal exposures, heavy metals have been implicated because of similarities between metal deposition patterns and forest decline.[57] [58] This correlation was further explored in high elevation forests in the northeast U.S. and the data strongly imply that metal stress causes tree injury and contributes to forest decline in the Northeast.[59] Contamination of plant leaves by heavy metals can lead to elevated soil levels. Trace metals absorbed into the plant frequently bind to the leaf tissue, and then are lost when the leaf drops. As the fallen leaves decompose, the heavy metals are transferred into the soil.[60] [61]

Ships also emit air toxics, including polycyclic aromatic hydrocarbons (PAHs), a class of polycyclic organic matter (POM) that contains compounds which are known or suspected carcinogens. Since the majority of PAHs are adsorbed onto particles less than 1.0 μm in diameter, long range transport is possible. Particles of this size can remain airborne for days or even months and travel distances up to 10,000 km before being deposited on terrestrial or aquatic surfaces.[62] Atmospheric deposition of particles is believed to be the major source of PAHs to the sediments of Lake Michigan, Chesapeake Bay, Tampa Bay and other coastal areas of the U.S.[63] [64] [65] [66] [67] PAHs tend to accumulate in sediments and reach high enough concentrations in some coastal environments to pose an environmental health threat that includes cancer in fish populations, toxicity to organisms living in the sediment, and risks to those (*e.g.,* migratory birds) that consume these organisms.[68] [69] PAHs tend to accumulate in sediments and bioaccumulate in fresh water, flora and fauna.

Atmospheric deposition of pollutants can reduce the aesthetic appeal of buildings and culturally important articles through soiling, and can contribute directly (or in conjunction with other pollutants) to structural damage by means of corrosion or erosion.[70] Atmospheric deposition may affect materials principally by promoting and accelerating the corrosion of metals, by degrading paints, and by deteriorating building materials such as concrete and limestone. Particles contribute to these effects because of their electrolytic, hygroscopic, and acidic properties, and their ability to adsorb corrosive gases (principally sulfur dioxide). The rate of metal corrosion depends on a number of factors, including the deposition rate and nature of the pollutant; the influence of the metal protective corrosion film; the amount of moisture present; variability in the electrochemical reactions; the presence and concentration of other surface electrolytes; and the orientation of the metal surface.

(3) Impacts on Visibility

Emissions from ships contribute to poor visibility in the U.S. through their primary $PM_{2.5}$ emissions, as well as their NO_X and SO_X emissions which contribute to the formation of secondary $PM_{2.5}$.[71] Visibility can be defined as the degree to which the atmosphere is transparent to visible light. Airborne particles degrade visibility by scattering and absorbing light. Visibility is important because it has direct significance to people's enjoyment of daily activities in all parts of the country. Individuals value good visibility for the well-being it provides them directly, where they live and work and in places where they enjoy recreational opportunities. Visibility is also highly valued in significant natural areas such as national parks and

[53] Agrawal H., Malloy Q.G.J., Welch W.A., Wayne Miller J., Cocker III D.R. (2008) In-use gaseous and particulate matter emissions from a modern ocean going container vessel. *Atmospheric Environment, 42(21),* 5504–5510.

[54] Miller, W., *et al.* (2008 June 10). *Measuring Emissions from Ocean Going Vessels.* Presentation presented at the Fuel, Engines, and Control Devices Workshop, San Pedro, California.

[55] Isakson J., Persson T.A., E. Selin Lindgren E. (2001) Identification and assessment of ship emissions and their effects in the harbour of Gteborg, Sweeden. *Atmospheric Environment, 35(21),* 3659–3666.

[56] U.S. EPA (2004). *Air Quality Criteria for Particulate Matter (AQCD).* Washington, DC: U.S. Environmental Protection Agency. Retrieved on March 18, 2009 from *http://cfpub.epa.gov/ncea/cfm/recordisplay.cfm?deid=87903.*

[57] U.S. EPA (2004). *Air Quality Criteria for Particulate Matter (AQCD).* Washington, DC: U.S. Environmental Protection Agency. Retrieved on March 18, 2009 from *http://cfpub.epa.gov/ncea/cfm/recordisplay.cfm?deid=87903.*

[58] Gawel, J.E.; Ahner, B.A.; Friedland, A.J.; Morel, F.M.M. (1996) Role for heavy metals in forest decline indicated by phytochelatin measurements. *Nature (London), 381,* 64–65.

[59] U.S. EPA (2004). *Air Quality Criteria for Particulate Matter (AQCD).* Washington, DC: U.S. Environmental Protection Agency. Retrieved on March 18, 2009 from *http://cfpub.epa.gov/ncea/cfm/recordisplay.cfm?deid=87903.*

[60] Cotrufo M.F., De Santo A.V., Alfani A., Bartoli G., De Cristofaro A. (1995) Effects of urban heavy metal pollution on organic matter decomposition in Quercus ilex L. Woods. *Environmental Pollution, 89(1),* 81–87.

[61] Niklinska M., Laskowski R., Maryanski M. (1998). Effect of heavy metals and storage time on two types of forest litter: Basal respiration rate and exchangeable metals. *Ecotoxicological Environmental Safety, 41,* 8–18.

[62] U.S. EPA (2004). *Air Quality Criteria for Particulate Matter (AQCD).* Washington, DC: U.S. Environmental Protection Agency. Retrieved on March 18, 2009 from *http://cfpub.epa.gov/ncea/cfm/recordisplay.cfm?deid=87903.*

[63] Dickhut R.M., Canuel E.A., Gustafson K.E., Liu K., Arzayus K.M., Walker S.E., Edgecombe G., Gaylor M.O., MacDonald E.H. (2000). Automotive Sources of Carcinogenic Polycyclic Aromatic Hydrocarbons Associated with Particulate Matter in the Chesapeake Bay Region. *Environmental Science & Technology, 34(21),* 4635–4640.

[64] Simcik M.F., Eisenreich, S.J., Golden K.A., *et al.* (1996). Atmospheric Loading of Polycyclic Aromatic Hydrocarbons to Lake Michigan as Recorded in the Sediments. *Environmental Science and Technology, 30,* 3039–3046.

[65] Simcik M.F., Eisenreich S.J., Lioy P.J. (1999). Source apportionment and source/sink relationship of PAHs in the coastal atmosphere of Chicago and Lake Michigan. *Atmospheric Environment, 33,* 5071–5079.

[66] Poor N., Tremblay R., Kay H., *et al.* (2002). Atmospheric concentrations and dry deposition rates of polycyclic aromatic hydrocarbons (PAHs) for Tampa Bay, Florida, USA. *Atmospheric Environment, 38,* 6005–6015.

[67] Arzavus K.M., Dickhut R.M., Canuel E.A. (2001). Fate of Atmospherically Deposited Polycyclic Aromatic Hydrocarbons (PAHs) in Chesapeake Bay. *Environmental Science & Technology, 35,* 2178–2183.

[68] Simcik M.F., Eisenreich, S.J., Golden K.A., *et al.* (1996). Atmospheric Loading of Polycyclic Aromatic Hydrocarbons to Lake Michigan as Recorded in the Sediments. *Environmental Science and Technology, 30,* 3039–3046.

[69] Simcik M.F., Eisenreich S.J., Lioy P.J. (1999). Source apportionment and source/sink relationship of PAHs in the coastal atmosphere of Chicago and Lake Michigan. *Atmospheric Environment, 33,* 5071–5079.

[70] U.S. EPA (2005). Review of the National Ambient Air Quality Standards for Particulate Matter: Policy Assessment of Scientific and Technical Information, OAQPS Staff Paper. Retrieved on April 9, 2009 from *http://www.epa.gov/ttn/naaqs/standards/pm/data/pmstaffpaper_20051221.pdf.*

[71] U.S. EPA (2004). *Air Quality Criteria for Particulate Matter (AQCD).* Volume I Document No. EPA600/P–99/002aF and Volume II Document No. EPA600/P–99/002bF. Washington, DC: U.S. Environmental Protection Agency. Retrieved on March 18, 2009 from *http://cfpub.epa.gov/ncea/cfm/recordisplay.cfm?deid=87903.*

wilderness areas, and special emphasis is given to protecting visibility in these areas. For more information on visibility, *see* the final 2004 PM AQCD as well as the 2005 PM Staff Paper.[72] [73]

EPA is pursuing a two-part strategy to address visibility. First, EPA has set secondary $PM_{2.5}$ standards which act in conjunction with the establishment of a regional haze program. In setting the secondary $PM_{2.5}$ standard, EPA has concluded that $PM_{2.5}$ causes adverse effects on visibility in various locations, depending on PM concentrations and factors such as chemical composition and average relative humidity. Second, section 169 of the Clean Air Act provides additional authority to address existing visibility impairment and prevent future visibility impairment in the 156 national parks, forests and wilderness areas categorized as mandatory class I Federal areas (62 FR 38680–81, July 18, 1997).[74] In July 1999, the regional haze rule (64 FR 35714) was put in place to protect the visibility in mandatory class I Federal areas. Visibility can be said to be impaired in both $PM_{2.5}$ nonattainment areas and mandatory class I Federal areas.

(4) Plant and Ecosystem Effects of Ozone

Elevated ozone levels contribute to environmental effects, with impacts to plants and ecosystems being of most concern. Ozone can produce both acute and chronic injury in sensitive species depending on the concentration level and the duration of the exposure. Ozone effects also tend to accumulate over the growing season of the plant, so that even low concentrations experienced for a longer duration have the potential to create chronic stress on vegetation. Ozone damage to plants includes visible injury to leaves and impaired photosynthesis, both of which can lead to reduced plant growth and reproduction, resulting in reduced crop yields, forestry production, and use of sensitive ornamentals in landscaping. In addition, the impairment of photosynthesis, the process by which the plant makes carbohydrates (its source of energy and food), can lead to a subsequent reduction in root growth and carbohydrate storage below ground, resulting in other, more subtle plant and ecosystems impacts.

These latter impacts include increased susceptibility of plants to insect attack, disease, harsh weather, interspecies competition and overall decreased plant vigor. The adverse effects of ozone on forest and other natural vegetation can potentially lead to species shifts and loss from the affected ecosystems, resulting in a loss or reduction in associated ecosystem goods and services. Lastly, visible ozone injury to leaves can result in a loss of aesthetic value in areas of special scenic significance like national parks and wilderness areas. The final 2006 ozone AQCD presents more detailed information on ozone effects on vegetation and ecosystems.

C. Air Quality Modeling Results

Air quality modeling was performed to assess the impact of the coordinated strategy. We looked at impacts on future ambient $PM_{2.5}$ and ozone levels, as well as nitrogen and sulfur deposition levels and visibility impairment. In this section, we present information on current levels of pollution as well as model projected levels of pollution for 2020 and 2030.[75]

The air quality modeling uses EPA's Community Multiscale Air Quality (CMAQ) model. The CMAQ modeling domain is rectangular in shape and encompasses all of the lower 48 States, portions of Canada and Mexico, and areas extending into the ocean up to 1,000 nautical miles (nm), depending on the coast. The smallest area of ocean coverage is over the northeast U.S. In places like Maine and Cape Cod, the easternmost points of the contiguous U.S., the distance to the edge of the CMAQ modeling domain is approximately 150 nm. The rest of the U.S. shoreline has at least 200 nm between the shoreline and boundary of the air quality modeling. The CMAQ modeling domain is described in more detail in Section 2.4.5.2 of the RIA. The performance of the CMAQ modeling was evaluated using a 2002 base case simulation. More detail about the performance evaluation is contained within the Section 2.4.5.4 of the RIA. The model was able to reproduce historical concentrations of ozone and $PM_{2.5}$ at land-based monitors with low amounts of bias and error. While we are not able to evaluate the model's performance over the ocean due to the absence of surface monitors, there is no evidence to suggest that model performance is unsatisfactory over the ocean.

The emission control scenarios used in the air quality modeling are slightly different than the final coordinated strategy emission control scenarios. For example, the 2020 air quality impacts are based on inventory estimates that were modeled using incorrect ECA boundary information off of the western coast of the U.S. A calculation error placed the western 200 nautical mile (nm) ECA boundary approximately 50 nm closer to shore. Additionally, the 2020 air quality control case does not reflect emission reductions related to global controls for areas that are beyond 200 nm but within the CMAQ air quality modeling domain. Finally, the emission control scenarios do not consider the exemption of Great Lakes steamships from the final fuel sulfur standards. The impact of these differences is expected to be minimal.

(1) Particulate Matter

The coordinated strategy described in this final rule will significantly reduce ambient PM concentrations through reductions in emissions of direct PM, as well as NO_X and SO_X which contribute to secondary PM.

(a) Current Levels

$PM_{2.5}$ concentrations exceeding the level of the $PM_{2.5}$ NAAQS occur in many parts of the country. In 2005, EPA designated 39 nonattainment areas for the 1997 $PM_{2.5}$ NAAQS (70 FR 943, January 5, 2005). These areas are composed of 208 full or partial counties with a total population exceeding 88 million. The 1997 $PM_{2.5}$ NAAQS was recently revised and the 2006 24-hour $PM_{2.5}$ NAAQS became effective on December 18, 2006. On October 8, 2009, the EPA issued final nonattainment area designations for the 24-hour $PM_{2.5}$ NAAQS (74 FR 58688, November 13, 2009). These designations include 31 areas composed of 120 full or partial counties.

(b) Projected Levels

A number of State governments have told EPA that they need the reductions the coordinated strategy will provide in order to meet and maintain the $PM_{2.5}$

[72] U.S. EPA (2004). *Air Quality Criteria for Particulate Matter (AQCD).* Volume I Document No. EPA600/P–99/002aF and Volume II Document No. EPA600/P–99/002bF. Washington, DC: U.S. Environmental Protection Agency. Retrieved on March 18, 2009 from *http://cfpub.epa.gov/ncea/cfm/recordisplay.cfm?deid=87903.*

[73] U.S. EPA (2005). *Review of the National Ambient Air Quality Standard for Particulate Matter: Policy Assessment of Scientific and Technical Information, OAQPS Staff Paper.* EPA–452/R–05–005. Washington, DC: U.S. Environmental Protection Agency.

[74] These areas are defined in section 162 of the Act as those national parks exceeding 6,000 acres, wilderness areas and memorial parks exceeding 5,000 acres, and all international parks which were in existence on August 7, 1977.

[75] As discussed in Section 3.7 of the RIA, the inventories used for the air quality modeling in 2020 and 2030 differ slightly from each other. The difference between 2020 and 2030 is small and was due to an error in calculating the 200 nautical miles distance. In addition, as discussed in Section 3.7 of the RIA, the 2020 air quality control case does not include global controls for areas that are beyond 200 nautical miles but within the air quality modeling domain. The impact of this latter difference is expected to be minimal.

NAAQS.[76] Most areas designated as not attaining the 1997 $PM_{2.5}$ NAAQS will need to attain the 1997 standards in the 2010 to 2015 time frame, and then maintain them thereafter. The 2006 24-hour $PM_{2.5}$ nonattainment areas will be required to attain in the 2014 to 2019 time frame and then maintain thereafter. The fuel sulfur emission standards will become effective in 2010 and 2015, and the NO_X engine emission standards will become effective in 2016. Therefore, the coordinated strategy emission reductions will be useful to States in attaining or maintaining the $PM_{2.5}$ NAAQS.

EPA has already adopted many emission control programs that are expected to reduce ambient $PM_{2.5}$ levels and which will assist in reducing the number of areas that fail to achieve the $PM_{2.5}$ NAAQS. Even so, our air quality modeling for this rule projects that in 2020, with all current controls but excluding the reductions expected to occur as a result of the coordinated strategy, at least 13 counties with a population of almost 30 million may not attain the 1997 annual $PM_{2.5}$ standard of 15 $\mu g/m^3$ and 47 counties with a population of over 53 million may not attain the 2006 24-hour $PM_{2.5}$ standard of 35 $\mu g/m^3$. These numbers do not account for those areas that are close to (*e.g.,* within 10 percent of) the $PM_{2.5}$ standards. These areas, although not violating the standards, will also benefit from the additional reductions from this rule ensuring long term maintenance of the $PM_{2.5}$ NAAQS.

Air quality modeling of the expected impacts of the coordinated strategy shows that in 2020 and 2030 all of the modeled counties will experience decreases in their annual and 24-hour $PM_{2.5}$ design values. For areas with current annual $PM_{2.5}$ design values greater than 15$\mu g/m^3$, the modeled future-year, population-weighted annual $PM_{2.5}$ design values are expected to decrease on average by 0.8 $\mu g/m^3$ in 2020 and by 1.7 $\mu g/m^3$ in 2030. For areas with current 24-hour $PM_{2.5}$ design values greater than 35$\mu g/m^3$, the modeled future-year, population-weighted annual $PM_{2.5}$ design values are expected to decrease on average by 1.3 $\mu g/m^3$ in 2020 and by 3.4 $\mu g/m^3$ in 2030. In 2030, the maximum projected decrease for an annual $PM_{2.5}$ design value is 6.0 $\mu g/m^3$ in Miami, FL, and the maximum projected decrease for a 24-hour $PM_{2.5}$ design value is 11.7 $\mu g/m^3$ in Los Angeles, CA. The air quality modeling methodology and the projected reductions are discussed in more detail in Chapter 2 of the RIA.

(2) Ozone

(a) Current Levels

In 2008, the U.S. EPA amended the ozone NAAQS (73 FR 16436, March 27, 2008). The final 2008 ozone NAAQS rule set forth revisions to the previous 1997 NAAQS for ozone to provide increased protection of public health and welfare. As of July 31, 2009 there are 54 areas designated as nonattainment for the 1997 8-hour ozone NAAQS, comprising 282 full or partial counties with a total population of almost 127 million people. These numbers do not include the people living in areas where there is a future risk of failing to maintain or attain the 1997 8-hour ozone NAAQS. The numbers above likely underestimate the number of counties that are not meeting the ozone NAAQS because the nonattainment areas associated with the more stringent 2008 8-hour ozone NAAQS have not yet been designated.[77] Table II–1 provides an estimate, based on 2005–07 air quality data, of the counties with design values greater than the 2008 8-hour ozone NAAQS of 0.075 ppm.

TABLE II–1—COUNTIES WITH DESIGN VALUES GREATER THAN THE 2008 OZONE NAAQS BASED ON 2005–2007 AIR QUALITY DATA

	Number of counties	Population [a]
1997 Ozone Standard: counties within the 54 areas currently designated as nonattainment (as of 7/31/09)	282	126,831,848
2008 Ozone Standard: additional counties that would not meet the 2008 NAAQS [b]	227	41,285,262
Total	509	168,117,110

Notes:

[a] Population numbers are from 2000 census data.

[b] Attainment designations for the 2008 ozone NAAQS have not yet been made. Nonattainment for the 2008 Ozone NAAQS will be based on three years of air quality data from later years. Also, the county numbers in this row include only the counties with monitors violating the 2008 Ozone NAAQS. The numbers in this table may be an underestimate of the number of counties and populations that will eventually be included in areas with multiple counties designated nonattainment.

(b) Projected Levels

States with 8-Hour ozone nonattainment areas are required to take action to bring those areas into compliance in the future. Based on the final rule designating and classifying 8-hour ozone nonattainment areas for the 1997 standard (69 FR 23951, April 30, 2004), most 8-hour ozone nonattainment areas will be required to attain the 1997 ozone NAAQS in the 2007 to 2013 time frame and then maintain the NAAQS thereafter. In addition, there will be attainment dates associated with the designation of nonattainment areas as a result of the reconsideration of the 2008 ozone NAAQS. Many of these nonattainment areas will need to adopt additional emission reduction programs, and the NO_X reductions that will result from the coordinated strategy will be particularly important for these States.

EPA has already adopted many emission control programs that are expected to reduce ambient ozone levels and assist in reducing the number of areas that fail to achieve the ozone NAAQS. Even so, our air quality modeling projects that in 2020, with all

[76] *See* the Advanced Notice of Proposed Rule Making at Docket Number: EPA–HQ–OAR–2007–0121.

[77] On September 16, 2009, the Administrator announced that the EPA is reconsidering the 2008 ozone standards to determine whether they adequately protect public health and the environment. She also announced that the Agency will propose to temporarily stay the 2008 standards for the purpose of attainment and nonattainment area designations. Under the stay, all activities to designate areas for the 2008 ozone standards would be suspended for the duration of the reconsideration period. EPA intends to complete the reconsideration by August 31, 2010. If, as a result of the reconsideration, EPA determines that the 2008 ozone standards are not supported by the scientific record and promulgates different ozone standards, the new 2010 ozone standards would replace the 2008 ozone standards and the requirement to designate areas for the 2008 standards would no longer apply. If EPA promulgates new ozone standards in 2010, EPA intends to accelerate the designations process to that the designations would be effective in August 2011.

current controls but excluding the reductions achieved through the coordinated strategy, up to 50 counties with a population of almost 50 million may not attain the 2008 ozone standard of 0.075 ppm. These numbers do not account for those areas that are close to (*e.g.,* within 10 percent of) the 2008 ozone standard. These areas, although not violating the standards, will also benefit from the additional reductions from this rule ensuring long-term maintenance of the ozone NAAQS.

These air quality modeling results suggest that emission reductions achieved through the coordinated strategy will improve both the average and population-weighted average ozone design value concentrations for the U.S. in 2020 and 2030. In addition, the air quality modeling shows that on average the coordinated program described in this action will help bring counties closer to ozone attainment as well as assist counties whose ozone concentrations are within 10 percent below the standard. For example, in projected nonattainment counties, on a population-weighted basis, the 8-hour ozone design value will on average decrease by 0.5 ppb in 2020 and 1.6 ppb in 2030. The air quality modeling methodology and the projected reductions are discussed in more detail in Chapter 2 of the RIA.

It should be noted that even though our air quality modeling predicts important reductions in nationwide ozone levels, three counties (of 661 that were part of the analysis) are expected to experience an increase in their ozone design values in 2030. There are two counties in Washington, Clallam County and Clark County, and Orange County, CA, which will experience 8-hour ozone design value increases due to the NO_X disbenefits which occur in these VOC-limited ozone nonattainment areas. Briefly, NO_X reductions at certain times and in some areas can lead to increased ozone levels. The air quality modeling methodology (Section 2.4.5), the projected reductions (Section 2.4), and the limited NO_X disbenefits (Section 2.4.2.2.2), are discussed in more detail in Chapter 2 of the RIA.

(c) Case Study of Shipping Emissions and Ozone Impacts on Forests

The section below attempts to estimate the impacts of the coordinated strategy on forests through a case study.

Assessing the impact of ground-level ozone on forests in the United States involves understanding the risk/effect of tree species to ozone ambient concentrations and accounting for the prevalence of those species within the forest. As a way to quantify the risk/effect of particular plants to ground-level ozone, scientists have developed ozone-exposure/tree-response functions by exposing tree seedlings to different ozone levels and measuring reductions in growth as "biomass loss."[78]

With knowledge of the distribution of sensitive species and the level of ozone at particular locations, it is possible to estimate a "biomass loss" for each species across their range. EPA performed an analysis for 2020 in which we examined biomass loss with and without ship emissions to determine the benefit of reducing these emissions on sensitive tree species in the U.S.[79] The biomass loss attributable to shipping appears to range from 0 to 6.5% depending on the particular species. The species most sensitive to ozone related biomass loss in the U.S. is black cherry (*Prunus serotina*); the area of its range with more than 10% total biomass loss in 2020 decreased by 8.5% in the case in which emissions from ships were removed. Likewise, yellow-poplar (*Liriodendron tulipifera*), eastern white pine (*Pinus strobus*), aspen (*Populus spp.*), and ponderosa pine (*Pinus ponderosa*) saw areas with more then 2% biomass loss reduced by 2.1% to 3.8% in 2020. This 2% level of biomass loss is important, because a consensus workshop on ozone effects reported that a 2% annual biomass loss causes harm due to the potential for compounding effects over multiple years as short-term negative effects on seedlings affect long-term forest health.[80] [81]

(3) Nitrogen and Sulfur Deposition

(a) Current Levels

Over the past two decades, the EPA has undertaken numerous efforts to reduce nitrogen and sulfur deposition across the U.S. Analyses of long-term monitoring data for the U.S. show that deposition of both nitrogen and sulfur compounds has decreased over the last 17 years although many areas continue to be negatively impacted by deposition. Deposition of inorganic nitrogen and sulfur species routinely measured in the U.S. between 2004 and 2006 were as high as 9.6 kg N/ha/yr and 21.3 kg S/ha/yr. The data shows that reductions were more substantial for sulfur compounds than for nitrogen compounds. These numbers are generated by the U.S. national monitoring network and they likely underestimate nitrogen deposition because NH_3 is not measured. In the eastern U.S., where data are most abundant, total sulfur deposition decreased by about 36% between 1990 and 2005 while total nitrogen deposition decreased by 19% over the same time frame.[82]

(b) Projected Levels

The emissions reductions that result from the coordinated strategy will significantly reduce the annual total sulfur and nitrogen deposition occurring in sensitive U.S. ecosystems including forests, wetlands, lakes, streams, and estuaries. For sulfur deposition, adopting the coordinated strategy will result in reductions ranging from 5% to 20% in 2020 along the entire Atlantic and Gulf coasts with higher levels of reduction, exceeding 25%, occurring in the near-land coastal waters of the U.S. In a few land areas on the Atlantic and Gulf coasts, such as the southern parts of the States of Louisiana, Texas, and Florida, 2020 sulfur deposition reductions will be much higher, *i.e.,* over 30%. Along the Pacific Coast, sulfur deposition reductions will exceed 25% in the entire Southern California area, and the Pacific Northwest. For a map of 2020 sulfur reductions and additional information on these impacts *see* Section 2.4.3 of the RIA.

Overall, nitrogen deposition reductions in 2020 resulting from the coordinated strategy described in this action are less than sulfur deposition reductions. Nitrogen deposition reductions will range from 3% to 7% along the entire Atlantic, Pacific and Gulf Coasts. As with sulfur deposition reductions, a few areas such as the southern parts of the States of Louisiana, Texas, and Florida will experience larger reductions of nitrogen up to 9%. The Pacific coastal waters will see higher nitrogen reductions, exceeding 20% in some instances. *See* Section 2.4.3 of the RIA for a map and additional information on nitrogen deposition impacts.

[78] Chappelka, AH, Samuelson, LJ. (1998). Ambient ozone effects on forest trees of the Eastern United States: a review. *New Phytologist, 139,* 91–108.

[79] Note that while the coordinated strategy does not eliminate ship emissions, it will be directionally helpful in reducing ship emissions.

[80] Prasad A.M, Iverson L.R. (2003). Little's range and FIA importance value database for 135 eastern U.S. tree species. Northeastern Research Station, USDA Forest Service, Delaware, Ohio. [online] Retrieved on March 19, 2009, from *http://www.fs.fed.us/ne/delaware/4153/global/littlefia/index.html.*

[81] Heck W.W., Cowling E.B. (1997) The need for a Long Term Cumulative Secondary Ozone Standard—an Ecological Perspective. *Air and Waste Management Association, EM,* 23–33.

[82] U.S. EPA. U.S. EPA's 2008 Report on the Environment (Final Report). U.S. Environmental Protection Agency, Washington, DC, EPA/600/R–07/045F (NTIS PB2008–112484).

(4) Visibility

(a) Current Levels

As mentioned in Section II.C.1, millions of people live in nonattainment areas for the $PM_{2.5}$ NAAQS. These populations, as well as large numbers of individuals who travel to these areas, are likely to experience visibility impairment. In addition, while visibility trends have improved in mandatory class I Federal areas, the most recent data show that these areas continue to suffer from visibility impairment. In summary, visibility impairment is experienced throughout the U.S., in multi-State regions, urban areas, and remote mandatory class I Federal areas.

(b) Projected Levels

The air quality modeling conducted for the coordinated strategy was also used to project visibility conditions in 133 mandatory class I Federal areas across the U.S. in 2020 and 2030. The results indicate that improvements in visibility due to OGV emissions reductions will occur in all 133 mandatory class I Federal areas in the future, although all areas will continue to have annual average deciview levels above background in 2020 and 2030.[83] The average visibility on the 20 percent worst days at these scenic locales is projected to improve by 0.22 deciviews, or 1.4 percent in 2020 and by 0.43 deciviews or 2.7% in 2030.

The greatest improvements in visibilities will occur in coastal areas. For instance, the Agua Tibia Wilderness area (near Los Angeles) will see a 9% improvement (2.17 DV) in 2020 and a 17% improvement (4.6 DV) in 2030 as a result of the emission reductions from the coordinated strategy. National parks and national wilderness areas in other parts of the country will also see improvements. For example, in 2030 the Swanquarter National Wildlife Refuge (North Carolina) will have a 5% improvement in visibility (1.11 DV) and Acadia National Park (Maine) will have a 6% improvement (1.27 DV) with the coordinated strategy. Even inland mandatory class I Federal areas are projected to see improvements as a result of the controls from the coordinated strategy. For example in 2030, the Grand Canyon National Park, located in the State of Arizona, will see a 54% improvement in visibility (0.42 DV) with the coordinated strategy. For the table which contains the full visibility results over the 133 analyzed areas *see* Section 2.2.4.2 of the RIA.

D. Emissions From Ships With Category 3 Engines

(1) Overview

This section describes the contribution of Category 3 vessels to national emission inventories of NO_X, $PM_{2.5}$, and SO_2. A Category 3 vessel has a Category 3 propulsion engine. Emissions from a Category 3 vessel include the emissions from both the propulsion and auxiliary engines on that vessel. Propulsion and auxiliary engine emissions were estimated separately to account for differences in emission factors, engine size and load, and activity.

We estimate that in 2009, Category 3 vessels will contribute almost 913,000 tons (10 percent) to the national mobile source NO_X inventory, about 71,000 tons (24 percent) to the mobile source diesel $PM_{2.5}$ inventory, and nearly 597,000 tons (80 percent) to the mobile source SO_2 inventory. Expressed as a percentage of all anthropogenic emissions, Category 3 vessels contribute 6 percent to the national NO_X inventory, 3 percent to the national $PM_{2.5}$ inventory, and 11 percent to the total SO_2 inventory in 2009. In 2030, absent the strategy discussed in this rule, these vessels will contribute about 2.1 million tons (40 percent) to the mobile source NO_X inventory, 168,000 tons (75 percent) to the mobile source diesel $PM_{2.5}$ inventory, and about 1.4 million tons (95 percent) to the mobile source SO_2 inventory. Expressed as a percentage of all anthropogenic emissions, Category 3 vessels will contribute 19 percent to the national NO_X inventory, 5 percent to the national $PM_{2.5}$ inventory, and 15 percent to the total SO_2 inventory in 2030. Under this strategy, by 2030, annual NO_X emissions from these vessels will be reduced by 1.2 million tons, $PM_{2.5}$ emissions by 143,000 tons, and SO_2 emissions by 1.3 million tons.[84]

Each sub-section below discusses one of the three affected pollutants, including expected emission reductions that will result from the combination of the proposed CAA NO_X standards along with the ECA designation through amendment to MARPOL Annex VI and related fuel standards. Table II–2 summarizes the impacts of these reductions for 2020 and 2030 on a national basis. Chapter 3 of the RIA also presents regional emissions inventories, such as those for the Great Lakes. Table II–3 provides the estimated 2030 NO_X emission reductions (and PM reductions) for the coordinated strategy compared to the Locomotive and Marine rule, Clean Air Nonroad Diesel (CAND) program, and the Heavy-Duty Highway rule. Further details on our inventory estimates are available in Chapter 3 of the RIA. Note that the inventories presented here do not consider the exemption of Great Lakes steamships from the final fuel sulfur standards. This change to the program is not expected to have a significant impact on national inventory estimates. We intend to follow up with a more detailed study of the impacts of the emission control program on Great Lakes carriers which may provide information that will help us refine our Great Lakes emission inventories.

As described in Chapter 3 of the RIA, the Category 3 vessel emission inventories presented in this section are estimated by combining two sets of emissions inventories, one for U.S. port areas and one for operation on the open ocean. With regard to operation on the open ocean, it was necessary to specify an outer boundary of the modeling domain; otherwise, emissions from ships operating as far away as Asia or Europe would be included in the U.S. emission inventory. For simplicity, we set the outer boundary for inventory modeling roughly equivalent to the U.S. Exclusive Economic Zone (EEZ). It consists of the area that extends 200 nautical miles (nm) from the official U.S. baseline, which is recognized as the low-water line along the coast as marked on the official U.S. nautical charts in accordance with the articles of the Law of the Sea. The U.S. region was then clipped to the boundaries of the U.S. EEZ. While this area will exclude emissions that occur outside the 200 nm boundary but that are transported to the U.S. landmass, it has the advantage of corresponding to an area in which the United States has a clear environmental interest. This area also corresponds well to the CMAQ modeling domain for most coasts.

[83] The level of visibility impairment in an area is based on the light-extinction coefficient and a unit less visibility index, called a "deciview", which is used in the valuation of visibility. The deciview metric provides a scale for perceived visual changes over the entire range of conditions, from clear to hazy. Under many scenic conditions, the average person can generally perceive a change of one deciview. The higher the deciview value, the worse the visibility. Thus, an improvement in visibility is a decrease in deciview value.

[84] These emission inventory reductions include reductions from ships operating within the 24 nautical mile regulatory zone off the California Coastline, beginning with the effective date of the Coordinated Strategy program elements. The California regulation contains a provision that would sunset the requirements of the rule if the Federal program achieves equivalent emission reductions. *See http://www.arb.ca.gov/regact/2008/fuelogv08/fro13.pdf* at 13 CCR 2299.2(j)(1).

TABLE II–2—ESTIMATED NATIONAL (50 STATE) REDUCTIONS IN EMISSIONS FROM CATEGORY 3 COMMERCIAL MARINE VESSELS [a]

Pollutant [short tons]	2020	2030
NO_X:		
NO_X Emissions without Coordinated Strategy	1,361,000	2,059,000
NO_X Emissions with Coordinated Strategy	952,000	878,000
NO_X Reductions Resulting from Coordinated Strategy	409,000	1,181,000
Direct $PM_{2.5}$:		
$PM_{2.5}$ Emissions without Coordinated Strategy	110,000	168,000
$PM_{2.5}$ Emissions with Coordinated Strategy	16,000	25,000
$PM_{2.5}$ Reductions Resulting from Coordinated Strategy	94,000	143,000
SO_2:		
SO_2 Emissions without Coordinated Strategy	928,000	1,410,000
SO_2 Emissions with Coordinated Strategy	51,000	78,000
SO_2 Reductions Resulting from Coordinated Strategy	877,000	1,332,000

Notes:
[a] Emissions are included within 200 nautical miles of the U.S. coastline.

TABLE II–3—PROJECTED 2030 EMISSIONS REDUCTIONS FROM RECENT MOBILE SOURCE RULES

[Short Tons] [a]

Rule	NO_X	$PM_{2.5}$
Category 3 Marine	1,181,000	143,000
Locomotive and Marine	795,000	27,000
Clean Air Nonroad Diesel	738,000	129,000
Heavy-Duty Highway	2,600,000	109,000

Notes:
[a] Locomotive and Marine Rule (73 FR 25098, May 6, 2008) Clean Air Nonroad Diesel Rule (69 FR 38957, June 29, 2004) Heavy-Duty Highway Rule (66 FR 5001, January 18, 2001).

(2) NO_X Emission Reductions

In 2009, annual emissions from Category 3 marine vessels will total about 913,000 tons. Earlier Tier 1 NO_X engine standards became effective in 2000, but the reductions due to the Tier 1 standards are offset by the growth in this sector, resulting in increased NO_X emissions of 1.4 million tons and 2.1 million tons in 2020 and 2030, respectively.

As shown in Table II–2, the coordinated strategy will reduce annual NO_X emissions from the current national inventory baseline by 409,000 tons in 2020 and 1,181,000 tons in 2030.

As shown in Table II–3, the 2030 NO_X reductions for the coordinated strategy will exceed those for the other two nonroad rules.

(3) $PM_{2.5}$ Emissions Reductions

In 2009, annual emissions from Category 3 marine vessels will total about 71,000 tons. By 2030, these engines, absent the coordinated strategy, would contribute about 168,000 tons.

As shown in Table II–2, the coordinated strategy will reduce annual $PM_{2.5}$ emissions by 94,000 tons in 2020 and 143,000 tons in 2030. As seen in Table II–3, the 2030 $PM_{2.5}$ emission reduction will be larger than any of the reductions achieved with other recent rules.

(4) SO_2 Emissions Reductions

In 2009, annual emissions from Category 3 marine vessels will total about 597,000 tons. By 2030, these engines, absent the coordinated strategy, will contribute about 1.4 million tons.

As shown in Table II–2 the coordinated strategy will reduce annual SO_2 emissions by 877,000 tons in 2020 and 1.3 million tons in 2030.

III. Engine Standards

This section details the emission standards, implementation dates, and other major requirements being finalized under the Clean Air Act. A discussion of the technological feasibility of the finalized NO_X standards follows the description of the proposed program.

Other elements of our coordinated strategy to control emissions from ships are discussed in subsequent sections. Provisions related to our Clean Air Act fuel controls are described in Section IV. Section V summarizes the U.S. and Canada's recent proposal to amend MARPOL Annex VI to designate much of the U.S. and Canadian coasts as an Emission Control Area.[85] Finally, provisions revising our Clean Air Act test procedures and related certification requirements, provisions to implement MARPOL Annex VI through APPS, and various changes we are making to our Category 1 and 2 (marine diesel engines with per cylinder displacement less than 30 liters per cylinder) marine diesel engine program are described in Section VI.

A. What Category 3 Marine Engines Are Covered?

Consistent with our existing marine diesel emission control program, the engine emission standards being finalized will apply to any new marine diesel engine with per-cylinder displacement at or above 30 liters installed on a vessel flagged or registered in the United States.

With regard to marine diesel engines on foreign vessels that enter U.S. ports, we are retaining our current approach and not applying this Clean Air Act program to those engines. This is appropriate because engines on foreign vessels are subject to the same NO_X limits through MARPOL Annex VI, and the United States can enforce compliance pursuant to Annex VI and the recent amendments to the Act to Prevent Pollution from Ships (33 U.S.C. 1901 *et seq.*). At the same time, however, the effectiveness of this approach is contingent on the designation of U.S. coasts as an ECA

[85] The ECA proposal and associated Technical Support Document can be found at *http://www.epa.gov/otaq/oceanvessels.htm.* France has since joined the ECA proposal on behalf of the Saint Pierre and Miquelon archipelago.

pursuant to MARPOL Annex VI, since the Annex VI Tier III NO_X limits are geographic in scope and apply only if an ECA has been adopted. We anticipate that MARPOL Annex VI will be amended to include the North American ECA proposal. However, if the proposed amendment is not adopted in a timely manner by IMO, we will reconsider whether additional action is necessary to control harmful emissions from all vessels affecting U.S. air quality. Section V contains a description of the ECA designation process.

The combination of this Clean Air Act program, MARPOL Annex VI, and APPS will apply comparable emission standards to the vast majority of vessels entering U.S. ports or operating in U.S. waters.[86] Most significantly, these vessels will be required to meet the NO_X limits described below. As described later in this Section III and in Section VI, there will be some minor differences between the finalized Clean Air Act program and the requirements that apply under MARPOL Annex VI. Nevertheless, with respect to U.S. air quality, these differences will have a negligible effect on emissions from foreign vessels.

B. What Standards Are We Finalizing for Newly Manufactured Engines?

This subsection details the emission standards (and implementation dates) we are finalizing for freshly manufactured (*i.e.,* new) Category 3 engines on U.S. vessels. As described in Section III.C, we believe the standards will be challenging to manufacturers, yet ultimately feasible and cost-effective within the finalized lead time. These standards, along with other parts of our program, are the outcome of our work with stakeholders to resolve the challenges associated with applying advanced diesel engine technology to Category 3 engines to achieve significant NO_X reductions.

(1) NO_X Standards

We are finalizing new Tier 2 and Tier 3 NO_X emission standards for Category 3 marine diesel engines. Our existing Tier 1 NO_X standards for Category 3 engines were dependent on the rated speed of the engine for speeds between 130 revolutions per minute (rpm) and 2,000 rpm. Fixed standards applied for lower and higher speeds. Thus, the standards were expressed as an equation that applies for speeds between 130 rpm and 2,000 rpm, along with fixed values that were calculated from the equation for 130 rpm and 2,000 rpm that apply for lower and higher speeds. This was done to account for the fact that brake-specific NO_X emissions are inherently higher for lower speed engines (and lower for higher speed engines). Note that this same approach is used by the IMO for the same technical reasons. We are continuing this approach for Tier 2 and Tier 3, as shown in Table III–1.

TABLE III–1—NO_X EMISSION STANDARDS FOR CATEGORY 3 ENGINES

[g/kW-hr]

		Less than 130 RPM	130–2,000 RPM [a]	Over 2,000 RPM
Tier 1	[b] 2004	17.0	$45.0 \cdot n^{(-0.20)}$	9.8
Tier 2	2011	14.4	$44.0 \cdot n^{(-0.23)}$	7.7
Tier 3	2016	3.4	$9.0 \cdot n^{(-0.20)}$	2.0

Notes:
[a] Applicable standards are calculated from n (maximum in-use engine speed in RPM), rounded to one decimal place.
[b] Tier 1 NO_X standards applied for engines originally manufactured after 2004, and also to certain earlier engines.

Our analysis, which is described in the RIA, shows that these standards will give the greatest degree of emission control achievable considering compliance costs, lead time, and other relevant factors. The technological bases are also discussed briefly below.

Note that other important provisions related to compliance with these standards are described in Section VI. This includes provisions to ensure effective control of NO_X emissions over a broad range of operating conditions.

(a) Tier 2 NO_X Limits

We are finalizing the proposed Tier 2 NO_X emission standards for Category 3 marine diesel engines. In-cylinder emission control technology for Category 3 marine engines has progressed substantially in recent years. Significant reductions can be achieved in the near term with little or no impact on overall vessel performance. These technologies include traditional engine-out controls such as electronically-controlled high-pressure common-rail fuel systems, turbocharger optimization, compression-ratio changes, and electronically-controlled exhaust valves. We are setting a near-term NO_X emission standard requiring a reduction of approximately 20 percent below the current Tier 1 standard beginning 2011.

(b) Tier 3 NO_X Limits

While the Tier 2 standards will achieve modest reductions quickly, the finalized Tier 3 standards are intended to achieve much greater emission reductions through the use of more advanced emission control technology. These standards will achieve reductions of about 80 percent from the current Tier 1 standards. As explained in the RIA, we evaluated the possibility of requiring the Tier 3 limits on an earlier schedule than 2016. However, we found that a schedule requiring Tier 3 limits prior to 2016 had significant feasibility issues, and are therefore finalizing the 2016 implementation date for Tier 3 standards. Under the finalized approach, manufacturers of Category 3 engines will have about the same amount of lead time allowed manufacturers for smaller diesel marine engines and for locomotives.

(2) PM and SO_X Standards

We are not establishing new engine standards for PM or SO_X emissions. We intend to rely instead on the use of cleaner fuels as described in Section IV and V. SO_X emissions and the majority of the direct PM emissions from Category 3 marine engines operated on residual fuels are a direct result of fuel quality, most notably the sulfur in the fuel, and engine-based PM controls are not currently feasible for engines using these higher sulfur fuels. Other components of residual fuel, such as ash and heavy metals, also contribute directly to PM.

Using cleaner distillate fuel is the most effective means to achieve significant PM and SO_X reductions for

[86] Certain public vessels such as military vessels and foreign vessels in innocent passage may be exempt.

Category 3 engines. We are finalizing requirements to substantially reduce the sulfur content of fuel purchased in the U.S. for use in an ECA. This complements Annex VI which requires that fuels used in ECAs around the world have sulfur levels no higher than 1,000 ppm. This sulfur limit is expected to necessitate the use of distillate fuel which will result not only in reductions in sulfate PM emissions, but also reductions in organic PM and metallic ash particles in the exhaust.

Even though the sulfur limit is much lower than current levels, it is not clear if this fuel sulfur level would be low enough to allow Category 3 engines to be equipped with the catalytic PM filters similar to those being used by trucks today. If we were to require technology that needs lower sulfur fuel, such as 15 ppm, ship operators would need to have access to this fuel around the world and at this time, it is not clear if 15 ppm sulfur fuel could be made available globally. Operating on higher sulfur fuel, such as for outside of our waters, could otherwise result in damage to the PM control equipment. In any case, the 1,000 ppm sulfur fuel requirement alone will eliminate 85 percent of PM emissions from ships operating in ECAs.

To further our understanding of PM emissions from ships, we are requiring engine manufacturers to measure and report PM emissions even though we are not finalizing a PM standard. The information gathered will help support our efforts as we continue to evaluate the feasibility of achieving further PM reductions. It will also help us to better characterize the PM emission rates associated with operating Category 3 engines on distillate fuel. If we determine that further PM reductions are feasible or that a specific PM limit is necessary to ensure anticipated reductions in PM emissions from ships, we may propose PM standards for Category 3 engines in the future.

(3) HC and CO Standards

We are finalizing HC and CO standards of 2.0 g/kW-hr and 5.0 g/kW-hr, respectively. Emission control technologies for Category 3 marine engines have been concentrated on reducing NO_X and PM emissions, but these emission standards will prevent increases in emissions of HC and CO that might otherwise occur as a result of use of certain technologies for controlling NO_X, such as those that significantly degrade combustion efficiency.

(4) CO_2 Standards

We are not adopting CO_2 standards for marine diesel engines at this time. Marine diesel engines are included in other ongoing Agency actions, including our Advance Notice of Proposed Rulemaking (ANPRM) for mobile sources (73 FR 44353, July 30, 2008) and our Greenhouse Gas Reporting Rule (74 FR 16448, April 10, 2009). In addition, EPA is participating in the U.S. Government delegation to IMO, which is currently engaged in negotiations for an international program to address greenhouse emissions from ships.

C. Are the Standards Feasible?

We have analyzed a variety of technologies available for NO_X reduction in the Category 3 marine sector. As described in more detail in our RIA, we are projecting that marine diesel engine manufacturers will choose to use in-cylinder, or engine design-based emission control technologies to achieve the NO_X reductions required to meet the final Tier 2 standard.

The in-cylinder, or engine-out, NO_X emissions of a diesel engine can be controlled by utilizing engine design and calibration parameters (*e.g.,* fuel delivery and valve timing) to limit the formation of NO_X. NO_X formation rate has a strong exponential relationship to combustion temperature. Therefore, high temperatures result in high NO_X formation rates.[87] [88] Any changes to engine design and calibration which can reduce the peak temperature realized during combustion will also reduce NO_X emissions. Many of the approaches and technologies for reducing in-cylinder NO_X emissions are discussed in our RIA.

To achieve the 80 percent NO_X reductions required to meet the final Tier 3 standard, we believe many manufacturers will choose selective catalytic reduction (SCR) exhaust aftertreatment technology. SCR is a commonly-used technology for meeting stricter NO_X emissions standards in diesel applications worldwide. Stationary power plants fueled with coal, diesel and natural gas have used SCR for three decades as a means of controlling NO_X emissions, and European heavy-duty truck manufacturers are currently using this technology to meet Euro 5 emissions limits. To a lesser extent, SCR has been introduced on diesel engines in the U.S. market, but the applications have been limited to marine ferryboat and stationary electrical power generation demonstration projects in California and several of the Northeast States. SCR systems are currently being designed and developed for use on ocean-going vessels worldwide, and we project that SCR will continue to be a viable technology for control of Category 3 NO_X emissions.

When operating in the ECA, SCR units would be active, meaning that urea would be injected into the exhaust to facilitate catalytic reduction of NO_X emissions. When outside of the ECA, the unit would likely be inactive, meaning that urea would not be injected into the exhaust. When the SCR unit is inactive, the exhaust flow could either continue to pass through the SCR unit or be diverted around the catalyst. Under the MARPOL NO_X Technical Code, a means for monitoring the use of urea must be provided which must include "sufficient information to allow a ready means of demonstrating that the consumption of such additional substances is consistent with achieving compliance with the applicable NO_X limit." In addition, where a NO_X reducing device, such as SCR, is used, one of the options for providing verification of compliance with the NO_X standard is through direct measurement and monitoring of NO_X emissions. A more detailed discussion of SCR technology can be found in our RIA.

SCR is not the only approach under consideration for meeting the Tier 3 standards. Manufacturers may choose a combination of other in-cylinder technologies, such fuel-water emulsification, direct water injection, intake air humidification, or exhaust gas recirculation (EGR) to reduce NO_X emissions and meet the final standards. These "in-cylinder" approaches could be calibrated and applied in one manner to achieve Tier 3 NO_X levels when operating with an ECA, and then adjusted, or re-calibrated, in another manner to achieve Tier 2 NO_X levels when operating outside an ECA. This is discussed in more detail in the RIA.

Another technology, which is currently under investigation, is the use of an exhaust gas cleaning unit (EGCS) to reduce NO_X emissions. One significant technological issue that must be addressed is the prevention of nitrates from being introduced into the water. In a typical diesel exhaust gas mixture, NO_X is composed of roughly 5–10% NO_2, with the majority of the remainder in the form of NO. NO_2 is soluble in water, and therefore may be removed by the water in the scrubber. It is possible to treat the exhaust upstream of the scrubber to convert

[87] Flynn, P., *et al.,* "Minimum Engine Flame Temperature Impacts on Diesel and Spark-Ignition Engine NO_X Production", SAE 2000–01–1177, 2000.

[88] Heywood, John B., "Internal Combustion Engine Fundamentals", McGraw-Hill, 1988.

more of the NO_X to NO_2, thereby facilitating the use of a scrubber to remove NO_2. However, we are concerned that this would add to nitrogen loading of the water in which the ship is operating. As discussed in Section II.B.1, nitrogen loading can lead to serious water quality impacts. This issue is addressed in the IMO EGCS guidelines by limiting the amount of nitrates that may be removed by the scrubber, and washed overboard. However, a scrubber design may be acceptable if it removes nitrates from the wash water, which in turn are disposed of properly, or prevents nitrates from forming in the wash water. One manufacturer has stated that their unique EGCS design converts NO_X to nitrogen (N_2), rather than nitrates. This is discussed in more detail in the RIA.

IV. Fuel Standards

A. Background

EPA is finalizing standards for fuel manufactured or distributed in the U.S. that are consistent with those recently adopted as amendments to MARPOL Annex VI. As amended, Annex VI includes revised fuel sulfur standards for use in engines onboard ships, and it also set more stringent fuel sulfur limits for "any fuel oil used onboard ships * * * operating within an Emission Control Area" (Annex VI, Regulation 14).

Under the Annex, the process by which an Emission Control Area (ECA) is to be designated is through amendment of the Annex. The U.S. and Canadian governments have submitted a proposal to amend MARPOL Annex VI to designate an ECA to include waters off much of the U.S. and Canada. Specifically, the proposed ECA includes the waters off of the contiguous 48 States, Southeastern Alaska, and the Main Hawaiian Islands, extending to a distance of 200 nautical miles from the coastline. This amendment was considered at the July 2009 Marine Environment Protection Committee (MEPC 59), and we expect that the amendment will be adopted in March 2010, at MEPC 60. If this amendment is not adopted in a timely manner by IMO, we intend to take supplemental action to control emissions from vessels that affect U.S. air quality.

EPA is in this notice finalizing fuel sulfur limits under section 211(c) of the Clean Air Act that match the limits that apply under Annex VI in ECAs. The adoption of such standards will: (1) Allow for the production and sale of up to 1,000 ppm sulfur fuel for use in Category 3 marine vessels; and (2) forbid the production and sale of fuel oil above 1,000 ppm sulfur for use in the waters within an ECA and ECA associated areas (per 40 CFR 1043.20) except as allowed under 40 CFR Part 1043, as described below.[89] [90]

There are a few exceptions that will allow for the use of fuel greater than 1,000 ppm sulfur in an ECA. First, as an alternative to using lower sulfur fuel, Annex VI allows for the use of approaches, such as exhaust gas scrubbers, that can achieve equivalent emission reductions even when the fuel is operating on high sulfur residual fuel. In the event that a vessel is using an alternative device, procedure, or compliance method, provided they achieve equivalent emissions reductions, fuel oil above 1,000 ppm sulfur may be purchased in the U.S. for use in an ECA and ECA associated areas. This is discussed in more detail in Section V of this preamble. As discussed further in Section VI.B.5, existing steamships operating exclusively on the Great Lakes are not subject to the 1,000 ppm sulfur requirement, and vessels that have been granted temporary relief on the basis of serious economic hardship are also not subject to the standard. These three exceptions are all set out in the regulations at 40 CFR Part 1043.

The majority of vessels with a Category 3 propulsion engine operate on high-sulfur, heavy fuel oil (HFO) (also known as residual, or bunker, fuel). Due to their use of heavy fuel, these marine diesel engines have very high PM and SO_2 emissions. Sulfur in the fuel is emitted from engines primarily as SO_2; however a small fraction is emitted as sulfur trioxide (SO_3) which immediately forms sulfate and is emitted as PM by the engine. In addition, much of the SO_2 emitted from the engine reacts in the atmosphere to form secondary PM. Reductions in residual fuel sulfur levels will lead to significant sulfate PM and SO_2 emission reductions which will provide dramatic environmental and public health benefits. However, in most cases, fuels that meet the long-term fuel sulfur standards will likely be distillate fuels, rather than HFO. In addition to reductions in sulfate PM, switching from HFO to distillate fuel may reduce black carbon emissions, fine particle counts, organic carbon, and metallic ash particles. Further information on these impacts as well as a discussion of the technological feasibility of fuel switching, or using alternative approaches, is discussed in Section V.

HFO sold for use by these vessels is currently not subject to any EPA sulfur limits (as it is not regulated by our current sulfur program) and generally has very high levels of sulfur. The finalized modifications to our existing diesel fuel program prohibit the production and sale of this fuel for use in an ECA associated area, and fuel sold for use in such areas will not be allowed to exceed a sulfur content of 1,000 ppm, except as allowed under 40 CFR Part 1043. In a complementary fashion, the amendment to MARPOL Annex VI designating the North American ECA will ensure that fuel used in an ECA, including fuel purchased in another country but used within the North American ECA, also either meets a 1,000 ppm sulfur limit or meets required emissions limits through the use of alternative devices, procedures, or compliance methods, provided they achieve equivalent emissions reductions (equivalents). Under our finalized regulations, fuel sold for use by Category 3 vessels without equivalents in an ECA and ECA associated areas will be allowed to have a sulfur content as high as this 1,000 ppm sulfur limit (except as otherwise allowed under 40 CFR Part 1043), while fuel sold for use in Category 1 (marine diesel engines up to 7 liters per cylinder displacement) and Category 2 (marine diesel engines from 7 to 30 liters per cylinder) vessels will continue to be subject to the nonroad, locomotive, and marine [91] (NRLM) diesel fuel sulfur requirements. In the event that the North American ECA is not approved in a timely manner, we will revisit the standards being finalized here in that context.

B. Diesel Fuel Standards Prior to This Final Rule

The Nonroad Diesel program (finalized on June 29, 2004 (69 FR 38958)) reduces the sulfur content of NRLM diesel fuel from uncontrolled levels down to a maximum sulfur level of 15 ppm. Refiners and importers are

[89] Per 40 CFR 1043.20, "ECA associated areas" are U.S. internal waters that are navigable from the ECA. This term does not include internal waters that are shoreward of ocean waters that are not part of an emission control area. Though the outer limits of the sulfur limitation are the same as for the proposed ECA, the sulfur limitation in this final rule is not dependent on adoption of the ECA.

[90] For the purpose of the discussion in this section with regard to the CAA fuel standards in 40 CFR 80, "Category 3 vessel" refers to a commercial vessel with a Category 3 propulsion engine; "Category 2 vessel" refers to a commercial or recreational vessel with a Category 2 propulsion engine; and "Category 1 vessel" refers to a commercial or recreational vessel with only Category 1 or smaller engines. The fuel provisions being finalized today apply to all of the engines on a given vessel.

[91] For the purposes of this final rule (and the final 40 CFR Part 80 regulations), the term "marine" as it is used here refers to Category 1 and 2 marine diesel engines unless otherwise stated.

required to produce or import all NRLM diesel fuel at a sulfur level of 15 ppm or less by June 1, 2014. The main compliance mechanism of the diesel sulfur program is the Designate and Track (D&T) provisions, which allows NRLM diesel fuel to be distinguished from similar products (*e.g.,* heating oil) and yet provides a means for diesel fuel to be fungibly transported through the fuel production and distribution system. Under D&T, refiners and importers are required to designate the type and sulfur level of each batch of fuel produced or imported. As this fuel is transferred through the distribution system, product transfer documents (PTDs) must be exchanged each time the batch changes custody. Along with PTDs, other required elements of D&T include quarterly and annual reporting, fuel pump labeling, and recordkeeping.

The Nonroad Diesel program also contains certain provisions to ease refiners' transition to the lower sulfur standards and to enable the efficient distribution of all diesel fuels. These provisions, as discussed more below in Section IV.B.2, include special provisions for qualified small refiners, transmix processors, and entities in the fuel distribution system.

(1) Scope of the Nonroad Diesel Fuel Program

The sulfur standards finalized by the Nonroad Diesel rule apply to all the diesel fuel that is produced and sold for use in NRLM diesel applications (all fuel used in NRLM diesel engines, except for fuels heavier than a No. 2 distillate used in Category 2 and 3 marine engines [92] and any fuel that is exempted for national security or other reasons). While the Nonroad Diesel rule did not set sulfur standards for other distillate fuels (such as jet fuel, heating oil, kerosene, and No. 4 fuel oil), it did implement provisions to prevent the inappropriate use of heating oil and other higher sulfur distillate fuels in NRLM and locomotive and marine (LM) diesel applications. Sale of distillate fuels for use in nonroad, locomotive, or marine diesel engines will generally be prohibited unless the fuel meets the diesel fuel sulfur standards of 40 CFR Part 80.[93] The regulated fuels under our diesel fuel sulfur program include those fuels listed in the regulations at 40 CFR 80.2(qqq).

The sulfur standards do not apply to: (1) No. 1 distillate fuel used to power aircraft; (2) Number 4, 5, and 6 fuels (*e.g.,* residual fuels or residual fuel blends, intermediate fuel oil (IFO) Heavy Fuel Oil Grades 30 and higher), used for stationary source purposes; (3) any distillate fuel with a T–90 distillation point greater than 700 °F, when used in Category 2 or 3 marine diesel engines (this includes Number 4, 5, and 6 fuels (*e.g.,* IFO Heavy Fuel Oil Grades 30 and higher), including fuels meeting the American Society for Testing and Materials (ASTM) specifications DMB, DMC, and RMA–10 and heavier); and (4) any fuel for which a national security or research and development exemption has been approved or fuel that is exported from the U.S. The criterion that any distillate fuel with a T–90 greater than 700 °F will not be subject to the sulfur standards when used in Category 2 or 3 marine engines was intended to exclude fuels heavier than No. 2 distillate, including blends containing residual fuel. In addition, residual fuel was not subject to the sulfur standards.

While many marine diesel engines use No. 2 distillate, ASTM specifications for marine fuels identify four kinds of marine distillate fuels: DMX, DMA, DMB, and DMC. DMX is a special light distillate intended mainly for use in emergency engines. DMA (also called marine gas oil, or "MGO") is a general purpose marine distillate that contains no trace of residual fuel. These fuels can be used in all marine diesel engines but are primarily used by Category 1 engines. DMX and DMA fuels intended for use in any marine diesel engine are subject to EPA's fuel sulfur standards.

DMB, also called marine diesel oil, is not typically used with Category 1 engines, but is used for Category 2 and 3 engines. DMB is allowed to have a trace of residual fuel, which can be high in sulfur. This contamination with residual fuel usually occurs due to the distribution process, when distillate is brought on board a vessel via a barge that has previously contained residual fuel, or using the same supply lines as are used for residual fuel. DMB is produced when fuels such as DMA are brought on board the vessel in this manner. EPA's fuel sulfur standards do apply to the distillate that is used to produce the DMB, for example the DMA distillate, up to the point that it becomes DMB. However, DMB itself is not subject to the EPA fuel sulfur standards when it is used in Category 2 or 3 engines.

DMC is a grade of marine fuel that may contain some residual fuel and is often a residual fuel blend. This fuel is similar to No. 4 diesel, and can be used in Category 2 and Category 3 marine diesel engines. DMC is produced by blending a distillate fuel with residual fuel, for example at a location downstream in the distribution system. EPA's fuel sulfur standards apply to the distillate that is used to produce the DMC, up to the point that it is blended with the residual fuel to produce DMC. However, DMC itself is not subject to the EPA fuel sulfur standards when it is used in Category 2 or 3 marine engines.

Residual fuel was not previously covered by the sulfur content standards as it is not a distillate fuel. Residual fuel is typically designated by the prefix RM (*e.g.,* RMA, RMB, *etc.*). These fuels are also identified by their nominal viscosity (*e.g.,* RMA10, RMG35, *etc.*). Most residual fuels require treatment by an onboard purifier-clarifier centrifuge system, although RMA and RMB do not require this.

The distillation criterion adopted by EPA, T–90 greater than 700 °F, was designed to identify those fuels that are not subject to the sulfur standards when used in Category 2 or 3 marine diesel engines. It is intended to exclude DMB, DMC, and other heavy distillates or blends, when used in Category 2 or 3 marine diesel engines. We are not amending this provision in this action. However, under this final rule, all of these fuels, and any other diesel fuels or fuel oils, will be subject to a 1,000 ppm sulfur limit if they are produced or sold for use in an ECA, except as otherwise allowed under 40 CFR Part 1043.

(2) Flexibilities

Compliance flexibilities were provided in the nonroad diesel sulfur regulations for qualified small refiners (69 FR 39047; Section IV.B.1) and for transmix processors (69 FR 39045; Section IV.A.3.d). Small refiners were provided, among other flexibility options, additional time for compliance with the 15 ppm NRLM standard, until June 1, 2014. Transmix processors, who distill off-specification interface mixtures of petroleum products from pipeline systems into gasoline and distillate fuel, have a simple refinery configuration that does not make it cost-effective for them to install and operate a hydrotreater to reduce distillate fuel sulfur content. As a result, transmix processors were provided with the flexibility to continue to produce all of their NRLM diesel fuel to meet the 500 ppm sulfur standard until June 1, 2014, and all of their LM diesel fuel to meet a 500 ppm sulfur limit indefinitely. The

[92] Category 3 marine engines frequently are designed to use residual fuels and include special fuel handling equipment to use the residual fuel.

[93] For the purposes of the diesel sulfur program, the term heating oil basically refers to any No. 1 or No. 2 distillate other than jet fuel, kerosene, and diesel fuel used in highway or NRLM applications. For example, heating oil includes fuel which is suitable for use in furnaces and similar applications and is commonly or commercially known or sold as heating oil, fuel oil, or other similar trade names.

latter flexibility also allows for an outlet for off-spec fuel that may be produced in the distribution system.

The D&T provisions, first established to distinguish highway from nonroad 500 ppm fuel, were thus continued beyond 2014 to ensure that 500 ppm NRLM could be distinguished from similar fuel (*e.g.,* heating oil that has a sulfur level of 500 ppm). In 2014 and beyond, D&T is essential to ensure that heating oil is not being inappropriately shifted downstream of the refiner into the NRLM and LM diesel fuel markets, circumventing the NRLM standards (as mentioned above in Section IV.B.1). Provisions in the Nonroad Diesel rule to ensure that heating oil is not used in NRLM applications include the use of a fuel marker to distinguish heating oil from NRLM and LM diesel fuel, dye solvent yellow 124, which is added to heating oil at the terminal level. The D&T provisions also provided parties in the diesel fuel industry with inherent flexibility. D&T maximizes the efficiency of the distribution system by allowing for fungible distribution of physically similar products, and minimizing the need for product segregation. Under D&T, diesel fuel with similar sulfur levels can be fungibly shipped up to the point of distribution from a terminal (where off-highway diesel fuels must be dyed red, pursuant to Internal Revenue Service (IRS) requirements, to indicate its tax exempt status).

(3) Northeast/Mid-Atlantic Area

In the Northeast, heating oil is distributed in significant quantities. Discussions with terminal operators in the Northeast (and other representatives of heating oil users and distributors) during the development of the Nonroad Diesel rule revealed concerns that the heating oil marker requirement would represent a significant burden on terminal operators and users of heating oil given the large volume of heating oil used in the Northeast. These parties suggested that if EPA prohibited the sale and use of diesel fuel produced by those utilizing the flexibilities described above, this area could be exempted from the marker requirement.

Thus, the Northeast/Mid-Atlantic (NE/MA) area was developed (69 FR 39063, Section IV.D.1.b.ii; *see also* 40 CFR 80.510(g) for the specific States and counties that comprise the NE/MA area). As there would be no way to distinguish heating oil from 500 ppm NRLM and 500 ppm LM diesel fuel in 2014 and beyond without the fuel marker, these fuel types are not allowed to be produced/imported, distributed and/or sold in the NE/MA area during this time period (500 ppm NRLM diesel fuel may not be produced/imported, distributed and/or sold in the NE/MA area after 2012).

Similarly, high sulfur NRLM (HSNRLM) produced through the use of credits is not allowed in Alaska. However, EPA-approved small refiners in Alaska may produce HSNRLM diesel fuel. To receive this approval, a small refiner must provide EPA with a compliance plan showing how their HSNRLM diesel fuel will be segregated from all other distillate fuels through its distribution to end-users.

(4) Nonroad Diesel Program Transition Schedule

The transition to lower sulfur diesel fuel for NRLM equipment is depicted in Figure VI–1 below. The transition for urban (areas served by the Federal Aid Highway System) and rural Alaska are shown below in Figure VI–2.

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Highway and Nonroad Diesel Fuel Standards										
Who	**Covered Fuel**	**2006**	**2007**	**2008**	**2009**	**2010**	**2011**	**2012**	**2013**	**2014**
	Highway Diesel Fuel	80% 15 ppm/ 20% 500 ppm				100% 15 ppm (including small refiner fuel)				
Large Refiners/ Importers	***NR***		500	500	500	15	15	15	15	15
Large Refiners/ Importers	***LM***		500	500	500	500	500	15	15	15
	NRLM w/ credits(not in NE/MA or AK)		HS	HS	HS	500	500	500	500	15
Small Refiners	***NRLM (not in NE/MA, w/ approval in AK)***		HS	HS	HS	500	500	500	500	15
Transmix Processor & In-use	***NR (not in NE/MA or AK)***		HS	HS	HS	500	500	500	500	15
Transmix Processor & In-use	***LM (not in NE/MA or AK)***		HS	HS	HS	500	500	500	500	500
***2006 dates for HW diesel fuel**: June 1 for refiners/importers, September 1 for downstream parties, and October 15 for retailers and wholesale purchaser-consumers.*										
***2010 dates for HW diesel fuel**: As of the following dates, all HW diesel fuel must meet the 15 ppm standard- June 1 for refiners/importers, October 1 for downstream parties, and December 1 for retailers and wholesale purchaser-consumers (WPCs).*										
***2007 dates for NRLM diesel fuel**: June 1 for refiners, downstream requirements for NE/MA area* only (August 1 for terminals, October 1 for retailers/WPCs, and December 1 for in-use).*										
***2010+ dates for NRLM diesel fuel**: June 1 for refiners, August 1 for terminals, October 1 for retailers/WPCs, and December 1 for in-use.*										
** **Anti-downgrading provisions begin October 15, 2006** **										
**Note- No small refiner or credit NRLM can be used in the NE/MA area. Thus, the large refiner NRLM standard is also the in-use standard in the NE/MA area.*										

Figure IV-1 Highway, Nonroad, Locomotive, and Marine Diesel Fuel Sulfur Standards Prior to This Final Rule

Urban AK (areas served by the FAHS)

HW-

- Pre-2006: HS/uncontrolled.
- 2006: 6/1/06- refiners to 15; 9/1/06- pipelines & terminals to 15; 10/15/06- retail & WPC to 15.

NRLM-

- Pre-2007: HS/uncontrolled.
- 2007: 6/1/07- refiners to 500; 8/1/07- pipelines & terminals to 500; 10/1/07- retail & WPC to 500; 12/1/07- in-use, farm & construction tanks to 500 (*note- urban AK is on same downstream schedule as NE/MA*).
- 2010: 6/1/10- refiners to 15 NR; 8/1/10- pipelines & terminals to 15 NR; 10/1/10- retail & WPC to 15 NR; 12/1/10- in-use, farm & construction tanks to 15 NR.
- 2012: 6/1/12- refiners to 15 LM; 8/1/12- pipelines & terminals to 15 LM; 10/1/12- retail & WPC to 15 LM; 12/1/12- in-use, farm & construction tanks to 15 LM.

** *Urban AK is on the same schedule as the main HW & NR diesel programs (except they're on the same downstream schedule as the NE/MA for NRLM in 2007); permanently exempt from dye & marker requirements.* **

Rural AK

HW-

- Pre-2010: HS/uncontrolled.
- 2010: 6/1/10- refiners to 15 HW; 8/1/10- pipelines & terminals to 15 HW; 10/1/10- retail & WPC to 15 HW; 12/1/10- in-use, farm & construction tanks to 15 HW.

NRLM-

- Pre-2010: HS/uncontrolled.
- 2010: 6/1/10- refiners to 15 NRLM; 8/1/10- pipelines & terminals to 15 NRLM; 10/1/10- retail & WPC to 15 NRLM; 12/1/10- in-use, farm & construction tanks to 15 NRLM.

** Downstream transition dates are same for HW & NRLM in rural AK; permanent exemption from dye & marker requirements. **

General Note- Credit & transmix fuel cannot be used in any area of AK; small refiner fuel can be used with approval (and only if properly labeled and segregated).

Figure IV-2 Highway, Nonroad, Locomotive, and Marine Diesel Fuel Sulfur Standards for Alaska Prior to This Final Rule

BILLING CODE 6560–50–C

C. Applicability

Assuming adoption of an amendment to MARPOL Annex VI establishing a U.S. ECA, pursuant to Annex VI, the fuel used in that ECA cannot exceed 1,000 ppm sulfur beginning January 1, 2015.[94] As mentioned above, we are incorporating a similar 1,000 ppm sulfur limit into our CAA regulations at 40 CFR Part 80 through both a prohibition on the production and sale of fuel oil above 1,000 ppm sulfur for use in any marine vessels (Categories 1, 2, and 3) in an ECA and ECA associated areas except as allowed under 40 CFR Part 1043, and an allowance for the production and use of 1,000 ppm sulfur fuel to be used in Category 3 marine vessels. Fuel produced and sold for use in any engine on Category 1 and Category 2 marine vessels will continue to be subject to the existing diesel sulfur requirements which are more stringent than those being finalized in this action for Category 3 marine vessels. We requested comment on whether or not Category 1 and 2 engines installed on Category 3 marine vessels should be allowed to use 1,000 ppm sulfur fuel. To reduce burden that could potentially be caused by requiring that these engines burn 15 ppm diesel fuel (which could result in a vessel needing to carry three different types of fuel onboard), we are finalizing that Category 1 and 2 auxiliary engines installed on Category 3 marine vessels will be allowed to use 1,000 ppm fuel.

Discussions with stakeholders in the diesel fuel production and distribution industry have indicated that they anticipate that most (if not all) fuel oil that could meet a 1,000 ppm sulfur standard would be considered a distillate or diesel fuel, because at a 1,000 ppm sulfur level it is nearly impossible for fuel to have a T–90 distillation point at or above 700 °F (*i.e.,* be considered residual fuel). As discussed in Section IV.B.1, fuel with a T–90 less than 700 °F will be required to meet the standards of our existing diesel sulfur program which, in 2014 and beyond, is 15 ppm. We believe that because of the limits on the sulfur content of fuel used in ECAs, the existing diesel fuel sulfur program should be revised to allow for the production, distribution, purchase, and use of 1,000 ppm sulfur fuel oil for use in Category 3 marine vessels. Therefore, we are finalizing a new 1,000 ppm sulfur category for fuel oil produced and purchased for use in Category 3 marine vessels (called "ECA marine fuel"). This finalized fuel sulfur requirement will largely supplement the existing diesel fuel sulfur requirements and will harmonize EPA's diesel sulfur program with the requirements of Annex VI. Under this final action, owners of Category 3 marine vessels will be able to purchase and use 1,000 ppm sulfur ECA marine fuel, which will allow those vessels to comply with the sulfur limits in any ECA worldwide and in ECA associated areas.

D. Fuel Sulfur Standards

As discussed above in Section IV.C, in addition to the prohibition on the sale of fuel greater than 1,000 ppm sulfur for use in marine vessels (except as allowed under 40 CFR Part 1043) operating within an ECA and ECA associated areas, we are also finalizing the allowance of the production, distribution, and sale of 1,000 ppm sulfur ECA marine fuel, which we discuss more in this section.

Prior to this action, and pending the establishment of the North American ECA, the kind of fuel produced and sold for use by Category 3 marine vessels had uncontrolled sulfur levels as it was not subject to the NRLM sulfur limits. This was reflected in the regulations by exempting these kinds of fuel from the definition of NRLM diesel fuel and the NRLM sulfur limits (40 CFR 80.2(nnn)). The combined effect of Annex VI and these regulations is to require that any fuel sold for use in a Category 3 marine vessel operating in an ECA be 1,000 ppm sulfur or lower, except as allowed under 40 CFR Part 1043. Fuel oil used or sold for use in Category 3 marine vessels in an ECA and ECA associated areas will therefore go from uncontrolled, high sulfur levels to no higher than 1,000 ppm sulfur (except as otherwise allowed under 40 CFR Part 1043). Under Annex VI, fuel with sulfur levels greater than 1,000 ppm cannot be used in a marine vessel without sulfur abatement technology operating in an ECA, no matter where the fuel is purchased. Consistent with this, the finalized section 211(c) controls will prohibit the production and sale of any fuel for use in an ECA and ECA associated areas that is above 1,000 ppm sulfur, except as allowed under 40 CFR Part 1043.

The requirements for 1,000 ppm sulfur fuel oil will apply to the North Sea, the Baltic Sea, and any other ECAs established around the world, so this fuel will be produced by refiners in other countries. Under EPA's NRLM program prior to this final rule, 1,000 ppm sulfur fuel would have been subject to the 15 ppm NRLM sulfur limit in 2014 and later. If EPA were to require that fuel produced, distributed, and sold for use for Category 3 vessels in the North American ECA and ECA associated areas meet the 15 ppm sulfur standard after 2014, we believe that Category 3 vessel owners would simply purchase 1,000 ppm sulfur fuel elsewhere to be used here in the North American ECA. This could be an extremely inefficient process for ship owners. It would also mean a loss of sales for U.S. refiners of fuel that these Category 3 vessel owners purchase. These impacts would add to the costs and burdens of the program with no corresponding environmental benefit. Therefore, we believe that it is reasonable to allow U.S. refiners and importers to produce 1,000 ppm sulfur fuel for use by Category 3 vessels. Thus, we are finalizing a new fuel sulfur standard of 1,000 ppm for fuel produced, distributed, and sold for use in Category 3 marine vessels. While we expect use of this fuel to be concentrated in the area of the North American ECA and ECA associated areas (and any other ECA), we are allowing its use by Category 3 marine vessels in all locations, to encourage its general use. After 2014, no fuel above 15 ppm can be used in Category 1 or Category 2 vessels.

We note that the combination of the Annex VI ECA provisions and the modifications proposed in this action for the diesel sulfur program will achieve very significant benefits compared to the existing program. The production and use of 1,000 ppm ECA marine fuel, as well as 15 ppm NRLM diesel fuel, will replace much higher sulfur fuel usage, and there is no additional benefit to be gained by requiring the sale of 15 ppm sulfur diesel fuel for use by Category 3 vessels as a practical matter because we believe Category 3 vessels would simply purchase 1,000 ppm sulfur fuel elsewhere. In order to incorporate these modifications into our existing program under the Clean Air Act, we needed to create a new fuel designation for allowable fuel under our program.

(1) Amendments to the Diesel Fuel Sulfur Program

We are prohibiting the production, distribution, and sale or offer for sale of any fuel for use in any marine diesel vessels (Categories 1, 2, and 3) operating in the North American ECA and ECA associated areas that is greater than 1,000 ppm sulfur, except as otherwise allowed under 40 CFR Part 1043. We are also finalizing a sulfur standard of 1,000 ppm for fuel produced, distributed, and sold or offered for sale for use in Category 3 marine vessels operating in

[94] Annex VI, Regulation 14 (located in the rulemaking docket, EPA–HQ–OAR–2007–0121–0107).

an ECA and ECA associated areas. To simplify the existing diesel fuel sulfur program, we are also eliminating the 500 ppm LM diesel fuel standard once the 1,000 ppm ECA marine fuel standard becomes effective. Under the diesel sulfur program prior to this final rule, 500 ppm LM diesel fuel could be produced by transmix processors indefinitely, and could be used by locomotives and marine vessels that do not require 15 ppm. The original intent of allowing for this fuel was to serve as an outlet for interface and downgraded diesel fuel post-2014 that would otherwise not meet the 15 ppm sulfur standard. However, we believe that the 1,000 ppm sulfur ECA marine fuel can now serve as this outlet. We believe that transmix generated near the coasts would have ready access to marine applications, and transmix generated in the mid-continent could be shipped via rail or fuel barge to markets on the coasts.

Elimination of the 500 ppm LM diesel fuel standard will simplify the diesel sulfur program such that sulfur can serve as the distinguishing factor for fuels available for use after 2014 (the designated products under the diesel fuel program will thus be: 15 ppm motor vehicle, nonroad, locomotive, and marine (MVNRLM) diesel fuel, heating oil, and 1,000 ppm ECA marine fuel). With this approach, beginning in 2014, only 15 ppm NRLM diesel fuel can be used in locomotive and Category 1/Category 2 marine diesel applications (and 1,000 ppm ECA marine fuel could be used in Category 3 marine vessels). Further, this will help to streamline the D&T program as there will no longer be a need for a fuel marker to distinguish 500 ppm LM diesel fuel from heating oil. Below, we discuss the aspects of D&T that we are changing, which we believe will greatly simplify the diesel sulfur program.

(a) Compliance and Implementation

(i) Northeast/Mid-Atlantic Area and the Fuel Marker

With the elimination of the 500 ppm LM designation in 2014, parties in the fuel production and distribution industry will still be required to register and designate their products and adhere to PTD, fuel pump labeling, and recordkeeping requirements. But we believe that the tracking portion of D&T can be simplified. Annual reporting was required under § 80.601 for D&T through June 30, 2015 (the final annual report is due August 31, 2015). The final reporting period was set to ensure that heating oil was not being inappropriately shifted into the 500 ppm LM diesel fuel pool. However, with the elimination of this fuel designation, the final annual reporting period will instead be July 1, 2013 through May 31, 2014, with the report due to EPA on August 31, 2014.

As stated in the preamble to the proposed rule, we believe that the elimination of the 500 ppm LM diesel fuel designation will also, beginning June 1, 2014, negate the need for the heating oil marker and the NE/MA area. After 2014, the heating oil marker requirement in the diesel sulfur program prior to this final rule was for the sole purpose of distinguishing heating oil from 500 ppm LM diesel fuel, to prevent heating oil from swelling the 500 ppm LM diesel fuel pool. Also, as there is no marker requirement for heating oil in the NE/MA area, the diesel sulfur program did not allow for 500 ppm LM diesel fuel to be produced, distributed, or purchased for use in the NE/MA area after 2012. As also noted in the proposed rule, without 500 ppm LM diesel fuel there is no need for the heating oil marker; fuel designations and sulfur level could serve as the distinguishing factor between the available fuels (15 ppm MVNRLM diesel fuel, 1,000 ppm ECA marine fuel, and heating oil). Further, there is no need for the NE/MA area without the heating oil marker. Thus, we are finalizing to remove the NE/MA area designation and the heating oil marker requirement.

(ii) PTDs and Labeling

We are finalizing new PTD language for the 1,000 ppm ECA marine fuel designation at regulation § 80.590. As stated in regulation § 80.590(a)(7)(vii), we are adding the following statement to PTDs accompanying 1,000 ppm sulfur ECA marine fuel: "1,000 ppm sulfur (maximum) ECA Marine Fuel. For use in Category 3 marine vessels only. Not for use in engines not installed on Category 3 marine vessels."

Appendix V of Annex VI also includes language that is required on bunker delivery notes. Compliance requirements of this action, such as PTDs, are not intended to supplant or replace requirements of Annex VI (and we encourage regulated entities to consult Annex VI to ensure that they are fully aware of all requirements that must be met in addition to EPA's requirements). However, if a party's bunker delivery note also contains the information required under our regulations for PTDs, we will consider the bunker delivery note to also suffice as a PTD.

We are also finalizing new pump labeling language for the 1,000 ppm sulfur ECA marine fuel designation at regulation § 80.574. Diesel fuel pump labels required under the existing diesel sulfur regulations must be prominently displayed in the immediate area of each pump stand from which diesel fuel is offered for sale or dispensing. However, we understand that there may be cases where it is not feasible to affix a label to a fuel pump stand due to space constraints (such as diesel fuel pumps at marinas) or where there is no pump stand, thus the current regulations allow for alternative labeling with EPA approval. Previously approved alternative labeling has included the use of permanent placards in the immediate vicinity of the fuel pump; and we will also allow other reasonable alternatives to labeling for situations where pump labeling may not be feasible. As stated in regulation § 80.574, we are replacing the 500 ppm LM diesel fuel pump label language with the following fuel pump label language for 1,000 ppm sulfur ECA marine fuel: "1,000 ppm SULFUR ECA MARINE FUEL (1,000 ppm Sulfur Maximum). For use in Category 3 marine vessels only. **Warning—**Federal law prohibits use in any engine that is not installed on a Category 3 marine vessel; use of fuel oil with a sulfur content greater than 1,000 ppm in an ECA is prohibited, except as allowed by 40 CFR Part 1043."

Under this program, we are also eliminating MVNRLM diesel fuel labeling requirements from EPA's regulations. In 2014 and beyond, EPA will not require "visible evidence" of red dye in off-road fuels; however this requirement still exists in IRS's taxation regulations to denote that off-road fuels are untaxed. EPA's required label for 15 ppm NRLM diesel fuel (instead of one 15 ppm MVNRLM diesel fuel label) is mainly to denote that 15 ppm NRLM will be dyed red, while 15 ppm MV diesel fuel will not. Further, after October 1, 2014, all MVNRLM diesel fuel available for purchase and/or distribution will be 15 ppm. We believe that it is not appropriate for EPA to retain a labeling requirement for MVNRLM diesel fuel given the fact that the red dye provision is no longer EPA's requirement. Please note, however, that marketers and wholesale purchaser-consumers are still free to continue to label their pump stands to help with consumer awareness. Labeling will continue to be required for heating oil and, as proposed above, for 1,000 ppm sulfur ECA marine fuel.

Additionally, EPA will consult with IRS regarding handling labels in IRS's regulations at Title 26 of the Code of Federal Regulations.

(b) Timing of the Standard

Currently, all refiners and importers are required to produce all of their NRLM diesel fuel to meet the 15 ppm standard beginning June 1, 2014. To allow transition time for the distribution system, terminals are allowed until August 1, 2014 to begin dispensing 15 ppm NRLM diesel fuel, retailers and wholesale purchaser-consumers are allowed until October 1, 2014, and end-users are allowed until December 1, 2014. To be consistent with the existing diesel program, we are allowing refiners to begin producing 1,000 ppm sulfur ECA marine fuel beginning June 1, 2014, and downstream parties will follow the current NRLM transition schedule (August, October, and December). We believe that following the same transition schedule as the existing diesel sulfur program would best facilitate the availability of 1,000 ppm ECA marine fuel for purchase and use by the Annex VI January 1, 2015 date.

(2) Proposed Alternative Options

We identified two potential alternatives in the proposed rule to the changes to the existing diesel fuel sulfur program discussed above: The creation of an expanded NE/MA area and the retention of the 500 ppm LM diesel fuel designation. We requested comment on these alternative options, as well as any additional alternative options. We received a comment stating that the 500 ppm sulfur designation should be retained because, the commenter stated, Category 3 engines can use both 500 ppm and 1,000 ppm sulfur fuel. Another commenter who supported the elimination of this fuel category noted that if it is determined that the 500 ppm LM designation is necessary for the locomotive industry, it would support the concept of an expanded NE/MA area as a secondary option.

E. Technical Amendments to the Current Diesel Fuel Sulfur Program Regulations

Following publication of the technical amendments to the Highway and Nonroad Diesel Regulations (71 FR 25706, May 1, 2006), we discovered additional errors and clarifications within the diesel regulations at 40 CFR Part 80, Subpart I that we are addressing in this action. These items are merely typographical/printing error and grammar corrections. A list of the changes that we are making to Subpart I is below in Table IV–1.

TABLE IV–1—TECHNICAL AMENDMENTS TO THE DIESEL FUEL SULFUR REGULATIONS

Section	Description of change
80.525(a)–(d)	Removal of the term "motor vehicle" from this section.
80.551(f)	Correction of printing error.
80.561	Correction of typographical error in title.
80.570(a) and (b)	Amended to correct date ("November 30, 2010" instead of "September 30, 2010".
80.593	Correction of typographical error in introductory text.
80.599(e)(4)	Correction of printing error in definition of terms "#1MV15$_I$" and "NPMV15$_I$".
80.600(a)(12)	Amended to correct date ("May 31, 2014" instead of "June 1, 2014").
80.600(i)	Amended to remove duplicate sentence.
80.601(b)(3)(x)	Amended to correct dates ("August 31" instead of "August 1").
80.612(b)	Amended to fix typographical error in paragraph.

V. Emission Control Areas for U.S. Coasts

The finalized Clean Air Act standards described above are part of a coordinated strategy for ensuring that all ships that affect U.S. air quality will be required to meet stringent NO_X and fuel sulfur requirements. Another component of this strategy consists of pursuing ECA designation for U.S. and Canadian coasts in accordance with Annex VI of MARPOL. ECA designation will ensure that all ships, foreign-flagged and domestic, are required to meet stringent NO_X and fuel sulfur requirements while operating within 200 nautical miles of most U.S. coasts. This section describes what an ECA is, the process for obtaining ECA designation at the International Maritime Organization, and summarizes the U.S. and Canadian proposal for an amendment to MARPOL Annex VI designating most U.S. and Canadian coasts as an ECA (referred to as the "North American ECA"), submitted to IMO on March 27, 2009.[95]

This section also discusses technological approaches to comply with the fuel standards. These approaches include switching to lower sulfur fuel and equivalents, such as exhaust gas cleaning units. We also discuss how emissions from foreign-flagged ships may be covered should approval of the U.S. ECA be delayed.

A. What Is an ECA?

(1) What Emissions Standards Apply in an ECA?

MARPOL Annex VI contains international standards to control air emissions from ships. The NO_X and SO_X/PM programs each contain two sets of standards. The global standards for the sulfur content of fuel and NO_X emissions from engines apply to ships at all times. In recognition that some areas may require further control, Annex VI also contains more stringent NO_X and SO_X/PM geographic-based standards that apply to ships operating in designated Emission Control Areas. Once a North American ECA is designated through amendment to MARPOL Annex VI, the requirements will be enforceable for most vessels through the Act to Prevent Pollution from Ships (*see* Section VI.B).

The current global fuel sulfur (S) limit is 45,000 ppm[96] S and will tighten to 35,000 ppm S in 2012. Depending on a 2018 fuel availability review, the MARPOL Annex VI global fuel sulfur limit will be further reduced to 5,000 ppm S as early as 2020. In contrast, ships operating in designated ECAs are subject to a fuel sulfur limit of 15,000 ppm S. The ECA limit is reduced to 10,000 ppm S in July 2010 and 1,000 ppm S in 2015. In addition, Tier 3 NO_X standards will apply to new engines operating in ECAs beginning in 2016. These Tier 3 NO_X standards represent an 80 percent reduction in NO_X beyond current Tier 1 standards and are anticipated to require the use of aftertreatment technology such as SCR. We are adopting similar Tier 3 standards as part of our Clean Air Act program (*see* Section III).

There are currently two ECAs in effect today, exclusively controlling SO_X; thus they are called Sulfur Emission Control Areas, or SECAs. The first SECA was designated to control the emissions of SO_X in the Baltic Sea area and entered into force in May 2005. The second SECA was designated to control the emissions of SO_X in the North Sea area and entered into force in November 2006.

[95] *Proposal to Designate an Emission Control Area for Nitrogen Oxides, Sulphur Oxides and Particulate Matter,* Submitted by the United States and Canada. IMO Document MEPC59/6/5, 27 March 2009. A copy of this document can be found at *http://www.epa.gov/otaq/regs/nonroad/marine/ci/mepc-59-eca-proposal.pdf.*

[96] Note that MARPOL Annex VI expresses these standards in units of % (m/m) sulfur. 10,000 ppm S equals 1 percent S.

(2) What Is the Process for Obtaining ECA Designation?

A proposal to amend Annex VI to designate an ECA can be submitted by a party to Annex VI. A party is a country that ratified Annex VI. The proposal for amendment must be approved by the Parties to MARPOL Annex VI; this would take place at a meeting of the Marine Environment Protection Committee (MEPC). The U.S. deposited its Instrument of Ratification with the IMO on October 8, 2008. Annex VI entered into force for the U.S. on January 8, 2009, making the U.S. eligible to apply for an ECA.

The criteria and procedures for ECA designation are set out in Appendix III to MARPOL Annex VI. A proposal to designate an ECA must demonstrate a need to prevent, reduce, and control emissions of SO_X, PM, and/or NO_X from ships operating in that area. The specific criteria are summarized below:

- A delineation of the proposed area of application;
- A description of the areas at risk on land and at sea, from the impacts of ship emissions;
- An assessment of the contribution of ships to ambient concentrations of air pollution or to
- Adverse environmental impacts;
- Relevant information pertaining to the meteorological conditions in the proposed area of
- Application to the human populations and environmental areas at risk;
- Description of ship traffic in the proposed ECA;
- Description of the control measures taken by the proposing Party or Parties;
- Relative costs of reducing emissions from ships compared with land-based controls; and
- An assessment of the economic impacts on shipping engaged in international trade.

An amendment to designate an ECA must be adopted by the Parties to Annex VI, as an amendment to Annex VI. The proposal to amend Annex VI was approved at MEPC 59, and circulated for adoption. The earliest possible adoption date is at MEPC 60, which will take place in March 2010 entering into force as early as August 2012.

B. U.S. Emission Control Area Designation

EPA worked with the U.S. Coast Guard, State Department, the National Oceanic and Atmospheric Administration and other agencies to develop the analysis supporting ECA designation for U.S. coasts contained in the U.S. and Canadian submittal to IMO. In addition, we collaborated with Environment Canada and the California Air Resources Board. In developing the ECA proposal, EPA consulted with stakeholders including representatives from the shipping industry, ports, master mariners, environmental interests and representatives from State and local governments. EPA began conducting outreach in advance of this year's ECA proposal; in fact we have been engaged with this industry for many years with regards to the development of an Emission Control Area for the United States. Stakeholders also had the opportunity to comment on the strategy we announced in the Advance Notice of Proposed Rulemaking (ANPRM) for the Category 3 Marine Diesel Engine Rule, published on December 7, 2007. In the ANPRM, EPA outlined an approach to regulating emissions from both new and existing vessels using a framework that aligns with MARPOL Annex VI, including applying the standards for Emission Control Areas along U.S. coasts.

The proposal for ECA designation that the USG submitted to IMO earlier this year is for a combined U.S./Canada ECA submission. This approach has several advantages. First, the emission reductions within a Canadian ECA will lead to air quality improvements in the U.S. Second, a joint ECA helps minimize any competitive issues between U.S. and Canadian ports, such as in the Puget Sound area, which could arise from ECA standards. Third, IMO encourages a joint submittal where there is a common interest in emission reductions on neighboring waters. In addition, France has since joined the ECA proposal on behalf of the Saint Pierre and Miquelon archipelago.

(1) What Areas Would Be Covered in a North American ECA?

The area included in the North American ECA submittal to IMO for ECA designation generally extends 200 nautical miles from the coastal baseline, except where this distance would enter the Exclusive Economic Zones (EEZ) of a neighboring country. This area would include the Pacific Coast, the Atlantic/Gulf Coast and the Southeastern Hawaiian Islands. On the Pacific Coast, the ECA would be bounded in the north such that it includes the approaches into Anchorage, Alaska, but not the Aleutian Islands or points north. It would continue contiguously to the south including the Pacific coasts of Canada and the U.S., with its southernmost boundary at the point where California meets the border with Mexico. In the Atlantic/Gulf Coast, the ECA would be bounded in the west by the border of Texas with Mexico and continue contiguously to the east around the peninsula of Florida and north up the Atlantic coasts of the U.S. and Canada and would be bounded in the north by the 60th North parallel. The Southeastern Hawaiian Islands that were included in the ECA submittal are Hawaii, Maui, Oahu, Molokai, Niihau, Kauai, Lanai, and Kahoolawe.

Not included in the ECA submittal were the Pacific U.S. territories, smaller Hawaiian Islands, the U.S. territories of Puerto Rico and the U.S. Virgin Islands, Western Alaska including the Aleutian Islands, and the U.S. and Canadian Arctic. The U.S. and Canada did not make a determination or imply that these areas suffer no adverse impact from shipping. Rather, we concluded that information must be gathered to properly assess these areas. If further information supports the need for an ECA designation in any of these areas, we would submit a future, proposal for ECA designation of these areas.

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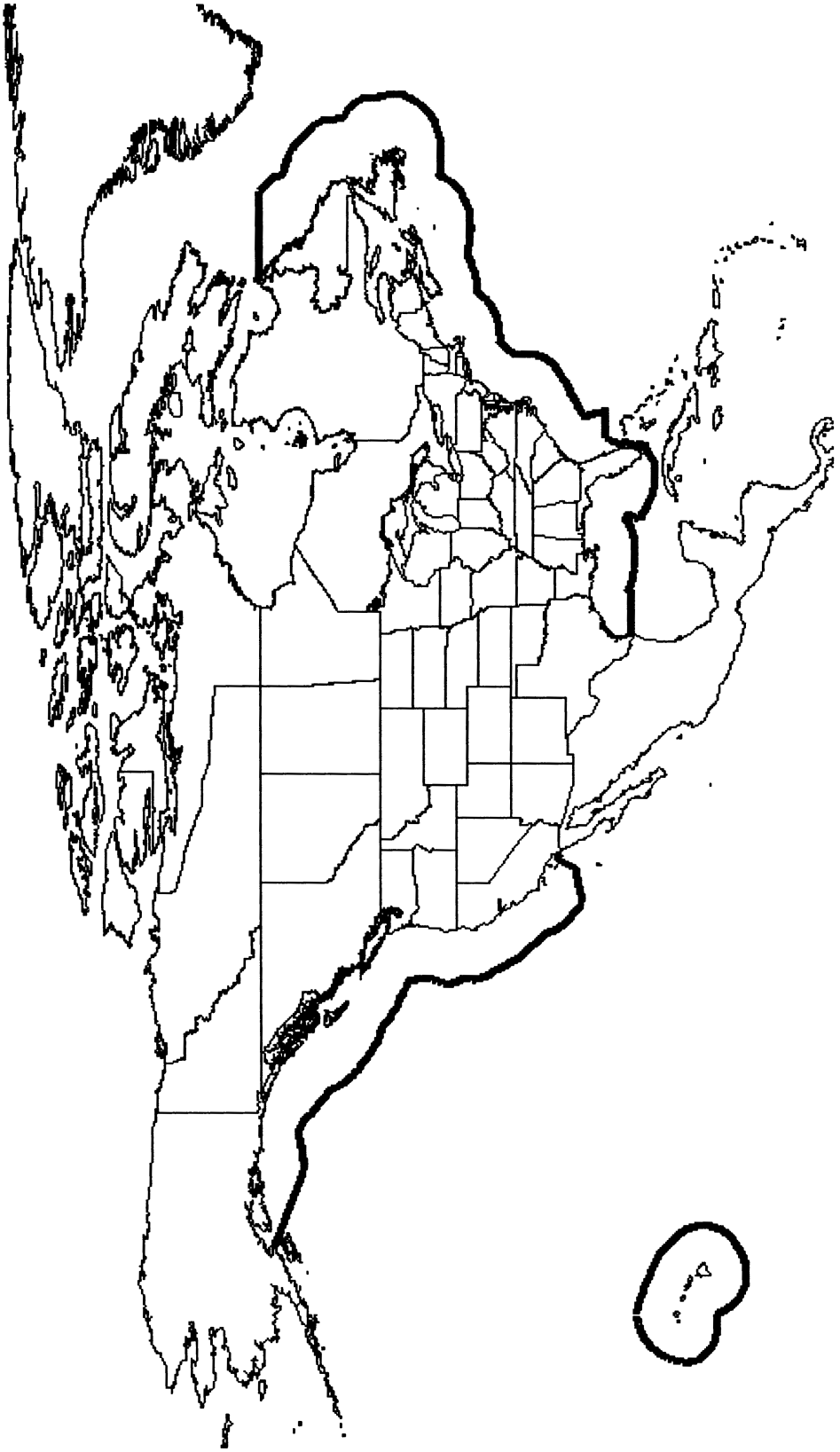


Figure V-1 Proposed North American Emission Control Area

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We are currently performing the analyses necessary to support an ECA designation for Puerto Rico and the U.S. Virgin Islands and will be engaging stakeholders as part of that effort. That outreach will include neighboring countries, shipping companies, environmental organizations, and other stakeholders. Puerto Rico has a population of 4 million people, sees significant shipping traffic and experiences the highest asthma rate in the United States. Addressing the impact of ship emissions on Puerto Rico

and U.S. Virgin Islands is a top priority for the Agency. We plan to complete the appropriate analysis and stakeholder outreach regarding an ECA designation for these U.S. territories such that the U.S. with any interested Caribbean neighbors could make a proposal to the IMO in advance of MEPC 61 with the intent to *see* the ECA adopted at MEPC 62 (July 2011) and enter into force 28 months later (December 2013). In this way, we can be confident that there will be ample time for consideration and adoption of such an ECA well in advance of January 1, 2015 when the 1,000 ppm fuel sulfur standard enters into effect.

Establishing the ECA boundary for Puerto Rico and the U.S. Virgin Islands would require vessels operating in this area to meet Tier 3 NO_X requirements that become effective in 2016. EPA will remove the Tier 3 NO_X exemption from applying to Puerto Rico and the U.S. Virgin Islands through an appropriate rule amendment once the Caribbean ECA boundary is established.

(2) What Analyses Were Performed in Support of a North American ECA?

We performed a comprehensive analysis to estimate the degree of human health risk and environmental degradation that is posed by air emissions from ships operating in their ports and along our coasts. To evaluate the risk to human populations, state-of-the-art assessment tools were used to apply widely accepted methods with advanced computer modeling techniques. The analyses incorporated detailed ship traffic data, the most recent emissions estimates, detailed observed meteorological data, current scientific understanding of exhaust plume behavior (both physical dispersion and photochemical reaction) and the latest epidemiologic databases of health effects attributable to pollutant exposure levels to estimate the current impacts of shipping on human health and the environment. In addition, sulfate and nitrate deposition modeling was performed to assess the impacts of nitrogen nutrient loading and acidification on U.S. ecosystems.

Two contrasting future scenarios were evaluated: One in which ships continue to operate with current emissions performance while operating in the specified area, and one in which ships comply with ECA standards. The analysis demonstrated that ECA designation for U.S. coasts could save thousands of lives each year, relieve millions of acute respiratory symptoms, and benefit many of the most sensitive ecosystems. This analysis is consistent with, and incorporated in, the benefits estimates presented in Section VIII.

C. Technological Approaches To Comply With Fuel Standards

When operating within the ECA, all ships would have to comply with the 0.1 percent fuel sulfur limit beginning in 2015 and vessels built after December 31, 2015 would have to comply with the Tier 3 NO_X limits described above. This section describes how ships would comply with the fuel standards. Approaches for compliance with the NO_X standards are discussed in Section 3 above.

(1) Fuel Switching

As discussed above, the MARPOL Annex VI fuel sulfur limit for ships operating in an ECA is 15,000 ppm today and reduces to 10,000 ppm in July 2010 and further to 1,000 ppm in 2015. We anticipate that the 1,000 ppm fuel sulfur limit, beginning in 2015, will likely result in the use of distillate fuel for operation in ECAs. This would require the vessel to switch from a higher sulfur fuel to 1,000 ppm S fuel before entering the ECA. The practical implications of fuel switching are discussed below.

Currently, the majority of ocean-going vessels use residual fuel (also called HFO or IFO) in their main propulsion engines, as this fuel is relatively inexpensive and has a good energy density. This fuel is relatively dense ("heavy") and is created as a refining by-product from typical petroleum distillation. Residual fuels typically are composed of heavy, residuum hydrocarbons and can contain various contaminants such as heavy metals, water and sulfur compounds. It is these sulfur compounds that cause the SO_X emissions when the fuel is combusted. If the vessel does not employ the use of a sulfur scrubber or other technology, it will most likely operate on a marine distillate fuel while in an ECA in order to meet the sulfur emission requirements.

The sulfur in marine fuel is primarily emitted as SO_2; however, a small fraction (about 2 percent) is converted to SO_3. SO_3 almost immediately forms sulfate and is emitted as direct PM by the engine. Consequently, emissions of SO_2 and sulfate PM are very high for engines operating on residual fuel. Switching from high sulfur residual fuel to lower sulfur distillate fuel results in large reductions in SO_2 and sulfate PM emissions. In addition to high sulfur levels, residual fuel contains relatively high concentrations of low volatility, high molecular weight organic compounds and metals. Organic compounds that contribute to PM can be present either as a nucleation aerosol or as a material adsorbed on the surfaces of agglomerated elemental carbon soot particles and metallic ash particles. The sulfuric acid aerosol in the exhaust provides a nucleus for agglomeration of organic compounds. Operation on higher volatility distillate fuel reduces both nucleation and adsorption of organic compounds into particulate matter. Therefore, in addition to direct sulfate PM reductions, switching from residual fuel to distillate fuel reduces organic PM and metallic ash particles in the exhaust.

In the majority of vessels which operate on residual fuel, marine distillate fuel is still used for operation during routine maintenance, prior to and immediately after engine shut-down, or in emergencies. Standard procedures today have been established to ensure that this operational fuel switchover is performed safely and efficiently. Mainly, in order for the vessel to completely switch between residual and distillate fuel, the fuel pumps and wetted lines will need to be completely purged by the new fuel to ensure that the ship is burning the correct fuel for the area. This purging will vary from ship to ship due to engine capacity, design, operation, and efficiency. Provided the ship has separate service tanks for distillate and residual fuel (most, if not all, vessels do), fuel switching time should be limited only by maximum allowable rate of fuel temperature change. Additionally, for a longer operation period such as would occur while in an ECA, we investigated several other fuel switching topics to ensure that vessels would not have long-term issues from operating on the marine distillate fuels.

Marine distillate fuels are similar in composition and structure to other petroleum-based middle distillate fuels such as diesel and No. 2 heating oil, but they have a much lower allowable sulfur content than residual fuels. This lower sulfur content means that by combusting marine distillate fuel in their propulsion engines, vessels operating within the ECA would meet the stricter SO_X requirements. However, sulfur content is not the only difference between the marine residual and distillate fuels; they also have different densities, viscosities, and other specification limits.

The maritime industry has analyzed the differences between residual and distillate fuel compositions to address any potential issues that could arise from switching operation of a Category 3 engine from residual fuel to distillate fuel. The results from this research has

evolved into routine operational switching procedures that ensure a safe and efficient way for the Category 3 engines to switch operation between the residual and distillate fuels. Engine manufacturers, fuel suppliers, the American Bureau of Shipping, and the U.S. Coast Guard have provided guidance on fuel switching procedures.[97] [98] [99] [100] [101] A brief summary of the fuel differences, as well as any potential issues and their usual solutions, is presented below.

(a) Fuel Density

Due to its chemical composition, residual fuel has a slightly higher density than marine distillates. Using a less dense fuel could affect the ballast of a ship at sea and would have to require compensation. Therefore, when beginning to operate on the distillate fuel, the vessel operator would have to pay attention to the vessel's ballast and may have to compensate for any changes that may occur. We anticipate that these procedures would be similar to operating the vessel with partially-full fuel tanks.

Another consideration when switching to a lower density fuel is the change in volumetric energy content. Distillate fuel has a lower energy density content on a per gallon basis when compared to the residual fuel; however, per ton, distillate fuel's energy density is larger than the residual fuel. This means that when switching from residual fuel to distillate fuel, if the vessel's tanks are volumetrically limited (*i.e.,* the tanks can only hold a set quantity of fuel gallons), the distance a vessel can travel on the distillate fuel may be slightly shorter than the distance the vessel could travel on the residual fuel due to the lower volumetric energy content of distillate fuel, which could require compensation. This distance reduction would be approximately 5 percent and would only be of concern while the vessel was operating on the distillate fuel (*i.e.,* while in the U.S. ECA) as the majority of the time the vessel will be operating on the residual fuel. However, if the vessel is limited by weight (draft), the higher energy content per ton of fuel would provide an operational advantage.

(b) Kinematic Viscosity

Residual fuel's kinematic viscosity is much higher than marine distillate fuel's viscosity. Viscosity is the "thickness" of the fuel. If this parameter is lowered from the typical value used within a pump, some issues could arise. If a distillate fuel is used in a system that typically operates on residual fuel, the decrease in viscosity could cause problems with high-pressure fuel injection pumps due to the increased potential for internal leakage of the thinner fuel through the clearances in the pumping elements. Internal leakage is part of the design of a fuel pump and is used in part to lubricate the pumping elements. However, if this leakage rate is too high, the fuel pump could produce less than optimal fuel injection pressures. If the distillate fuel's lower viscosity becomes an issue, it is possible to cool the fuel and increase the viscosity above 2 centistokes, which is how most vessels operate today during routine fuel switchovers.

(c) Flash Point

Flash point is the temperature at which the vapors off the fuel ignite with an outside ignition source. This can be a safety concern if the owner/operator uses an onroad diesel fuel rather than a designated "marine distillate" fuel for operation because marine fuels have a specified minimum flash point of 60 °C (140 °F) to ensure onboard safety, whereas onroad diesel has a minimum specified flash point of 52 °C (125.6 °F). However, since most distillate fuels are created in the same fashion, typical flash points of onroad diesel are above 60 °C (140 °F), and would meet the marine fuel specification for this property. Bunker suppliers ensure that marine fuels meet a minimum flash point of 60 °C (140 °F) through fuel testing as designated on the bunker delivery note.

(d) Lubricity

Lubricity is the ability of the fuel to lubricate the engine/pump during operation. Fuels with higher viscosity and high sulfur content tend to have very good lubricity without the use of specific lubricity-improving additives. Refining processes that lower fuel sulfur levels and their viscosities can also remove some of the naturally-occurring lubricating compounds. Severe hydrotreating of fuel to obtain ultra-low sulfur levels can result in poor fuel lubricity. Therefore, refineries commonly add lubricity improvers to ultra-low sulfur diesel. This will most likely become a concern when very low levels of sulfur are present in the fuel and/or the fuel has been hydrotreated to reduce sulfur, *e.g.,* if ultra-low sulfur highway diesel (ULSD) is used in the engine. Several groups have conducted studies on this subject, and for some systems where fuel lubricity has become an issue, lubricity additives can be utilized or the owner/operator can install a lubricating system for the fuel pump.

(e) Lube Oil

Lube oils are used to neutralize acids formed in combustion, most commonly sulfuric acids created from sulfur in the fuel. The quantity of acid-neutralizing additives in lube oil should match the total sulfur content of the fuel. If excessive amounts of these additives are used, they may create deposits on engine components. Marine engine manufacturers have recommended that lube oil only needs to be adjusted if the fuel is switched for more than one week, but the oil feed rate may need to be reduced as well as engine operating power. Additional research has been conducted in this area and several oil companies have been working to create a lubricating oil that would be compatible with several different types of fuel.

(f) Asphaltenes

Asphaltenes are heavy, non-volatile, aromatic compounds which are contained naturally in some types of crude oil. Asphaltenes may precipitate out of the fuel solution when a fuel rich in carbon disulfide, such as residual fuel, is mixed with a lighter hydrocarbon fuel, such as *n*-pentane or *n*-heptane found in some distillate fuels. When these heavy aromatic compounds fall out of the fuel solution, they can clog filters, create deposition along the fuel lines/combustion chamber, seize the fuel injection pump, or cause other system troubles. This risk can be minimized through onboard test kits and by purchasing distillate and residual fuel from the same refiner. However, according to the California Air Resources Board, the formation of asphaltenes is not seen as an issue based on data from previous maritime rules.

As can be seen, if vessel operators choose to operate on marine distillate fuel while in the ECA, some prudence is required. However, as described above, issues that could arise with switching between residual and distillate fuel are addressed through changes to operating procedures. To conduct a successful switchover between the residual and marine

[97] MAN B&W Diesel, "Operation on Low-Sulphur Fuels; Two-Stroke Engines," 2004.

[98] Wartsila, "Low Sulphur Guidelines," January 9, 2006.

[99] American Petroleum Institute, "Technical Considerations of Fuel Switching Practices," API Technical Issues Workgroup, June 3, 2009.

[100] American Bureau of Shipping, "ABS Notes: Use of Low-Sulphur Marine Fuel for Main and Auxiliary Diesel Engines," Fuel Oil Piping, EWZ–001–02–P04–W007, Attachment G—Revision 1.

[101] United States Coast Guard, "Avoiding Propulsion Loss from Fuel Switching: American Petroleum Institute, Technical Considerations," Marine Safety Alert 03–09, June 16, 2009.

distillate fuels, vessel operators will need to keep the above issues in mind and follow the engine manufacturer's standard fuel switching procedure.

(g) Boilers

Steamships operate through the use of steam produced by boilers. In addition, boilers are often used on diesel-propelled ships for auxiliary power. Many of these boilers are designed to operate on heavy fuel oil. As such, the fuel must be heated and the system optimized to atomize heavy fuel oil and then mix it with air for combustion. To operate these systems on distillate fuel, certain modifications to the boiler may be necessary to the burner and fuel systems. These modifications are more likely to be necessary for older boilers. First, as with diesel engines, residual fuel needs to be heated to flow through the pumps. Distillate fuel does not. In addition, the fuel pumps and injection nozzles must be matched to the viscosity and lubricity of the fuel. Second, the fuel burners and air mixing system must be matched to the fuel. In modern boilers, burners generally are able to operate on distillate fuel and heavy fuel oil. The air mixing generally needs to be reduced when using distillate fuel which evaporates easier. The control system must be adjusted so that the main burner does not accidently re-ignite after a flame-out. If the boiler loses its ignition source (flame) too high of a mass of fuel may be vaporized for the boiler to be safely re-lighted. In this case, the boiler should be purged before relighting the flame. Third, proper monitoring of the boiler operation will optimize flame supervision and minimize the risk of problems when operating on distillate fuel.

(2) Equivalents

Regulation 4 of Annex VI allows for alternative devices, procedures, or compliance methods if they are "at least as effective in terms of emissions reductions as that required by this Annex." As an alternative to operating on lower sulfur fuel, an exhaust gas cleaning device may be used to remove SO_X and PM emissions from the exhaust. These devices are colloquially known as SO_X scrubbers. This section describes the technological feasibility of SO_X scrubbers and how they may be used to achieve equivalent emission reductions as fuel switching.

SO_X scrubbers are capable of removing up to 95 percent of SO_X from ship exhaust using the ability of seawater to absorb SO_X. SO_X scrubbers have been widely used in stationary source applications, where they are a well-established SO_X reduction technology. In these applications, lime or caustic soda are typically used to neutralize the sulfuric acid in the washwater. While SO_X scrubbers are not widely used on ocean-going vessels, there have been prototype installations to demonstrate their viability in this application such as the Krystallon systems installed on the P&O ferry Pride of Kent and the Holland America Line cruise ship the ms Zaandam. These demonstrations have shown scrubbers can replace and fit into the space occupied by the exhaust silencer units and can work well in marine applications.

There are two main scrubber technologies. The first is an open-loop design which uses seawater as exhaust washwater and discharges the treated washwater back to the sea. Such open-loop designs are also referred to as seawater scrubbers. In a seawater scrubber, the exhaust gases are brought into contact with seawater, either through spraying seawater into the exhaust stream or routing the exhaust gases through a water bath. The SO_2 in the exhaust reacts with oxygen to produce sulfur trioxide which then reacts with water to form sulfuric acid. The sulfuric acid in the water then reacts with carbonate and other salts in the seawater to form sulfates which may be removed from the exhaust. The washwater is then treated to remove solids and raise the pH prior to discharge back to the sea. The solids are collected as sludge and held for proper disposal ashore.

A second type of SO_X scrubber which uses a closed-loop design is also feasible for use on marine vessels. In a closed loop system, fresh water is used as washwater, and caustic soda is injected into the washwater to neutralize the sulfur in the exhaust. A small portion of the washwater is bled off and treated to remove sludge, which is held and disposed of at port, as with the open-loop design. The treated effluent is held onboard or discharged at open sea. Additional fresh water is added to the system as needed. While this design is not completely closed-loop, it can be operated in zero discharge mode for periods of time.

Exhaust gas scrubbers can achieve reductions in particulate matter as well. By removing sulfur from the exhaust, the scrubber removes most of the direct sulfate PM. Sulfates are a large portion of the PM from ships operating on high sulfur fuels. By reducing the SO_X emissions, the scrubber will also control much of the secondary PM formed in the atmosphere from SO_X emissions. However, simply mixing alkaline water in the exhaust does not necessarily remove much of the carbonaceous PM, ash, or metals in the exhaust. While SO_2 associates with the washwater, particles can only be washed out of the exhaust through direct contact with the water. In simple scrubber designs, much of the mass of particles can reside in gas bubbles and escape out the exhaust.

Manufacturers have been improving their scrubber designs to address carbonaceous soot and other fine particles. Finer water sprays, longer mixing times, and turbulent action would be expected to directionally reduce PM emissions through contact impactions. One scrubber design uses an electric charge on the water to attract particles in the exhaust to the water. In another design, demisters are used that help effectively wash out PM from the exhaust stream. In either of these designs, however, the systems would be effective at removing SO_2 from the exhaust even if the additional hardware needed for non-sulfate PM reduction were not used.

Annex VI does not present specific exhaust gas limits that are deemed to be equivalent to the primary standard of operating on lower sulfur fuel. Prior to the recent amendments to Annex VI, Regulation 14 included a limit of 6 g/kW-hr SO_2 as an alternative to the 15,000 ppm sulfur limit for sulfur emission control areas. Under the amended requirements, the specific SO_2 limit was removed and more general language on equivalents was included.

IMO has developed guidelines for the use of exhaust gas cleaning systems (EGCS) such as SO_X scrubbers as an alternative to operating on lower sulfur fuel.[102] These guidelines include a table of SO_2 limits intended to correspond with various fuel sulfur levels. Based on the methodology that was used to determine the SO_2 limit of 6.0 g/kW-hr for existing ECAs, the corresponding limit is 0.4 g/kW-hr SO_2 for a 1,000 ppm fuel sulfur limit. This limit is based on an assumed fuel consumption rate of 200 g/kW-hr and the assumption that all sulfur in the fuel is converted to SO_2 in the exhaust. The IMO guidelines also allow for an alternative approach of basing the limit on a ratio of SO_2 to CO_2. This has the advantage of being easier to measure during in-use monitoring. In addition, this ratio holds more constant at lower loads than a brake-specific limit, which would approach infinity as power approaches zero. For the existing 15,000 ppm fuel sulfur limit in ECAs, a SO_2 (ppm)/CO_2 (%) limit of 65 was

[102] International Maritime Organization, "2009 Guidelines for Exhaust Gas Cleaning Systems," Resolution MEPC.184(59), Adopted on 17 July 2009, MEPC 59/24/Add.1/Annex 9.

developed. The equivalent limit for a 1,000 ppm fuel sulfur level is 4.0 SO_2 (ppm)/CO_2 (%).

It is our intent that the IMO guidelines will be used by the U.S. Government in making the determination whether an EGCS meets the requirements of MARPOL Annex VI, Regulation 4. We are currently working with the U.S. Coast Guard on developing the U.S. Government process for approving equivalents. It is not yet clear if a request for an equivalent determination will be made to EPA or the U.S. Coast Guard. To prevent multiple requests from having to be made, today's regulations require such a request to be made to EPA only. This could change as a result of the discussions between EPA and the U.S. Coast Guard. If so, we will update the regulatory text accordingly.

Scrubbers are effective at reducing SO_2 emissions and sulfate PM emissions from the exhaust. However, as discussed above, the effectiveness of the scrubber at removing PM emissions other than sulfates is dependent on the scrubber design. In addition to sulfate PM reductions, switching from residual fuel to distillate fuel results in reductions in organic PM and metallic ash particles in the exhaust. We expect that ECGS designs will achieve similar PM reductions as fuel switching; however, if this turns out to not be the case, we will address this issue, as appropriate, through further action.

Water-soluble components of the exhaust gas such as SO_2, SO_3, and NO_2 form sulfates and nitrates that are dissolved into the discharge water. Scrubber washwater also includes suspended solids, heavy metals, hydrocarbons and polycyclic aromatic hydrocarbons (PAH). Before the scrubber water is discharged, there are several approaches that may be used to process the scrubber water to remove solid particles. Heavier particles may be trapped in a settling or sludge tank for disposal. The removal process may include cyclone technology similar to that used to separate water from residual fuel prior to delivery to the engine. However, depending on particle size distribution and particle density, settling tanks and hydrodynamic separation may not effectively remove all suspended solids. Other approaches include filtration and flocculation techniques. Flocculation, which is used in many waste water treatment plants, refers to adding a chemical agent to the water that will cause the fine particles to aggregate so that they may be filtered out. Sludge separated from the scrubber water would be stored on board until it is disposed of at proper facilities.

The IMO guidelines for the use of exhaust gas cleaning devices such as SO_X scrubbers include recommended monitoring and water discharge practices. The washwater should be continuously monitored for pH, PAHs and turbidity. Further, the IMO guidance include specifications for these same items, as well as nitrate content when washwater is discharged in ports, harbors or estuaries. Finally, the IMO guidance recommends that washwater residue (sludge) be delivered ashore to adequate reception facilities and not discharged to the sea or burned on board.

Any discharges directly into waters of the United States may be subject to Clean Water Act or other U.S. regulation. To the extent that the air pollution control technology results in a wastewater discharge, such discharge will require a permit under the Clean Water Act's National Pollutant Discharge Elimination System (NPDES) permit program. For example, the NPDES Vessel General Permit in Section 2.2.26 contains conditions for Exhaust Gas Scrubber Washwater Discharge. Also, the Act to Prevent Pollution for Ships may apply to such discharge.

D. ECA Designation and Foreign-Flagged Vessels

In our previous marine diesel engine rulemakings, EPA did not extend our Clean Air Act standards to engines on vessels flagged by other countries. In our 2003 rule, many States and localities expressed concern about the high levels of emissions from ocean-going vessels. We examined our position and concluded that no change was necessary at that time because the Tier 1 standards we adopted for Category 3 engines on U.S. vessels were the same as those contained in MARPOL Annex VI. We indicated we would re-examine this issue in our current rulemaking and would also review the progress made by the international community toward the adoption of new more stringent international standards that reflect the application of advanced emission control technologies.

We received comments from a broad range of interested parties on the Advanced Notice of Proposed Rulemaking (ANPRM) for this rulemaking. Generally, those commenters remained concerned about the contribution of ocean-going vessels to air quality problems. Many took the position that EPA should cover engines on foreign-flagged OGV under Clean Air Act section 213 since they account for the vast majority of OGV emissions in the United States and because of their perception, at the time these comments were submitted, that the international process to set stringent standards was stalled.

In the Notice of Proposed Rulemaking (NPRM) for this rulemaking, we provided background on EPA's past statements with regard to the application of our Clean Air Act section 213 standards to engines on foreign-flagged vessels, and summarized comments we received on this issue in response to our ANPRM. Because the NO_X standards adopted in the amendments to Annex VI are comparable in stringency and timing to our final CAA NO_X standards, we did not believe it necessary to extend our Clean Air Act Tier 2 and 3 standards to engines on foreign-flagged vessels. Therefore, we did not seek to resolve the issue of whether section 213 of the Act allows us to set standards for engines on foreign-flagged vessels. However, we stated that our proposed decision rested on the timely adoption of an amendment to Annex VI designating the U.S. coastal waters as an ECA, since the most stringent of the NO_X standards will be applicable in such areas. We maintain the position we expressed in the NPRM, particularly in light of the recent approval, and circulation for adoption, of the North American ECA. If the amendment designating a U.S. ECA is not timely adopted by the Parties to IMO, we will revisit this issue.

EPA received a number of comments in response to the NPRM on the issue of whether EPA should or could address emissions from engines on foreign-flagged vessels. Most commenters reiterate their positions as stated in comments received on the ANPRM.[103] Environmental group commenters who previously expressed their position that EPA has authority—and even obligation—within the Clean Air Act to regulate foreign-flagged vessels, maintain that position and recognize that application of the new standards to all vessels, including those that are foreign-flagged, is necessary to achieve the new standards' public health and environmental benefits. While some commenters accept EPA's position that it will revisit this issue without delay in

[103] Ohio Environmental Council, Earth Day Coalition, Marsh Area Regional Council, Ohio League of Conservation Voters, OAR–2007–0121–0314; Northeast States for Coordinated Air Use Management, OAR–2007–0121–0227; American Lung Association with Environmental Defense Fund, OAR–2007–0121–0366 and OAR–2007–0121–0227; Santa Barbara Air Pollution Control District, OAR–2007–0121–0231; Clean Air Task Force, OAR–2007–0121–0264 and OAR–2007–0121–0227; South Coast Air Quality Management District, OAR–2007–0121–0309 and OAR–2007–0121–0232.

the event that a U.S. ECA designation is not timely adopted by the Parties to the IMO,[104] others are concerned about the potential for delay within the IMO and, thus, urge EPA to commence a parallel rulemaking as a backstop to that potential delay.[105] Still others find EPA's reliance on an ECA designation to be insufficient and suggest that EPA should presently assert authority and extend this rule's application to foreign-flagged vessels.[106] That suggestion also includes a concern that too much reliance on the IMO for authority to regulate foreign-flagged vessels could expose a gap wherein ships that are flagged in nations that are not parties to Annex VI would go unregulated in U.S. waters.[107] To close that gap, the commenter recommends direct application of CAA standards to all foreign-flagged vessels. That concern echoes industry commenters' calls for equal application of the standards to all vessels in U.S. waters to ensure a "level playing field" and "uniform treatment of the entire merchant fleet."[108]

We appreciate the comments we received and are committed to revisiting the issue if the U.S. ECA proposal is not timely adopted. However, we continue to believe we need not revisit this issue at this time given that foreign-flagged vessels will be subject to standards under APPS that are comparable to those for U.S.-flagged vessels under section 213 of the CAA. The issue of whether EPA is compelled to cover foreign-flagged vessels under section 213 of the CAA was raised in *Bluewater* v. *EPA,* 372 F.3d 404 (DC Cir. 2004), a challenge to EPA's decision in 2003 not to revisit the issue of whether foreign-flagged vessels may and should be covered by nonroad emissions standards issued under section 213 of the CAA. In finding Bluewater's claim to be premature, the *Bluewater* court referred back to its determination in *Engine Mfrs. Ass'n* v. *EPA,* 88 F.3d at 1086–87, that "new nonroad engine" as used in 213(a)(3) is ambiguous and reiterated EPA's undisputed finding that there would be no significant loss of emission reductions by not revisiting the issue. We do not believe circumstances have changed to call into question the *Bluewater* court's finding as applied to today's setting. In fact, the only changed circumstances further support EPA's decision not to revisit the issue. Since issuance of the 2003 final rule and the court's decision in *Bluewater,* Annex VI has entered into force, and the United States has become a Party to Annex VI and has successfully negotiated significant new emission and fuel standards. In addition, Congress has adopted amendments to the Act to Prevent Pollution from Ships to implement both the original and amended Annex VI requirements. Therefore, given that foreign-flagged vessels are subject to the original and new Annex VI NO_X and fuel requirements under the operation of APPS, we do not believe it is currently necessary to address whether EPA may or should cover foreign-flagged vessels under section 213 of the CAA. *See South Coast* v. *EPA,* 554 F.3d 1076, 1081 (DC Cir. 2009) ("Deferring resolution of the issue until it will have an effect remains reasonable and the petitioners' objection therefore remains premature.").

However, as noted above, we are committed to revisiting this issue if the proposed ECA, within which the most stringent NO_X and fuel requirements are applicable, is not timely adopted. Meetings to discuss adoption of the U.S.-proposed ECA are scheduled shortly after this rule is finalized, and thus, taking into consideration the lead times adopted, little time is lost in not revisiting this issue in this rulemaking. We also note that ships that are flagged in nations that are not a Party to Annex VI are subject to Annex VI requirements in U.S. waters under the Act to Prevent Pollution from Ships. Our regulations to implement the requirements of Annex VI with respect to such vessels make clear the applicability of those provisions to such vessels.

VI. Certification and Compliance Program

This section describes the regulatory changes being finalized for the CAA Category 3 engine compliance program. In general, these changes are being finalized to ensure that the benefits of the standards are realized in-use and throughout the useful life of these engines, and to incorporate lessons learned over the last few years from the existing test and compliance program.

The most obvious change is that we are applying the plain language regulations of 40 CFR part 1042 to Category 3 engines. These part 1042 regulations were adopted in 2008 for Category 1 and Category 2 engines (73 FR 25098, May 6, 2008). They were structured to contain the provisions that are specific to marine engines and vessels in part 1042, and apply the parts 1065 and 1068 for other provisions not specific to marine engines. This approach is not intended to significantly change the compliance program from the program currently applicable to Category 3 engines under 40 CFR part 94, except as specifically noted in this notice. These plain language regulations supersede the regulations in part 94 for Category 3 engines beginning with the 2011 model year. *See* Section VI.E for additional discussion of the transition from part 94 to part 1042.

The changes from the existing programs are described below along with other notable aspects of the compliance program. These changes are necessary to implement the new standards as well as to implement the Annex VI program as required under the amendments to the Act to Prevent Pollution from Ships.

Finally, we are also including several changes and clarifications to the compliance program that are not specific to Category 3 engines. Some of these apply only for marine diesel engines below 30 liters per cylinder displacement.

A. Compliance Provisions for Category 3 Engines

In general, we are retaining the certification and compliance provisions adopted with the Tier 1 standards for Category 3 engines. These include testing, durability, labeling, maintenance, prohibited acts, *etc.* However, we believe additional testing and compliance provisions will be necessary for new standards requiring more advanced technology and more sophisticated emission control systems. These changes, as well as other modifications to our certification and compliance provisions for Category 3 engines, are discussed below.

Our certification process is similar to the process specified in the Annex VI NO_X Technical Code (NTC) for pre-certification. However, the Clean Air Act specifies certain requirements for our certification program that are different from the NTC requirements. The EPA approach differs most significantly from the NTC in three areas. First, the NTC allows but does not require certification of engines before installation (known as pre-certification

[104] Ohio Environmental Council, Earth Day Coalition, Marsh Area Regional Council, Ohio League of Conservation Voters, OAR–2007–0121–0314; Northeast States for Coordinated Air Use Management, OAR–2007–0121–0227; American Lung Association with Environmental Defense Fund, OAR–2007–0121–0366 and OAR–2007–0121–0227.

[105] Santa Barbara Air Pollution Control District, OAR–2007–0121–0231.

[106] Clean Air Task Force, OAR–2007–0121–0264 and OAR–2007–0121–0227; South Coast Air Quality Management District, OAR–2007–0121–0309 and OAR–2007–0121–0232; Earthjustice, Friends of the Earth, and Center for Biological Diversity, OAR–2007–0121–0320.

[107] Earthjustice, Friends of the Earth, and Center for Biological Diversity, OAR–2007–0121–0320.

[108] World Shipping Council, OAR–2007–0121–0227 and OAR–2007–0121–0325; Marine Engineers Beneficial Association, OAR–2007–0121–0259.

under the NTC), while EPA does require it. Second, we include various provisions to hold the engine manufacturer responsible for the durability of emission controls, while the NTC holds the engine manufacturer liable only before the engine is placed into service. Finally, we specify broader temperature ranges and allow manufacturers less discretion in setting engine parameters for testing, with the goal of adopting test procedures that represent a wide range of normal in-use operation. We believe the regulations in this final rule are sufficiently consistent with NTC that manufacturers can continue to use a single harmonized compliance strategy to certify under both systems.

(1) Testing

We are largely continuing the testing requirements that currently apply for Category 3 engines with a few exceptions.

(a) General Test Procedures

We are applying the general engine testing procedures of 40 CFR part 1065 to Category 3 engines. This is part of our ongoing initiative to update the content, organization and writing style of our regulations. For each engine sector for which we have recently promulgated standards (such as smaller marine diesel engines), we refer to one common set of test procedures in part 1065. This is because we recognized that a single set of test procedures would allow for improvements to occur simultaneously across engine sectors. A single set of test procedures is easier to understand than trying to understand many different sets of procedures, and it is easier to move toward international test procedure harmonization if we only have one set of test procedures.

These procedures replace those currently published in parts 92 and 94 and are fundamentally similar to those procedures. The primary differences are related to tighter tolerances to reduce test-to-test variability. In most cases, a manufacturer should be able to comply with 1065 using its current test equipment. Nevertheless, full compliance with part 1065 would take some effort on the part of manufacturers. As such, we are including some flexibility to make a gradual transition from the part 92 and 94 procedures. For several years, manufacturers will be able to optionally use the part 1065 procedures. Part 1065 procedures will generally be required for any new testing by 2016 (except as noted below). This is very similar to the allowance already provided with respect to Category 1 and Category 2 engines.

Several manufacturers raised in their comments general objections to applying the 1065 test procedures. However, since we proposed to allow Category 3 manufacturers to submit data collected using the test equipment, test fuels, and procedures specified in the NO_X Technical Code, we believe that the requirement should be finalized as proposed. The procedures in 1065 will still be the official test procedures, however, and manufacturers will be liable with respect to any test results from 1065 testing. We do not believe this allowance will have any effect on the stringency of the standards, or how manufacturers design and produce their engines.

(b) Test Fuel

Appropriate test procedures need to represent in-use operating conditions as much as possible, including specification of test fuels consistent with the fuels that compliant engines will use over their lifetimes. Our Part 94 regulations allow Category 3 engine testing using distillate fuel, even though many vessels with these engines currently use less expensive residual fuel. This provision is consistent with the specifications of the NO_X Technical Code. We are continuing this approach for Tier 2 and Tier 3. Our primary reason for continuing this approach is that we expect these Category 3 engines will generally be required to use distillate fuels in areas that will affect U.S. air quality for most of their operational lives. (We expect this because we expect IMO to approve our proposal to amend Annex VI to designate the U.S. coastal waters as an ECA.) However, since these engines will not be required to use low-sulfur or ultra low-sulfur fuel, we are also adding an explicit requirement that a high-sulfur distillate test fuel be used for both Tier 2 and Tier 3 testing. Our testing regulations (40 CFR 1065.703) are being revised to specify that high-sulfur diesel test fuels contain 800 to 2,500 ppm sulfur. This will be lower than the prior specification of 2,000 to 4,000 ppm. This will allow manufacturers to test with fuels near the ultimate in-use limit of 1,000 ppm.

(c) Testing Catalyst-Equipped Engines

In our existing programs that require compliance with catalyst-based engines (such as the Category 1 & 2 engine program), we have required manufacturers to test prototype engines equipped with prototype catalyst systems. However, it is not clear that this approach would be practical for Category 3 engines. These are problematic because of their size and because they tend to be a least partially custom built on a vessel by vessel basis. Requiring a manufacturer to construct a full-scale catalyst system for each certification test would be extremely expensive.

We are finalizing an optional special certification procedure to address this concern. The provisions are in § 1042.655 of the finalized regulations. The emission-data engine must be tested in the specified manner to verify that the engine-out emissions comply with the Tier 2 standards. The catalyst material must be tested under conditions that accurately represent actual engine conditions for the test points. This catalyst testing may be performed on a benchscale. Manufacturers must include a detailed engineering analysis describing how the test data collected for the engine and catalyst material demonstrate that all engines in the family will meet all applicable emission standards. Manufacturers must verify their design by testing a complete production engine and catalysts in its final assembled configuration. It is important to note that this allowance does not limit in any way the manufacturers' or operators' obligations with respect to safety for catalyst systems, such as those specified by Coast Guard.

(d) Testing Production Engines

Under the current regulations, manufacturers must test a sample of their Category 1 and Category 2 engines during production. We are now finalizing similar provisions for Category 3 engines. While in the past we did not believe that such testing was necessary, circumstances have changed in two important ways. First, relatively inexpensive portable test systems have recently become available. This greatly reduces the cost of testing an engine in a ship. Second, the need to verify that production engines actually comply with the emission standards increases as standards become more stringent and emission control technologies become more complicated.

Specifically, every new Tier 2 or later Category 3 engine must be tested during the vessel's sea trial to show compliance with the applicable NO_X standard. Any engine that fails to comply with the standard will need to be repaired and retested. Since we are not finalizing PM standards for Category 3 engines, and because PM measurement is more difficult than measuring only gaseous emission, we will not require PM measurement during testing after

installation, provided PM emissions were measured during certification.

One concern that manufacturers have raised in the past is that it can be difficult to achieve the exact test points in use. Therefore, we are allowing manufacturers flexibility with respect to test points when testing production engines, consistent with the equivalent allowance under the NO_X Technical Code. Where manufacturers are unable to duplicate the certification test points during production testing, we are allowing them to comply with an alternate "at-sea standard" that is 10 percent higher than the otherwise applicable standard. This is specified in § 1042.104(g).

Since we are requiring testing of every production engine, we are also excluding Category 3 engines from selective enforcement audits under 40 CFR part 1068.

(e) PM Measurement

We are requiring manufacturers to measure PM emissions along with NO_X, HC, and CO during certification testing to report these results along with the other test data. This is similar to our recently proposed requirement for manufacturers to measure and report certain greenhouse gas emissions for a variety of nonroad engine sectors.[109] Manufacturers should be able to collect these data using stand-alone partial flow PM measurement systems. In recent years, several vendors have developed such systems to be compliant with the requirements of 1065.

It is worth noting that in the past, there has been some concern regarding the use of older PM measurement procedures with high sulfur fuels. The primary issue of concern was variability of the PM measurement, which was strongly influenced by the amount of water bound to sulfur. However, we believe improvements in PM measurement procedures, such as those specified in 40 CFR 1065, have addressed these issues of measurement variability. The U.S. Government recently submitted proposed procedures for PM measurement to IMO.[110]

(2) Low Power Operation and Mode Caps

Emission control performance can vary with the power at which the engine operates. This is potentially important because Category 3 engines can operate at relatively low power levels when they are operating in port areas. Ship pilots generally operate engines at reduced power for several miles to approach a port, with even lower power levels very close to shore. The International Organization for Standardization (ISO) E3 and E2 test cycles, which are used for emission testing of propulsion marine engines, are heavily weighted towards high power. In the absence of other requirements, it would be possible for manufacturers to meet the cycle-weighted average emission standards without significantly reducing emissions at low-power modes. This could be especially problematic for Tier 3 engines relying on urea-SCR for NO_X control, since the effectiveness of the control is directly affected by the amount of urea that is injected and there would be an obvious economic incentive for manufacturers and operators to minimize the amount of urea injected.

We are addressing these concerns in two ways. First, we are applying mode caps for NO_X emissions that will ensure that manufacturers design their emission controls to be fully effective at 25 percent power. This will require that manufacturers meet the applicable NO_X standard at each individual test point, and not merely as a weighted average of the test points. The caps will only apply for NO_X emissions, and manufacturers will not be required to meet the HC and CO standards at each test point. For HC and CO, manufacturers will only be required to meet the applicable standards as a weighted average of the test points.

The other concern is related to power levels other than the test points. To address this, we will continue to rely on our prohibition of defeat devices to ensure effective control for lower powers. Most significantly, this will prohibit manufacturers from turning off the urea supply to SCR systems at these points, unless the exhaust gas temperature was too cool for the SCR catalyst to function properly. (Urea at these low temperatures does not react with NO_X molecules and can lead to high emissions of ammonia.)

(3) On-Off Technologies

Many of the technologies that are projected to be used to meet the Tier 3 NO_X standards (such as SCR, water injection, and EGR) are not integral to operation of the engine, allowing the engine to be operated without them. They will also require the operator to supply the proper reductant. Thus, these technologies are potentially "on-off" technologies. Switching to distillate fuel instead of residual fuel to reduce SO_X and PM emissions can be thought of in the same way.

The increased operating costs of such controls associated with urea (or other reductants) or with distillate usage suggest that it may be reasonable to allow these systems to be turned off while a ship is operated on the open ocean, far away from sensitive areas that are affected by ship emissions. This is the basis of the MARPOL Annex VI ECA approach, with one set of limits that would apply when ships are operated in sensitive areas and another that would apply when ships are operated outside those designated areas.

We are finalizing the proposed regulatory provision in § 1042.115(g) to address the use of on-off technologies on Category 3 engines subject to the Tier 3 standards. This provision will require the manufacturer to obtain EPA approval to design the engines to have on-off features. It will also require the engine's onboard computer to record the on-off operation (including geographic position and time) and require that the engine comply fully with the Tier 2 standards when the Tier 3 controls are turned off.

In response to comments, we are expanding this option slightly to address other possible technological solutions. In particular, we will allow a manufacturer to design the system to have a Tier 3 mode and a Tier 2 mode that correspond to "on" and "off," without regard to whether any given controls are turned on or off. For example, under this allowance, a manufacturer could design the system to have a Tier 2 (off) mode in which the SCR system continues to function, while engine-out emissions are increased. Such a design would be allowed as long as the emission downstream of the aftertreatment met the Tier 2 standards.

Our goal is to require manufacturers to comply with the Tier 3 standards in all areas where the emissions significantly affect U.S. air quality. We expect that all such areas will also ultimately be included in one or more Emission Control Areas. We describe a North American ECA in Section V.A, which is intended to include most areas where the emissions significantly affect U.S. air quality. However, we have not yet determined the extent to which Category 3 engines affect air quality in other areas—specifically, the U.S. territories, areas of Alaska west of Kodiak, the smallest Hawaiian islands, or Puerto Rico and the U.S. Virgin Islands. Therefore, we are including an interim provision to exclude those areas with respect to the Tier 3 standards at this time. We will revisit this should our review of available modeling results or

[109] 74 FR 16448, April 10, 2009.

[110] "Measurement Method For Particulate Matter Emitted From Marine Engines," Submitted by the United States to the International Maritime Organization Intersessional [sic] Meeting Of the BLG Working Group On Air Pollution, 5 October 2007.

other information indicate that compliance with the Tier 3 standards should be required for some or all of these areas.

(4) NO_X Monitoring

Category 3 engines equipped with on-off controls must be equipped to continuously monitor NO_X concentrations in the exhaust. Engine manufacturers will be required to include systems to automatically alert operators of any operation with the emission controls on where NO_X concentrations indicate malfunctioning emission controls. We are also requiring the engine to record in nonvolatile computer memory any such operation. However, we are not requiring monitoring NO_X concentrations during operation for which the emission controls are allowed to be turned off, provided the record indicated that the controls were turned off. Where the NO_X monitor system indicates a malfunction, operators will be required to investigate the cause and make any necessary adjustments or repairs.

We are defining as a malfunction of the emission controls any condition that would cause an engine to fail to comply with the applicable NO_X standard (*See* Section VI.A.1.d for a discussion of standards that will apply for installed engines at sea). Such malfunctions could include maladjustment of the engine or controls, inadequate reductant, or emission controls turned off completely. We recognize that it is not possible to perfectly correlate a measured NO_X concentration with an equivalent cycle-weighted emission result. Therefore, the requirement will allow engine manufacturers to exercise good engineering judgment in using measured NO_X concentrations to monitor the emission performance of the engine. Should manufacturers decide that it would be helpful to have a less subjective (and less flexible) requirement, we will be willing to work with them to make such improvements to this provision through a future rulemaking.

(5) Parameter Adjustment

Given the broad range of ignition properties for in-use residual fuels, we expect that our in-use adjustment allowance for Category 3 engines will result in a broad range of adjustment. We requested comment on a requirement for operators of ships equipped with NO_X monitors to perform a simple NO_X check test to confirm emissions after parameter adjustments or maintenance operations, using onboard emission measurement systems with electronic-logging equipment. While we are not adopting such a requirement at this time, we may do so in the future should we determine that these engines are being improperly adjusted in use.

(6) In-Use Liability

Under the Tier 1 program for Category 3 engines, owners and operators are required to maintain, adjust, and operate the engines in such a way as to ensure proper function of the emission controls. These requirements, which are described in 40 CFR 94.1004, are being continued in the regulations in part 1042 (*See* § 1042.660 of the finalized regulations for these requirements). Owners will also continue to be required to keep certain records onboard the vessel and report annually to EPA whether or not the vessel has complied with these and other requirements.

Specifically, these provisions require that all maintenance, repair, adjustment, and alteration of the engine be performed using good engineering judgment so that the engine continues to meet the emission standards. Each two-hour period of operation of an engine in a condition not complying with this requirement will be considered a separate violation. Some commenters expressed concern that treating each two-hour period of operation as a separate violation would be inappropriate for events that occur while the vessel is out at sea. These commenters correctly noted that where a repair cannot be made at sea, the operator has no choice but to continue operating the vessel in its noncompliant condition. Therefore, we are revising the regulations to clarify that we would not consider operating a vessel in need of repair to be a violation, if such a repair was not possible.

(7) Replacement Engines

The existing provisions of § 1042.615 provide an exemption that allows manufacturers to produce new uncertified engines when they are needed to replace equivalent existing engines that fail prematurely. For many engine sectors, this practice is common, but represents a very small faction of a manufacturer's total engine production. We do not believe this practice is either common or necessary for Category 3 engines, and therefore we proposed to not allow this exemption for Category 3 engines. However, engine manufacturers commented that there have been infrequent but real occurrences where they have needed to provide a Category 3 replacement engine in response to premature engine failure. To address this concern, we are finalizing a provision that would allow us to make an exception in very unusual circumstances and allow a manufacturer to make a new Category 3 engine that is exempt from current emission standards. Even for the rare case where manufacturers would need to supply a replacement Category 3 engine, we would expect them generally to be able to provide a certified engine. It is clear that removing a failed engine and installing a replacement will involve a very significant effort; we would expect this effort to include reasonable modifications to accommodate a certified engine even if it was somewhat different than the engine being replaced. However, if manufacturers can demonstrate under § 1042.615 that no certified engine has the physical and performance characteristics to properly power the vessel, they may produce a new engine that is exempt from emission standards. This may be most likely for vessels that have paired Category 3 engines where one of the engines fails prematurely and cannot be repaired without being removed from the vessel.

It is also important to note that the provisions of Annex VI related to replacement engines also apply. This generally limits replacement engines to those that are identical to the engines being replaced.

B. Compliance Provisions To Implement Annex VI NO_X Regulation and the NO_X Technical Code

In addition to the Clean Air Act provisions being finalized in this action, we are also establishing new regulations to implement certain provisions of the Act to Prevent Pollution from Ships. These regulations are a new part 1043 of title 40.

The Act to Prevent Pollution from Ships establishes a general requirement for vessels operating in the exclusive economic zone and navigable waters of the United States to comply with MARPOL Annex VI. It also gives EPA and the Administrator the authority to further implement MARPOL Annex VI. Many of the requirements relating to NO_X emissions and fuel sulfur limits can be implemented without the need for further elaboration because the Annex, along with the NO_X Technical Code, provides instructions on how to demonstrate compliance with those requirements. However, APPS authorizes the Administrator to prescribe any necessary or desired additional regulations to assist in carrying out the provisions of Regulations 12 through 19 of Annex VI (*see* 33 U.S.C. 1903(c)(2)). Specifically, the regulations being finalized in this FRM in part 1043 of title 40 are

intended to assist in the implementation of the engine and fuel requirements contained in Regulation 13, 14, and 18 of MARPOL Annex VI. They address such issues as how to obtain an Engine International Air Pollution Prevention (EIAPP) certificate (which is equivalent in many ways to a Clean Air Act certificate of conformity), exemptions for vessels used exclusively in domestic service, and requirements for vessels not registered by a country that is a Party to Annex VI.

The requirements being finalized in part 1043 will generally begin July 1, 2010. However, the ECA NO_X requirements will not begin until the Tier 3 NO_X standards begin (or when the ECA enters into force for the U.S., whichever is later), and the ECA fuel requirements will not begin until 12 months after the ECA enters into force for the U.S., as provided by Annex VI. It is also important to clarify that Annex VI itself was effective for the United States as of January 8, 2009. The requirement of the Annex for ships to have a valid International Air Pollution Prevention (IAPP) certificate applies for U.S. vessels based on when the keel is laid and when it is dry-docking. Vessels for which keels were laid (or which were at a similar stage of construction) before January 8, 2009 must have on board a valid IAPP certificate no later than the first scheduled dry-docking, but in no case later than January 8, 2012. Vessels for which keels are laid (or which are at a similar stage of construction) after January 8, 2009 must have on board a valid IAPP certificate upon completion of its initial survey before the ship is placed into service.

The MARPOL Annex VI NO_X requirements apply to all marine diesel engines above 130 kW. Similarly, the MARPOL Annex VI fuel requirements apply to all fuel oil used onboard a vessel, defined as any fuel delivered to and intended for combustion purpose for propulsion or operation on board any ship, including distillate and residual fuels. Thus the part 1043 compliance program described here applies somewhat more broadly than the Clean Air Act compliance program described earlier for Category 3 engines.

It is worth noting that while APPS generally requires compliance with Annex VI and future amendments to Annex VI, we have incorporated by reference the existing 2008 version of the Annex for certain purposes. Specifically, we require compliance with the 2008 Annex VI NO_X and fuel requirements by non-Party vessels and require compliance with the ECA requirements by all vessels in our internal waters; both of these issues are discussed later. We fully expect to update this incorporation by reference whenever aspects of the Annex relating to these provisions are amended. However, we recognize that it is possible that there will be a brief period during which the incorporated version differs slightly from any amended provisions. To the extent that occurs, vessels in our internal waters and non-Party vessels would be subject to the requirements in the 2008 version (or the latest version that has been incorporated by reference).

In § 1043.1(d), we clarify that these regulations do not limit requirements that would otherwise apply pursuant to APPS, except for excluding domestic vessels from the Annex VI NO_X standard (consistent with the allowance in Regulation 13.1.2.2 of the Annex).

(1) EIAPP Certificates

In general, an engine can be dual-certified under EPA's Clean Air Act marine diesel engine program and the MARPOL Annex VI/APPS program. However, we require that engine manufacturers submit separate applications for the 1042 and EIAPP certificates. The regulations in part 1043 specify the process that would apply. The process for obtaining the EIAPP is very similar to the process for obtaining a certificate of conformity under part 1042, and although there are differences between the programs, manufacturers should be able to comply with both programs with very little additional work. The primary differences are that, to certify to the MARPOL Annex VI standards, the manufacturer must include a copy of the Technical File and onboard NO_X verification procedures (as specified in Section 2.4 of the NO_X Technical Code) and is not required to provide information about useful life, emission labels, deterioration factors, or PM emissions.[111] Engine manufacturers will be able to apply for both certifications using the same certification templates and test data.

Consistent with our 1042 program, our 1043 program will require that each engine installed or intended to be installed on a U.S.-flagged vessel have an EIAPP before it is introduced into U.S. commerce. The finalized regulations will create a presumption that all marine engines manufactured, sold, or distributed in U.S. commerce will be considered to be intended to be installed on a U.S.-flagged vessel, although this presumption could be rebutted by clear and convincing evidence to the contrary (evidence that the engine is intended for export, for example). We will also require that all engines that are intended only for domestic use be labeled as such. Thus, all engines not labeled for domestic use will be presumed to be intended for use on vessels subject to part 1043.

(2) Approved Methods

The 2008 amendments to MARPOL Annex VI added a new provision to the engine standards in Regulation 13 that extends the Tier I NO_X limits to certain engines installed on ships constructed on or after January 1, 1990 through December 31, 1999. Specifically, engines with power output greater than 5,000 kW and with per cylinder displacement at or above 90 liters installed on such ships would be required to meet the Tier I NO_X limits if a certified Approved Method is available. An Approved Method may be certified by the Administration of any flag state, but once one is registered with the IMO the owner of such an engine must either install the Approved Method or demonstrate compliance with the Annex VI Tier I limits through some other method. We are including a regulatory section codifying this requirement. These regulations are contained in § 1043.50.

(3) Other Annex VI Compliance Requirements

Engine manufacturers, vessel manufacturers, vessel owners, and fuel providers, fuel distributors, and other directly regulated stakeholders are required to comply with all aspects of Regulations 13, 14, and 18 of Annex VI as well as the NO_X Technical Code. These include requirements for engine operation, fuel use, fuel oil quality, and various recordkeeping requirements (*e.g.,* record book of engine parameters, engine technical file, fuel switching procedures, bunker delivery notes and associated fuel samples, and fuel sampling procedures).

Regulation 18 of both the original and the revised Annex VI sets out the requirements for bunker delivery notes and associated fuel samples. All vessels 400 gross tons and above, and each fixed and floating drilling rig and other platforms (*i.e.,* those vessels subject to Regulations 5 and 6 of both the original and the revised Annex VI) are required to keep onboard the vessel bunker delivery notes that specify the details of fuel oil brought onboard for combustion purposes. These bunker delivery notes may be inspected by the competent authority of a Party while the ship is in its port or offshore terminals. The competent authority may also verify the

[111] *See* 68 FR 9746, February 28, 2003, at 9774–5 for a discussion of these differences as they relate to Category 3 marine diesel engines.

contents of bunker delivery notes. A fuel sample is required to accompany each bunker delivery note, sealed and signed by the supplier's representative and the master or officer in charge of fuel operations. The sample should be taken pursuant to IMO guidelines and is to be retained for at least 12 months from the date of delivery. While the IMO guidelines were not in place at the time the original Annex was adopted, they were subsequently developed and Regulation 18 of amended Annex VI refers specifically to these guidelines: MEPC.96(47).

Although these are Annex VI requirements, we are not creating a regulatory requirement for the certification of bunker delivery notes or fuel samples. Such a requirement would be infeasible with respect to the time and resources that would be necessary to certify every batch of fuel sold to a vessel above 400 GT in the United States. In addition, the requirements in Annex VI clearly call for the sulfur content of gas fuels delivered to a ship for combustion purposes be documented by the fuel supplier, and that the required fuel sample be sealed and signed by the fuel provider and the representative of the ship owner.

It has been brought to the attention of EPA and the Coast Guard that some fuel providers in the United States and elsewhere have not been issuing bunker delivery notes and/or fuel samples at the time of fuel delivery. Ship owners and operators, and fuel providers, are reminded that the bunker delivery notes and fuel samples are requirements under Annex VI; a vessel can be found in noncompliance with the Annex VI fuel requirements if the vessel is inspected at a domestic or foreign port. Therefore, ship owners and operators should exercise care and diligence in obtaining the necessary bunker delivery notes and fuel samples at the time fuel is brought onboard, through the fuel contractual arrangement or through other agreement at the time of sale, and fuel providers should be certain that they have procedures and processes in place to provide the bunker delivery note and fuel sample for each batch of fuel delivered.

(4) Non-Party Vessels

The finalized regulations specify that vessels flagged by a country that is not a party to MARPOL (known as non-Party vessels) must comply with Regulations 13, 14, and 18 of Annex VI when operating in U.S. waters. This requirement fulfills the requirement of 33 U.S.C. 1902(e), which requires the adoption of regulations for non-Party vessels such that they are not treated more favorably than vessels of countries that are party to the MARPOL Protocol. However, since such vessels cannot get EIAPP certificates, this provision requires non-party vessels to obtain equivalent documentation of compliance with the NO_X standards of Annex VI.

(5) Internal Waters

APPS applies Annex VI requirements, including amendments to Annex VI that have entered into force for the United States, to ships that are in the internal waters of the U.S. Among the requirements added in the 2008 amendments to Annex VI are more stringent standards for fuel quality and NO_X emissions. Many of these standards apply in "Emission Control Areas" (ECAs) to be designated by the Parties to Annex VI. As described earlier, the U.S. and Canada submitted an application for a North American ECA, adoption of which is anticipated in March 2010.

As some commenters have noted, the ECA proposal does not include U.S. or Canadian internal waters. While the two governments did not specifically seek designation for internal waters in their ECA proposal, it is evident that emissions in internal waters are of greater concern than emissions occurring from the baseline seaward to 200 nautical miles. Vessel emissions in internal waters are often even closer to U.S. population centers than emissions in coastal waters. Emissions in internal waters affect U.S. air quality to an equal, if not greater, degree to emissions in coastal waters. Given these considerations, EPA believes that Congress' direction to apply Annex VI requirements to ships in the internal waters of the United States, as well as its grant of authority to EPA to administer the relevant regulations of Annex VI, confers the authority to apply the fuel quality and emissions requirements that apply to ECAs to ships in internal waters.

We also note the application of these standards to internal waters should not disturb reasonable expectations or impose a significant burden on industry. It has always been presumed in our analyses supporting the ECA proposal and this rule, and is the customary practice in the North Sea and Baltic Sea SECAs, that vessels will continue to comply with the emissions standards anytime they operate on the landward side of the ECA boundary, including in a country's internal waters. We are not aware of anyone ever suggesting that a vessel complying with ECA standards would increase its emissions while it remains in port or other body of water that is part of or connected to an ECA. We do not believe that vessels would generally choose to switch to higher sulfur fuels or choose to turn off Tier III control strategies in internal waters. In most cases, ocean-going vessels only operate in internal waters for short periods of time while entering and leaving ports. Switching to high sulfur fuel or turning off and on NO_X control strategies could be time consuming and may not be justified by the limited operational cost savings.

We are finalizing regulatory text to codify Annex VI global requirements and clarify application of Annex VI ECA requirements to ships in U.S. internal waters. Specifically, the regulatory text includes the APPS requirements for vessels to comply with Annex VI global requirements in our internal waters. The regulatory text also clarifies that vessels operating in U.S. internal waters, shoreward of an ECA, that can be accessed by ocean-going vessels must meet Annex VI ECA requirements. This includes ports and internal waters such as the Great Lakes. In the regulatory text we refer to the internal waters in which we are applying the ECA requirements as the "ECA associated area." The regulatory text will apply the ECA requirements for these internal waters beginning the same time the ECA takes effect under Annex VI.

Application of the ECA requirements under APPS to our internal waters does not replace but rather augments our Clean Air Act standards. The Clean Air Act exhaust emission and fuel standards apply regardless of the APPS provisions, except to the extent that any of the new CAA provisions refer to the ECA boundaries.

We received extensive comments on the economic and safety impacts of applying the ECA engine and fuel requirements to vessels that operate on the Great Lakes. The Summary and Analysis of Comments for this rule includes a discussion of the economic impacts of applying the ECA engine and fuel requirements to vessels that operate on the Great Lakes. In addition, EPA will perform a study and issue a report evaluating the economic impact of the final rule on Great Lakes carriers. We will work with Great Lakes stakeholders in conducting the study and expect to complete the report in summer 2010.

In addition to recommending the above-mentioned study, Conference Report 111–316 accompanying HR 2996, the Department of Interior, Environment, and Related Agencies Appropriations Act, 2010, suggests that EPA should include two waiver provisions for Great Lakes carriers in this final rule. Based on this statement

and concerns that have been raised by the Great Lakes shipping industry, we are finalizing a new provision to address certain vessels operating exclusively on the Great Lakes (hereinafter, "Great Lakes vessels"). Specifically, we are finalizing a provision that provides for relief in the event of serious economic hardship. This economic hardship provision allows Great Lakes shippers to petition EPA for a temporary exemption from the 2015 fuel sulfur standards. The shipper must show that despite taking all reasonable business, technical, and economic steps to comply with the fuel sulfur requirements, the burden of compliance costs would create a serious economic hardship for the company. The Agency will evaluate each application on a case-by-case basis. Our experience to date shows that detailed technical and financial information from the companies seeking relief has been necessary to fully evaluate whether a hardship situation exists. As such, we may request additional information as needed. Typically, because of EPA's comprehensive evaluation of both financial and technical information, action on hardship applications can take approximately six months. Because of this, applications for an economic hardship waiver must be submitted to EPA by January 1, 2014. As is our historic practice with fuel waivers, if we approve a delay in meeting the fuel sulfur requirements, we expect to impose appropriate conditions to: (1) Ensure the shipper is making its best effort; and (2) minimize any loss of emissions benefits from the program.

In the Conference Report, Congress also indicated that EPA should provide a waiver for the requirement for the use of 1.0 percent fuel sulfur (10,000 ppm) standard if residual fuel meeting that standard is not available on the Great Lakes. In response to this statement and comments from the Lake Carriers Association, we are creating a provision that will ensure that operators on the Great Lakes will be able to buy marine residual fuels if compliant 10,000 ppm S fuel is not available. Under this provision, if marine residual fuel meeting the 10,000 ppm S standard is not available, it will not be a violation of our standards for vessel operators to bunker and use marine residual fuel with sulfur content above 10,000 ppm S provided the fuel they do purchase is the lowest sulfur marine residual fuel available at the port. We believe this market based approach will provide a significant incentive to fuel suppliers to provide 10,000 ppm S fuel, while giving Great Lakes shippers confidence that marine residual fuel will be available for their use during the 10,000 ppm S fuel program.

Finally, some commenters raised technical and safety issues associated with operating Great Lakes steamships on distillate fuel. Great Lakes steamships operate in fresh water and therefore have very long lives. Many of the boilers used on these vessels were manufactured and constructed in the 1940s and 1950s and were designed specifically to operate on heavy fuel oils. Due to these technical issues, we considered a number of options for how to address these vessels. However, Congress placed a prohibition on EPA's use of funds in this fiscal year to issue a final rule that includes fuel sulfur standards applicable to existing steamships that operate exclusively within the Great Lakes. Therefore, we are excluding Great Lakes steamships from the fuel sulfur requirements. For the purpose of this exclusion, Great Lakes steamships means vessels, operating exclusively on the Great Lakes and Saint Lawrence Seaway, whose primary propulsion is a steam turbine or steam reciprocating engine. In addition, these steamships must have been in service on the Great Lakes prior to October 30, 2009. This does not include diesel propulsion Category 3 vessels with auxiliary boilers.

Totem Ocean Trailer Express (TOTE) raised similar concerns for the small number of steamships operating along the U.S. coasts. As these vessels do not operate exclusively within U.S. internal waters, they fall under the U.S. Government's (primarily EPA and Coast Guard's) implementation of the ECA provisions of Annex VI. The requirements of the Annex VI ECA fuel sulfur limits apply to all vessels and have no exemptions for steamships. It is not within the scope of this rulemaking to amend the requirements of the MARPOL Annex VI treaty. However, through TOTE's comments and follow-up conversations with ship owners, we agree that special challenges exist for the use of lower sulfur fuel in steamships. Therefore, we will continue to work on this issue with the United States Coast Guard and other members of the U.S. Delegation to IMO as well as other interested stakeholders including the affected steamship operators. We are committed to resolving this issue before the end of 2011, well in advance of January 2015 when the 0.1 percent fuel sulfur standard will enter into force.

(6) Exemptions and Exclusions

Under MARPOL Annex VI and APPS, certain vessels are excluded from some or all of the requirements. Consistent with Annex VI and APPS, the regulations in 1043 will exclude public vessels and engines intended to be used solely for emergencies. For the purpose of this provision, the term "public vessels" includes all warships and naval auxiliary vessels, as well as any other vessels owned or operated by a sovereign country engaged in noncommercial service. Consistent with the provisions in APPS, we are not applying the Annex VI requirements to U.S.-flagged public vessels (or foreign public vessels excluded by their flag states). It should be noted, however, that not all public vessels are exempt from our Clean Air Act engine and fuel requirements. Only public vessels covered by a national security exemption under § 94.908 or § 1042.635 are exempt from the Clean Air Act program.

The category of emergency engines includes engines that power equipment such as pumps that are intended to be used solely for emergencies and engines installed in lifeboats intended to be used solely in emergencies. It should be noted that the emergency engine provisions in the Annex and part 1043 are similar but not identical to the emergency engine provisions in our Clean Air Act program or the process of obtaining our CAA exemptions. In particular, the emergency engine exemption from the CAA requirements applies only with respect to the catalyst-based Tier 4 standards.

We are exempting from the MARPOL Annex VI NO_X standards engines installed on vessels registered or flagged in the United States provided the vessel remains within the EEZ of the United States. These engines will still be required to meet stringent emission standards since they are covered by our Clean Air Act program. In addition, the fuels used by these vessels are also covered by our Clean Air Act program, which has more stringent fuel requirements than Annex VI. Therefore, as long as the operators of these domestic vessels comply with these more stringent Clean Air Act fuel requirements, they will be deemed to be in compliance with the Annex VI requirements. The combination of these proposed provisions will mean that a fishing vessel that operates out of a U.S. port and that never leaves U.S. waters will not be required to have an EIAPP for all engines above 130 kW, a record book of engine parameters and a technical file for each engines, and vessels over 400 gross tons will not be required to maintain bunker delivery notes (vessels under 400 gross tons are not required by Regulation 18 of MARPOL Annex VI to have bunker delivery notes). Instead, the engines on

that vessel will be required to be in compliance with our marine diesel engine standards and be required to comply with the manufacturer's requirements with regard to the proper fueling of those engines. We are also explicitly precluding these engines from being certified to use residual fuel if they are exempt from the part 1043 requirements. Thus, these engines will be required to always use cleaner fuels than are required by Annex VI. U.S. vessels that operate or may operate in waters that are under the jurisdiction of another country are not exempt from these provisions, and the owner of any such vessel may be required by that country to show compliance with Annex VI. Therefore, the owner should be sure to maintain the appropriate paperwork for that engine and have the appropriate engine certification. It should be noted that engines that must show compliance with the Annex VI standards are not exempt from EPA's standards for Category 1 or Category 2 engines.

Finally, spark-ignition, non-reciprocating engines, and engines that do not use liquid fuel are not included in Regulation 13 of the Annex VI program and therefore they will not be covered by the proposed APPS regulations with respect to NO_X emissions. However, the MARPOL Annex VI fuel requirements do apply for these vessels. These engines are generally subject to separate Clean Air Act fuel requirements and/or emission standards that effectively require the use of low sulfur fuels, either directly or indirectly.

C. Changes to the Requirements Specific to Engines Below 30 Liters per Cylinder

The amendments to MARPOL Annex VI were adopted in October of 2008, after we finalized our Clean Air Act Tier 3 and Tier 4 standards for Category 1 and Category 2 engines (May 6, 2008, 73 FR 25097). While these two programs are very similar, there are a few differences between them with regard to their engine requirements. We are adopting some changes to our CAA program to facilitate compliance with both programs. In addition, some of the provisions described in Section VI.D may also apply to Category 1 and Category 2 marine diesel engines, regarding non-diesel engines and technical amendments to our current program.

(1) MARPOL Annex VI and EPA's Standards for Category 1 and Category 2 Engines

Our existing regulations include an exemption for Category 1 and Category 2 engines on certain migratory vessels. This allowance is limited to vessels that are operated primarily outside of the United States, and that obtain and maintain SOLAS certification and appropriate EIAPP certification demonstrating compliance with Annex VI. We are making some minor modifications to this allowance to reflect the new Annex VI standards.

We are also revising § 1042.650 to add exemption provisions for Category 1 and Category 2 auxiliary engines on vessels with Category 3 propulsion engines. These auxiliary engines would be exempt from the part 1042 standards, but would still be required to comply with the Annex VI standards. In addition, engines that would have been subject to the Tier 4 standards of part 1042 would be required to conform to the Tier III NO_X requirements, irrespective of whether they would be required to comply under Annex VI. For example, this would affect 2015 Category 2 engines with a maximum engine power of 3000 kW installed on a 2015 vessel since such an engine would be subject to the Tier 4 standards under § 1042.101, but would have only been subject to the Tier II standards under Annex VI.

Given the MARPOL Annex VI and CAA NO_X requirements are comparable, with slightly different phase-in dates and cut-offs, we believe this approach will be a less burdensome implementation approach over transitioning years, and will not have a meaningful impact on emission reductions. In the absence of this exemption, manufacturers would have been required to certify special auxiliary engines that met both Annex VI and 1042 requirements for a U.S. market that could be as small as one engine per year. By allowing manufacturers to meet only the Annex VI requirements, they would be able to produce a single international engine and spread the administrative costs over many more engines. It is important to note that we are not extending this exemption to vessels powered by smaller engines because these factors cannot be presumed for such vessels.

(2) On/Off Technology for Category 1 and 2 Engines

As described in Section VI.A.3 above, we proposed to allow the use of auxiliary emission control devices (AECDs) that would allow modulation of emission control equipment on Category 3 engines outside of specific geographic areas. These AECDs would be subject to certain restrictions: (1) The AECD would be available for the Tier 3 standards only; (2) the AECD would modulate emission controls only while operating in areas where emissions could reasonably be expected to not adversely affect U.S. air quality; and (3) an engine equipped with an AECD must also be equipped with a NO_X emission monitoring device.

We are expanding our proposed allowance for ocean-going vessels with Category 3 propulsion engines to also include Category 1 and Category 2 engines to provide auxiliary power. We are not allowing this option for U.S. vessels with Category 1 or Category 2 propulsion engines.

D. Other Regulatory Issues

In addition to the changes described in Sections VI.A and VI.C, we are also finalizing changes that apply to marine engines in general, and/or to other types of engines.

(1) Non-Diesel Engines

Most of the preceding discussions have focused on conventional diesel engines using either diesel fuel or residual fuels. It is important to highlight two other types of engines being affected by this proposal: engines using other fuels and gas turbine engines.

(a) Engines Not Using Diesel Fuel

For all categories of marine engines, our existing standards apply to all engines meeting the definition of compression-ignition, regardless of the fuel type. For example, compression-ignition Category 3 engines that burn natural gas are subject to our Tier 1 standards and will be subject to our finalized Tier 2 and Tier 3 standards. We are continuing to apply this approach for all marine engines subject to our standards.

The testing regulations in part 1065 include test fuel specifications for diesel fuel, residual fuel, and natural gas (as well as for gasoline and liquefied petroleum gas, which would not typically be used in a compression-ignition engine). To certify an engine for a different fuel type, a manufacturer will need to obtain EPA approval to use an alternate fuel which it recommends for testing. All other aspects of certification will be the same.

(b) Gas Turbine Engines

Gas turbine engines are internal combustion engines that can operate using a variety of fuels (such as diesel fuel or natural gas) but do not operate on a compression-ignition or other reciprocating engine cycle. Power is extracted from the combustion gas using a rotating turbine rather than reciprocating pistons. The primary type

of U.S.-flagged vessels that use gas turbine engines are naval combat ships. While a small number have been used in commercial ships, we are not aware of any current sales for commercial applications. They can range in size from those equivalent in power to mid-size Category 1 engines to those that produce the same power as Category 3 engines. None of these engines have been subject to our current standards because they do not meet the definition of compression-ignition engines in our existing regulations.

To date, this omission has not been a concern because only a small number of turbine-powered vessels have been produced and nearly all of them would have been eligible for a national security exemption. However, we were concerned that this exclusion may become a loophole in the future for operators hoping to avoid using engines with advanced catalytic emission controls. To a lesser degree, we also had concerns about the possibility of other non-reciprocating engines being excluded. We are closing this potential loophole by revising the regulations to treat new gas turbine engines (as well as other non-reciprocating engines) the same as compression-ignition engines and to apply our standards for new Category 1 and Category 2 engines (including NO_X, HC, CO, and PM standards) to gas turbine engines.

Several commenters objected to finalizing this requirement. They argued primarily that this would not align with MARPOL. They also asserted that the proposed requirements would not pass a cost/benefit analysis and that turbines cannot be tested under the procedures of 40 CFR part 1065. However, they did not provide any information about costs, benefits, or test procedures. As described in the RIA and the Summary and Analysis of Comments Document, we continue to believe the requirements are feasible and appropriate. As described below, we are finalizing these requirements largely as proposed. The primary revision being made is to delay them until the Tier 4 timeframe to provide turbine manufacturers additional lead time.

To incorporate this approach in our marine emission control program, we are changing our definitions of Category 1 and Category 2 to include gas turbine engines. Since turbine engines have no cylinders, we are adopting a conversion convention to apply the regulatory provisions that depend on a specified value for per-cylinder displacement. This convention is intended to apply the standards based on equivalent power ratings, to the extent possible. Specifically, we are redefining "Category 1" to include gas turbines with rated power up to 2250 kW and redefining "Category 2" to include all gas turbines with higher power ratings. This means we will not consider any gas turbines as "Category 3" engines. The largest gas turbine engines will be considered to be Category 2 engines, even those that had rated power more typical of Category 3 diesel engines. We are adopting this approach primarily because our Category 3 standards vary with engine speed, and are specified based on a speed range typical of diesel engines. These formulas do not make sense for gas turbine engines since they have much higher engine speeds.

We are aware that some companies are manufacturing new high-performance recreational vessels using gas turbine engines. In at least some cases, the engines are modified from surplus military aircraft engines. We have not yet determined whether such recreational engines should be held to the same standards as conventional diesel engines. It is also important to note that under our current regulations, diesel engines meeting the definition of "recreational marine engine" in § 1042.901 are not subject to catalyst forcing standards. This approach was applied because of factors such as the usage patterns for recreational diesel engines. We believe these same factors to apply for recreational gas turbine engines. Thus, we are not as concerned about a potential gas turbine loophole for recreational engines as for commercial engines. We also do not have enough information at this time to know how feasible it would be for small gas turbine engine manufacturers to comply with the standards for recreational diesel engines, or to accurately assess the environmental impact of these vessels. Nevertheless, it is clear that the environmental impact of such small numbers of these engines cannot be large. Thus, at this time, we are not applying this regulatory change to recreational gas turbine engines (*i.e.,* that is gas turbine engines installed on recreational vessels). We will continue to investigate these engines and may subject them to standards in the future.

Our diesel engine program contains a national security exemption that automatically exempts vessels "used or owned by an agency of the Federal government responsible for national defense, where the vessel has armor, permanently attached weaponry, specialized electronic warfare systems, unique stealth performance requirements, and/or unique combat maneuverability requirements." Since it is not our intent to prohibit naval vessels from using turbine engines, we are revising this provision to automatically exempt military vessels owned by an agency of the Federal government responsible for national defense powered by gas turbine engines.

We are confident that gas turbine engines could use the same type of aftertreatment as is projected for diesel engines. The basic reactions through which SCR reduces NO_X emissions can occur under a wide range of conditions, and exhaust from gas turbine engines is fundamentally similar to exhaust from diesel engines. Viewed another way, however, this requirement can be considered to be feasible based on the fact that the only circumstance in which a vessel would actually need a gas turbine engine would be for military purposes where our national security exemption provisions will apply. For all other vessels, it is entirely feasible for the vessel to be powered by a diesel engine. In fact, that is what is being done today.

This program for gas turbine engines will apply to freshly manufactured engines only. We are not applying our marine remanufacture program to gas turbine engines. Because there are so few engines in the fleet, it is not possible to know what common rebuilding process are or whether and how those practices would return an existing engine to as-new condition. We may review this approach in the future if there is an increase in the number of gas turbines in the fleet.

Finally, it is important to address some confusion expressed by the commenters about our definitions. We agree that it would be incorrect to actually define turbine engines as reciprocating or compression ignition, which is what the commenters thought we had proposed. However, we did not propose to define turbines to be reciprocating or compression-ignition engines. The commenters misread § 1042.1(f), which states that certain marine engines "are subject to all the requirements of this part even if they do not meet the definition of 'compression-ignition' in § 1042.901." This provision subjects marine gas turbine engines to the requirements of part 1042, but it explicitly recognizes that they do not meet the definition of compression-ignition in § 1042.901. The confusion seems to arise from the statement that these engines "are deemed to be compression-ignition engines for the purposes of this subchapter." This statement is merely a regulatory convention that means the part applies to turbines as if they did meet the definition.

(2) Technical Amendments

The finalized regulations include technical amendments to our motor vehicle and nonroad engine regulations. These changes are generally corrections and clarifications. A large number of these changes are the removal of obsolete highway engine text that applied only for past model years. Many others are changes to the text of part 1042 to make it more consistent with the language of our other recently corrected nonroad parts. The last large category of changes includes those related to the test procedures in part 1065. *See* the memorandum in the docket entitled "Technical Amendments to EPA Regulations" for a full description of these changes.[112]

E. U.S. Vessels Enrolled in the Maritime Security Program

The U.S. Department of Transportation Maritime Administration (MARAD) oversees the Maritime Security Program (MSP) established by the Maritime Security Act of 1996 and reauthorized by the Maritime Security Act of 2003 (MSA). The MSA requires that the Secretary of Transportation, in consultation with the Secretary of Defense, establish a fleet of active, commercially viable and militarily useful vessels to meet national defense and other security requirements and maintain a U.S. presence in international commercial shipping. The fleet consists of privately-owned, U.S.-flagged vessels known as the Maritime Security Fleet (MSF). 46 U.S.C. 53102 outlines that vessels complying with applicable international agreements and associated guidelines are eligible for a certificate of inspection from Coast Guard, and thus inclusion in the MSF.

The requirements of the MSP may have created confusion for owners of non-U.S.-flagged vessels regarding their obligation to also comply with EPA's domestic marine diesel engine emission standards at the time they re-flag for inclusion in the MSF. We want to remind vessel owners that the MSA does not preempt the Clean Air Act or alleviate their obligation to comply with EPA's marine diesel engine program, or any other EPA requirements that apply to marine vessels. As is clear from our past rulemakings, it has always been our intent that each U.S.-flagged vessel must comply with all of EPA's domestic standards, regardless of whether the vessel was flagged in the U.S. upon original delivery into service.

We are revising the regulations to clarify these requirements and, as noted earlier, to provide exemptions for auxiliary engines on Category 3. First, we are revising § 1042.1 to clarify that our regulations apply for all U.S.-flagged vessels. In conjunction with this, we are revising the definitions of "model year" and "new marine engine" to clarify that our marine engine program applies to all U.S.-flagged vessels regardless of where that vessels is built or operated, and how the regulations apply for vessels that are re-flagged to be U.S. vessels.

We are clarifying that engines on foreign vessels that vessels become "new marine engines" under part 1042 at the point at which they are reflagged. As new marine engines, we would expect them to be covered by valid certificates and/or exemptions prior to being placed into service. If engines on U.S.-flagged vessels are not covered by valid certificates and/or exemptions when they first enter U.S. waters, they would be subject to all of the prohibitions of part 1068.101. The operator would be in violation of the prohibition against introduction of an uncertified new engine into U.S. commerce.

Some of the revisions being finalized are intended to simplify the transition from part 94 to part 1042. Under the revised regulations, part 1042 becomes the default regulatory part for compression-ignition marine engines. Section 1043.1 specifies that such marine engines are subject to part 1042 unless they are certified under part 94. In addition, § 1042.1(c) specifies that the definition of "new marine engine" in § 1042.901 applies for engines certified under part 94. This is important because our standards and prohibitions apply for engines meeting the definition of "new marine engine". Thus, to determine whether an uncertified marine engine is subject to our standards and prohibitions, you must determine whether it meets any of the criteria of the definition of "new marine engine" in § 1042.901.

Each "new marine engine", is subject to standards based on its model year. The revised definition of "model year" specifies that engines on re-flagged vessels would generally be subject to the standards that would have applied in the year they were originally manufactured. If the engine has a model year before the years the part 94 standards first applied, it would not be subject to any standards. If the engine has a later model year but one that is before the years the part 1042 standards apply, it would be subject to the standards of part 94. According to § 1042.1(c), if the engine is certified to these part 94 standards, it is not required to comply with the requirements of part 1042.

To further smooth this transition, we are finalizing a new interim provision in § 1042.145(i). This provision is intended to apply for vessel operators that were not aware that their vessels were required to comply with our regulations. Once this amendment takes effect, it will allow them to operate in U.S. waters until July 1, 2010 without certificates or exemptions for their engines. After that, it will be a violation of 40 CFR 1068.101 to operate in U.S. waters with uncertified engines if those engines are subject to our standards. Operation of such vessels in U.S. waters on or after July 1, 2010 is deemed to be introduction into U.S. commerce of a new marine engine.

VII. Costs and Economic Impacts

In this section, we present the projected cost impacts and cost effectiveness of the coordinated emission control strategy for large marine vessels with a per cylinder displacement greater than 30 Liters per cylinder. We also present our analysis of the economic impacts of the coordinated strategy, which consists of the estimated social costs of the program and how those costs will likely be shared across stakeholders. The projected benefits and benefit-cost analysis of the coordinated strategy are presented in Section VIII.

We estimate the costs of the coordinated strategy to be about $1.85 billion in 2020, increasing to $3.11 billion in 2030.[113] Of the 2020 costs, nearly 89 percent or $1.64 billion are attributable to the fuel sulfur provisions. The total operational costs are estimated to be $1.82 billion in 2020. The costs to apply engine controls to U.S.-flagged vessels are expected to be $31.9 million in 2020, increasing to $47.4 million in 2030 as more ships are built to comply with Clean Air Act (CAA) Tier 3 NO_X limits. All costs are presented in 2006 U.S. dollars.

When attributed by pollutant, at a net present value of 3 percent from 2010 through 2040, the NO_X controls are expected to cost about $510 per ton of NO_X reduced, SO_X controls are expected to cost about $930 per ton of SO_X reduced, and the PM controls are

[112] *See* "Technical Amendments to EPA Regulations," EPA memorandum from Alan Stout, in the docket for this rule, Docket No.: EPA–HQ–OAR–2007–0121.

[113] These total estimated costs are slightly different than those reported in the ECA proposal, because the ECA proposal did not include costs associated with the Annex VI existing engine program, Tier II, or the costs associated with existing vessel modifications that may be required to accommodate the use of lower sulfur fuel. Further, the cost totals presented in the ECA package included Canadian cost estimates.

expected to cost about $7,950 per ton of PM reduced ($500, $920, and $7,850 per ton of NO_X, SO_X, and PM respectively, at a net present value of 7 percent over the same period). These costs are comparable to our other recently adopted mobile source programs, and are one of the most cost-effective programs in terms of NO_X and PM when compared to recent mobile and stationary programs. The coordinated strategy also provides very cost-effective SO_X reductions comparable to the Heavy-Duty Nonroad diesel rulemaking.

The social costs of the program are estimated to be approximately $3.1 billion in 2030. The impact of these costs on society is estimated to be minimal. For example, we estimate the cost of shipping a 20-foot container on the Pacific route, with 1,700 nm of operation in the ECA, would increase by about $18, or less than 3 percent. Similarly, the price of a seven-day Alaska cruise that operates mainly in the ECA is expected to increase by about $7 per day.

The estimated costs presented in this section are for the entire coordinated strategy, including those requirements that are the subject of this action and those that are associated with the proposed ECA designation. Table VII–1 sets out the different components of the coordinated strategy for 2020. The costs of the coordinated strategy consist of the costs associated with the MARPOL Annex VI global standards that are operational through APPS, some of which we are also adding to our CAA emission control program for U.S. vessels (Tier 2 and Tier 3 NO_X emission control hardware for U.S. vessels; operating costs for the Tier 2 NO_X requirements; controls for existing vessels; certain compliance requirements). Also included are the costs associated with complying with the engine standards and low sulfur fuel limits in U.S. internal waters (Tier 3 operating costs; fuel sulfur hardware and operating costs).

Note that, with regard to hardware costs, the coordinated strategy includes the entire cost for new U.S. vessels to comply with the Tier 3 NO_X standards and fuel limits, even though some of the benefits from using these emission control systems will occur outside the United States. Conversely, we do not include any new vessel Tier 3 or fuel hardware costs for foreign vessels that operate in U.S. waters even though a significant share of the benefits of the coordinated strategy will arise from foreign vessels that comply with the engine and fuel sulfur limits while operating within the U.S., ECA and internal waters.

The regulatory changes finalized for Category 1 and 2 engines are not included in this cost analysis as they are intended to be compliance flexibilities and not result in increased compliance costs. Similarly, the technical amendments finalized for other engines will not have significant economic impacts and are therefore not addressed here. Finally, to provide for a representative comparison between costs and benefits of the program, the cost analysis presented here assumes that all vessels currently using residual fuel will operate on distillate fuel in an ECA, including Great Lakes steamships. As noted in earlier chapters, Great Lakes steamships have been excluded from the final fuel sulfur standards. This change is not expected to have a significant impact on the estimated costs or benefits of the rule as those vessels are not a large part of the national inventory.

TABLE VII–1—COSTS ASSOCIATED WITH THE U.S. COORDINATED STRATEGY AND CANADIAN ECA

[Estimated Costs for 2020, $2006]

Program element		U.S. coordinated strategy	Canadian ECA
Hardware—T2 (variable costs; fixed costs applied in 2010).	U.S. vessels	$3,310,000	NA—not part of ECA.
	Foreign Vessels	N/A—global std	NA—not part of ECA.
Hardware—T3 (variable costs; fixed costs recovered in the year in which they occur: 2011–15).	U.S. vessels (variable costs; fixed costs recovered in the year in which they occur: 2011–15).	$28,700,000	$100,000,000.
	Foreign vessels: 30% of vessels making 75% of entrances to U.S. ports [a].	$296,700,000.	
	Foreign vessels: 70% of vessels making 25% of entrances to U.S. ports [a].	$692,200,000.	
Hardware—Fuel	U.S. vessels (new vessel costs)	$804,000	$10,000,000.
	Foreign vessels (new vessel costs)	$23,600,000.	
Operating—T2 (inside full inventory modeling domain).	U.S. vessels	$5,630,000	NA—not part of ECA.
	Foreign vessels	$32,900,000	NA—not part of ECA.
Operating—T3 (inside relevant part of affected waterways).	U.S. vessels	$15,800,000	$30,000,000.
	Foreign vessels	$127,000,000.	
Operating—Fuel (inside relevant part of affected waterways).	U.S. vessels	$210,000,000	$260,000,000.
	Foreign vessels	$1,430,000,000.	
Existing vessels—engine costs (all U.S. vessels 1990–99 retrofit during first 5 years of program, 2011–15).	U.S. vessels	$0	NA—not part of ECA.
	Foreign vessels	N/A—global std	NA—not part of ECA.
Existing vessels—vessel fuel switching costs (all U.S. vessels 1999–90 retrofit during first 5 years of program, 2011–15).	U.S. vessels	$0	Canada did not provide.
	Foreign vessels	$0	Canada did not provide.

The estimated costs presented in this section are for the Federal program as a whole. We do not estimate costs on a regional or owner-specific basis. We received several comments from owners of vessels operating on the Great Lakes

contending that the impact of the proposed control program on their operations is unique, and that the economic impacts of the program on these operators should be estimated separately. As explained in Section VI of this preamble and in more detail in the Summary and Analysis of Comments prepared for this final rule, we are providing various regulatory flexibilities for operators that may have difficulty complying with the requirements of this rule. In addition, as part of EPA's appropriation bill (Pub. L. 111–88), Congress recommended that EPA perform a study to evaluate the economic impact of the final rule on Great Lakes carriers, with a final report due in the summer of 2010. We will be soliciting input from affected entities as we prepare that report.

A. Estimated Fuel Costs

The coordinated strategy includes fuel sulfur limits which are included in this cost analysis. Prior to this final rule, all distillate fuels produced at refineries in the U.S. had a sulfur limitation of 15 ppm. The coordinated strategy does not impose additional costs for refiners in the U.S. and actually allows additional flexibility. Specifically, we are allowing distillate fuel to have up to 1,000 ppm sulfur for use in Category 3 vessels. The fuel requirements will impose a cost to the ship owners. This section presents estimates of the cost of compliance with the 1,000 ppm sulfur limit in the U.S. waterways.

Distillate fuel will likely be used to meet the 1,000 ppm fuel sulfur limit, beginning in 2015. As such, the primary cost of the fuel sulfur limit for ship owners will be that associated with switching from heavy fuel oil to higher-cost distillate fuel. Some engines already operate on distillate fuel and will not be affected by fuel switching costs. However, distillate fuel costs may be affected by the need to further refine the distillate fuel to meet the 1,000 ppm sulfur limit.

To investigate these effects, studies were performed on the impact of a North American ECA on global fuel production and costs, to inform the application for such ECA.[114] These studies were performed prior to the ECA being defined; thus, we picked a maximum distance boundary to ensure the fuel volumes used for the cost analysis would be larger than required by the program. Specifically, we used the total fuel consumption in the U.S. and Canada exclusive economic zones.[115] The studies are relevant to this regulation as well, since they estimate the cost of 1,000 ppm sulfur fuel for Category 3 vessels operating in U.S. waterways.

To assess the effect on the refining industry of the imposition of a 1,000 ppm sulfur limit on fuels, we needed to first understand and characterize the fuels market. Research Triangle Institute (RTI) was contracted to conduct a fuels study using an activity-based economic approach. The study established baseline bunker fuel demand, projected a growth rate for bunker fuel demand, and established future bunker fuel demand volumes.[116] These volumes then became the input to the World Oil Refining Logistics and Demand (WORLD) model to evaluate the effect of the coordinated strategy on fuel cost.

The WORLD model was run by Ensys Energy & Systems, the owner and developer of the refinery model. The WORLD model is the only such model currently developed for this purpose and was developed by a team of international petroleum consultants. It has been widely used by industries, government agencies, and Organization of the Petroleum Exporting Countries (OPEC) over the past 13 years, including the Cross Government/Industry Scientific Group of Experts, established to evaluate the effects of the different fuel options proposed under the revision of MARPOL Annex VI. The model incorporates crude sources, global regions, refinery operations, and world economics. The results of the WORLD model have been comparable to other independent predictions of global fuel, air pollutant emissions and economic predictions.

The WORLD model was run for 2020, in which the control case included a fuel sulfur level of 1,000 ppm in the U.S. The baseline case was modeled as "business as usual" in which ships continue to use the same fuel as today. Because of the recent increases and fluctuations in oil prices, we had additional WORLD model runs conducted. For these runs, we used new reference case and high oil price estimates that were recently released by the U.S. Energy Information Administration (EIA). In addition to increased oil price estimates, the updated model accounts for increases in natural gas costs, capital costs for refinery upgrades, and product distribution costs.

Because only a small portion of global marine fuel is consumed in the ECA, the overall impact on global fuel production is small. Global fuel use in 2020 by ships is projected to be 500 million metric tonnes/yr. Of this amount, 90 million metric tonnes of fuel is used for U.S./Canadian trade, or about 18 percent of total global fuel use. In the proposed ECA, less than 20 million metric tonnes of fuel will be consumed in 2020, which is less than 4 percent of total global marine fuel use. Of the amount of fuel to be consumed in the proposed ECA in 2020, about 4 million metric tonnes of distillate will be consumed in the Business as Usual (BAU) case, which is about 20 percent of the amount of total fuel to be consumed in the proposed ECA.

There are two main components to projected increased marine fuel cost associated with the ECA. The first component results from shifting from operation on residual fuel to operation on higher cost distillate fuel. This is the dominant cost component. However, there is also a small cost associated with desulfurizing the distillate to meet the 1,000 ppm sulfur standard. Based on the WORLD modeling, the average increase in costs associated with switching from marine residual to distillate will be $145 per metric tonne of fuel consumed. Due to the differences in energy density between the two fuels, this translates to a cost increase of $123 for each metric tonne of residual fuel replaced by distillate fuel.[117] This is the cost increase that will be borne by the shipping companies purchasing the fuel. Of this amount, $6 per metric tonne is the increase in costs associated with distillate desulfurization.

Table VII–2 summarizes the fuel cost estimates with and without an ECA. In the baseline case, fuel volumes for operation are 18% marine gas oil (MGO), 7% marine diesel oil (MDO), and 75% IFO. Weighted average baseline distillate fuel cost is $462/tonne. In the ECA, all fuel volumes are modeled as MGO, at $468/tonne.

[114] Research Triangle Institute, 2009. "Global Trade and Fuels Assessment—Future Trends and Effects of Designating Requiring Clean Fuels in the Marine Sector". Prepared for U.S. Environmental Protection Agency. Research Triangle Park, NC.

[115] In this analysis, the U.S. included the lower 48 contiguous States and southeastern Alaska.

[116] Research Triangle Institute, 2009. "Global Trade and Fuels Assessment—Future Trends and Effects of Designating Requiring Clean Fuels in the Marine Sector". Prepared for U.S. Environmental Protection Agency. Research Triangle Park, NC.

[117] Note that distillate fuel has a higher energy content, on a per ton basis, than residual fuel. As such, there is an offsetting cost savings, on a per metric ton basis, for switching to distillate fuel. Based on a 5 percent higher energy content for distillate, the net equivalent cost increase is estimated as $123 for each metric ton of residual fuel that is being replaced by distillate fuel.

TABLE VII–2—ESTIMATE MARINE FUEL COSTS

Fuel	Units	Baseline	ECA
MGO ...	$/bbl	$ 61.75	$ 62.23
	$/tonne	464	468
MDO	$/bbl	61.89	62.95
	$/tonne	458	466
IFO	$/bbl	49.87	49.63
	$/tonne	322	321

The increased cost of distillate desulfurization is due both to additional coking and hydrotreating capacities at refineries. Cokers crack residual blends in IFO bunker fuel into distillates, using heat and residence time to make the conversion. The process also produces useful byproducts such as petroleum coke and off gas. The WORLD model did not use hydrocracking technology to convert residual fuels into distillates for either the reference or high price crude cases. Because of the higher capital and operating costs of hydrocrackers, the WORLD model favored the use of coking units. As such, the WORLD model assumed that cokers would convert the residual blendstocks in Intermediate Fuel Oil grades to distillates. The model added coking processes to refineries located in the U.S. and, to a lesser extent, to refiner regions outside of the U.S. Specifically, the model added one additional coking unit with a capacity of 30 thousand barrels per stream day (KBPSD), and one to two hydrocracking units representing 50 and 80 KBPSD additional capacity.

The WORLD model also added new conventional distillate hydrotreating capacity to lower the sulfur levels for the marine distillate fuel, in addition to the existing slack distillate hydrotreating capacity that existed in refiner regions for these fuels. In addition, the model used lighter crudes and adjusted operating parameters in refineries. This had the effect of increasing the projected production of lower sulfur distillate fuels in lieu of adding distillate hydrotreating capacity. The model elected to use lower sulfur crudes and used operational adjustments. Higher capital and operating costs of new units under the high-priced crude scenario favored use of existing refinery capacity made available from lower global refiner utilizations.

B. Estimated Engine Costs

To quantify the cost impacts associated with the coordinated strategy, we estimated the hardware and operational costs to U.S.-flagged ships, as well as affected foreign-flagged ships. The hardware costs included in the total cost of the coordinated strategy are only applied to U.S.-flagged vessels, and include those associated with the CAA Tier 2 and Tier 3 NO_X standards, the Annex VI existing engine program, and the use of lower sulfur fuel. Tier 2 hardware costs consist of changes to the engine block and the migration from mechanical fuel injection to common rail fuel injection systems. Tier 3 hardware costs include engine modifications, the migration from mechanical fuel injection to common rail fuel injection systems, and the installation of Selective Catalytic Reduction (SCR). Hardware costs associated with the use of lower sulfur fuel are from applying additional tanks and equipment to enable a vessel to switch from residual fuel to lower sulfur fuel. These equipment costs were applied to those new vessels that may need additional hardware, and also include the estimated cost of retrofitting the portion of the fleet that may require additional hardware to accommodate the use of lower sulfur fuel in 2015. The hardware costs also include a per engine cost of $10,000 associated with the requirement to test each production engine (§ 1042.302). These are the sole engine hardware costs specifically attributable to our CAA rule.

The operational costs were applied to both U.S.- and foreign-flagged vessels and include additional operational costs associated with the applicable NO_X limits and the use of lower sulfur fuel. The operational costs for NO_X controls consist of the additional fuel required due to an estimated two percent fuel penalty associated with the use of technologies to meet CAA Tier 2 and global Tier II NO_X standards, and the use of urea for ships equipped with an SCR unit to meet CAA Tier 3 and global Tier III NO_X standards. The operational costs associated with the use of lower sulfur fuel include both the differential cost of using lower sulfur fuel that meets ECA standards instead of using marine distillate fuel, and the differential cost of using lower sulfur fuel that meets ECA standards instead of using residual fuel.

To assess the potential cost impacts, we must understand (1) the makeup of the fleet of ships expected to visit the U.S. when these requirements go into effect, (2) the emission reduction technologies expected to be used, and (3) the cost of these technologies. Chapter 5 of the RIA presents this analysis in greater detail. The total engine and vessel costs associated with the coordinated strategy are based on a cost per unit value applied to the number of affected vessels. Operational costs are based on fuel consumption values determined in the inventory analysis (Section 5.2). This section discusses a brief overview of the methodology used to develop the hardware and operational costs, and the methodology used to develop a fleet of future vessels to which these hardware and engineering costs were applied.

(1) Methodology

To estimate the hardware costs to ships that may be affected by the coordinated strategy, we used an approach similar to that used to estimate the emissions inventory. Specifically, the same inputs were used to develop a fleet of ships by ship type and engine type that may be expected to visit U.S. ports through the year 2040. In order to determine the cost of applying emission reduction technology on a per vessel basis, ICF International was contracted by the U.S. EPA to conduct a cost study of the various compliance strategies expected to be used to meet the new NO_X standards and fuel sulfur requirements.[118] ICF was instructed to develop cost estimates covering a range of vessel types and sizes, which could be scaled according to engine speed and power to arrive at an estimated cost per vessel. The costs developed for these engine configurations were used to develop a $/kW value that could be applied to any slow or medium speed engine. Using the average propulsion power by ship type presented in the inventory analysis, the per-vessel hardware costs were then applied to the estimated number of applicable vessels built after the standards take effect.

(a) Hardware Costs

The hardware cost estimates include variable costs (components, assembly, and the associated markup) and fixed costs (tooling, research and development, redesign efforts, and certification). Hardware costs associated with the Annex VI existing engine standards were applied to the portion of existing U.S.-flagged vessels built between 1990 and 1999 expected to be subject to these standards in 2011 when the standards go into effect (engines with a per-cylinder displacement of at least 90 liters and a power output of over 5,000 kW. These costs were applied over a five-year period beginning in 2011 where 20 percent of the total subject fleet was estimated to undergo service each year. The existing engine program fixed costs were phased

[118] ICF International, "Costs of Emission Reduction Technologies for Category 3 Marine Engines," prepared for the U.S. Environmental Protection Agency, December 2008. EPA Report Number: EPA–420–R–09–008.

in over a five-year period beginning in 2010 and applied on a per-vessel basis.

Hardware costs associated with the CAA Tier 2 program were applied to all new U.S.-flagged vessels beginning in the year 2011 when the standards take effect. The fixed costs associated with Tier 2 standards are expected to be incurred over a five-year period; however, as the Tier 2 standards take effect in 2011, it was assumed that manufacturers are nearing the end of their research and development. In order to capture all of these costs, all fixed costs that would have been incurred during that five-year phase-in period were applied in the year 2010. Hardware costs associated with Tier 3 were estimated for U.S. vessels and were applied as of 2016. The fixed costs associated with Tier 3 were phased in over a five-year period beginning in 2011.

Hardware costs associated with the use of lower sulfur fuel are estimated separately for both new and existing vessels that may require additional hardware to accommodate the use of lower sulfur fuel. The fuel sulfur control related hardware costs for new vessels begin to apply in 2015, while all retrofit costs are expected to be incurred by 2015 and as such are applied in this year. The fixed costs for both new and existing vessels that may require additional hardware to accommodate the use of lower sulfur fuel are applied on a per-vessel basis and are phased in over a five year period beginning as of 2010.

(b) Operational Costs

The operational costs estimated here are composed of three parts: (1) The estimated increase in fuel consumption expected to occur with the use of Tier II technologies on U.S.- and foreign-flagged vessels, (2) the differential cost of using lower sulfur fuel applicable for both U.S.- and foreign-flagged vessels, and (3) the use of urea with SCR as a Tier III NO_X emission reduction technology on both U.S.- and foreign-flagged vessels. The fuel consumption values associated with Tier II and Tier III standards were determined in the inventory analysis (*see* Chapter 3 of the RIA), with an estimated Tier II fuel consumption penalty of 2 percent (*see* Chapter 4 of the RIA). The two percent fuel penalty estimate is based on the use of modifications to the fuel delivery system to achieve Tier II NO_X reductions, and does not reflect the possibility that there may be other technologies available to manufacturers that could offset this fuel penalty. Additionally, Tier III will provide the opportunity to re-optimize engines for fuel economy when using aftertreatment, such as SCR, to provide NO_X reductions similar to the compliance strategy for some heavy-duty truck manufacturers using urea SCR to meet our 2010 truck standard. The differential cost of using lower sulfur fuel is discussed above in Section VII.A of this preamble. The estimated urea cost associated with the use of Tier III SCR is derived from a urea dosage rate that is 7.5 percent of the fuel consumption rate.

Operating costs per vessel vary depending on what year the vessel was built, *e.g.,* vessels built as of 2016 will incur operating costs associated with the use of urea necessary when using SCR as a Tier III NO_X emission control technology, while vessels built prior to 2016 do not use urea but will incur operating costs associated with the differential cost of using lower sulfur fuel. Further, we have assumed vessels built as of 2011 that meet Tier II standards will incur a 2 percent fuel consumption penalty; *see* Table 5–31 of the RIA for further details on fuel costs and fuel volumes. In addition, vessels built as of 2016 that meet Tier III NO_X standards while traveling in the regulated U.S. waterways are still required to at least meet Tier II NO_X standards outside of an ECA and will continue to incur the associated fuel penalty. Therefore, an estimated fleet had to be developed over a range of years, and provide a breakout of ships by age in each year.

(2) Fleet Development

There are currently no available estimates of the number of ships that may visit U.S. ports in the future or comprehensive engine sales predictions. Therefore, to develop the costs associated with the coordinated strategy, an approximation of the number of ships by age and engine type that may visit U.S. ports in the future was constructed. To characterize the fleet of ships visiting U.S. ports, we used U.S. port call data collected in 2002 for the inventory port analysis (*see* Chapter 3 of the RIA) which included only vessels with C3 engines where the engine size and type was identified.[119] We used this data with the growth rates developed in the inventory analysis to estimate how many ships, by ship type and engine type, would visit U.S. ports in future years. Due to the long life of these vessels, and the fact that there has been no significant event that would have changed the composition of the world fleet since this baseline data was taken, it is reasonable to use 2002 data as the basis for modeling the future fleet upon which to base hardware cost estimates. An analysis is presented in Section 5.1.2.2 of Chapter 5 of the RIA which confirms the reasonableness of this assumption using 2007 MARAD data.

The ship type information gathered from this baseline data, for the purposes of both this analysis and the inventory, was categorized into one of the following ship types: Auto Carrier, Bulk Carrier, Container, General Cargo, Miscellaneous, Passenger, Refrigerated Cargo (Reefer), Roll-On Roll-Off (RoRo), and Tankers. Average engine and vessel characteristics were developed from the baseline data, and these values were used to represent the characteristics of new vessels used in this cost analysis (*see* Chapter 3 of the RIA). Estimated future fleets were developed by ship type and engine type through the year 2040 for both new and existing vessels and both U.S.- and foreign-flagged vessels. Hardware costs were applied on a per-vessel basis.

Although most ships primarily operate on residual fuel, they typically carry some amount of distillate fuel as well. Switching to the use of lower sulfur distillate fuel is the compliance strategy assumed here to be used by both new and existing ships in 2015 when the new lower sulfur fuel standards go into effect. To estimate the potential cost of this compliance strategy, we evaluated the distillate storage capacity of the current existing fleet to estimate how many ships may require additional hardware to accommodate the use of lower sulfur fuel. We performed this analysis on the entire global fleet listed in Lloyd's database as of 2008.[120] Of the nearly 43,000 vessels listed, approximately 20,000 vessels had provided Lloyds with fuel tankage information, cruise speed, and propulsion engine power data. Using this information, we were able to estimate how far each vessel could travel on its existing distillate carrying capacity.

In order to determine if the current distillate capacity of a particular ship was sufficient to call on a U.S. coordinated strategy without requiring additional hardware, we evaluated whether or not each ship could travel 1,140 nm, or the distance between the Port of Los Angeles and the Port of Tacoma. This distance was selected because it represents one of the longer trips a ship could travel without

[119] In order to separate slow speed engines from medium speed engines where that information was not explicitly available, 2-stroke engines were assumed to be slow speed, where 4-stroke engines were assumed to be medium speed.

[120] *http://www.sea-web.com.*

stopping at another port, and should overestimate the number of vessels that would require such a modification. The resulting percentages of ships estimated to require a retrofit were then applied to the number of existing ships in the 2015 fleet to estimate the total cost of this compliance strategy for existing ships built prior to 2015. The same percentages were also applied to all new ships built as of 2015 to determine the number of ships that may require additional hardware and estimate the cost of this compliance strategy for new vessels.

(3) NO_X Reduction Technologies

(a) Tier 2

Most engine manufacturers are expected to be able to meet Tier 2 NO_X standards using engine modifications. This cost estimate includes the hardware costs associated with the use of retarded fuel injection timing, higher compression ratios, and better fuel distribution. There are no variable costs associated with the engine modifications as the changes are not expected to require any additional hardware. Some engines may also be equipped with common-rail fuel systems instead of mechanical fuel injection to meet Tier 2 NO_X standards. It is expected that approximately 75 percent of SSD and 30 percent of MSD engines will get this modification for Tier 2. The Tier 2 hardware costs developed here include the costs of the migration of some engines to common-rail fuel systems. It was also estimated that these technologies may increase fuel consumption by up to 2 percent; this fuel penalty is included in the Tier 2 operational costs. Tier 2 hardware costs included in the total estimated cost of the coordinated strategy are only associated with U.S.-flagged vessels; operational costs are applied to both U.S.- and foreign-flagged vessels.

(b) Tier 3

Tier 3 NO_X standards are approximately 80 percent below Tier 1 NO_X standards, and are likely to require exhaust aftertreatment such as SCR. ICF performed a detailed cost analysis for the U.S. EPA that included surveying engine and emission control technology manufacturers regarding these advanced technology strategies and their potential costs. Tier 3 NO_X standards are projected to be met through the use of SCR systems. While other technologies such as EGR or those that include introduction of water into the combustion chamber either through fumigation, fuel emulsions, or direct water injection may also enable Tier 3 compliance, we assume they will only be selected if they are less costly than SCR. Therefore, we have based this analysis on the exclusive use of SCR.

(c) Engine Modifications

In addition to SCR, it is expected that manufacturers will also use compound or two-stage turbocharging as well as electronic valving to enhance performance and emission reductions to meet Tier 3 NO_X standards. Engine modifications to meet Tier 3 emission levels will include a higher percentage of common-rail fuel injection coupled with two-stage turbocharging and electronic valving. Engine manufacturers estimate that nearly all SSD and 80 percent of MSD engines will use common-rail fuel injection. Two stage turbocharging will most likely be used on least 70 percent of all engines required to meet Tier 3 emission levels. Electronically (hydraulically) actuated intake and exhaust valves for MSD and electronically actuated exhaust valves for SSD are necessary to accommodate two-stage turbocharging. Additionally, the remaining SSD engines still using mechanical injection (approximately 25 percent mechanically controlled, and 75 percent electronically controlled) are expected to migrate to common rail for Tier 3, while an additional 40 percent of MSD engines are expected to receive common rail totaling approximately 80 percent of all MSD engines. The engine modification variable costs were applied to all new U.S.-flagged vessels equipped with either SSD or MSD engines. Costs to foreign-flagged vessel expected to visit U.S. ports are presented as a separate analysis in Chapter 5 of the RIA, and are not included in the total estimated cost of the coordinated strategy.

(4) SO_X/PM Emission Reduction Technology

In addition to Tier 3 NO_X standards, the IMO ECA requirements also include lower fuel sulfur limits that will result in reductions in SO_X and PM. Category 3 marine engines typically operate on heavy fuel oil with a sulfur content of 2.7 percent, therefore significant SO_X and PM reductions will be achieved using distillate fuels with a sulfur content of 0.1 percent. This cost analysis is based on the assumption that vessel operators will operate their engines using lower sulfur fuel in the U.S. coordinated strategy waterways. We believe fuel switching will be the primary compliance approach; fuel scrubbers would be used in the event that the operator expected to realize a cost savings and are not considered in this analysis. In some cases, additional capacity and equipment to accommodate the use of lower sulfur fuel may need to be installed on a vessel. The potential costs due to these additional modifications applied to new ships as well as retrofits to any existing ships are discussed here, and these hardware costs are included as part of the total cost of this coordinated program.

Although most ships operate on heavy fuel oil, they typically carry small amounts of distillate fuel. Some vessel modifications and new operating practices may be necessary to use lower sulfur distillate fuels on vessels designed to operate primarily on residual fuel. Installation and use of a fuel cooler, associated piping, and viscosity meters to the fuel treatment system may be required to ensure viscosity matches between the fuel and injection system design. While there are many existing ships that already have the capacity to operate on both heavy fuel oil and distillate fuel and have separate fuel tank systems to support each type of fuel, some ships may not have sufficient onboard storage capacity. If a new or segregated tank is desired, additional equipment for fuel delivery and control of these systems may be required.

(5) NO_X and SO_X Emission Reduction Technology Costs

(a) NO_X Emission Reduction Technology

The costs associated with SCR include variable and fixed costs. SCR hardware costs include the reactor, dosage pump, urea injectors, piping, bypass valve, an acoustic horn or a cleaning probe, the control unit and wiring, and the urea tank (the size of the tank is based on 250 hours of normal operation when the ship is operating in the regulated U.S. waterways and the SCR system is activated.) The size of the tank is dependent on the frequency with which the individual ship owner prefers to fill the urea tank. The methodology used here to estimate the capacity of the SCR systems is based on the power rating of the propulsion engines only. Auxiliary engine power represents about 20 percent of total installed power on a vessel; however, it would be unusual to operate both propulsion and auxiliary engines at 100 percent load. Typically, ships operate under full propulsion power only while at sea when the SCR is not operating; when nearing ports, the auxiliary engine is operating at high loads while the propulsion engine is operating at very low loads.

In this analysis, we determined the average number of hours a ship would spend calling on a U.S. port: If the call was straight in and straight out at 200 nm, the average time spent was slightly over 35 hours. If the distance travelled was substantial, such as from the Port of Los Angeles to the Port of Tacoma, or 1140 nm, the average time spent travelling was approximately 75 hours. Therefore, the size of the tanks and corresponding $/kW values estimated here to carry enough urea for 250 hours of continuous operation may be an overestimate. Based on 250 hours of operation, a range of urea tank sizes from 20 m^3 to approximately 256 m^3 was determined for the six different engine configurations used in this analysis.

To understand what impacts this may have on the cargo hauling capacity of the ship, we looked at the ISO standard containers used today. Currently, over two-thirds of the containers in use today are 40 feet long, total slightly over 77 m^3 and are the equivalent of two TEU.[121] The urea tank sizes estimated here reflect a cargo equivalence of 0.5–2 TEUs, based on a capacity sufficient for 250 hours of operation. The TEU capacity of container ships, for example, continues to increase and can be as high as 13,000 TEUs.[122] Based on a rate of approximately $1,300 per TEU to ship a container from Asia to the U.S., a net profit margin of 10%, and an average of 16 trips per year, the estimated cost due to displaced cargo to call on a U.S./Canada ECA may be $2,100.[123] [124] [125] The cost analysis presented here does not include displaced cargo due to the variability of tank sizes owners choose to install.

To estimate the SCR hardware costs associated with newly built ships, we needed to generate an equation in terms of $/kW that could be applied to other engine sizes. Therefore, the $/kW values representing the hardware costs estimated for the six different engine types and sizes used in this analysis was developed using a curve fit for both SSD and MSD engines. The resulting $/kW values range from $40–$80 per kW for MSD, and $40–$70 for SSD. These costs were then applied based on the characteristics of the average ship types described in the inventory section of the RIA (*see* Chapter 3) to the representative portion of the future fleet in order to estimate the total costs associated with this program. Table VII–3 presents the estimated costs of this technology as applied to different ship and engine types representing the average ship characteristics discussed in Section VII.A.2.

(b) Lower Sulfur Fuel Hardware Costs

This cost analysis is based on the use of switching to lower sulfur fuel to meet the fuel sulfur standards. The costs presented here may be incurred by some existing and some newly built ships if additional fuel tank equipment is required to facilitate the use of lower sulfur fuel. Based on existing vessel fleet data, we estimate that approximately one-third of existing vessels may need additional equipment installed to accommodate additional lower sulfur fuel storage capacity beyond that installed on comparable new ships. In order to include any costs that may be incurred on new vessels that choose to add additional lower sulfur fuel capacity, we also estimated that one-third of new vessels may require additional hardware. Separate $/kW values were developed for new and existing vessels as the existing vessel retrofit would likely require more labor to complete installation.

The size of the tank is dependent on the frequency with which the individual ship owner prefers to fill the lower sulfur fuel tank. The size of the tanks and corresponding $/kW value estimated here will carry capacity sufficient for 250 hours of propulsion and auxiliary engine operation. This is most likely an overestimate of the amount of lower sulfur fuel a ship owner would need to carry, resulting in an overestimate of the total cost to existing and new vessels. The tank sizes based on 250 hours of operation and based on the six different engine configuration used in this analysis range from 240 m^3 to nearly 2,000 m^3. This would be the equivalent of 6–50 TEUs. This cost analysis does not reflect other design options such as partitioning of a residual fuel tank to allow for lower sulfur fuel capacity which would reduce the amount of additional space required, nor does this analysis reflect the possibility that some ships may have already been designed to carry smaller amounts of distillate fuel in separate tanks for purposes other than continuous propulsion. The $/kW value hardware cost values for the six data points corresponding to the six different engine types and sizes used in this analysis are $2–7 for SSD and $3–8 for MSD. A curve fit was determined for the slow-speed engine as well as for the medium speed engines to determine a $/kW value for each engine type. Table VII–3 presents the estimated costs of the technologies used to meet the different standards as applied to different ship and engine types representing the average ship characteristics discussed in Section VII.A.2. The estimated hardware costs of retrofitting existing U.S.-flagged vessels that may require additional hardware to accommodate the use of lower sulfur fuel is estimated to be $10.4 million in 2015.

TABLE VII–3—ESTIMATED VARIABLE COSTS OF EMISSION CONTROL TECHNOLOGY ON A PER-SHIP BASIS—BY SHIP TYPE AND ENGINE TYPE [a]

Ship type	Engine speed	Average propulsion power (kW)	MFI to common rail	EFI to common rail	Tier 3 (SCR and engine modifications)	Lower sulfur fuel hardware—new vessels	Lower sulfur fuel hardware—existing vessels
Auto Carrier	MSD	9640	$80,500	$30,400	$566,000	$42,300	$56,400
Bulk Carrier	MSD	6360	67,200	24,600	479,000	36,900	48,500
Container	MSD	13878	92,300	35,400	678,000	49,200	66,600
General Cargo	MSD	5159	60,400	21,700	448,000	34,900	45,600
Passenger	MSD	23762	109,600	42,800	939,000	65,400	90,400
Reefer	MSD	7360	71,900	26,600	506,000	38,500	50,900
RoRo	MSD	8561	76,700	28,700	538,000	40,500	53,800
Tanker	MSD	6697	68,800	25,300	488,000	37,400	49,300

[121] *http://www.iicl.org,* Institute of International Container Lessors.

[122] Kristensen, Hans Otto Holmegaard, "Preliminary Ship Design of Container Ships, Bulk Carriers, Tankers, and Ro-Ro Ships. Assessment of Environmental Impact from Sea-Borne Transport Compared with Landbased Transport," March, 2008.

[123] *http://people.hofstra.edu/geotrans/eng/ch2en/conc2en/maritimefreightrates.html.*

[124] *http://moneycentral.msn.com/investor/invsub/results/hilite.asp?Symbol=SSW.*

[125] Based on a container ship carrying nearly 9,000 TEUs traveling from Hong Kong to the Port of Los Angeles (approximately 6,400 nm) with a cruise speed of 25 nm/hr, the round trip time is nearly 21 days and this trip could be made roughly 16 times per year.

TABLE VII–3—ESTIMATED VARIABLE COSTS OF EMISSION CONTROL TECHNOLOGY ON A PER-SHIP BASIS—BY SHIP TYPE AND ENGINE TYPE [a]—Continued

Ship type	Engine speed	Average propulsion power (kW)	MFI to common rail	EFI to common rail	Tier 3 (SCR and engine modifications)	Lower sulfur fuel hardware—new vessels	Lower sulfur fuel hardware—existing vessels
Misc.	MSD	9405	79,800	30,000	560,000	41,900	55,800
Auto Carrier	SSD	11298	152,400	55,500	819,000	48,000	64,800
Bulk Carrier	SSD	8434	132,900	48,400	669,000	42,700	57,700
Container	SSD	27454	211,600	77,200	1,521,000	63,900	86,700
General Cargo	SSD	7718	127,000	46,200	630,000	41,100	55,500
Passenger	SSD	23595	201,500	73,500	1,374,000	61,200	83,000
Reefer	SSD	10449	147,200	53,600	776,000	46,500	62,900
RoRo	SSD	15702	174,300	63,500	1,034,000	53,900	72,900
Tanker	SSD	9755	142,600	51,900	739,000	45,300	61,200
Misc.	SSD	4659	93,300	33,900	50,000	32,000	43,100

[a] The values presented in Table VII–3 are provided only to show what the estimated costs would be for a range of vessel types given average characteristics (such as DWT, total main, and total auxiliary power) for both SSD and MSD engine types. Not all vessels will require all of these technologies; for example, it is estimated that only 30 percent of MSD will get common-rail fuel injection systems for Tier II.

(6) Total Costs Associated With the Coordinated Strategy

The total hardware costs associated with the coordinated strategy were estimated using the number of new ships by ship type and engine type entering the fleet each year. Table VII–4 presents the total hardware costs to U.S.-flagged vessels associated with the coordinated strategy. These costs consist of the variable and fixed hardware costs associated with the Annex VI existing engine program, Tier 2 and Tier 3 standards, and additional components that may be required to accommodate the use of lower sulfur fuel on both new and existing vessels. This table also presents the total estimated operational costs associated with the coordinated strategy. These costs consist of the 2 percent fuel consumption penalty associated with Tier 2 (Annex VI Tier II), the use of urea on vessels equipped with SCR systems, and the differential cost of using lower sulfur fuel; these costs are incurred by both U.S.- and foreign-flagged vessels. The total estimated cost of the coordinated strategy is $3.41 billion in 2030. The total costs from 2010 through 2040 are estimated to be $42.9 billion at a 3 percent discount rate or $22.1 at a 7 percent discount rate.

TABLE VII–4—TOTAL HARDWARE AND OPERATIONAL COSTS ASSOCIATED WITH THE COORDINATED STRATEGY

[Thousands of $]

Year	Total hardware costs for existing engines	Total new engine hardware costs	Total vessel hardware costs	Total operating costs		Total costs associated with the coordinated strategy
				U.S. flag	Foreign flag	
2010	$9,400	$319	$166	$0	$0	$485
2011	161,000	3,580	173	173	1,130	5,060
2012	153,000	3,700	179	841	5,590	10,300
2013	145,000	3,830	186	32,400	213,000	249,000
2014	137,000	3,960	192	34,400	226,000	265,000
2015	131,000	4,100	11,100	180,000	1,190,000	1,390,000
2016	0	27,300	691	189,000	1,250,000	1,470,000
2017	0	28,500	717	199,000	1,330,000	1,560,000
2018	0	29,600	745	210,000	1,410,000	1,650,000
2019	0	30,700	773	221,000	1,500,000	1,750,000
2020	0	31,900	803	233,000	1,590,000	1,860,000
2021	0	33,200	834	246,000	1,680,000	1,960,000
2022	0	34,600	866	258,000	1,770,000	2,060,000
2023	0	35,900	899	272,000	1,880,000	2,190,000
2024	0	37,400	934	286,000	1,980,000	2,300,000
2025	0	38,800	970	300,000	2,090,000	2,430,000
2026	0	40,400	1,010	315,000	2,200,000	2,560,000
2027	0	42,100	1,050	330,000	2,310,000	2,680,000
2028	0	43,700	1,090	345,000	2,430,000	2,820,000
2029	0	45,500	1,130	362,000	2,550,000	2,960,000
2030	0	47,400	1,180	378,000	2,680,000	3,110,000
2031	0	49,300	1,220	395,000	2,810,000	3,260,000
2032	0	51,300	1,270	413,000	2,950,000	3,420,000
2033	0	53,400	1,320	431,000	3,080,000	3,570,000
2034	0	55,500	1,370	451,000	3,240,000	3,750,000
2035	0	57,900	1,430	471,000	3,390,000	3,920,000
2036	0	60,200	1,490	494,000	3,560,000	4,120,000
2037	0	62,800	1,540	517,000	3,740,000	4,320,000
2038	0	65,300	1,610	541,000	3,930,000	4,540,000
2039	0	68,000	1,670	566,000	4,110,000	4,750,000
2040	0	70,800	1,740	591,000	4,310,000	4,970,000
NPV @ 3%	677,000	663,000	26,500	5,260,000	36,900,000	42,900,000

TABLE VII–4—TOTAL HARDWARE AND OPERATIONAL COSTS ASSOCIATED WITH THE COORDINATED STRATEGY—Continued

[Thousands of $]

Year	Total hardware costs for existing engines	Total new engine hardware costs	Total vessel hardware costs	Total operating costs		Total costs associated with the coordinated strategy
				U.S. flag	Foreign flag	
NPV @ 7%	610,000	346,000	16,900	2,730,000	19,000,000	22,100,000

C. Cost Effectiveness

One tool that can be used to assess the value of the coordinated strategy is the engineering costs incurred per ton of emissions reduced. This analysis involves a comparison of our program to other measures that have been or could be implemented. As summarized in this section, the coordinated strategy represents a highly cost effective mobile source control program for reducing NO_X, PM and SO_X emissions.

We have estimated the cost per ton based on the net present value of 3 percent and 7 percent of all hardware costs incurred by U.S.-flagged vessels, all operational costs incurred by both U.S. and foreign-flagged vessels, and all emission reductions generated from the year 2010 through the year 2040. The baseline case for these estimated reductions is the existing set of engine standards for C3 marine diesel engines and fuel sulfur limits. Table VII–5 shows the annual emissions reductions associated with the coordinated strategy; these annual tons are undiscounted. A description of the methodology used to estimate these annual reductions can be found in Section II of this preamble and Chapter 3 of the RIA.

TABLE VII–5—ESTIMATED EMISSIONS REDUCTIONS ASSOCIATED WITH THE COORDINATED STRATEGY

[Short tons]

Calendar year	Reductions (tons)		
	NO_X	SO_X	PM
2010	47,000	0	0
2011	54,000	0	0
2012	70,000	0	0
2013	88,000	390,000	48,400
2014	105,000	406,000	50,400
2015	123,000	641,000	68,000
2016	150,000	668,000	70,800
2017	209,000	695,000	73,700
2018	279,000	724,000	76,800
2019	349,000	755,000	80,000
2020	409,000	877,000	94,100
2021	488,000	916,000	98,200
2022	547,000	954,000	102,000
2023	634,000	995,000	107,000
2024	714,000	1,040,000	111,000
2025	790,000	1,080,000	116,000
2026	866,000	1,130,000	121,000
2027	938,000	1,170,000	126,000
2028	1,020,000	1,220,000	131,000
2029	1,100,000	1,280,000	137,000
2030	1,180,000	1,330,000	143,000
2031	1,260,000	1,390,000	149,000
2032	1,330,000	1,450,000	155,000
2033	1,410,000	1,510,000	162,000
2034	1,500,000	1,580,000	169,000
2035	1,590,000	1,650,000	177,000
2036	1,690,000	1,720,000	184,000
2037	1,810,000	1,800,000	193,000
2038	1,920,000	1,880,000	201,000
2039	2,020,000	1,970,000	210,000
2040	2,130,000	2,050,000	220,000
NPV at 3%	14,400,000	19,100,000	2,100,000
NPV at 7%	6,920,000	10,100,000	1,090,000

The net estimated reductions by pollutant, using a net present value of 3 percent from 2010 through 2040 are 14.4 million tons of NO_X, 19.1 million tons of SO_X, and 2.1 million tons of PM (6.9 million, 10.1 million, and 1.1 million tons of NO_X, SO_X, and PM, respectively, at a net present value of 7 percent over the same period.)

Using the above cost and emission reduction estimates, we estimated the lifetime (2010 through 2040) cost per ton of pollutant reduced. For this analysis, all of the hardware costs associated with the Annex VI existing engine program and Tier 2 and Tier 3 NO_X standards as well as the operational costs associated with the

global Tier II and Tier III standards were attributed to NO_X reductions. The costs associated with lower sulfur fuel operational costs as applied to all vessels visiting U.S. ports and the hardware costs associated with accommodating the use of lower sulfur fuel on U.S.-flagged vessels were associated with SO_X and PM reductions. In this analysis, half of the costs associated with the use of lower sulfur fuel were allocated to PM reductions and half to SO_X, reductions, because the costs incurred to reduce SO_X emissions directly reduce emissions of PM as well. Using this allocation of costs and the emission reductions shown in Table VII–5 we can estimate the lifetime cost per ton reduced associated with each pollutant. These results are shown in Table VII–6. Using a net present value of 3 percent, the discounted lifetime cost per ton of pollutant reduced is $510 for NO_X, $930 for SO_X, and $7,950 for PM ($500, $920, and $7,850 per ton of NO_X, SO_X, and PM, respectively, at a net present value of 7 percent.) As shown in Table VII–6, these estimated discounted lifetime costs are similar to the annual long-term (2030) cost per ton of pollutant reduced.

TABLE VII–6—COORDINATED STRATEGY ESTIMATED AGGREGATE DISCOUNTED LIFETIME COST PER TON (2010–2040) AND LONG-TERM ANNUAL COST PER TON (2030) [a]

Pollutant	2010 thru 2040 discounted lifetime cost per ton at 3%	2010 thru 2040 discounted lifetime cost per ton at 7%	Long-term cost per ton (for 2030)
NO_X	$510	$500	$520
SO_X	930	920	940
PM	7,950	7,850	8,760

[a] The $/ton numbers presented here vary from those presented in the ECA proposal due to the net present value of the annualized reductions being applied from 2015–2020, and the use of metric tonnes rather than of short tons. Note that these costs are in 2006 U.S. dollars.

These results for the coordinated strategy compare favorably to other air emissions control programs. Table VII–7 compares the coordinated strategy to other air programs. This comparison shows that the coordinated strategy will provide a cost-effective strategy for generating substantial NO_X, SO_X, and PM reductions from Category 3 vessels. The results presented in Table VII–7 are lifetime costs per ton discounted at a net present value of 3 percent, with the exception of the stationary source program and locomotive/marine retrofits, for which annualized costs are presented. While results at a net present value of 7 percent are not presented, the results would be similar. Specifically, the coordinated strategy falls within the range of values for other recent programs.

TABLE VII–7—ESTIMATED $/TON FOR THE COORDINATED STRATEGY COMPARED TO PREVIOUS MOBILE SOURCE PROGRAMS FOR NO_X, SO_X, AND PM_{10}

Source category [a]	Implementation date	NO_X cost/ton	SO_X cost/ton	PM_{10} cost/ton
Category 3 Marine Compression Ignition Engine Coordinated Strategy FRM, 2009.	2011	510	930	7,950.
Nonroad Small Spark-Ignition Engines 73 FR 59034, October 8, 2008	2010	[b,c] 330–1,200		
Stationary Diesel (CI) Engines 71 FR 39154, July 11, 2006	2006	580–20,000	.....	3,500–42,000.
Locomotives and C1/C2 Marine (Both New and Retrofits) 73 FR 25097, May 6, 2008	2015	[b] 730	.....	8,400 (New). 45,000 (Retrofit).
Heavy Duty Nonroad Diesel Engines 69 FR 38957, June 29, 2004	2015	[b] 1,100	780	13,000.
Heavy Duty Onroad Diesel Engines 66 FR 5001, January 18, 2001	2010	[b] 2,200	5,800	14,000.

Notes:

[a] Table presents aggregate program-wide cost/ton over 30 years, discounted at a 3 percent NPV, except for Stationary CI Engines and Locomotive/Marine retrofits, for which annualized costs of control for individual sources are presented. All figures are in 2006 U.S. dollars per short ton.

[b] Includes NO_X plus non-methane hydrocarbons (NMHC). NMHC are also ozone precursors, thus some rules set combined NO_X+NMHC emissions standards. NMHC are a small fraction of NO_X so aggregate cost/ton comparisons are still reasonable.

[c] Low end of range represents costs for marine engines with credit for fuel savings, high end of range represents costs for other nonroad SI engines without credit for fuel savings.

D. Economic Impact Analysis

This section contains our analysis of the expected economic impacts of our coordinated strategy on the markets for Category 3 marine diesel engines, vessels using these engines, and the U.S. marine transportation service sector. We briefly describe our methodology and present our estimated expected economic impacts.

The total estimated social costs of the coordinated strategy in 2030 are equivalent to the estimated engineering compliance costs of the program, at approximately $3.1 billion.[126] As explained below, these costs are expected to accrue initially to the owners and operators of affected vessels when they purchase engines, vessels, and fuel. These owners and operators are expected to pass their increased

[126] The costs totals reported in this FRM are slightly different than those reported in the ECA proposal. This is because the ECA proposal did not include costs associated with the Annex VI existing engine program, Tier II, or the costs associated with existing vessel modifications that may be required to accommodate the use of lower sulfur fuel. Further, the cost totals presented in the ECA package included Canadian cost estimates.

costs on to the entities that purchase international marine transportation services, in the form of higher freight rates. Ultimately, these social costs are expected to be borne by the final consumers of goods transported by affected vessels in the form of slightly higher prices for those goods.

We estimate that compliance with the coordinated strategy would increase the price of a new vessel by 0.5 to 2 percent, depending on the vessel type. The price impact of the coordinated strategy on the marine transportation services sector would vary, depending on the route and the amount of time spent in waterways covered by the engine and fuel controls (the U.S. ECA and U.S. internal waters covered by the coordinated strategy). For example, we estimate that the cost of operating a ship in liner service between Singapore, Seattle, and Los Angeles/Long Beach, which includes about 1,700 nm of operation in waterways covered by the coordinated strategy, would increase by about 3 percent. For a container ship, this represents a price increase of about $18 per container (3 percent price increase), assuming the total increase in operating costs is passed on to the purchaser of the marine transportation services. The per passenger price of a seven-day Alaska cruise on a vessel operating entirely within waterways covered by the coordinated strategy is expected to increase by about $7 per day, again assuming that the total increase in operating costs is passed on to the passengers of the vessel. Ships that spend less time in covered areas would experience relatively smaller increases in their operating costs, and the impacts on their freight prices is expected to be smaller.

It should be noted that this economic analysis holds all other aspects of the market constant except for the elements of the coordinated strategy. It does not attempt to predict future market equilibrium conditions, particularly with respect to how excess capacity in today's market due to the current economic downturn will be absorbed. This approach is appropriate because the goal of an economic impact analysis is to explore the impacts of a specific program; allowing changes in other market conditions would confuse the impacts due to the regulatory program.

The remainder of this section provides information on the methodology we used to estimate these economic impacts and the results of our analysis. A more detailed discussion can be found in Chapter 7 of the RIA prepared for this rule.

(1) What Is the Purpose of an Economic Impact Analysis?

In general, the purpose of an Economic Impact Analysis (EIA) is to provide information about the potential economic consequences of a regulatory action, such as the coordinated strategy to reduce emissions from Category 3 vessels. Such an analysis consists of estimating the social costs of a regulatory program and the distribution of these costs across stakeholders. The estimated social costs can then be compared with the estimated social benefits as presented elsewhere in this preamble.

In an economic impact analysis, social costs are the value of the goods and services lost by society resulting from (a) the use of resources to comply with and implement a regulation and (b) reductions in output. There are two parts to the analysis. In the market analysis, we estimate how prices and quantities of goods directly affected by the emission control program can be expected to change once the program goes into effect. In the economic welfare analysis, we look at the total social costs associated with the program and their distribution across key stakeholders.

(2) How Did We Estimate the Economic Impacts of the Coordinated Strategy?

Our analysis of the economic impacts of the coordinated strategy is based on the application of basic microeconomic theory. In this analysis, we use a competitive market model approach in which the interaction between supply and demand determines equilibrium market prices and quantities. The competitive model approach is appropriate for the vessel building and transportation service markets because in each of those markets there are many producers and consumers are not constrained to use one producer over the others.[127]

We also use a competitive market structure for the Category 3 engine market. This market is characterized by a small number of manufacturers (2 companies comprising about 60 percent of the market, with two others having a notable share), which suggests that this limited number of manufacturers may have certain market power. However, an important characteristic of the market suggests this market may nevertheless be competitive. Specifically while the primary engine companies design and patent Category 3 marine diesel engines, they manufacture only key components and not the actual engine itself. Engines are manufactured through licensing agreements with shipyards or other companies. Licensees pay a fixed cost to the primary engine manufacturers for using their designs and brands. Engine prices are then set by the licensees, sometimes as part of the price of a completed vessel, and there is competition among these firms to manufacturer engines and vessels.

Nevertheless, to estimate the maximum economic impact of the program, we can examine how the results of this economic impact analysis would change if we assumed an imperfectly competitive market structure. In markets with a small number of producers, it is not uncommon for manufacturers to exercise market power to obtain prices above their costs, thereby securing greater profits. In this case, market prices would be expected to increase by more than the compliance costs of the regulatory program, although the magnitude of the increase would be limited by the existing dynamics of the market (*i.e.,* the current difference between the actual market price and the competitive market price). This impact is discussed in more detail in Section VII.D.5, below. The higher price impact from imperfect competition would be transmitted to the vessel and marine transportation markets. However, even in this case, the price impacts of this rule on the Category 3 engine market are not expected to be large given the price increases estimated for the competitive case, described below. This is because the compliance costs for engine program are relatively small compared to the price of a vessel.

Finally, the existence of only a small number of firms in a market does not mean that the market necessarily behaves noncompetitively. In the Bertrand competition model, firms compete with each other by choosing a lower price.[128] When they compete repeatedly, the market price is expected to approximate the price that would occur in a perfectly competitive market. In this case, the two primarily engine producers compete against each other and against the smaller producers in the market. They also compete to sell the same or similar engines in the land-based electrical power generating market, where they face many more competitors.

In a competitive structure model, we use the relationships between supply and demand to simulate how markets can be expected to respond to increases

[127] Stopford describes these markets as competitive. *See* Stopford, Martin. Maritime Economics, 3rd Edition (Routledge, 2009), Chapter 4.

[128] Tirole, Jean. The Theory of Industrial Organization (1989). MIT Press. *See* pages 223–224.

in production costs that occur as a result of the new emission control program. We use the laws of supply and demand to construct a model to estimate the social costs of the program and identify how those costs will be shared across the markets and, thus, across stakeholders. The relevant concepts are summarized below and are presented in greater detail in Chapter 7 of the RIA.

Before the implementation of a control program, a competitive market is assumed to be in equilibrium, with producers producing the amount of a good that consumers desire to purchase at the market price. The implementation of a control program results in an increase in production costs by the amount of the compliance costs. This generates a "shock" to the initial equilibrium market conditions (a change in supply). Producers of affected products will try to pass some or all of the increased production costs on to the consumers of these goods through price increases, without changing the quantity produced. In response to the price increases, consumers will decrease the quantity they buy of the affected good (a change in the quantity demanded). This creates surplus production at the new price. Producers will react to the decrease in quantity demanded by reducing the quantity they produce, and they will be willing to sell the remaining production at a lower price that does not cover the full amount of the compliance costs. Consumers will then react to this new price. These interactions continue until the surplus production is removed and a new market equilibrium price and quantity combination is achieved.

The amount of the compliance costs that will be borne by stakeholders is ultimately limited by the price sensitivity of consumers and producers in the relevant markets, represented by the price elasticities of demand and supply for each market. An "inelastic" price elasticity (less than one) means that supply or demand is not very responsive to price changes (a one percent change in price leads to less than one percent change in quantity). An "elastic" price elasticity (more than one) means that supply or demand is sensitive to price changes (a one percent change in price leads to more than one percent change in quantity). A price elasticity of one is unit elastic, meaning there is a one-to-one correspondence between a percent change in price and percent change in quantity.

On the production side, price elasticity of supply depends on the time available to adjust production in response to a change in price, how easy it is to store goods, and the cost of increasing (or decreasing) output. In this analysis, we assume the supply for engines, vessels, and marine transportation services is elastic: an increase in the market price of an engine, vessel or freight rates will lead producers to want to produce more, while a decrease will lead them to produce less (this is the classic upward-sloping supply curve). It would be difficult to estimate the slope of the supply curve for each of these markets given the global nature of the sector and, as explained in Chapter 7 of the RIA it is not necessary to have estimated supply elasticities for this analysis due to the assumption of nearly perfectly inelastic demand for the marine transportation sector. However, we can make some observations about the supply elasticities based on the nature of each sector. For the marine transportation sector, it is reasonable to assume a supply elasticity equal to or greater than one because the amount of transportation services provided can easily be adjusted due to a change in price in most cases (*e.g.,* move more or fewer containers or passengers) especially if the market can carry a certain amount of excess capacity. For the new Category 3 engine market the supply elasticity is also likely to be greater than one. These engines are often used in other land-based industries, notably in power plants, which provide a market to accommodate production fluctuations as manufacturers adjust their output for the marine market. The supply elasticity for the vessel construction market, on the other hand, is upward sloping but the slope (supply elasticity) may be less than or equal to one depending on the vessel type. This would be expected since it may be harder to adjust production and/or store output if the price drops, or rapidly increase production if the price increases. Because of the nature of this industry, it may not be possible to easily switch production to other goods, or to stop or start production of new vessels.

On the consumption side, we assume that the demand for engines is a function of the demand for vessels, which is a function of the demand for international shipping (demand for engines and vessels is derived from the demand for marine transportation services). This makes intuitive sense: Category 3 engine and vessel manufacturers would not be expected to build an engine or vessel unless there is a purchaser, and purchasers will want a new vessel/engine only if there is a need for one to supply marine transportation services. Deriving the price elasticity of demand for the vessel and engine markets from the international shipping market is an important feature of this analysis because it provides a link between the product markets.

In this analysis, the price elasticity of demand for marine transportation services, and therefore for vessels and Category 3 engines, is assumed to be nearly perfectly inelastic (the demand for marine transportation services will remain the same for all price changes). This stems from the fact that for most goods, there are no reasonable alternative shipping modes. In most cases, transportation by rail or truck is not feasible, and transportation by aircraft is too expensive. Approximately 90 percent of world trade by tonnage is moved by ship, and ships provide the most efficient method to transport these goods on a tonne-mile basis.[129] Stopford notes that "shippers need the cargo and, until they have time to make alternative arrangements, must ship it regardless of cost * * *. The fact that freight generally accounts for only a small portion of material costs reinforces this argument."[130] A nearly perfectly inelastic price elasticity of demand for marine transportation services means that virtually all of the compliance costs can be expected to be passed on to the consumers of marine transportation services, with no change in output for engine producers, ship builders, or owners and operators of ships engaged in international trade. Section VII.D.5, below, provides a discussion of the impact of relaxing of the nearly perfect demand elasticity for marine transportation services in general, and for the cruise industry specifically. Relaxing this assumption is not expected to change the estimated total social costs of the program, which are limited by the engineering compliance costs. However, it would change the way those costs are shared among stakeholders.

Finally, with regard to the fuel markets, the impacts of the coordinated strategy on fuel costs were assessed using the World Oil Refining Logistics and Demand (WORLD) model, as run by Ensys Energy & Systems, the owner and developer of the refinery model. As described in Chapter 5 of the RIA, the WORLD model is the only such model currently developed for this purpose, and was developed by a team of international petroleum consultants. It

[129] Harrould-Koleib, Ellycia. Shipping Impacts on Climate: A Source with Solutions. Oceana, July 2008. A copy of this report can be found at *http://www.oceana.org/fileadmin/oceana/uploads/Climate_Change/Oceana_Shipping_Report.pdf.*

[130] Stopford, Martin. *Maritime Economics, 3rd Edition.* Routledge, 2009. p. 163.

has been widely used by industries, government agencies, and OPEC over the past 13 years, including the Cross Government/Industry Scientific Group of Experts, established to evaluate the effects of the different fuel options proposed under the revision of MARPOL Annex VI. The model incorporates crude sources, global regions, refinery operations, and world economics, as well as assumptions about how these markets respond to regulatory programs. The results of the WORLD model have been shown to be comparable to other independent predictions of global fuel, air pollutant emissions and economic predictions.

WORLD is a comprehensive, bottom-up model of the global oil downstream that includes crude and noncrude supplies; refining operations and investments; crude, products, and intermediates trading and transport; and product blending/quality and demand. Its detailed simulations are capable of estimating how the global system can be expected to operate under a wide range of different circumstances, generating model outputs such as price effects and projections of refinery operations and investments.

This analysis of the economic impacts of the coordinated strategy relies on the estimated engineering compliance costs for engines and fuels described in Sections VII.A (fuels) and VII.B (engines) above. These costs include hardware costs for new U.S. vessels to comply with the Tier 2 and Tier 3 engine standards, and for existing U.S. vessels to comply with the MARPOL Annex VI requirements for existing engines. There are also hardware costs for fuel switching equipment on new and existing U.S. vessels to comply with the 1,000 ppm fuel sulfur limit; the cost analysis assumes that 32 percent of all vessels require fuel switching equipment to be added (new vessels) or retrofit (existing vessels). Also included are expected increases in operating costs for U.S. and foreign vessels operating in the inventory modeling domain (the waterways covered by the engine and fuel controls, *i.e.,* the U.S. ECA and U.S. internal waters covered by the coordinated strategy.[131] These increased operating costs include changes in fuel consumption rates, increases in fuel costs, and the use of urea for engines equipped with SCR, as well as a small increase in operating costs for operation outside the waterways affected by the coordinated strategy due to the fuel price impacts of the program.

(3) What Are the Estimated Market Impacts of the Coordinated Strategy?

(a) What Are the Estimated Engine and Vessel Market Impacts of the Coordinated Strategy?

The estimated market impacts for engines and vessels are based on the variable costs associated with the engine and vessel compliance programs; fixed costs are not included in the market analysis. This is appropriate because in a competitive market the industry supply curve is generally based on the market's marginal cost curve; fixed costs do not influence production decisions at the margin. Therefore, the market analysis for a competitive market is based on variable costs only.

The assumption of nearly perfectly inelastic demand for marine transportation services means that the quantity of these services purchased is not expected to change as a result of costs of complying with the requirements of the coordinated strategy. As a result, the demand for vessels and engines would also not change compared to the no-control scenario, and the quantities produced would remain the same.

The assumption of nearly perfectly inelastic demand for marine transportation services also means the price impacts of the coordinated strategy on new engines and vessels would be equivalent to the variable engineering compliance costs. Estimated price impacts for a sample of engine-vessel combinations are set out in Table VII–8 for medium speed engines, and Table VII–9 for slow speed engines. These are the estimated price impacts associated with the Tier 3 engine standards on a vessel that will switch fuels to comply with the fuel sulfur requirements while operating in the waterways covered by the engine and fuel controls. Because there is no phase-in for the standards, the estimated price impacts are the same for all years, beginning in 2016.

TABLE VII–8—SUMMARY OF ESTIMATED MARKET IMPACTS—MEDIUM SPEED TIER 3 ENGINES AND VESSELS

[$2006] [a]

Ship type	Average propulsion power	New vessel engine price impact (new tier 3 engine price impact) [b]	New vessel fuel switching equipment price impact [c]	New vessel total price impact
Auto Carrier	9,600	$573,200	$42,300	$615,500
Bulk Carrier	6,400	483,500	36,900	520,400
Container	13,900	687,800	49,200	736,000
General Cargo	5,200	450,300	34,900	475,200
Passenger	23,800	952,500	65,400	1,107,900
Reefer	7,400	511,000	38,500	549,500
RoRo	8,600	543,800	40,500	584,300
Tanker	6,700	492,800	37,400	530,200
Misc.	9,400	566,800	41,900	608,700

Notes:

[a] The new vessel engine price impacts listed here do not include a per engine cost of $10,000 for engines installed on U.S. vessels to comply with the proposed production testing requirement (§ 1042.302).

[b] Medium speed engine price impacts are estimated from the cost information presented in Chapter 5 of the RIA using the following formula: (10%*($/SHIP_MECH→CR)) + (30%*($/SHIP_ELEC→CR)) + (T3 ENGINE MODS) + (T3SCR)).

[c] Assumes 32 percent of new vessels would require the fuel switching equipment.

[131] The MARPOL amendments include Tier II and Tier III NO_X standards that apply to all vessels, including foreign vessels. While the analysis does not include hardware costs for the MARPOL Tier II and Tier III standards for foreign vessels because foreign vessels operate anywhere in the world, it is appropriate to include the operating costs for these foreign vessels while they are operating in our inventory modeling domain. This is because foreign vessels complying with the Tier II and Tier III standards will have a direct beneficial impact on U.S. air quality, and if we consider the benefits of these standards we should also consider their costs.

TABLE VII–9—SUMMARY OF ESTIMATED MARKET IMPACTS—SLOW SPEED TIER 3 ENGINES AND VESSELS ($2006) [a]

Ship type	Average propulsion power	New vessel engine price impact (new tier 3 engine price impact) [b]	New vessel fuel switching equipment price impact [c]	New vessel total price impact
Auto Carrier	11,300	$825,000	$48,000	$873,000
Bulk Carrier	8,400	672,600	42,700	715,300
Container	27,500	1,533,100	63,900	1,597,000
General Cargo	7,700	632,900	41,000	673,900
Passenger	23,600	1,385,300	61,200	1,446,500
Reefer	10,400	781,000	46,500	827,500
RoRo	15,700	1,042,100	53,900	1,096,000
Tanker	9,800	744,200	45,300	789,500
Misc.	4,700	453,600	32,000	485,600

Notes:
[a] The new vessel engine price impacts listed here do not include a per engine cost of $10,000 for engines installed on U.S. vessels to comply with the proposed production testing requirement (§ 1042.302).
[b] Slow speed engine price impacts are estimated from the cost information presented in Chapter 5 using the following formula: (5%*($/SHIP_MECH→CR)) + (15%*($/SHIP_ELEC→CR)) + (T3 ENGINE MODS) + (T3 SCR)).
[c] Assumes 32 percent of new vessels would require the fuel switching equipment.

The estimated price impacts for Tier 2 vessels would be substantially lower, given the technology that will be used to meet the Tier 2 standards is much less expensive. The cost of complying with the Tier 2 standards ranges from about $56,000 to $100,000 for a medium speed engine, and from about $130,000 to $250,000 for a slow speed engine (*see* discussion in Chapter 7 of the RIA). Again, because the standards do not phase in, the estimated price impacts are the same for all years the Tier 2 standards are required, 2011 through 2015.

These estimated price impacts for Tier 2 and Tier 3 vessels are small when compared to the price of a new vessel. A selection of new vessel prices is provided in Table VII–10; these range from about $40 million to $480 million. The program price increases range from about $600,000 to $1.5 million. A price increase of $600,000 to comply with the Tier 3 standards and fuel switching requirements would be an increase of approximately 2 percent for a $40 million vessel. The largest vessel price increase noted above for a Tier 3 passenger vessel is about $1.5 million; this is a price increase of less than 1 percent for a $478 million passenger vessel. Independent of the nearly-perfect inelasticity of demand, price increases of this magnitude would be expected to have little, if any, effect on the sales of new vessels, all other economic conditions held constant.

TABLE VII–10—NEWBUILD VESSEL PRICE BY SHIP TYPE AND SIZE, SELECTED VESSELS

[Millions, $2008]

Vessel type	Vessel size category	Size range (mean) (DWT)	Newbuild
Bulk Carrier	Handy	10,095–39,990 (27,593)	$56.00
	Handymax	40,009–54,881 (47,616)	79.00
	Panamax	55,000–78,932 (69,691)	97.00
	Capesize	80,000–364,767 (157,804)	175.00
Container	Feeder	1,000–13,966 (9,053)	38.00
	Intermediate	14,003–36,937 (24,775)	70.00
	Panamax	37,042–54,700 (45,104)	130.00
	Post Panamax	55,238–84,900 (67,216)	165.00
Gas carrier	Midsize	1,001–34,800 (7,048)	79.70
	LGC	35,760–59,421 (50,796)	37.50
	VLGC	62,510–122,079 (77,898)	207.70
General cargo	Coastal Small	1,000–9,999 (3,789)	33.00
	Coastal Large	10,000–24,912 (15,673)	43.00
	Handy	25,082–37,865 (29,869)	52.00
	Panamax	41,600–49,370 (44,511)	58.00
Passenger	All	1,000–19,189 (6,010)	478.40
Reefer	All	1,000–19,126 (6,561)	17.30
Ro-Ro	All	1,000–19,126 (7,819)	41.20
Tanker	Coastal	1,000–23,853 (7,118)	20.80
	Handymax	25,000–39,999 (34,422)	59.00
	Panamax	40,000–75,992 (52,300)	63.00
	AFRAmax	76,000–117,153 (103,112)	77.00
	Suezmax	121,109–167,294 (153,445)	95.00

TABLE VII–10—NEWBUILD VESSEL PRICE BY SHIP TYPE AND SIZE, SELECTED VESSELS—Continued

[Millions, $2008]

Vessel type	Vessel size category	Size range (mean) (DWT)	Newbuild
	VLCC	180,377–319,994 (294,475)	154.00

Sources: Lloyd's Shipping Economist (2008), Informa (2008), Lloyd's Sea-Web (2008).

(b) What Are the Estimated Fuel Market Impacts of the Coordinated Strategy?

The market impacts for the fuel markets were estimated through the modeling performed to estimate the fuel compliance costs for the coordinated strategy. In the WORLD model, the total quantity of fuel used is held constant, which is consistent with the assumption that the demand for international shipping transportation would not be expected to change due to the lack of transportation alternatives.

The expected price impacts of the coordinated strategy are set out in Table VII–11. Note that on a mass basis, less distillate than residual fuel is needed to go the same distance (5 percent less). The prices in Table VII–11 are adjusted for this impact.

Table VII–11 shows that the coordinated strategy is expected to result in a small increase in the price of marine distillate fuel, about 1.3 percent. The price of residual fuel is expected to decrease slightly, by less than one percent, due to a reduction in demand for that fuel.

TABLE VII–11—SUMMARY OF ESTIMATED MARKET IMPACTS—FUEL MARKETS

Fuel	Units	Baseline price	Control price	Adjusted for energy density	% change
Distillate	$/tonne	$462	$468	N/A	+1.3%
Residual	$/tonne	$322	$321	N/A	−0.3%
Fuel Switching	$/tonne	$322	$468	$444	+38.9%[a]

Notes:
[a] Energy adjusted value.

Because of the need to shift from residual fuel to distillate fuel for ships while operating in the waterways covered by the engine and fuel controls (the U.S. ECA and U.S. internal waters covered by the coordinated strategy), ship owners are expected to see an increase in their total cost of fuel. This increase is because distillate fuel is more expensive than residual fuel. Factoring in the higher energy content of distillate fuel relative to residual fuel, the fuel cost increase would be about 39 percent.

(c) What Are the Estimated Marine Transportation Market Impacts of the Coordinated Strategy?

We used the above information to estimate the impacts on the prices of marine transportation services. This analysis, which is presented in Chapter 7 of the RIA, is limited to the impacts of increases in operating costs due to the fuel and emission requirements of the coordinated strategy. Operating costs would increase due to the increase in the price of fuel, the need to switch to fuel with a sulfur content not to exceed 1,000 ppm while operating in the waterways covered by the engine and fuel controls, and due to the need to dose the aftertreatment system with urea to meet the Tier 3 standards. Table VII–12 summarizes these price impacts for selected transportation markets. Table VII–12 also lists the vessel and engine parameters that were used in the calculations.

TABLE VII–12—SUMMARY OF IMPACTS OF OPERATIONAL FUEL/UREA COST INCREASES

Vessel type	Vessel and engine parameters	Operational price increases
Container North Pacific Circle Route	36,540 kW 50,814 DWT	$17.53/TEU.
Bulk Carrier North Pacific Circle Route	3,825 kW 16,600 DWT	$0.56/tonne.
Cruise Liner (Alaska)	31,500 kW 226,000 DWT 1,886 passengers	$6.60/per passenger per day.

This information suggests that the increase in marine transportation service prices would be small, both absolutely and when compared to the price charged by the ship owner per unit transported and are estimated to be about $18 per TEU on the North Pacific Circle Route and $0.56 per tonne for bulk cargo on the North Pacific Circle Route. Stopford notes that the price of transporting a 20 foot container between the UK and Canada is estimated to be about $1,500; of that, $700 is the cost of the ocean freight; the rest is for port, terminal, and other charges.[132] Thus, a price increase of about $18 represents an increase of less than 3 percent of ocean freight cost, and about one percent of transportation cost. Similarly, the price of a 7-day Alaska cruise varies

[132] Stopford, Martin, *Maritime Economics,* 3rd Edition. Routledge, 2009. Page 519.

from $100 to $400 per night or more. In that case, a price increase of about $7 per night would be a 1.5 percent to about 6 percent increase.

(4) What Are the Estimated Social Costs of the Coordinated Strategy and How Are They Expected To Be Distributed Across Stakeholders?

The total social costs of the coordinated strategy are based on both fixed and variable costs. Fixed costs are a cost to society: They displace other product development activities that may improve the quality or performance of engines and vessels. In this economic impact analysis, fixed costs are accounted for in the year in which they occur, with the fixed costs associated with the Tier 2 engine standards accounted for in 2010 and the fixed costs associated with the Tier 3 engine standards and the fuel sulfur controls for vessels operating on the waterways covered by the coordinated strategy are accounted for in the five-year period beginning prior to their effective dates.

The estimated social costs of the coordinated strategy for all years are presented in Table VII–4. For 2030, the social costs are estimated to be about $3.1 billion.[133] For the reasons described above and explained more fully in the RIA, these costs are expected to be borne fully by consumers of marine transportation services.

These social costs are small when compared to the total value of U.S. waterborne foreign trade. In 2007, waterborne trade for government and non-government shipments by vessel into and out of U.S. foreign trade zones, the 50 States, the District of Columbia, and Puerto Rico was about $1.4 trillion. Of that, about $1 trillion was for imports.[134]

If only U.S. vessels are considered, the social costs of the coordinated strategy in 2030 would be about $427.5 million. Again, these social costs are small when compared to the annual revenue for this sector. In 2002, the annual revenue for this sector was about $19.8 billion.[135]

(5) Sensitivity Analyses

In this section we briefly discuss the impact of relaxing several of the assumptions used in our economic impact analysis for the coordinated strategy, including the assumption of nearly perfectly inelastic demand for marine transportation services, nearly perfectly inelastic demand for cruise services, and a competitive market structure for the Category 3 marine diesel engine market. Each of these cases is examined more fully in Chapter 7 of the RIA for this rule.

To examine the impact of the assumption of nearly perfectly inelastic demand elasticity for marine transportation services, we would determine a discrete value for that elasticity and then create a computer model to model the effects of the coordinated strategy. It would be difficult to develop such an elasticity using available industry information. Therefore, this alternative analysis relies on the price elasticities we developed for our 2008 rulemaking that set technology-forcing standards for Category 1 and Category 2 engines (73 FR 25098, May 6, 2008). Although these price elasticities of demand and supply were developed using data for United States markets only, they reflect behavioral reactions to price changes if alternative modes of transportation were available. While they are not specific to the global marine transportation market, they are useful to provide an idea of the change in results that could be expected if the demand elasticity for marine transportation is not nearly perfectly inelastic.

The values used for the behavioral parameters for the Category 1 and 2 markets are provided in Table VII–13. In this case, the demand for marine transportation services is estimated to be somewhat inelastic: A one percent increase in price will result in a 0.5 percent decrease in demand.

TABLE VII–13—BEHAVIORAL PARAMETERS USED IN LOCOMOTIVE/MARINE ECONOMIC IMPACT MODEL

Sector	Market	Demand elasticity	Source	Supply elasticity	Source
Marine	Marine Transportation Services.	−0.5 (inelastic)	Literature estimate	0.6 (inelastic)	Literature estimate.
	Commercial Vessels[a]	Derived	N/A	2.3 (elastic)	Econometric estimate.
	Engines	Derived	N/A	3.8 (elastic)	Econometric estimate.

Notes:
[a] Commercial vessels include tug/tow/pushboats, ferries, cargo vessels, crew/supply boats, and other commercial vessels.

In general, relaxing the condition of nearly perfectly inelastic demand elasticity would result in the compliance costs of the coordinated strategy being shared by consumers and suppliers. The distribution of compliance costs from our earlier rule are presented in Table VII–14. While the emission control requirements and the compliance cost structure of the coordinated strategy are somewhat different, these results give an idea of how costs would be shared if the assumption of nearly perfectly inelastic price elasticity of demand for the transportation services market in the ocean-going marine sector were relaxed.

[133] The costs totals reported in this FRM are slightly different than those reported in the ECA proposal. This is because the ECA proposal did not include costs associated with the Annex VI existing engine program, Tier II, or the costs associated with existing vessel modifications that may be required to accommodate the use of lower sulfur fuel. Further, the cost totals presented in the ECA package included Canadian cost estimates.

[134] Census Bureau's Foreign Trade Division, *U.S. Waterborne Foreign Trade by U.S. Custom Districts,* as reported by the Maritime Administration at *http://www.marad.dot.gov/library_landing_page/data_and_statistics/Data_and_Statistics.htm,* accessed April 9, 2009.

[135] U.S. Census Bureau, Industry Statistics Sampler, NAICS 48311, Deep sea, coastal, and Great Lakes transportation, at *http://www.census.gov/econ/census02/data/industry/E48311.HTM,* assessed on April 9, 2009.

TABLE VII–14—DISTRIBUTION OF SOCIAL COSTS AMONG STAKEHOLDER GROUPS—CATEGORY 1 AND CATEGORY 2 ENGINE PROGRAM

Stakeholder group	2020 (percent)	2030 (percent)
Marine engine producers	0.8	0.5
Marine vessel producers	10.7	3.8
Recreational and fishing vessel consumers	8.4	4.1
Marine transportation service providers	36.4	41.5
Marine transportation service consumers	43.8	50.0
Total	100.0	100.0

With regard to cruise transportation, commenters remarked that demand is not nearly perfectly inelastic. Cruises are a recreational good, and if the price of a cruise increases, consumers will choose to spend their recreational budgets on other activities.

The same analysis described above would also apply in this particular sector of the marine transportation market. In this case, the share of the compliance costs that will be borne by the cruise industry suppliers will depend on the magnitude of the demand elasticity. If the price elasticity of demand is larger (in absolute value) than the price elasticity of supply, ship owners will bear a larger share of the costs of the program; if the price elasticity of demand is smaller (in absolute value) than the price elasticity of supply, consumers will bear a larger share of the program.

In our 2002 recreational vehicle rule, we estimated the demand elasticity for inboard cruisers to be about −1.4 and the supply elasticity to be about 1.6.[136] Using these values as a proxy for cruise ship demand and supply, this suggests that the compliance costs will be shared among passengers and operators roughly evenly.

As described in Section 7.3 of the RIA, the compliance costs associated with the coordinated strategy are expected to be small compared to the daily costs of a cruise, at about $7 per night. Overall, total engine and vessel costs are expected to increase about one percent and operating costs increasing between 1.5 and 6 percent. These increases are within the range of historic variations in bunker fuel prices. So, although relaxing the assumption of nearly perfectly elastic demand elasticity for cruises means the burden of the coordinated strategy would be shared between cruise ship operators and cruise ship passengers, those costs, and therefore the expected price increases, are expected to be small compared to the price of a cruise.

Finally, this Economic Impact Analysis assumes that the market structure for the Category 3 marine diesel engine market is competitive. As explained above, this assumption is reasonable even though there are few producers in this market. If, in fact, this market is noncompetitive and behaves more like an oligopoly, then the results of the analysis would be somewhat different. Specifically, oligopolistic producers can set the market price at a level higher than the competitive market price, capturing larger profits than would otherwise be the case. However, this price premium would already be reflected in the prices of Category 3 marine diesel engines. What would change in the analysis is the magnitude of the compliance costs passed on to consumers of these engines (vessel builders and the transportation services market), which would be higher than the compliance costs. This effect is discussed in Chapter 7 of the RIA.

VIII. Benefits

This section presents our analysis of the health and environmental benefits that will occur as a result of EPA's coordinated strategy to address emissions from Category 3 engines and ocean-going vessels throughout the period from initial implementation through 2030. We provide estimated benefits for the entire coordinated strategy, including the Annex VI Tier 2 NO_X requirements and the ECA controls that will be mandatory for U.S. and foreign vessels through the Act to Prevent Pollution from Ships. However, unlike the cost analysis, this benefits analysis does not allocate benefits between the components of the program (the requirements in this rule and the requirements that would apply through MARPOL Annex VI and ECA implementation). This is because the benefits of the coordinated strategy will be fully realized only when the U.S. ECA is in place and both U.S. and foreign vessel are required to use lower sulfur fuel and operate their Tier 3 NO_X controls while in the designated area, and therefore it makes more sense to consider the benefits of the coordinated strategy as a whole.

The components of the coordinated strategy will apply stringent NO_X and SO_X standards to virtually all vessels that affect U.S. air quality, and impacts on human health and welfare will be substantial. As presented in Section II, the coordinated strategy is expected to provide very large reductions in direct PM, NO_X, SO_X, and toxic compounds, both in the near term and in the long term. Emissions of NO_X (a precursor to ozone formation and secondarily-formed $PM_{2.5}$), SO_X (a precursor to secondarily-formed $PM_{2.5}$) and directly-emitted $PM_{2.5}$ contribute to ambient concentrations of $PM_{2.5}$ and ozone. Exposure to ozone and $PM_{2.5}$ is linked to adverse human health impacts such as premature deaths as well as other important public health and environmental effects.

Using the most conservative premature mortality estimates (Pope *et al.,* 2002 for $PM_{2.5}$ and Bell *et al.,* 2004 for ozone),[137] [138] we estimate that implementation of the coordinated strategy will reduce approximately 12,000 premature mortalities in 2030 and yield approximately $110 billion in total benefits. The upper end of the premature mortality estimates (Laden *et al.,* 2006 for $PM_{2.5}$ and Levy *et al.,* 2005 for ozone) [139] [140] increases avoided

[136] EPA420–02–022, Final Regulatory Support Document: Control of Emissions from Unregulated Nonroad Engines, Chapter 9. A copy of this document is available at *http://www.epa.gov/otaq/regs/nonroad/2002/r02022j.pdf.*

[137] Pope, C.A., III, R.T. Burnett, M.J. Thun, E.E. Calle, D. Krewski, K. Ito, and G.D. Thurston (2002). Lung Cancer, Cardiopulmonary Mortality, and Long-term Exposure to Fine Particulate Air Pollution. *Journal of the American Medical Association,* 287, 1132–1141.

[138] Bell, M.L., *et al.* (2004). Ozone and short-term mortality in 95 U.S. urban communities, 1987–2000. *Journal of the American Medical Association, 292(19),* 2372–2378.

[139] Laden, F., J. Schwartz, F.E. Speizer, and D.W. Dockery (2006). Reduction in Fine Particulate Air Pollution and Mortality. *American Journal of Respiratory and Critical Care Medicine. 173,* 667–672.

[140] Levy, J.I., S.M. Chemerynski, and J.A. Sarnat (2005). Ozone exposure and mortality: an empiric

Continued

premature mortalities to approximately 31,000 in 2030 and yields approximately $270 billion in total benefits. Thus, even taking the most conservative premature mortality assumptions, the health impacts of the coordinated strategy presented in this rule are clearly substantial.

A. Overview

We base our analysis on peer-reviewed studies of air quality and human health effects (*see* U.S. EPA, 2006 and U.S. EPA, 2008).[141] [142] These methods are described in more detail in the RIA that accompanies this action. To model the ozone and PM air quality impacts of the CAA standards and requirements and the ECA designation, we used the Community Multiscale Air Quality (CMAQ) model (*see* Section II). The modeled ambient air quality data serves as an input to the Environmental Benefits Mapping and Analysis Program (BenMAP).[143] BenMAP is a computer program developed by the U.S. EPA that integrates a number of the modeling elements used in previous analyses (*e.g.,* interpolation functions, population projections, health impact functions, valuation functions, analysis and pooling methods) to translate modeled air concentration estimates into health effects incidence estimates and monetized benefits estimates.

The range of total ozone- and PM-related benefits associated with the coordinated strategy to control ship emissions is presented in Table VIII–1. We present total benefits based on the PM- and ozone-related premature mortality function used. The benefits ranges therefore reflect the addition of each estimate of ozone-related premature mortality (each with its own row in Table VIII–1) to estimates of PM-related premature mortality. These estimates represent EPA's preferred approach to characterizing the best estimate of benefits associated with the coordinated strategy. As is the nature of Regulatory Impact Analyses (RIAs), the assumptions and methods used to estimate air quality benefits evolve to reflect the Agency's most current interpretation of the scientific and economic literature. This analysis, therefore, incorporates a number of important changes from recent RIAs released by the Office of Transportation and Air Quality (OTAQ):

- The 2030 air quality modeling of the final coordinated strategy reflects air quality impacts associated with an ECA boundary distance of 200 nm with global controls (set through IMO) beyond the ECA boundary. For the proposal, however, the air quality modeling reflected impacts associated with an ECA boundary distance of 100 nm with global controls beyond. To estimate the 2030 benefits associated with a 200 nm ECA boundary in the proposal, we transferred the relationship between modeled impacts between 100 nm and 200 nm ECA boundaries observed in 2020. For each health endpoint and associated valuation, we calculated a ratio based on the national-level estimate for the 200 nm and 100 nm scenario and applied that to the related 2030 100 nm estimate. For the final RIA, we estimated benefits based on the actual 2030 200 nm air quality modeling results. The net effect of this change results in a small decrease in 2030 benefits compared to the proposal.
- For a period of time (2004–2008), the Office of Air and Radiation (OAR) valued mortality risk reductions using a value of statistical life (VSL) estimate derived from a limited analysis of some of the available studies. OAR arrived at a VSL using a range of $1 million to $10 million (2000$) consistent with two meta-analyses of the wage-risk literature. The $1 million value represented the lower end of the interquartile range from the Mrozek and Taylor (2002) [144] meta-analysis of 33 studies and $10 million represented the upper end of the interquartile range from the Viscusi and Aldy (2003) [145] meta-analysis of 46 studies. The mean estimate of $5.5 million (2000$) [146] was also consistent with the mean VSL of $5.4 million estimated in the Kochi *et al.* (2006) [147] meta-analysis. However, the Agency neither changed its official guidance on the use of VSL in rule-makings nor subjected the interim estimate to a scientific peer-review process through the Science Advisory Board (SAB) or other peer-review group.

During this time, the Agency continued work to update its guidance on valuing mortality risk reductions, including commissioning a report from meta-analytic experts to evaluate methodological questions raised by EPA and the SAB on combining estimates from the various data sources. In addition, the Agency consulted several times with the Science Advisory Board Environmental Economics Advisory Committee (SAB–EEAC) on the issue. With input from the meta-analytic experts, the SAB–EEAC advised the Agency to update its guidance using specific, appropriate meta-analytic techniques to combine estimates from unique data sources and different studies, including those using different methodologies (*i.e.,* wage-risk and stated preference) (U.S. EPA–SAB, 2007).[148]

Until updated guidance is available, the Agency determined that a single, peer-reviewed estimate applied consistently best reflects the SAB–EEAC advice it has received. Therefore, the Agency has decided to apply the VSL that was vetted and endorsed by the SAB in the Guidelines for Preparing Economic Analyses (U.S. EPA, 2000) while the Agency continues its efforts to update its guidance on this issue.[149] This approach calculates a mean value across VSL estimates derived from 26 labor market and contingent valuation studies published between 1974 and 1991. The mean VSL across these studies is $6.3 million (2000$).[150]

The Agency is committed to using scientifically sound, appropriately

bayes metaregression analysis. *Epidemiology. 16(4),* 458–68.

[141] U.S. Environmental Protection Agency (2006). *Final Regulatory Impact Analysis (RIA) for the Proposed National Ambient Air Quality Standards for Particulate Matter.* Prepared by: Office of Air and Radiation. Retrieved March 26, 2009 at *http://www.epa.gov/ttn/ecas/ria.html.*

[142] U.S. Environmental Protection Agency (2008). *Final Ozone NAAQS Regulatory Impact Analysis.* Prepared by: Office of Air and Radiation, Office of Air Quality Planning and Standards. Retrieved March 26, 2009 at *http://www.epa.gov/ttn/ecas/ria.html.*

[143] Information on BenMAP, including downloads of the software, can be found at *http://www.epa.gov/ttn/ecas/benmodels.html.*

[144] Mrozek, J.R., and L.O. Taylor (2002). What Determines the Value of Life? A Meta-Analysis. *Journal of Policy Analysis and Management* 21(2):253–270.

[145] Viscusi, V.K., and J.E. Aldy (2003). The Value of a Statistical Life: A Critical Review of Market Estimates Throughout the World. *Journal of Risk and Uncertainty* 27(1):5–76.

[146] In this analysis, we adjust the VSL to account for a different currency year (2006$) and to account for income growth to 2020 and 2030. After applying these adjustments to the $5.5 million value, the VSL is $7.7m in 2020 and $7.9 in 2030.

[147] Kochi, I., B. Hubbell, and R. Kramer 2006. An Empirical Bayes Approach to Combining Estimates of the Value of Statistical Life for Environmental Policy Analysis. Environmental and Resource Economics. 34: 385–406.

[148] U.S. Environmental Protection Agency (U.S. EPA). 2007. SAB Advisory on EPA's Issues in Valuing Mortality Risk Reduction. *http://yosemite.epa.gov/sab/sabproduct.nsf/4128007E7876B8F0852573760058A978/$File/sab-08-001.pdf.*

[149] In the (draft) update of the Economic Guidelines, EPA retained the VSL endorsed by the SAB with the understanding that further updates to the mortality risk valuation guidance would be forthcoming in the near future. Therefore, this report does not represent final agency policy. The 2000 guidelines can be downloaded here: *http://yosemite.epa.gov/ee/epa/eed.nsf/webpages/Guidelines.html,* and the draft updated version (2008) of the guidelines can be downloaded here: *http://yosemite.epa.gov/ee/epa/eerm.nsf/vwRepNumLookup/EE-0516?OpenDocument.*

[150] In this analysis, we adjust the VSL to account for a different currency year (2006$) and to account for income growth to 2020 and 2030. After applying these adjustments to the $6.3 million value, the VSL is $8.9m in 2020 and $9.1m in 2030.

reviewed evidence in valuing mortality risk reductions and has made significant progress in responding to the SAB–EEAC's specific recommendations. The Agency anticipates presenting results from this effort to the SAB–EEAC in Winter 2009/2010 and that draft guidance will be available shortly thereafter.

• In recent analyses, OTAQ has estimated $PM_{2.5}$-related benefits assuming that a threshold exists in the PM-related concentration-response functions (at 10 $\mu g/m^3$) below which there are no associations between exposure to $PM_{2.5}$ and health impacts. EPA strives to use the best available science to support our benefits analyses, and we recognize that interpretation of the science regarding air pollution and health is dynamic and evolving. Based on our review of the body of scientific literature, EPA applied the no-threshold model in this analysis. EPA's draft Integrated Science Assessment,[151] [152] which was recently reviewed by EPA's Clean Air Scientific Advisory Committee,[153] [154] concluded that the scientific literature consistently finds that a no-threshold log-linear model most adequately portrays the PM-mortality concentration-response relationship while recognizing potential uncertainty about the exact shape of the concentration-response function.[155] Although this document does not represent final agency policy that has undergone the full agency scientific review process, it provides a basis for reconsidering the application of thresholds in $PM_{2.5}$ concentration-response functions used in EPA's RIAs.[156] It is important to note that while CASAC provides advice regarding the science associated with setting the National Ambient Air Quality Standards, typically other scientific advisory bodies provide specific advice regarding benefits analysis.[157] Please *see* Section 6.4.1.3 of the RIA that accompanies this preamble for more discussion of the treatment of thresholds in this analysis.

• For the coordinated strategy, we rely on two empirical (epidemiological) studies of the relationship between ambient $PM_{2.5}$ and premature mortality (the extended analyses of the Harvard Six Cities study by Laden *et al* (2006) and the American Cancer Society (ACS) cohort by Pope *et al* (2002)) to anchor our benefits analysis, though we also present the $PM_{2.5}$-related premature mortality benefits associated with the estimates supplied by the expert elicitation as a sensitivity analysis. This approach was recently adopted in the proposed Portland Cement MACT RIA. Since 2006, EPA has calculated benefits based on these two empirical studies and derived the range of benefits, including the minimum and maximum results, from an expert elicitation of the relationship between exposure to $PM_{2.5}$ and premature mortality (Roman *et al.,* 2008).[158] Using alternate relationships between $PM_{2.5}$ and premature mortality supplied by experts, higher and lower benefits estimates are plausible, but most of the expert-based estimates have fallen between the two epidemiology-based estimates (Roman *et al.,* 2008). Assuming no threshold in the empirically-derived premature mortality concentration response functions used in the analysis of the coordinated strategy, only one expert falls below the empirically-derived range while two of the experts are above this range (*see* Tables 6–5 and 6–6 in the RIA that accompanies this preamble). Please refer to the proposed Portland Cement MACT RIA for more information about the preferred approach and the evolution of the treatment of threshold assumptions within EPA's regulatory analyses.

• The range of ozone benefits associated with the coordinated strategy is estimated based on risk reductions derived from several sources of ozone-related mortality effect estimates. This analysis presents six alternative estimates for the association based upon different functions reported in the scientific literature. We use three multi-city studies,[159] [160] [161] including the Bell, 2004 National Morbidity, Mortality, and Air Pollution Study (NMMAPS) that was used as the primary basis for the risk analysis in the ozone Staff Paper [162] and reviewed by the Clean Air Science Advisory Committee (CASAC).[163] We also use three studies that synthesize ozone mortality data across a large number of individual studies.[164] [165] [166] This approach is consistent with recommendations provided by the NRC in their ozone mortality report (NRC, 2008),[167] "The committee recommends

[151] U.S. Environmental Protection Agency (U.S. EPA). Integrated Science Assessment for Particulate Matter (External Review Draft). National Center for Environmental Assessment, Research Triangle Park, NC. EPA/600/R–08/139. December. Available on the Internet at *http://cfpub.epa.gov/ncea/cfm/recordisplay.cfm?deid=201805.*

[152] U.S. Environmental Protection Agency (U.S. EPA). Integrated Science Assessment for Particulate Matter (Second External Review Draft). National Center for Environmental Assessment, Research Triangle Park, NC. EPA/600/R–08/139B. July. Available on the Internet at *http://cfint.rtpnc.epa.gov/ncea/prod/recordisplay.cfm?deid=210586.*

[153] U.S. Environmental Protection Agency—Science Advisory Board (U.S. EPA–SAB). Review of EPA's Integrated Science Assessment for Particulate Matter (First External Review Draft, December 2008). EPA–COUNCIL–09–008. May. Available on the Internet at *http://yosemite.epa.gov/sab/SABPRODUCT.NSF/81e39f4c09954fcb85256ead006be86e/73ACCA834AB44A10852575BD0064346B/$File/EPA-CASAC-09-008-unsigned.pdf.*

[154] U.S. Environmental Protection Agency—Science Advisory Board (U.S. EPA–SAB). Consultation on EPA's Particulate Matter National Ambient Air Quality Standards: Scope and Methods Plan for Health Risk and Exposure Assessment. EPA–COUNCIL–09–009. May. Available on the Internet at *http://yosemite.epa.gov/sab/SABPRODUCT.NSF/81e39f4c09954fcb85256ead006be86e/723FE644C5D758DF852575BD00763A32/$File/EPA-CASAC-09-009-unsigned.pdf.*

[155] It is important to note that uncertainty regarding the shape of the concentration-response function is conceptually distinct from an assumed threshold. An assumed threshold (below which there are no health effects) is a discontinuity, which is a specific example of non-linearity.

[156] The final PM ISA, which will have undergone the full agency scientific review process, is scheduled to be completed in late December 2009.

[157] In the proposed Portland Cement RIA, EPA solicited comment on the use of the no-threshold model for benefits analysis within the preamble of that proposed rule. The comment period for the Portland Cement proposed NESHAP closed on September 4, 2009 (Docket ID No. EPA–HQ–OAR–2002–0051 available at *http://www.regulations.gov*). EPA is currently reviewing those comments. U.S. Environmental Protection Agency. (2009). Regulatory Impact Analysis: National Emission Standards for Hazardous Air Pollutants from the Portland Cement Manufacturing Industry. Office of Air and Radiation. Retrieved on May 4, 2009, from *http://www.epa.gov/ttn/ecas/regdata/RIAs/portlandcementria_4-20-09.pdf.*

[158] Roman, Henry A., Walker, Katherine D., Walsh, Tyra L., Conner, Lisa, Richmond, Harvey M., Hubbell, Bryan J., and Kinney, Patrick L.. (2008). Expert Judgment Assessment of the Mortality Impact of Changes in Ambient Fine Particulate Matter in the U.S. Environ. Sci. Technol., 42, 7, 2268–2274.

[159] Bell, M.L., *et al.* (2004). Ozone and short-term mortality in 95 U.S. urban communities, 1987–2000. Jama, 2004. 292(19): p. 2372–8.

[160] Huang, Y.; Dominici, F.; Bell, M.L. (2005). Bayesian hierarchical distributed lag models for summer ozone exposure and cardio-respiratory mortality. Environmetrics 16: 547–562.

[161] Schwartz, J. (2005). How sensitive is the association between ozone and daily deaths to control for temperature? Am. J. Respir. Crit. Care Med. 171: 627–631.

[162] U.S. EPA (2007). Review of the National Ambient Air Quality Standards for Ozone, Policy Assessment of Scientific and Technical Information. OAQPS Staff Paper. EPA–452/R–07–003. This document is available in Docket EPA–HQ–OAR–2003–0190. Retrieved on April 10, 2009, from *http:www.epa.gov/ttn/naaqs/standards/ozone/s_o3_cr_sp.html.*

[163] CASAC (2007). Clean Air Scientific Advisory Committee's (CASAC) Review of the Agency's Final Ozone Staff Paper. EPA–CASAC–07–002. March 26.

[164] Bell, M.L., F. Dominici, and J.M. Samet (2005). A meta-analysis of time-series studies of ozone and mortality with comparison to the national morbidity, mortality, and air pollution study. *Epidemiology,* 16(4): p. 436–45.

[165] Ito, K., S.F. De Leon, and M. Lippmann (2005). Associations between ozone and daily mortality: analysis and meta-analysis. *Epidemiology.* 16(4): p. 446–57.

[166] Levy, J.I., S.M. Chemerynski, and J.A. Sarnat (2005). Ozone exposure and mortality: an empiric bayes metaregression analysis. *Epidemiology.* 16(4): p. 458–68.

[167] National Research Council (NRC), 2008. Estimating Mortality Risk Reduction and Economic

Continued

that the greatest emphasis be placed on estimates from new systematic multicity analyses that use national databases of air pollution and mortality, such as in the NMMAPS, without excluding consideration of meta-analyses of previously published studies." The NRC goes on to note that there are uncertainties within each study that are not fully captured by this range of estimates.

TABLE VIII–1—ESTIMATED 2030 MONETIZED PM- AND OZONE-RELATED HEALTH BENEFITS OF A COORDINATED U.S. STRATEGY TO CONTROL SHIP EMISSIONS [a]

2030 Total Ozone and PM Benefits—PM Mortality Derived from American Cancer Society Analysis and Six-Cities Analysis [a]			
Premature ozone mortality function	Reference	Total benefits (billions, 2006$, 3% discount rate) [c d]	Total benefits (billions, 2006$, 7% discount rate) [c d]
Multi-city analyses	Bell *et al.,* 2004	110–260	99–240
	Huang *et al.,* 2005	110–260	100–240
	Schwartz, 2005	110–260	100–240
Meta-analyses	Bell *et al.,* 2005	110–260	100–240
	Ito *et al.,* 2005	110–270	110–240
	Levy *et al.,* 2005	110–270	110–240

Notes:

[a] Total includes premature mortality-related and morbidity-related ozone and $PM_{2.5}$ benefits. Range was developed by adding the estimate from the ozone premature mortality function to the estimate of $PM_{2.5}$-related premature mortality derived from either the ACS study (Pope *et al.,* 2002) or the Six-Cities study (Laden *et al.,* 2006).

[b] Note that total benefits presented here do not include a number of unquantified benefits categories. A detailed listing of unquantified health and welfare effects is provided in Table VIII–2.

[c] Results reflect the use of both a 3 and 7 percent discount rate, as recommended by EPA's Guidelines for Preparing Economic Analyses and OMB Circular A–4. Results are rounded to two significant digits for ease of presentation and computation.

The benefits in Table VIII–1 include all of the human health impacts we are able to quantify and monetize at this time. However, the full complement of human health and welfare effects associated with PM and ozone remain unquantified because of current limitations in methods or available data. We have not quantified a number of known or suspected health effects linked with ozone and PM for which appropriate health impact functions are not available or which do not provide easily interpretable outcomes (*i.e.,* changes in heart rate variability). Additionally, we are unable to quantify a number of known welfare effects, including reduced acid and particulate deposition damage to cultural monuments and other materials, and environmental benefits due to reductions of impacts of eutrophication in coastal areas. These are listed in Table VIII–2. As a result, the health benefits quantified in this section are likely underestimates of the total benefits attributable to the implementation of the coordinated strategy to control ship emissions.

TABLE VIII–2—UNQUANTIFIED AND NON-MONETIZED POTENTIAL EFFECTS OF A COORDINATED U.S. STRATEGY TO CONTROL SHIP EMISSIONS

Pollutant/effects	Effects not included in analysis—Changes in
Ozone Health [a]	Chronic respiratory damage.[b]
	Premature aging of the lungs.[b]
	Non-asthma respiratory emergency room visits.
	Exposure to UVb (+/−).[e]
Ozone Welfare	Yields for
	—commercial forests.
	—some fruits and vegetables.
	—non-commercial crops.
	Damage to urban ornamental plants.
	Impacts on recreational demand from damaged forest aesthetics.
	Ecosystem functions.
	Exposure to UVb (+/−).[e]
PM Health [c]	Premature mortality—short term exposures.[d]
	Low birth weight.
	Pulmonary function.
	Chronic respiratory diseases other than chronic bronchitis.
	Non-asthma respiratory emergency room visits.
	Exposure to UVb (+/−).[e]
PM Welfare	Residential and recreational visibility in non-Class I areas.
	Soiling and materials damage.
	Damage to ecosystem functions.
	Exposure to UVb (+/−).[e]
Nitrogen and Sulfate Deposition Welfare	Commercial forests due to acidic sulfate and nitrate deposition.
	Commercial freshwater fishing due to acidic deposition.
	Recreation in terrestrial ecosystems due to acidic deposition.

Benefits from Controlling Ozone Air Pollution. The National Academies Press: Washington, DC.

TABLE VIII–2—UNQUANTIFIED AND NON-MONETIZED POTENTIAL EFFECTS OF A COORDINATED U.S. STRATEGY TO CONTROL SHIP EMISSIONS—Continued

Pollutant/effects	Effects not included in analysis—Changes in
	Existence values for currently healthy ecosystems.
	Commercial fishing, agriculture, and forests due to nitrogen. deposition.
	Recreation in estuarine ecosystems due to nitrogen. deposition.
	Ecosystem functions.
	Passive fertilization.
CO Health	Behavioral effects.
HC/Toxics Health [f]	Cancer (benzene, 1,3-butadiene, formaldehyde, acetaldehyde).
	Anemia (benzene).
	Disruption of production of blood components (benzene).
	Reduction in the number of blood platelets (benzene).
	Excessive bone marrow formation (benzene).
	Depression of lymphocyte counts (benzene).
	Reproductive and developmental effects (1,3-butadiene).
	Irritation of eyes and mucus membranes (formaldehyde).
	Respiratory irritation (formaldehyde).
	Asthma attacks in asthmatics (formaldehyde).
	Asthma-like symptoms in non-asthmatics (formaldehyde).
	Irritation of the eyes, skin, and respiratory tract (acetaldehyde).
	Upper respiratory tract irritation and congestion (acrolein).
HC/Toxics Welfare	Direct toxic effects to animals.
	Bioaccumulation in the food chain.
	Damage to ecosystem function.
	Odor.

Notes:
[a] The public health impact of biological responses such as increased airway responsiveness to stimuli, inflammation in the lung, acute inflammation and respiratory cell damage, and increased susceptibility to respiratory infection are likely partially represented by our quantified endpoints.
[b] The public health impact of effects such as chronic respiratory damage and premature aging of the lungs may be partially represented by quantified endpoints such as hospital admissions or premature mortality, but a number of other related health impacts, such as doctor visits and decreased athletic performance, remain unquantified.
[c] In addition to primary economic endpoints, there are a number of biological responses that have been associated with PM health effects including morphological changes and altered host defense mechanisms. The public health impact of these biological responses may be partly represented by our quantified endpoints.
[d] While some of the effects of short-term exposures are likely to be captured in the estimates, there may be premature mortality due to short-term exposure to PM not captured in the cohort studies used in this analysis. However, the PM mortality results derived from the expert elicitation do take into account premature mortality effects of short term exposures.
[e] May result in benefits or disbenefits.
[f] Many of the key hydrocarbons related to this rule are also hazardous air pollutants listed in the CAA.

B. Quantified Human Health Impacts

Tables VIII–3 and VIII–4 present the annual $PM_{2.5}$ and ozone health impacts in the 48 contiguous U.S. States associated with the coordinated strategy for both 2020 and 2030. For each endpoint presented in Tables VIII–3 and VIII–4, we provide both the mean estimate and the 90% confidence interval.

Using EPA's preferred estimates, based on the ACS and Six-Cities studies and no threshold assumption in the model of mortality, we estimate that the coordinated strategy will result in between 5,300 and 14,000 cases of avoided $PM_{2.5}$-related premature deaths annually in 2020 and between 12,000 and 30,000 avoided premature deaths annually in 2030. As a sensitivity analysis, when the range of expert opinion is used, we estimate between 1,900 and 18,000 fewer premature mortalities in 2020 and between 4,300 and 40,000 fewer premature mortalities in 2030 (*see* Tables 6–5 and 6–6 in the RIA that accompanies this rule).

For ozone-related premature mortality, we estimate a range of between 61 to 280 fewer premature mortalities as a result of the coordinated strategy in 2020 and between 210 to 920 in 2030. The increase in annual benefits from 2020 to 2030 reflects additional emission reductions from coordinated strategy, as well as increases in total population and the average age (and thus baseline mortality risk) of the population.

TABLE VIII–3—ESTIMATED $PM_{2.5}$-RELATED HEALTH IMPACTS ASSOCIATED WITH A COORDINATED U.S. STRATEGY TO CONTROL SHIP EMISSIONS [a]

Health effect	2020 Annual reduction in ship-related incidence (5th–95th percentile)	2030 Annual reduction in ship-related incidence (5th–95th percentile)
Premature Mortality—Derived from epidemiology literature [b]		
Adult, age 30+, ACS Cohort Study (Pope *et al.,* 2002)	5,300	12,000
	(2,100–8,500)	(4,700–19,000)
Adult, age 25+, Six-Cities Study (Laden *et al.,* 2006)	14,000	30,000
	(7,400–20,000)	(17,000–44,000)

TABLE VIII–3—ESTIMATED $PM_{2.5}$-RELATED HEALTH IMPACTS ASSOCIATED WITH A COORDINATED U.S. STRATEGY TO CONTROL SHIP EMISSIONS [a]—Continued

Health effect	2020 Annual reduction in ship-related incidence (5th–95th percentile)	2030 Annual reduction in ship-related incidence (5th–95th percentile)
Infant, age <1 year (Woodruff *et al.,* 1997)	20 (0–55)	34 (0–93)
Chronic bronchitis (adult, age 26 and over)	3,800 (700–6,900)	8,100 (1,500–14,000)
Non-fatal myocardial infarction (adult, age 18 and over)	8,800 (3,200–14,000)	20,000 (7,600–33,000)
Hospital admissions—respiratory (all ages) [c]	1,200 (590–1,800)	2,700 (1,300–4,000)
Hospital admissions—cardiovascular (adults, age >18) [d]	2,700 (2,000–3,200)	6,600 (4,700–7,700)
Emergency room visits for asthma (age 18 years and younger)	3,500 (2,000–4,900)	7,300 (4,300–10,000)
Acute bronchitis (children, age 8–12)	8,500 (0–17,000)	17,000 (0–35,000)
Lower respiratory symptoms (children, age 7–14)	100,000 (49,000–150,000)	210,000 (100,000–310,000)
Upper respiratory symptoms (asthmatic children, age 9–18)	77,000 (24,000–130,000)	160,000 (50,000–270,000)
Asthma exacerbation (asthmatic children, age 6–18)	95,000 (10,000–260,000)	200,000 (22,000–550,000)
Work loss days	720,000 (630,000–810,000)	1,400,000 (1,300,000–1,600,000)
Minor restricted activity days (adults, age 18–65)	4,300,000 (3,600,000–4,900,000)	8,500,000 (7,200,000–9,800,000)

Notes:

[a] Incidence is rounded to two significant digits. Estimates represent incidence within the 48 contiguous United States.

[b] PM-related adult mortality based upon the American Cancer Society (ACS) Cohort Study (Pope *et al.,* 2002) and the Six-Cities Study (Laden *et al.,* 2006). Note that these are two alternative estimates of adult mortality and should not be summed. PM-related infant mortality based upon a study by Woodruff, Grillo, and Schoendorf, (1997). [Woodruff, T.J., J. Grillo, and K.C. Schoendorf. 1997. "The Relationship Between Selected Causes of Postneonatal Infant Mortality and Particulate Air Pollution in the United States." *Environmental Health Perspectives* 105(6):608–612.]

[c] Respiratory hospital admissions for PM include admissions for chronic obstructive pulmonary disease (COPD), pneumonia and asthma.

[d] Cardiovascular hospital admissions for PM include total cardiovascular and subcategories for ischemic heart disease, dysrhythmias, and heart failure.

TABLE VIII–4—ESTIMATED OZONE-RELATED HEALTH IMPACTS ASSOCIATED WITH A COORDINATED U.S. STRATEGY TO CONTROL SHIP EMISSIONS [a]

Health effect	2020 Annual reduction in ship-related incidence (5th–95th percentile)	2030 Annual reduction in ship-related incidence (5th–95th percentile)
Premature Mortality, All ages [b]		
Multi-City Analyses		
Bell *et al.* (2004)—Non-accidental	61 (23–98)	210 (70–340)
Huang *et al.* (2005)—Cardiopulmonary	100 (43–160)	350 (130–570)
Schwartz (2005)—Non-accidental	93 (34–150)	320 (100–530)
Meta-analyses:		
Bell *et al.* (2005)—All cause	200 (100–290)	660 (320–1,000)
Ito *et al.* (2005)—Non-accidental	270 (170–370)	920 (560–1,300)
Levy *et al.* (2005)—All cause	280 (200–360)	920 (640–1,200)
Hospital admissions—respiratory causes (adult, 65 and older) [c]	470 (46–830)	1,900 (120–3,300)
Hospital admissions—respiratory causes (children, under 2)	380 (180–590)	1,200 (490–1,900)
Emergency room visit for asthma (all ages)	210 (0–550)	690 (0–1,800)
Minor restricted activity days (adults, age 18–65)	360,000 (160,000–570,000)	1,100,000 (430,000–1,700,000)

TABLE VIII–4—ESTIMATED OZONE-RELATED HEALTH IMPACTS ASSOCIATED WITH A COORDINATED U.S. STRATEGY TO CONTROL SHIP EMISSIONS [a]—Continued

Health effect	2020 Annual reduction in ship-related incidence (5th–95th percentile)	2030 Annual reduction in ship-related incidence (5th–95th percentile)
School absence days	130,000 (51,000–190,000)	420,000 (150,000–630,000)

Notes:
[a] Incidence is rounded to two significant digits. Estimates represent incidence within the 48 contiguous U.S.
[b] Estimates of ozone-related premature mortality are based upon incidence estimates derived from several alternative studies: Bell *et al.* (2004); Huang *et al.* (2005); Schwartz (2005); Bell *et al.* (2005); Ito *et al.* (2005); Levy *et al.* (2005). The estimates of ozone-related premature mortality should therefore not be summed.
[c] Respiratory hospital admissions for ozone include admissions for all respiratory causes and subcategories for COPD and pneumonia.

C. Monetized Benefits

Table VIII–5 presents the estimated monetary value of reductions in the incidence of ozone and $PM_{2.5}$-related health effects. All monetized estimates are stated in 2006$. These estimates account for growth in real gross domestic product (GDP) per capita between the present and the years 2020 and 2030. As the tables indicate, total benefits are driven primarily by the reduction in premature fatalities each year.

Our estimate of total monetized benefits in 2020 for the coordinated strategy, using the ACS and Six-Cities PM mortality studies and the range of ozone mortality assumptions, is between $47 billion and $110 billion, assuming a 3 percent discount rate, or between $42 billion and $100 billion, assuming a 7 percent discount rate. In 2030, we estimate the monetized benefits to be between $110 billion and $270 billion, assuming a 3 percent discount rate, or between $99 billion and $240 billion, assuming a 7 percent discount rate. The monetized benefit associated with reductions in the risk of both ozone- and $PM_{2.5}$-related premature mortality ranges between 90 to 98 percent of total monetized health benefits, in part because we are unable to quantify a number of benefits categories (*see* Table VIII–2). These unquantified benefits may be substantial, although their magnitude is highly uncertain.

TABLE VIII–5—ESTIMATED MONETARY VALUE IN REDUCTIONS IN INCIDENCE OF HEALTH AND WELFARE EFFECTS

[in millions of 2006$] [a b]

		2020	2030
$PM_{2.5}$-related health effect		Estimated mean value of reductions (5th and 95th percentile)	
Premature Mortality—Derived from Epidemiology Studies [c d].	Adult, age 30+—ACS study (Pope *et al.,* 2002).		
	3% discount rate	$43,000 ($5,000 – $110,000)	$99,000 ($12,000 – $260,000)
	7% discount rate	$38,000 ($4,500 – $100,000)	$89,000 ($11,000 – $230,000)
	Adult, age 25+—six-cities study (Laden *et al.,* 2006).		
	3% discount rate	$110,000 ($14,000 – $270,000)	$250,000 ($33,000 – $630,000)
	7% discount rate	$98,000 ($13,000 – $250,000)	$230,000 ($30,000 – $570,000)
	Infant mortality, <1 year—(Woodruff *et al.* 1997).	$180 ($0 – $670)	$310 ($0 – $1,200)
Chronic bronchitis (adults, 26 and over)		$1,900 ($140 – $6,500)	$4,100 ($320 – $14,000)
Non-fatal acute myocardial infarctions			
3% discount rate		$960 ($170 – $2,300)	$2,700 ($460 – $6,700)
7% discount rate		$930 ($160 – $2,300)	$2,600 ($430 – $6,600)
Hospital admissions for respiratory causes		$17 ($8.4 – $25)	$39 ($19 – $57)
Hospital admissions for cardiovascular causes		$76 ($48 – $110)	$180 ($120 – $250)
Emergency room visits for asthma		$1.3 ($0.70 – $1.9)	$2.7 ($1.5 – $4.1)
Acute bronchitis (children, age 8–12)		$0.63 ($0 – $1.6)	$1.3 ($0 – $3.2)
Lower respiratory symptoms (children, 7–14)		$2.0 ($0.75 – $3.7)	$4.1 ($1.6 – $7.6)
Upper respiratory symptoms (asthma, 9–11)		$2.4 ($0.65 – $5.3)	$5.0 ($1.4 – $11)
Asthma exacerbations		$5.1 ($0.51 – $15)	$11 ($1.1 – $32)
Work loss days		$110 ($94 – $120)	$220 ($190 – $250)
Minor restricted-activity days (MRADs)		$270 ($150 – $390)	$540 ($310 – $780)
Ozone-related Health Effect			
Premature mortality, all ages—derived from multi-city analyses.	Bell *et al.,* 2004	$540 ($63 – $1,400)	$1,800 ($210 – $4,900)
	Huang *et al.,* 2005	$910 ($110 – $2,300)	$3,100 ($360 – $8,200)
	Schwartz, 2005	$830 ($94 – $2,200)	$2,800 ($310 – $7,600)

TABLE VIII–5—ESTIMATED MONETARY VALUE IN REDUCTIONS IN INCIDENCE OF HEALTH AND WELFARE EFFECTS—Continued

[in millions of 2006$] [a] [b]

		2020	2030
Premature mortality, all ages—derived from meta-analyses.	Bell *et al.,* 2005	$1,700 ($220 – $4,400)	$5,800 ($740 – $15,000)
	Ito *et al.,* 2005	$2,400 ($330 – $5,900)	$8,200 ($1,100 – $20,000)
	Levy *et al.,* 2005	$2,400 ($340 – $5,900)	$8,200 ($1,100 – $20,000)
Hospital admissions—respiratory causes (adult, 65 and older)		$11 ($1.1 – $20)	$45 ($2.8 – $79)
Hospital admissions—respiratory causes (children, under 2)		$3.8 ($1.8 – $5.9)	$12 ($4.9 – $19)
Emergency room visit for asthma (all ages)		$0.08 ($0.03 – $0.20)	$0.25 ($0 – $0.63)
Minor restricted activity days (adults, age 18–65)		$23 ($9.8 – $41)	$69 ($25 – $120)
School absence days		$12 ($4.6 – $17)	$37 ($13 – $57)

Notes:

[a] Monetary benefits are rounded to two significant digits for ease of presentation and computation. PM and ozone benefits are nationwide.

[b] Monetary benefits adjusted to account for growth in real GDP per capita between 1990 and the analysis year (2020 or 2030).

[c] Valuation assumes discounting over the SAB recommended 20-year segmented lag structure. Results reflect the use of 3 percent and 7 percent discount rates consistent with EPA and OMB guidelines for preparing economic analyses.

D. What Are the Limitations of the Benefits Analysis?

Every benefit-cost analysis examining the potential effects of a change in environmental protection requirements is limited to some extent by data gaps, limitations in model capabilities (such as geographic coverage), and uncertainties in the underlying scientific and economic studies used to configure the benefit and cost models. Limitations of the scientific literature often result in the inability to estimate quantitative changes in health and environmental effects, such as potential increases in premature mortality associated with increased exposure to carbon monoxide. Deficiencies in the economics literature often result in the inability to assign economic values even to those health and environmental outcomes which can be quantified. These general uncertainties in the underlying scientific and economics literature, which can lead to valuations that are higher or lower, are discussed in detail in the RIA and its supporting references. Key uncertainties that have a bearing on the results of the benefit-cost analysis of the coordinated strategy include the following:

- The exclusion of potentially significant and unquantified benefit categories (such as health, odor, and ecological benefits of reduction in air toxics, ozone, and PM);
- Errors in measurement and projection for variables such as population growth;
- Uncertainties in the estimation of future year emissions inventories and air quality;
- Uncertainty in the estimated relationships of health and welfare effects to changes in pollutant concentrations including the shape of the C–R function, the size of the effect estimates, and the relative toxicity of the many components of the PM mixture;
- Uncertainties in exposure estimation; and
- Uncertainties associated with the effect of potential future actions to limit emissions.

As Table VIII–5 indicates, total benefits are driven primarily by the reduction in premature mortalities each year. Some key assumptions underlying the premature mortality estimates include the following, which may also contribute to uncertainty:

- Inhalation of fine particles is causally associated with premature death at concentrations near those experienced by most Americans on a daily basis. Although biological mechanisms for this effect have not yet been completely established, the weight of the available epidemiological, toxicological, and experimental evidence supports an assumption of causality. The impacts of including a probabilistic representation of causality were explored in the expert elicitation-based results of the PM NAAQS RIA.
- All fine particles, regardless of their chemical composition, are equally potent in causing premature mortality. This is an important assumption, because PM produced via transported precursors emitted from marine engines may differ significantly from PM precursors released from electric generating units and other industrial sources. However, no clear scientific grounds exist for supporting differential effects estimates by particle type.
- The C–R function for fine particles is approximately linear within the range of ambient concentrations under consideration. Thus, the estimates include health benefits from reducing fine particles in areas with varied concentrations of PM, including both regions that may be in attainment with $PM_{2.5}$ standards and those that are at risk of not meeting the standards.
- There is uncertainty in the magnitude of the association between ozone and premature mortality. The range of ozone benefits associated with the coordinated strategy is estimated based on the risk of several sources of ozone-related mortality effect estimates. In a recent report on the estimation of ozone-related premature mortality published by the National Research Council, a panel of experts and reviewers concluded that short-term exposure to ambient ozone is likely to contribute to premature deaths and that ozone-related mortality should be included in estimates of the health benefits of reducing ozone exposure.[168] EPA has requested advice from the National Academy of Sciences on how best to quantify uncertainty in the relationship between ozone exposure and premature mortality in the context of quantifying benefits.

Emissions and air quality modeling decisions are made early in the analytical process. For this reason, the emission control scenarios used in the air quality and benefits modeling are slightly different than the coordinated strategy. The discrepancies impact the benefits analysis in two ways:

- The air quality modeling used for the 2020 scenario is based on inventory estimates that were modeled using incorrect boundary information. We believe the impact of this difference, while modest, likely leads to a small underestimate of the benefits that are presented in this section. The correct boundary information was used for the

[168] National Research Council (NRC). 2008. Estimating Mortality Risk Reduction and Economic Benefits from Controlling Ozone Air Pollution. The National Academies Press: Washington, DC.

2030 scenario. Please refer to the Chapter 3 of the RIA for more information on the emissions excluded from the health impacts analysis.

• The 2020 air quality modeling scenarios do not include emission reductions associated with the implementation of global controls (set through IMO) beyond the assumed ECA boundary of 200 nautical miles (nm). Again, while we expect the impact of this difference is modest, the omission of these additional emission reductions likely leads to a small underestimate of the 2020 benefits presented in this section. The 2030 air quality modeling scenario did include emission reductions associated with global controls beyond the assumed ECA boundary of 200 nm.

Despite the uncertainties described above, we believe this analysis provides a conservative estimate of the estimated economic benefits of the standards in future years because of the exclusion of potentially significant benefit categories that are not quantifiable at this time. Acknowledging benefits omissions and uncertainties, we present a best estimate of the total benefits based on our interpretation of the best available scientific literature and methods supported by EPA's technical peer review panel, the Science Advisory Board's Health Effects Subcommittee (SAB–HES). The National Academies of Science (NRC, 2002) has also reviewed EPA's methodology for analyzing the health benefits of measures taken to reduce air pollution. EPA addressed many of these comments in the analysis of the final PM NAAQS.[169] [170] This analysis incorporates this most recent work to the extent possible.

E. Comparison of Costs and Benefits

This section presents the cost-benefit comparison related to the expected impacts of our coordinated strategy for ocean-going vessels. In estimating the net benefits of the coordinated strategy, the appropriate cost measure is 'social costs.' Social costs represent the welfare costs of a rule to society and do not consider transfer payments (such as taxes) that are simply redistributions of wealth. For this analysis, we estimate that the social costs of the coordinated program are equivalent to the estimated compliance costs of the program. While vessel owners and operators will see their costs increase by the amount of those compliance costs, they are expected to pass them on in their entirety to consumers of marine transportation services in the form of increased freight rates. Ultimately, these costs will be borne by the final consumers of goods transported by ocean-going vessels in the form of higher prices for those goods. The social benefits of the coordinated strategy are represented by the monetized value of health and welfare improvements experienced by the U.S. population. Table VIII–6 contains the estimated social costs and the estimated monetized benefits of the coordinated strategy.

The results in Table VIII–6 suggest that the 2020 monetized benefits of the coordinated strategy are greater than the expected costs. Specifically, the annual benefits of the total program will range between $47 to $110 billion annually in 2020 using a three percent discount rate, or between $42 to $100 billion assuming a 7 percent discount rate, compared to estimated social costs of approximately $1.9 billion in that same year. These benefits are expected to increase to between $110 and $270 billion annually in 2030 using a three percent discount rate, or between $99 and $240 billion assuming a 7 percent discount rate, while the social costs are estimated to be approximately $3.1 billion. Though there are a number of health and environmental effects associated with the coordinated strategy that we are unable to quantify or monetize (*see* Table VIII–2), the benefits of the coordinated strategy far outweigh the projected costs.

Using a conservative benefits estimate, the 2020 benefits outweigh the costs by a factor of 22. Using the upper end of the benefits range, the benefits could outweigh the costs by a factor of 58. Likewise, in 2030 benefits outweigh the costs by at least a factor of 32 and could be as much as a factor of 87. Thus, even taking the most conservative benefits assumptions, benefits of the coordinated strategy clearly outweigh the costs.

TABLE VIII–6—SUMMARY OF ANNUAL BENEFITS AND COSTS ASSOCIATED WITH A COORDINATED U.S. STRATEGY TO CONTROL SHIP EMISSIONS [a]

[Millions of 2006 dollars]

Description	2020	2030
Total Estimated Costs [b]	$1,900	$3,100.
Total Estimated Health Benefits: [c d e f]		
3-percent discount rate	$47,000 to $110,000	$110,000 to $270,000.
7-percent discount rate	$42,000 to $100,000	$99,000 to $240,000.
Annual Net Benefits (Total Benefits—Total Costs):		
3-percent discount rate	$45,000 to $110,000	$110,000 to $270,000.
7-percent discount rate	$40,000 to $98,000	$96,000 to $240,000.

Notes:

[a] All estimates represent annual benefits and costs anticipated for the years 2020 and 2030. Totals are rounded to two significant digits and may not sum due to rounding.

[b] The calculation of annual costs does not require amortization of costs over time. Therefore, the estimates of annual cost do not include a discount rate or rate of return assumption (*see* Chapter 7 of the RIA). In Chapter 7, however, we use both a 3-percent and 7-percent social discount rate to calculate the net present value of total social costs consistent with EPA and OMB guidelines for preparing economic analyses.

[c] Total includes ozone and $PM_{2.5}$ benefits. Range was developed by adding the estimate from the Bell *et al.,* 2005 ozone premature mortality function to $PM_{2.5}$-related premature mortality derived from the ACS (Pope *et al.,* 2002) and Six-Cities (Laden *et al.,* 2006) studies.

[d] Annual benefits analysis results reflect the use of a 3-percent and 7-percent discount rate in the valuation of premature mortality and nonfatal myocardial infarctions, consistent with EPA and OMB guidelines for preparing economic analyses.

[e] Valuation of premature mortality based on long-term PM exposure assumes discounting over the SAB recommended 20-year segmented lag structure described in the Regulatory Impact Analysis for the Final Clean Air Interstate Rule (March 2005).

[f] Not all possible benefits or disbenefits are quantified and monetized in this analysis. Potential benefit categories that have not been quantified and monetized are listed in Table VIII–2.

[169] National Research Council (NRC). 2002. Estimating the Public Health Benefits of Proposed Air Pollution Regulations. The National Academies Press: Washington, DC.

[170] U.S. Environmental Protection Agency. October 2006. *Final Regulatory Impact Analysis (RIA) for the Proposed National Ambient Air Quality Standards for Particulate Matter.* Prepared by: Office of Air and Radiation. Available at *http://www.epa.gov/ttn/ecas/ria.html.*

IX. Public Participation

Two public hearings were held to provide interested parties the opportunity to present data, views, or arguments concerning the proposed rule; the first hearing was held in New York, NY on August 4, 2009, and the second in Long Beach, CA on August 6, 2009. The public was invited to submit written comments on the proposed rule during the formal comment period, which ended on September 28, 2009. EPA received 126 comments, and a detailed summary and response to these comments can be found in the Summary and Analysis of Comments document in the docket (Docket ID EPA–HQ–OAR–2007–0121).

EPA received a number of comments on the value that a voluntary verification program would provide as well as comments on how best to implement such a program. The proposed program is discussed in Chapter 9 of the RIA. EPA is still reviewing these comments and is not taking any action today with regard to such a program. We will continue to evaluate the potential for such a program and will work in an open process with stakeholders should we conclude that such a program is appropriate.

EPA also received a number of comments on the technical challenges of operating steamships on lower sulfur fuel. In response, we are not taking final action today to apply the ECA fuel sulfur requirements to Great Lakes steamships in service prior to January 1, 2009. We will continue to study these technical issues and address these vessels in a future action, if appropriate.

This rule includes several technical amendments unrelated to Category 3 marine diesel engines. Two of these have generated a significant degree of interest from commenters. First, we raised for discussion a variety of temporary changes to the bonding requirements for nonroad spark-ignition engines below 19 kW (Small SI engines) based on feedback received by manufacturers and surety agents. We learned over the last several months that manufacturers have been struggling to obtain a bond for 2010, as required under § 1054.690. It seemed that the bond values specified in the regulation were in some cases preventing surety agents and manufacturers from reaching agreeable terms. While we were considering these changes, we learned that one manufacturer in the United States and nine manufacturers from China were able to establish a bond policy. We expect to continue to monitor implementation experiences with respect to the bonding provision, but we believe it is no longer necessary to adopt the interim regulatory provisions we were considering. We are proceeding with one adjustment to the bonding provisions. We believe it is appropriate to set a maximum value of $10 million for any bond that is required under § 1054.690. Setting this value the same as the maximum level of fixed assets that we require to be exempted from getting a bond would allow for a logical correlation regarding the liability for manufacturers that are exempt from the bonding requirement and those that are not. Nevertheless, we believe it is appropriate to adopt this change for a three-year transition period. At that point, we would either change the regulation to adopt some permanent cap on bond values or let the regulation revert to the original provisions with no maximum value.

We communicated our intent to make these bonding-related changes to those that commented on the bonding provisions when we first adopted them, including the Outdoor Power Equipment Institute, the Engine Manufacturers Association, and the California Air Resources Board. The Outdoor Power Equipment Institute and the Engine Manufacturers Association objected to the change, arguing that the reduced bond requirement would be insufficient to recover penalties for noncompliance in most cases. Based on these comments and on the fact that several companies have established bond policies, we have decided not to make these changes in this rulemaking. We may choose to pursue these or other long-term adjustments to the bonding regulations based on our experiences over the next several months, but we would do that in the context of a new rulemaking, which would include ample opportunity for comment and collaboration. In the meantime, we anticipate that small businesses may continue to have difficulty establishing a bond. If this is the case, we would be ready to consider an application for hardship under the provisions of § 1054.635. Small businesses applying for relief under this provision would need to provide us with enough information to be able to act on their request. In any hardship approval, we would likely first consider the same kinds of relief reflected in the interim regulation changes we were considering. In particular, we could reduce the specified bond amount to preserve a measure of protection that is more carefully calibrated for very small sales volumes. We could also consider a manufacturer to be exempted from getting a bond based on a good compliance history of less than ten years.

The proposed rule also included new regulatory provisions to clarify what we would consider acceptable inventory and stockpiling practices for engine and vehicle manufacturers relative to the new emission standards for heavy-duty highway engines that take effect in 2010 and later model years. We have received extensive input in the comments, including concerns about how to define and potentially apply certain terms such as "normal inventory" and "production" practices given the dynamics of today's market and placed in the context of the timing of this final rule, and how such terms might be used by the Agency to determine whether inappropriate stockpiling has occurred. Based on this, we have decided to defer codification of the stockpiling prohibition until a later rulemaking. In the meantime, we plan to implement the 2010 standards based on the Agency's existing stockpiling guidance and to monitor engine and vehicle manufacturers in order to ensure that no circumventions of the Clean Air Act have occurred.

X. Statutory and Executive Order Reviews

As explained in Section I.A, the program we are finalizing is part of a coordinated strategy to address emissions from ocean-going vessels. That coordinated strategy includes, among other actions, the combination the global Tier 2 NO_X standards included in the amendments to Annex VI and the ECA Tier 3 NO_X limits and fuel sulfur limits that will apply when the U.S. coasts are designated as an ECA through an additional amendment to Annex VI. These engine and fuel standards will be enforceable for all vessels, U.S. and foreign, operating in the United States through the Act to Prevent Pollution from Ships. Because the coordinated strategy in its entirety is economically significant (*see* cost analysis in Section V), the components we are adopting in this rule (engine controls for Category 3 engines on U.S. vessels under our Clean Air Act program, as required by section 213 of the Act that are identical to the MARPOL Annex VI NO_X limits; limits on hydrocarbon and carbon monoxide emissions for Category 3 engines; PM measurement requirement; changes to our Clean Air Act diesel fuel program to allow production and sale of ECA-compliant fuel; changes to our emission control program for smaller marine diesel engines to harmonize with the Annex VI NO_X requirements, for U.S. vessels that operate internationally) may

also be considered to be economically significant.

A. Executive Order 12866: Regulatory Planning and Review

Under Executive Order (EO) 12866 (58 FR 51735, October 4, 1993), this action is a "significant regulatory action" because it raises novel legal or policy issues due to the international nature of the use of Category 3 marine diesel engines. Accordingly, EPA submitted this action to the Office of Management and Budget (OMB) for review under EO 12866 and any changes made in response to OMB recommendations have been documented in the docket for this action.

In addition, EPA prepared an analysis of the potential costs and benefits associated with our coordinated strategy for controlling emissions from ocean-going vessels. While the costs of the coordinated strategy are "significant," the largest part of these costs are related to compliance with MARPOL Annex VI, which applies independently of this final rule. The costs of the requirements we are adopting in this rule are minimal. This analysis is contained in the Regulatory Impact Analysis that was prepared, and is available in the docket for this rulemaking and at the docket Internet address listed under **ADDRESSES** above.

B. Paperwork Reduction Act

The information collection requirements in this rule will be submitted for approval to the Office of Management and Budget (OMB) under the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* The information collection requirements are not enforceable until OMB approves them.

Section 208(a) of the Clean Air Act requires that manufacturers provide information the Administrator may reasonably require to determine compliance with the regulations; submission of the information is therefore mandatory. We will consider confidential all information meeting the requirements of section 208(c) of the Clean Air Act. Recordkeeping and reporting requirements for manufacturers would be pursuant to the authority of section 208 of the Clean Air Act.

The data we require in this action is necessary to comply with Title II of the Clean Air Act, as amended in 1990. The Act directs us to adopt regulations for nonroad engines if we determine those engines contribute significantly to air pollution in the U.S. Now that we have made this determination, the Act directs us to set emission standards for any category of nonroad engines that contribute to air quality nonattainment in two or more areas in the U.S. We can only meet the requirements of the Act by collecting data from the regulated industry. Also, we will only have an effective program if we know that these engines maintain their certified emission level throughout their operating lives.

The burden for certification testing is generally based on conducting two engine tests for each engine family, then using that test data for several years. The manufacturer's application for certification involves an extensive effort the first year, followed by relatively little effort in subsequent years. We estimate that manufacturers will conduct new certification testing every five years; the costs have been estimated on an annual average basis. In addition to testing, manufacturers must prepare the application for certification and maintain appropriate records. The burden for production-line testing is based on an industry-wide calculation. Rebuilders, including operators of marine vessels with Category 3 engines, must keep records as needed to show that rebuilt engines continue to meet emission standards, consistent with the manufacturer's original design. In addition, owners and operators of marine vessels with Category 3 engines must record information about their location when rebuilding engines or making other adjustments and send minimal annual notification to EPA to show that engine maintenance and adjustments have not caused engines to be noncompliant. In total, we estimate that 12 engine manufacturers and 200 engine rebuilders will together face an estimated compliance burden of 3,012 hours per year, which corresponds with annual costs of $191,759 per year. Burden is defined at 5 CFR 1320.3(b).

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations in 40 CFR are listed in 40 CFR part 9. EPA will amend the table in 40 CFR part 9 to add OMB control number associated with the new regulations in 40 CFR part 1043 once those are approved.

C. Regulatory Flexibility Act

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

For purposes of assessing the impacts of this rule on small entities, small entity is defined as: (1) A small business that is primarily engaged in manufacture of large diesel marine engines as defined by NAICS code 333618 with 1,000 or fewer employees (based on Small Business Administration size standards) or a small business primarily engaged in shipbuilding and repairing as defined by NAICS code 336611 with 1,000 or fewer employees (based on Small Business Administration size standards); (2) a small business that is primarily engaged in freight or passenger transportation, either on the Great Lakes or in coastal areas as defined by NAICS codes 483113 and 483114 with 500 or fewer employees (based on Small Business Administration size standards); (3) a small governmental jurisdiction that is a government of a city, county, town, school district or special district with a population of less than 50,000; and (4) a small organization that is any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.

After considering the economic impacts of this final rule on small entities, I certify that this action will not have a significant economic impact on a substantial number of small entities. Since publication of the proposed rulemaking, we have learned that the small entities directly regulated by this final rule include shipping companies that use fuel subject to the requirements in this rulemaking. We have identified four small U.S. companies that are operating Category 3 engines that currently burn residual fuel, and have estimated the compliance burden for each of these four small companies based on available information about the companies and their vessels. Our analysis indicates that two companies will have an estimated compliance burden representing less than 1 percent of their operating revenues, one company will have an estimated compliance burden representing between 1 and 3 percent of their operating revenues, and one company will have an estimated compliance burden representing slightly over 6 percent of their operating revenues.

Although this final rule will not have a significant economic impact on a substantial number of small entities, EPA nonetheless has tried to reduce the impact of this rule by adopting provisions to reduce the regulatory

burden for these companies. For example, if we would apply the fuel requirements to steamships, a total of five small businesses would have an estimated compliance burden representing over 1 percent of their operating revenues, with the values for some companies reaching 20 percent or higher. However, we have decided to adopt provisions allowing us to waive the fuel-related requirements for these companies if it can be demonstrated that a compliant residual fuel is not available, or that the compliance burden will jeopardize the solvency of the company. This analysis also does not include cost savings from increased durability and reliability or decreased maintenance that occurs when using distillate fuel instead of residual fuel. Our estimated burden for these companies therefore overestimates the costs these companies will actually face when complying with the rule.

Additionally, in some areas, we consider port areas to be internal waters even though they are directly accessed by vessels that operate in coastal and international service on the oceans (such as Puget Sound). We believe it would not be realistic to expect companies operating such vessels to use distillate fuel as they approach U.S. ports and then convert the engines to operate on residual fuel for that portion of their operation that is considered internal waters. Since it would take about an hour of operation to transition back to the residual fuel, we believe this would not be commonly practiced whether or not fuel requirements apply in internal waters. Nevertheless, we have analyzed this scenario for potential small business impacts. We found that one U.S. small business with coastal operations would be affected by this rule, but that they will have costs representing less than one percent of their revenues. As a result, we have concluded that all small businesses that own or operate these coastal vessels will see no significant economic impact in complying with this rule.

D. Unfunded Mandates Reform Act

This rule does not contain a Federal mandate that may result in expenditures of $100 million or more for State, local, and Tribal governments, in the aggregate, or the private sector in any one year. While the costs of the coordinated strategy exceed the $100 million per year threshold for the private sector, the costs of the components of that strategy that are the subject of this rule are less than $100 million per year, as explained in Section VII. Therefore, this action is not subject to the requirements of Sections 202 or 205 of the UMRA. This action is also not subject to the requirements of Section 203 of UMRA because it contains no regulatory requirements that might significantly or uniquely affect small governments.

E. Executive Order 13132: Federalism

This action does not have federalism implications. It will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132. This action will be implemented at the Federal level and impose compliance obligations only on private industry. Thus, Executive Order 13132 does not apply to this rule.

Although Section 6 of Executive Order 13132 does not apply to this rule, EPA did consult with representatives of various State and local governments in developing this rule. EPA consulted with representatives from the National Association of Clean Air Agencies (NACAA, formerly STAPPA/ALAPCO), the Northeast States for Coordinated Air Use Management (NESCAUM), and the California Air Resources Board (CARB).

In the spirit of Executive Order 13132, and consistent with EPA policy to promote communications between EPA and State and local governments, EPA specifically solicited comment on the action from State and local officials.

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

This action does not have Tribal implications, as specified in Executive Order 13175 (65 FR 67249, November 9, 2000). The rule will be implemented at the Federal level and impose compliance costs only on manufacturers of marine engines and marine vessels. Tribal governments will be affected only to the extent they purchase and use the regulated engines and vehicles. Thus, Executive Order 13175 does not apply to this action.

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

This action is not subject to EO 13045 (62 FR 19885, April 23, 1997) because it is not economically significant as defined in EO 12866, and because the Agency does not believe the environmental health or safety risks addressed by this action present a disproportionate risk to children. This action's health and risk assessments are contained in Section II.A and Section VIII in this document and in Chapter 2 of the RIA, which has been placed in the public docket under Docket ID number EPA–HQ–OAR–2007–0121.

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

Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355 (May 22, 2001)), requires EPA to prepare and submit a Statement of Energy Effects to the Administrator of the Office of Information and Regulatory Affairs, Office of Management and Budget, for certain actions identified as "significant energy actions." Section 4(b) of Executive Order 13211 defines "significant energy actions" as "any action by an agency (normally published in the **Federal Register**) that promulgates or is expected to lead to the promulgation of a final rule or regulation, including notices of inquiry, advance notices of proposed rulemaking, and notices of proposed rulemaking: (1)(i) That is a significant regulatory action under Executive Order 12866 or any successor order, and (ii) is likely to have a significant adverse effect on the supply, distribution, or use of energy; or (2) that is designated by the Administrator of the Office of Information and Regulatory Affairs as a significant energy action." We have prepared a Statement of Energy Effects for this action as follows.

This rule's potential effects on energy supply, distribution, or use have been analyzed and are discussed in detail in Section 4.6 of the RIA. In summary, while we project that this rule would result in an energy effect that exceeds the 10,000 barrel per day change in crude oil production threshold noted in E.O. 13211, this rule does not significantly affect the energy use, production, or distribution beyond what is required by Annex VI of the International Convention for the Prevention of Pollution from Ships.

I. National Technology Transfer Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 ("NTTAA"), Public Law 104–113, 12(d) (15 U.S.C. 272 note) directs EPA to use voluntary consensus standards in its regulatory activities unless doing so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (*e.g.,* materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus standards

bodies. The NTTAA directs EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards.

The rulemaking involves technical standards. Therefore, the Agency conducted a search to identify potentially applicable voluntary consensus standards. The only test procedures outside of EPA that are written for Category 3 marine diesel engines are in the NO_X Technical Code as part of MARPOL Annex VI. These test procedures have been adopted by the International Maritime Organization under the auspices of the United Nations. As such, they are not technically voluntary consensus standards. We have adopted test procedure specifications for Category 3 marine diesel engines in 40 CFR part 1042, which rely on the EPA test procedures in 40 CFR part 1065. We have written the part 1065 test procedures to apply broadly to all sizes and types of engines. We have coordinated these efforts with a wide range of manufacturers from every industry over nearly the last ten years. As a result of this effort, we have reached a point that the test procedures have been very widely referenced and adopted for use in various countries and for various applications. We believe that part 1065 is the best path toward global harmonization of emission test procedures for highway, nonroad, and stationary engines. Nevertheless, we have included a provision allowing manufacturers to rely on the procedures specified in the NO_X Technical Code. We believe this appropriately maintains part 1065 as the primary path for adopting standardized and harmonized test procedures, without precluding the possibility of testing according to the other widely accepted protocol for testing Category 3 marine diesel engines.

J. Executive Order 12898: Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations

Executive Order (EO) 12898 (59 FR 7629 (Feb. 16, 1994)) establishes Federal executive policy on environmental justice. Its main provision directs Federal agencies, to the greatest extent practicable and permitted by law, to make environmental justice part of their mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects of their programs, policies, and activities on minority populations and low-income populations in the United States.

EPA has determined that this final rule will not have disproportionately high and adverse human health or environmental effects on minority or low-income populations because it increases the level of environmental protection for all affected populations without having any disproportionately high and adverse human health or environmental effects on any population, including any minority or low-income population.

Together, this final rule which addresses emissions from domestic-flagged vessels and the joint U.S./Canada ECA application to the IMO which addresses emissions from foreign-flagged vessels (referred to as the "coordinated strategy") will achieve significant reductions of various emissions from Category 3 marine diesel engines, including NO_X, SO_X, and direct PM. Exposure to these pollutants raises concerns regarding environmental health for the U.S. population in general including the minority populations and low-income populations that are the focus of the environmental justice executive order.

The emission reductions from the new standards in the coordinated strategy will have large beneficial effects on communities in proximity to port, harbor, and waterway locations, including low-income and minority communities. In addition to exhaust emission standards for freshly manufactured and remanufactured engines, the coordinated strategy will further reduce emissions from regulated engines that directly impact low-income and minority communities.

EPA recently updated its initial screening-level analysis of selected marine port areas to better understand the populations, including minority and low-income populations, that are exposed to diesel PM emission sources from these facilities.[171] [172] This screening-level analysis is an inexact tool and should only be considered for illustrative purposes to help understand potential impacts. The analysis included all emission sources as well as ocean-going marine diesel engines, and focused on a representative selection of national marine ports (45 ports total).[173] [174] Considering only ocean-going marine engine diesel PM emissions, the results indicate that 6.5 million people are exposed to ambient diesel PM levels that are 2.0 $\mu g/m^3$ and 0.2 $\mu g/m^3$ above levels found in areas further from these facilities. This population includes a disproportionate number of low-income households, African-Americans, and Hispanics. The results from all emission sources show that nearly 18 million people are exposed to higher levels of diesel PM from all sources at the marine port areas than urban background levels. Because those living in the vicinity of marine ports are more likely to be low-income households and minority residents, these populations would receive a significant benefit from the combined coordinated strategy. *See* Section VIII of this preamble and Chapter 6 of the RIA for a discussion on the benefits of this rule, including the benefits to minority and low-income communities.

K. Congressional Review Act

The Congressional Review Act, 5 U.S.C. 801 *et seq.,* as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A Major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a "major rule" as defined by 5 U.S.C. 804(2). This rule will be effective June 29, 2010.

XI. Statutory Provisions and Legal Authority

Statutory authority for the controls in this final rule can be found in sections 203–209, 211, 213 (which specifically authorizes controls on emissions from nonroad engines and vehicles), 216, and 301 of the Clean Air Act (CAA), 42 U.S.C. 7414, 7522, 7523, 7424, 7525, 7541, 7542, 7543, 7545, 7547, 7550, and 7601.

[171] ICF International. December 1, 2008. Estimation of diesel particulate matter concentration isopleths near selected harbor areas with revised emissions (revised). Memorandum to EPA under Work Assignment Number 1–9, Contract Number EP–C–06–094. This memo is available in Docket EPA–HQ–OAR–2007–0121.

[172] ICF International. December 10, 2008. Estimation of diesel particulate matter population exposure near selected harbor areas with revised harbor emissions (revised). Memorandum to EPA under Work Assignment Number 2–9, Contract Number EP–C–06–094. This memo is available in Docket EPA–HQ–OAR–2007–0121.

[173] The emissions inventories used as inputs for the analyses are not official estimates and likely underestimate overall emissions because they are not inclusive of all emission sources at the individual ports in the sample.

[174] The Agency selected a representative sample from the top 150 U.S. ports including coastal, inland and Great Lake ports.

List of Subjects

40 CFR Part 80

Environmental protection, Administrative practice and procedure, Air pollution control, Confidential business information, Diesel fuel, Fuel additives, Imports, Labeling, Penalties, Reporting and recordkeeping requirements.

40 CFR Part 85

Confidential business information, Imports, Labeling, Motor vehicle pollution, Reporting and recordkeeping requirements, Research, Warranties.

40 CFR Part 86

Environmental protection, Administrative practice and procedure, Air pollution control, Reporting and recordkeeping requirements, Motor vehicle.

40 CFR Part 94

Environmental protection, Administrative practice and procedure, Air pollution control, Confidential business information, Imports, Incorporation by reference, Labeling, Penalties, Vessels, Reporting and recordkeeping requirements, Warranties.

40 CFR Part 1027

Environmental protection, Administrative practice and procedure, Air pollution control, Imports, Reporting and recordkeeping requirements.

40 CFR Part 1033

Environmental protection, Administrative practice and procedure, Confidential business information, Incorporation by reference, Labeling, Penalties, Railroads, Reporting and recordkeeping requirements.

40 CFR Part 1039

Environmental protection, Administrative practice and procedure, Air pollution control, Confidential business information, Imports, Incorporation by reference, Labeling, Penalties, Reporting and recordkeeping requirements, Warranties.

40 CFR Part 1042

Environmental protection, Administrative practice and procedure, Air pollution control, Confidential business information, Imports, Incorporation by reference, Labeling, Penalties, Vessels, Reporting and recordkeeping requirements, Warranties.

40 CFR Part 1043

Environmental protection, Administrative practice and procedure, Air pollution control, Imports, Incorporation by reference, Vessels, Reporting and recordkeeping requirements.

40 CFR Parts 1045, 1048, 1051, 1054, and 1060

Environmental protection, Administrative practice and procedure, Air pollution control, Confidential business information, Imports, Incorporation by reference, Labeling, Penalties, Reporting and recordkeeping requirements, Warranties.

40 CFR Parts 1065

Environmental protection, Administrative practice and procedure, Incorporation by reference, Reporting and recordkeeping requirements, Research.

40 CFR Part 1068

Environmental protection, Administrative practice and procedure, Confidential business information, Imports, Incorporation by reference, Motor vehicle pollution, Penalties, Reporting and recordkeeping requirements, Warranties.

Dated: December 18, 2009.

Lisa P. Jackson,

Administrator.

■ For the reasons set out in the preamble, title 40, chapter I of the Code of Federal Regulations is amended as set forth below.

PART 80—REGULATION OF FUEL AND FUEL ADDITIVES

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

Authority: 42 U.S.C. 7414, 7542, 7545, and 7601.

■ 2. Section 80.2 is amended as follows:
■ a. By revising paragraph (ccc).
■ b. By revising paragraph (nnn).
■ c. By adding paragraph (ttt).
■ d. By adding paragraph (uuu).

§ 80.2 Definitions.

* * * * *

(ccc) *Heating Oil* means any #1, #2, or non-petroleum diesel blend that is sold for use in furnaces, boilers, and similar applications and which is commonly or commercially known or sold as heating oil, fuel oil, and similar trade names, and that is not jet fuel, kerosene, or MVNRLM diesel fuel.

* * * * *

(nnn) *Nonroad, locomotive, or marine (NRLM) diesel fuel* means any diesel fuel or other distillate fuel that is used, intended for use, or made available for use, as a fuel in any nonroad diesel engines, including locomotive and marine diesel engines, except the following: Distillate fuel with a T90 at or above 700 °F that is used only in Category 2 and 3 marine engines is not NRLM diesel fuel, and ECA marine fuel is not NRLM diesel fuel (note that fuel that conforms to the requirements of NRLM diesel fuel is excluded from the definition of "ECA marine fuel" in this section without regard to its actual use). Use the distillation test method specified in 40 CFR 1065.1010 to determine the T90 of the fuel. NR diesel fuel and LM diesel fuel are subcategories of NRLM diesel fuel.

(1) Any diesel fuel that is sold for use in stationary engines that are required to meet the requirements of § 80.510(a) and/or (b), when such provisions are applicable to nonroad engines, shall be considered NRLM diesel fuel.

(2) [Reserved]

* * * * *

(ttt) *ECA marine fuel* is diesel, distillate, or residual fuel that meets the criteria of paragraph (ttt)(1) of this section, but not the criteria of paragraph (ttt)(2) of this section.

(1) All diesel, distillate, or residual fuel used, intended for use, or made available for use in Category 3 marine vessels while the vessels are operating within an Emission Control Area (ECA) is ECA marine fuel, unless it meets the criteria of paragraph (ttt)(2) of this section.

(2) ECA marine fuel does not include any of the following fuel:

(i) Fuel that is allowed by 40 CFR part 1043 to exceed the fuel sulfur limits for operation in an ECA (such as fuel used by excluded vessels or vessels equipped with equivalent emission controls in conformance with 40 CFR 1043.55).

(ii) Fuel that conforms fully to the requirements of this part for NRLM diesel fuel (including being designated as NRLM).

(iii) Fuel used, or made available for use, in any diesel engines not installed on a Category 3 marine vessel.

(uuu) *Category 3 marine vessels,* for the purposes of this part 80, are vessels that are propelled by engines meeting the definition of "Category 3" in 40 CFR part 1042.901.

Subpart I—Motor Vehicle Diesel Fuel; Nonroad, Locomotive, and Marine Diesel Fuel; and ECA Marine Fuel

■ 3. The heading for subpart I is revised as set forth above.

■ 4. Section 80.501 is amended as follows:
■ a. By revising paragraph (a)(5).

■ b. By revising paragraph (a)(6).
■ c. By adding paragraph (a)(7).

§ 80.501 What fuel is subject to the provisions of this subpart?

(a) * * *

(5) ECA marine fuel.

(6) Other distillate fuels.

(7) Motor oil that is used as or intended for use as fuel in diesel motor vehicles or nonroad diesel engines or is blended with diesel fuel for use in diesel motor vehicles or nonroad diesel engines, including locomotive and marine diesel engines, at any downstream location.

* * * * *

■ 5. Section 80.502 is amended as follows:
■ a. By revising paragraph (a).
■ b. By revising paragraph (b) introductory text and paragraph (b)(1) introductory text.
■ c. By revising paragraph (c).
■ d. By revising paragraph (d) introductory text.
■ e. By adding paragraph (g).
■ f. By adding paragraph (h).

§ 80.502 What definitions apply for purposes of this subpart?

* * * * *

(a) *Entity* means any refiner, importer, distributor, retailer or wholesale-purchaser consumer of any distillate fuel (or other product subject to the requirements of this subpart I).

(b) *Facility* means any place, or series of places, where an entity produces, imports, or maintains custody of any distillate fuel (or other product subject to the requirements of this subpart I) from the time it is received to the time custody is transferred to another entity, except as described in paragraphs (b)(1) through (4) of this section:

(1) Where an entity maintains custody of a batch of diesel fuel (or other product subject to the requirements of this subpart I) from one place in the distribution system to another place (*e.g.,* from a pipeline to a terminal), all owned by the same entity, both places combined are considered to be one single aggregated facility, except where an entity chooses to treat components of such an aggregated facility as separate facilities. The choice made to treat these places as separate facilities may not be changed by the entity during any applicable compliance period. Except as specified in paragraph (b)(2) of this section, where compliance requirements depend upon facility-type, the entire facility must comply with the requirements that apply to its components as follows:

* * * * *

(c) *Truck loading terminal* means any facility that dyes NRLM diesel fuel or ECA marine fuel, pays taxes on motor vehicle diesel fuel per IRS code (26 CFR part 48), or adds a fuel marker pursuant to § 80.510 to heating oil and delivers diesel fuel or heating oil into trucks for delivery to retail or ultimate consumer locations.

(d) *Batch* means a quantity of diesel fuel (or other product subject to the requirements of this subpart I) which is homogeneous with regard to those properties that are specified for MVNRLM diesel fuel or ECA marine fuel under this subpart I, has the same designation under this subpart I (if applicable), and whose custody is transferred from one facility to another facility.

* * * * *

(g) *Emission Control Area.* An Emission Control Area (ECA), for the purposes of this subpart, means the "ECA" as defined in 40 CFR 1043.20 as well as "ECA associated area" as defined in 40 CFR 1043.20.

(h) *Marine diesel engine.* For the purposes of this subpart I only, marine diesel engine means a diesel engine installed on a Category 1 (C1) or Category 2 (C2) marine vessel.

■ 6. Section 80.510 is amended as follows:
■ a. By revising the section heading.
■ b. By revising paragraph (f) introductory text and adding paragraph (f)(6).
■ c. By revising paragraph (g)(1).
■ d. By adding paragraph (k).

§ 80.510 What are the standards and marker requirements for NRLM diesel fuel and ECA marine fuel?

* * * * *

(f) *Marking provisions.* From June 1, 2012 through May 31, 2014:

* * * * *

(6) Marker solvent yellow 124 shall not be used in any MVNRLM or heating oil after May 31, 2014.

(g) * * *

(1) Northeast/Mid-Atlantic Area, which includes the following States and counties, through May 31, 2014: North Carolina, Virginia, Maryland, Delaware, New Jersey, Connecticut, Rhode Island, Massachusetts, Vermont, New Hampshire, Maine, Washington DC, New York (except for the counties of Chautauqua, Cattaraugus, and Allegany), Pennsylvania (except for the counties of Erie, Warren, McKean, Potter, Cameron, Elk, Jefferson, Clarion, Forest, Venango, Mercer, Crawford, Lawrence, Beaver, Washington, and Greene), and the eight eastern-most counties of West Virginia (Jefferson, Berkeley, Morgan, Hampshire, Mineral, Hardy, Grant, and Pendleton).

* * * * *

(k) *Beginning June 1, 2014.* All ECA marine fuel is subject to a maximum per-gallon sulfur content of 1,000 ppm.

■ 7. Section 80.511 is amended as follows:
■ a. By revising the section heading.
■ b. By revising paragraph (a).
■ c. By revising paragraphs (b)(4) and (b)(9).
■ d. By adding paragraph (b)(10).

§ 80.511 What are the per-gallon and marker requirements that apply to NRLM diesel fuel, ECA marine fuel, and heating oil downstream of the refiner or importer?

(a) *Applicable dates for marker requirements.* Beginning June 1, 2006, all NRLM diesel fuel and ECA marine fuel shall contain less than 0.10 milligrams per liter of the marker solvent yellow 124, except for LM diesel fuel subject to the marking requirements of § 80.510(e).

(b) * * *

(4) Except as provided in paragraphs (b)(5) through (8) of this section, the per-gallon sulfur standard of § 80.510(c) shall apply to all NRLM diesel fuel beginning August 1, 2014, for all downstream locations other than retail outlets or wholesale purchaser-consumer facilities, shall apply to all NRLM diesel fuel beginning October 1, 2014 for retail outlets and wholesale purchaser-consumer facilities, and shall apply to all NRLM diesel fuel beginning December 1, 2014, for all locations.

* * * * *

(9) The per-gallon sulfur standard of § 80.510(k) shall apply to all ECA marine fuel beginning August 1, 2014, for all downstream locations other than retail outlets or wholesale purchaser-consumer facilities, shall apply to all ECA marine fuel beginning October 1, 2014, for retail outlets and wholesale purchaser-consumer facilities, and shall apply to all ECA marine fuel beginning December 1, 2014, for all locations.

(10) For the purposes of this section, distributors that have their own fuel storage tanks and deliver only to ultimate consumers shall be treated the same as retailers and their facilities treated the same as retail outlets.

■ 8. Section 80.513 is amended by revising paragraph (e) to read as follows:

§ 80.513 What provisions apply to transmix processing facilities?

* * * * *

(e) From June 1, 2014 and beyond, NRLM diesel fuel produced by a transmix processor is subject to the standards of § 80.510(c).

■ 9. Section 80.525 is amended by revising paragraphs (b) and (d) to read as follows:

§ 80.525 What requirements apply to kerosene blenders?

* * * * *

(b) Kerosene blenders are not subject to the requirements of this subpart applicable to refiners of diesel fuel, but are subject to the requirements and prohibitions applicable to downstream parties.

* * * * *

(d) Kerosene that a kerosene blender adds or intends to add to diesel fuel subject to the 15 ppm sulfur content standard must meet the 15 ppm sulfur content standard, and either of the following requirements:

(1) The product transfer document received by the kerosene blender indicates that the kerosene is diesel fuel that complies with the 15 ppm sulfur content standard.

(2) The kerosene blender has test results indicating the kerosene complies with the 15 ppm sulfur standard.

■ 10. Section 80.551 is amended by revising paragraph (f) to read as follows:

§ 80.551 How does a refiner obtain approval as a small refiner under this subpart?

* * * * *

(f) Approval of small refiner status for refiners who apply under § 80.550(d) will be based on all information submitted under paragraph (c) of this section, except as provided in § 80.550(e).

* * * * *

■ 11. Section 80.561 is amended by revising the section heading to read as follows:

§ 80.561 How can a refiner or importer seek temporary relief from the requirements of this subpart in case of extreme unforeseen circumstances?

* * * * *

■ 12. Section 80.570 is amended by revising paragraphs (a) and (b) to read as follows:

§ 80.570 What labeling requirements apply to retailers and wholesale purchaser-consumers of diesel fuel beginning June 1, 2006?

(a) From June 1, 2006 through November 30, 2010, any retailer or wholesale purchaser-consumer who sells, dispenses, or offers for sale or dispensing, motor vehicle diesel fuel subject to the 15 ppm sulfur standard of § 80.520(a)(1), must affix the following conspicuous and legible label, in block letters of no less than 24-point bold type, and printed in a color contrasting with the background, to each pump stand:

ULTRA-LOW SULFUR HIGHWAY DIESEL FUEL (15 ppm Sulfur Maximum)

Required for use in all model year 2007 and later highway diesel vehicles and engines.

Recommended for use in all diesel vehicles and engines.

(b) From June 1, 2006, through November 30, 2010, any retailer or wholesale purchaser-consumer who sells, dispenses, or offers for sale or dispensing, motor vehicle diesel fuel subject to the 500 ppm sulfur standard of § 80.520(c), must prominently and conspicuously display in the immediate area of each pump stand from which motor vehicle fuel subject to the 500 ppm sulfur standard is offered for sale or dispensing, the following legible label, in block letters of no less than 24-point bold type, printed in a color contrasting with the background:

LOW SULFUR HIGHWAY DIESEL FUEL (500 ppm Sulfur Maximum)

WARNING

Federal law prohibits use in model year 2007 and later highway vehicles and engines.

Its use may damage these vehicles and engines.

* * * * *

■ 13. Section 80.571 is amended by revising paragraphs (b) and (d) to read as follows:

§ 80.571 What labeling requirements apply to retailers and wholesale purchaser-consumers of NRLM diesel fuel or heating oil beginning June 1, 2007?

* * * * *

(b) From June 1, 2007, through September 30, 2010, for pumps dispensing NRLM diesel fuel meeting the 500 ppm sulfur standard of § 80.510(a):

LOW SULFUR NON-HIGHWAY DIESEL FUEL (500 ppm Sulfur Maximum)

WARNING

Federal Law prohibits use in highway vehicles or engines.

* * * * *

(d) From June 1, 2007, and beyond, for pumps dispensing non-motor vehicle diesel fuel for use other than in nonroad, locomotive, or marine engines, such as for use as heating oil:

HEATING OIL (May Exceed 500 ppm Sulfur)

WARNING

Federal law prohibits use in highway vehicles or engines, or in nonroad, locomotive, or marine diesel engines.

Its use may damage these diesel engines.

* * * * *

■ 14. Section 80.572 is amended by revising paragraphs (a) and (b) to read as follows:

§ 80.572 What labeling requirements apply to retailers and wholesale purchaser-consumers of NR and NRLM diesel fuel and heating oil beginning June 1, 2010?

* * * * *

(a) From June 1, 2010, through September 31, 2014, any retailer or wholesale purchaser-consumer who sells, dispenses, or offers for sale or dispensing, motor vehicle diesel fuel subject to the 15 ppm sulfur standard of § 80.520(a)(1), must affix the following conspicuous and legible label, in block letters of no less than 24-point bold type, and printed in a color contrasting with the background, to each pump stand:

ULTRA-LOW SULFUR HIGHWAY DIESEL FUEL (15 ppm Sulfur Maximum)

Required for use in all highway diesel vehicles and engines.

Recommended for use in all diesel vehicles and engines.

(b) From June 1, 2010, through September 30, 2012, for pumps dispensing NR diesel fuel subject to the 15 ppm sulfur standard of § 80.510(b):

ULTRA-LOW SULFUR NON-HIGHWAY DIESEL FUEL (15 ppm Sulfur Maximum)

Required for use in all model year 2011 and later nonroad diesel engines.

Recommended for use in all other non-highway diesel engines.

WARNING

Federal law prohibits use in highway vehicles or engines.

* * * * *

■ 15. Section 80.573 is amended by revising paragraph (a) to read as follows:

§ 80.573 What labeling requirements apply to retailers and wholesale purchaser-consumers of NRLM diesel fuel and heating oil beginning June 1, 2012?

* * * * *

(a) From June 1, 2012, through September 30, 2014, for pumps dispensing NRLM diesel fuel subject to the 15 ppm sulfur standard of § 80.510(c):

ULTRA-LOW SULFUR NON-HIGHWAY DIESEL FUEL (15 ppm Sulfur Maximum)

Required for use in all model year 2011 and later nonroad diesel engines.

Recommended for use in all other non-highway diesel engines.

WARNING

Federal law prohibits use in highway vehicles or engines.

* * * * *

■ 16. Section 80.574 is revised to read as follows:

§ 80.574 What labeling requirements apply to retailers and wholesale purchaser-consumers of ECA marine fuel beginning June 1, 2014?

(a) Any retailer or wholesale purchaser-consumer who sells, dispenses, or offers for sale or dispensing ECA marine fuel must prominently and conspicuously display in the immediate area of each pump stand from which ECA marine fuel is offered for sale or dispensing, one of the following legible labels, as applicable, in block letters of no less than 24-point bold type, printed in a color contrasting with the background:

(1) From June 1, 2014, and beyond, for pumps dispensing ECA marine fuel subject to the 1,000 ppm sulfur standard of § 80.510(k):

1,000 ppm SULFUR ECA MARINE FUEL (1,000 ppm Sulfur Maximum)

For use in Category 3 (C3) marine vessels only.

WARNING

Federal law prohibits use in any engine that is not installed on a C3 marine vessel; use of fuel oil with a sulfur content greater than 1,000 ppm in an ECA is prohibited except as allowed by 40 CFR Part 1043.

(2) The labels required by paragraph (a)(1) of this section must be placed on the vertical surface of each pump housing and on each side that has gallon and price meters. The labels shall be on the upper two-thirds of the pump, in a location where they are clearly visible.

(b) Alternative labels to those specified in paragraph (a) of this section may be used as approved by EPA.

(1) *For U.S. Mail:* U.S. EPA, Attn: Diesel Sulfur Alternative Label Request, 6406J, 1200 Pennsylvania Avenue, NW., Washington, DC 20460.

(2) *For overnight or courier services:* U.S. EPA, Attn: Diesel Sulfur Alternative Label Request, 6406J, 1310 L Street, NW., 6th Floor, Washington, DC 20005. (202) 343–9038.

■ 17. Section 80.580 is amended by adding paragraphs (b)(1) and (c)(1) to read as follows:

§ 80.580 What are the sampling and testing methods for sulfur?

* * * * *

(b) * * *

(1) For ECA marine fuel subject to the 1,000 ppm sulfur standard of § 80.510(k), sulfur content may be determined using ASTM D2622 (incorporated by reference, *see* paragraph (e) of this section).

* * * * *

(c) * * *

(1) *Options for testing sulfur content of 1,000 ppm diesel fuel.* (i) For ECA marine fuel subject to the 1,000 ppm sulfur standard of § 80.510(k), sulfur content may be determined using ASTM D4294, ASTM D5453, or ASTM D6920 (all incorporated by reference, *see* paragraph (e) of this section), provided that the refiner or importer test result is correlated with the appropriate method specified in paragraph (b)(1) of this section; or

(ii) For ECA marine fuel subject to the 1,000 ppm sulfur standard of § 80.510(k), sulfur content may be determined using any test method approved under § 80.585.

* * * * *

■ 18. Section 80.581 is amended by revising the section heading and paragraphs (a) and (c)(1) to read as follows:

§ 80.581 What are the batch testing and sample retention requirements for motor vehicle diesel fuel, NRLM diesel fuel, and ECA marine fuel?

(a) Beginning on June 1, 2006 (or earlier pursuant to § 80.531), for motor vehicle diesel fuel, and beginning June 1, 2010 (or earlier pursuant to § 80.535), for NRLM diesel fuel, and beginning June 1, 2014, for ECA marine fuel, each refiner and importer shall collect a representative sample from each batch of motor vehicle or NRLM diesel fuel produced or imported and subject to the 15 ppm sulfur content standard, or ECA marine fuel subject to the 1,000 ppm sulfur content standard. Batch, for the purposes of this section, means batch as defined under § 80.2 but without the reference to transfer of custody from one facility to another facility.

* * * * *

(c)(1) Any refiner who produces motor vehicle, NRLM diesel fuel, or ECA marine fuel using computer-controlled in-line blending equipment, including the use of an on-line analyzer test method that is approved under the provisions of § 80.580, and who, subsequent to the production of the diesel fuel batch tests a composited sample of the batch under the provisions of § 80.580 for purposes of designation and reporting, is exempt from the requirement of paragraph (b) of this section to obtain the test result required under this section prior to the diesel fuel leaving the refinery, provided that the refiner obtains approval from EPA. The requirement of this paragraph (c)(1) that the in-line blending equipment must include an on-line analyzer test method that is approved under the provisions of § 80.580 is effective beginning June 1, 2006.

* * * * *

■ 19. Section 80.583 is amended by revising the section heading to read as follows:

§ 80.583 What alternative sampling and testing requirements apply to importers who transport motor vehicle diesel fuel, NRLM diesel fuel, or ECA marine fuel by truck or rail car?

* * * * *

■ 20. Section 80.584 is amended by revising the section heading and adding paragraphs (a)(3) and (b)(3) to read as follows:

§ 80.584 What are the precision and accuracy criteria for approval of test methods for determining the sulfur content of motor vehicle diesel fuel, NRLM diesel fuel, and ECA marine fuel?

(a) * * *

(3) For ECA marine fuel subject to the 1,000 ppm sulfur standard of § 80.510(k), of a standard deviation less than 18.07 ppm, computed from the results of a minimum of 20 repeat tests made over 20 days on samples taken from a single homogeneous commercially available diesel fuel with a sulfur content in the range of 700–1,000 ppm. The 20 results must be a series of tests with a sequential record of the analyses and no omissions. A laboratory facility may exclude a given sample or test result only if the exclusion is for a valid reason under good laboratory practices and it maintains records regarding the sample and test results and the reason for excluding them.

(b) * * *

(3) For ECA marine fuel subject to the 1,000 ppm sulfur standard of § 80.510(k):

(i) The arithmetic average of a continuous series of at least 10 tests performed on a commercially available gravimetric sulfur standard in the range of 300–400 ppm sulfur shall not differ from the ARV of that standard by more than 13.55 ppm sulfur;

(ii) The arithmetic average of a continuous series of at least 10 tests performed on a commercially available gravimetric sulfur standard in the range of 900–1,000 ppm sulfur shall not differ from the ARV of that standard by more than 13.55 ppm sulfur; and

(iii) In applying the tests of paragraphs (b)(3)(i) and (ii) of this section, individual test results shall be

compensated for any known chemical interferences.

■ 21. Section 80.585 is amended by revising the section heading and paragraphs (e)(2) and (e)(4) to read as follows:

§ 80.585 What is the process for approval of a test method for determining the sulfur content of diesel or ECA marine fuel?

* * * * *

(e) * * *

(2) Follow paragraph 7.3.1 of ASTM D 6299–02 to check standards using a reference material at least monthly or following any major change to the laboratory equipment or test procedure. Any deviation from the accepted reference value of a check standard greater than 1.44 ppm (for diesel fuel subject to the 15 ppm sulfur standard), 19.36 ppm (for diesel fuel subject to the 500 ppm sulfur standard), or 36.14 ppm (for ECA marine fuel subject to the 1,000 ppm sulfur standard must be investigated.

* * * * *

(4) Upon discovery of any quality control testing violation of paragraph A 1.5.1.3 or A 1.5.2.1 of ASTM D 6299–02, or any check standard deviation greater than 1.44 ppm (for diesel fuel subject to the 15 ppm sulfur standard), 19.36 ppm (for diesel fuel subject to the 500 ppm sulfur standard), or 36.14 ppm (for ECA marine fuel subject to the 1,000 ppm sulfur standard), conduct an investigation into the cause of such violation or deviation and, after restoring method performance to statistical control, retest retained samples from batches originally tested since the last satisfactory quality control material or check standard testing occasion.

■ 22. Section 80.590 is amended as follows:

■ a. By revising the section heading.

■ b. By revising paragraphs (a) introductory text, (a)(5), (a)(6) introductory text, and (a)(6)(ii).

■ c. By adding paragraph (a)(7)(vii).

■ d. By redesignating paragraphs (e) through (i) as paragraphs (f) through (j), respectively.

■ e. By adding a new paragraph (e).

§ 80.590 What are the product transfer document requirements for motor vehicle diesel fuel, NRLM diesel fuel, heating oil, ECA marine fuel, and other distillates?

(a) This paragraph (a) applies on each occasion that any person transfers custody or title to MVNRLM diesel fuel, heating oil, or ECA marine fuel (including distillates used or intended to be used as MVNRLM diesel fuel, heating oil, or ECA marine fuel) except when such fuel is dispensed into motor vehicles or nonroad equipment, locomotives, marine diesel engines or C3 vessels. Note that 40 CFR part 1043 specifies requirements for documenting fuel transfers to certain marine vessels. For all fuel transfers subject to this paragraph (a), the transferor must provide to the transferee documents which include the following information:

* * * * *

(5) For transfers of MVNRLM diesel fuel or ECA marine fuel (beginning June 1, 2014), the sulfur content standard the transferor represents the fuel to meet.

(6) Beginning June 1, 2006, when an entity, from a facility at any point in the distribution system, transfers custody of a distillate or residual fuel designated under § 80.598, the following information must also be included:

* * * * *

(ii) An accurate and clear statement of the applicable designation and/or classification under § 80.598(a) and (b), for example, "500 ppm sulfur NRLM diesel fuel", or "jet fuel"; and whether the fuel is dyed or undyed, and for heating oil, whether marked or unmarked where applicable.

(7) * * *

(vii) *ECA marine fuel.* For ECA marine fuel produced or imported beginning June 1, 2014, "1,000 ppm sulfur (maximum) ECA marine fuel. For use in Category 3 marine vessels only. Not for use in engines not installed on C3 marine vessels."

* * * * *

(e) Beginning June 1, 2014, for ECA marine fuel only (except for transfers to truck carriers, retailers or wholesale purchaser-consumers), product codes may be used to convey the information required under this section if such codes are clearly understood by each transferee. "1000" must appear clearly on the product transfer document, and may be contained in the product code. If the designation is included in the code, codes used to convey the statement in paragraph (a)(7)(vii) of this section must contain the number "1000". If another letter, number, or symbol is being used to convey the statement in paragraph (a)(7)(vii) of this section, it must be clearly defined and denoted on the product transfer document.

* * * * *

■ 23. Section 80.593 is amended by revising the introductory text to read as follows:

§ 80.593 What are the reporting requirements for refiners and importers of motor vehicle diesel fuel subject to temporary refiner relief standards?

Beginning with 2006, or the first compliance period during which credits are generated under § 80.531(b) or (c), whichever is earlier, any refiner or importer who produces or imports motor vehicle diesel fuel subject to the 500 ppm sulfur standard under § 80.520(c), or any refiner or importer who generates, uses, obtains, or transfers credits under §§ 80.530 through 80.532, and continuing for each year thereafter, must submit to EPA annual reports that contain the information required in this section, and such other information as EPA may require:

* * * * *

■ 24. Section 80.597 is amended by revising paragraphs (c), (d), (e), and (f) and adding paragraph (g) to read as follows:

§ 80.597 What are the registration requirements?

* * * * *

(c) *Registration for ECA marine fuel.* Refiners and importers that intend to produce or supply ECA marine fuel beginning June 1, 2014, must provide EPA the information under § 80.76 no later than December 31, 2012, if such information has not been previously provided under the provisions of this part. In addition, for each import facility, the same identifying information as required for each refinery under § 80.76(c) must be provided.

(d) *Entity registration.* (1) Except as prescribed in paragraph (d)(6) of this section, each entity as defined in § 80.502 that intends to deliver or receive custody of any of the following fuels from June 1, 2006 through May 31, 2010, must register with EPA by December 31, 2005, or six months prior to commencement of producing, importing, or distributing any distillate listed in paragraphs (d)(1)(i) through (d)(1)(iii) of this section:

(i) Fuel designated as 500 ppm sulfur MVNRLM diesel fuel under § 80.598 on which taxes have not been assessed pursuant to IRS code (26 CFR part 48).

(ii) Fuel designated as 15 ppm sulfur MVNRLM diesel fuel under § 80.598 on which taxes have not been assessed pursuant to IRS code (26 CFR part 48).

(iii) Fuel designated as NRLM diesel fuel under § 80.598 that is undyed pursuant to § 80.520.

(iv) Fuel designated as California Diesel fuel under § 80.598 on which taxes have not been assessed and red dye has not been added (if required) pursuant to IRS code (26 CFR part 48)

and that is delivered by pipeline to a terminal outside of the State of California pursuant to the provisions of § 80.617(b).

(2) Except as prescribed in paragraph (d)(6) of this section, each entity as defined in § 80.502 that intends to deliver or receive custody of any of the following fuels from June 1, 2007, through May 31, 2014, must register with EPA by December 31, 2005, or six months prior to commencement of producing, importing, or distributing any distillate listed in paragraph (d)(1) of this section:

(i) Fuel designated as 500 ppm sulfur MVNRLM diesel fuel under § 80.598 on which taxes have not been assessed pursuant to IRS code (26 CFR part 48).

(ii) Fuel designated as NRLM diesel fuel under § 80.598 that is undyed pursuant to § 80.520.

(iii) Fuel designated as heating oil under § 80.598 that is unmarked pursuant to § 80.510(d) through (f).

(iv) Fuel designated as LM diesel fuel under § 80.598(a)(2)(iii) that is unmarked pursuant to § 80.510(e).

(3) Except as prescribed in paragraph (d)(6) of this section, each entity as defined in § 80.502 that intends to deliver or receive custody of any of the following fuels beginning June 1, 2014, must register with EPA by December 31, 2012, or prior to commencement of producing, importing, or distributing any distillate or residual fuel listed in this paragraph (d):

(i) Fuel designated as 1,000 ppm sulfur ECA marine fuel under § 80.598.

(ii) [Reserved]

(4) Registration shall be on forms prescribed by the Administrator, and shall include the name, business address, contact name, telephone number, e-mail address, and type of production, importation, or distribution activity or activities engaged in by the entity.

(5) Registration shall include the information required under paragraph (e) of this section for each facility owned or operated by the entity that delivers or receives custody of a fuel described in paragraphs (d)(1) through (3) of this section.

(6) *Exceptions for Excluded Liquids.* An entity that would otherwise be required to register pursuant to the requirements of paragraphs (d)(1) through (3) of this section is exempted from the registration requirements under this section provided that:

(i) The only diesel fuel or heating oil that the entity delivers or receives on which taxes have not been assessed or which is not received dyed pursuant to IRS code 26 CFR part 48 is an excluded liquid as defined pursuant to IRS code 26 CFR 48.4081–1(b).

(ii) The entity does not transfer the excluded liquid to a facility which delivers or receives diesel fuel other than an excluded liquid on which taxes have not been assessed pursuant to IRS code (26 CFR part 48).

(e) *Facility registration.* (1) List for each separate facility of an entity required to register under paragraph (d) of this section, the facility name, physical location, contact name, telephone number, e-mail address and type of facility. For facilities that are aggregated under § 80.502, provide information regarding the nature and location of each of the components. If aggregation is changed for any subsequent compliance period, the entity must provide notice to EPA prior to the beginning of such compliance period.

(2) If facility records are kept off-site, list the off-site storage facility name, physical location, contact name, and telephone number.

(3) *Mobile facilities:* (i) A description shall be provided in the registration detailing the types of mobile vessels that will likely be included and the nature of the operations.

(ii) Entities may combine all mobile operations into one facility; or may split the operations by vessel, region, route, waterway, *etc.* and register separate mobile facilities for each.

(iii) The specific vessels need not be identified in the registration, however information regarding specific vessel contracts shall be maintained by each registered entity for its mobile facilities, pursuant to § 80.602(d).

(f) *Changes to registration information.* Any company or entity shall submit updated registration information to the Administrator within 30 days of any occasion when the registration information previously supplied for an entity, or any of its registered facilities, becomes incomplete or inaccurate.

(g) *Issuance of registration numbers.* EPA will supply a registration number to each entity and a facility registration number to each of an entity's facilities that is identified, which shall be used in all reports to the Administrator.

■ 25. Section 80.598 is amended as follows:

■ a. By revising paragraphs (a)(2)(i)(A) through (F).

■ b. By adding paragraph (a)(2)(i)(H).

■ c. By revising paragraph (a)(2)(v) introductory text.

■ d. By adding paragraph (a)(3)(xv).

■ e. By revising paragraphs (b)(4)(i), (b)(4)(ii), (b)(7)(i), (b)(7)(ii), (b)(8), (b)(9)(ii), (b)(9)(viii), and (b)(9)(x) introductory text.

§ 80.598 What are the designation requirements for refiners, importers, and distributors?

(a) * * *

(2) * * *

(i) * * *

(A) Motor vehicle, nonroad, locomotive or marine (MVNRLM) diesel fuel.

(B) Heating oil.

(C) Jet fuel.

(D) Kerosene.

(E) No. 4 fuel.

(F) Distillate fuel for export only.

* * * * *

(H) ECA marine fuel. This designation may be used beginning June 1, 2014, and fuel designated as such is subject to the restrictions in paragraph (a)(3)(xv) of this section.

* * * * *

(v) From June 1, 2006, through May 31, 2010, any batch designated as motor vehicle diesel fuel must also be designated according to one of the following distillation classifications that most accurately represents the fuel:

* * * * *

(3) * * *

(xv) Beginning June 1, 2014, any fuel designated as ECA marine fuel will be subject to all the following restrictions:

(A) Such fuel may not exceed a sulfur level of 1,000 ppm.

(B) Such fuel may only be produced, distributed, sold, and purchased for use in C3 marine vessels.

(b) * * *

(4) * * *

(i) #1D 500 ppm sulfur motor vehicle diesel fuel.

(ii) #2D 500 ppm sulfur motor vehicle diesel fuel.

* * * * *

(7) * * *

(i) 500 ppm sulfur NRLM diesel fuel.

(ii) Heating oil.

* * * * *

(8) Beginning June 1, 2014, whenever custody of a batch of distillate or residual fuel (other than jet fuel, kerosene, No. 4 fuel, fuel for export, fuel intended for use outside an ECA, or fuel otherwise allowed to be used under 40 CFR part 1043) having a sulfur content greater than 15 ppm is transferred to another facility, the entity transferring custody must accurately and clearly designate the batch as one of the following and specify its volume:

(i) ECA marine fuel.

(ii) Heating oil.

(iii) Exempt distillate fuels such as fuels that are covered by a national security exemption under § 80.606, fuels

that are used for purposes of research and development pursuant to § 80.607, and fuels used in the U.S. Territories pursuant to § 80.608 (including additional identifying information).

(9) * * *

(ii) Until June 1, 2014, any distillate fuel containing greater than or equal to 0.10 milligrams per liter of marker solvent yellow 124 required under § 80.510(d), (e), or (f) must be designated as heating oil except that from June 1, 2010, through September 30, 2012, it may also be designated as LM diesel fuel as specified under § 80.510(e).

* * * * *

(viii) For facilities in areas other than those specified in § 80.510(g)(1) and (2), batches or portions of batches of unmarked distillate received designated as heating oil may be re-designated as NRLM or LM diesel fuel only if all the following restrictions are met:

(A) From June 1, 2007, through May 31, 2010, for any compliance period, the volume of high sulfur NRLM diesel fuel delivered from a facility cannot be greater than the volume received, unless the volume of heating oil delivered from the facility is also greater than the volume it received by an equal or greater proportion, as calculated in § 80.599(c)(2).

(B) From June 1, 2010, through May 31, 2014, for any compliance period, the volume of fuel designated as heating oil delivered from a facility cannot be less than the volume of fuel designated as heating oil received, as calculated in § 80.599(c)(4).

* * * * *

(x) Notwithstanding the provisions of paragraphs (b)(5) and (8) of this section, beginning October 1, 2007:

* * * * *

■ 26. Section 80.599 is amended as follows:

■ a. By revising paragraph (a)(1).

■ b. By removing and reserving paragraph (a)(2).

■ c. By revising paragraph (e)(4).

§ 80.599 How do I calculate volume balances for designation purposes?

(a) * * *

(1) The annual compliance periods are shown in the following table:

Beginning date of annual compliance period	Ending date of annual compliance period
June 1, 2006	May 31, 2007.
June 1, 2007	June 30, 2008.
July 1, 2008	June 30, 2009.
July 1, 2009	May 31, 2010.
June 1, 2010	June 30, 2011.
July 1, 2011	May 31, 2012.
June 1, 2012	June 30, 2013.
July 1, 2013	May 31, 2014.

(2) [Reserved]

* * * * *

(e) * * *

(4) The following calculation may be used to account for wintertime blending of kerosene and the blending of non-petroleum diesel:

$$\#2MV500_O \leq \#2MV500_I + \#2MV500_P - \#2MV500_{INVCHG} + 0.2 * (\#1MV15_I + \#2MV15_I + NPMV15_I)$$

Where:

$\#1MV15_I$ = the total volume of fuel received during the compliance period that is designated as #1D 15 ppm sulfur motor vehicle diesel fuel. Any motor vehicle diesel fuel produced by or imported into the facility shall not be included in this volume.

$NPMV15_I$ = the total volume of fuel received during the compliance period that is designated as NP15 ppm sulfur motor vehicle diesel fuel. Any motor vehicle diesel fuel produced by or imported into the facility shall not be included in this volume.

$\#1MV15_P$ = the total volume of fuel produced by or imported into the facility during the compliance period that was designated as #1D 15 ppm sulfur motor vehicle diesel fuel when it was delivered.

* * * * *

■ 27. Section 80.600 is amended as follows:

■ a. By revising paragraphs (a)(5) and (a)(12).

■ b. By revising paragraphs (b)(1)(v)(A) and (B).

■ c. By revising paragraph (b)(3).

■ d. By revising paragraph (i).

■ e. By revising paragraphs (o)(1) and (o)(2).

§ 80.600 What records must be kept for purposes of the designate and track provisions?

(a) * * *

(5) Any refiner or importer shall maintain the records specified in paragraphs (a)(6) through (10) of this section for each batch of distillate or residual fuel that it transfers custody of and designates from June 1, 2014, and later as any of the following categories:

(i) Heating oil.

(ii) ECA marine fuel.

* * * * *

(12) Records must be maintained that demonstrate compliance with a refiner's compliance plan required under § 80.554, for distillate fuel designated as high sulfur NRLM diesel fuel and delivered from June 1, 2007 through May 31, 2010, for distillate fuel designated as 500 ppm sulfur NR diesel fuel and delivered from June 1, 2010, through May 31, 2012, and for distillate fuel designated as 500 ppm sulfur NRLM diesel fuel and delivered from June 1, 2012, through May 31, 2014, in the areas specified in § 80.510(g)(2).

* * * * *

(b) * * *

(1) * * *

(v) For each facility that receives fuel designated as heating oil, records for each batch of distillate or residual fuel with any of the following designations for which custody is received or delivered as well as any batches produced from June 1, 2014, and beyond:

(A) 1,000 ppm sulfur ECA marine fuel.

(B) Heating oil.

* * * * *

(3) Records that clearly and accurately identify the total volume in gallons of each designated fuel identified under paragraph (b)(1) of this section transferred over each of the compliance periods, and over the periods from June 1, 2006 to the end of each compliance period. The records shall be maintained separately for each fuel designated under paragraph (b)(1) of this section, and for each EPA entity and facility registration number from whom the fuel was received or to whom it was delivered. For batches of fuel received from facilities without an EPA facility registration number:

(i) Any batches of fuel received marked pursuant to § 80.510(d) or (f) shall be deemed to be designated as heating oil.

(ii) Any batches of fuel received marked pursuant to § 80.510(e) shall be deemed to be designated as heating oil or LM diesel fuel.

(iii) Any batches of fuel received on which taxes have been paid pursuant to Section 4082 of the Internal Revenue Code (26 CFR 48.4082) shall be deemed to be designated as motor vehicle diesel fuel.

(iv) Any 500 ppm sulfur diesel fuel dyed pursuant to § 80.520(b) and not marked pursuant to § 80.510(d) or (f) shall be deemed to be designated as NRLM diesel fuel.

(v) Any diesel fuel with less than or equal to 500 ppm sulfur which is dyed pursuant to § 80.520(b) and not marked pursuant to § 80.510(e) shall be deemed to be NR diesel fuel.

(vi) Beginning June 1, 2014, any batches of fuel with greater than 15 ppm sulfur, but less than or equal to 1,000 ppm sulfur, and not designated as heating oil shall be deemed to be 1,000 ppm ECA marine fuel.

* * * * *

(i) Additional records that must be kept by mobile facilities. Any registered mobile facility must keep records of all contracts from any contracted

components (*e.g.,* tank truck, barge, marine tanker, rail car, *etc.*) in each of its registered mobile facilities.

* * * * *

(o) * * *

(1) Any aggregated facility consisting of a refinery and truck loading terminal shall maintain records of all the following information for each batch of distillate fuel (and/or residual fuel with a sulfur level of 1,000 ppm or less that is intended for use in an ECA) produced by the refinery and sent over the aggregated facility's truck loading terminal rack:

(i) The batch volume.

(ii) The batch number, assigned under the batch numbering procedures under §§ 80.65(d)(3) and 80.502(d)(1).

(iii) The date of production.

(iv) A record designating the batch as distillate or residual fuel meeting the 500 ppm, 15 ppm, or 1,000 ppm ECA marine sulfur standard.

(v) A record indicating the volumes that were either taxed, dyed, or dyed and marked.

(2) Volume reports for all distillate fuel (and/or residual fuel with a sulfur level of 1,000 ppm or less that is intended for use in an ECA) from external sources (*i.e.,* from another refiner or importer), as described in § 80.601(f)(2), sent over the aggregated facility's truck rack.

■ 28. Section 80.601 is amended by revising paragraph (b)(3)(x) to read as follows:

§ 80.601 What are the reporting requirements for purposes of the designate and track provisions?

* * * * *

(b) * * *

(3) * * *

(x) Beginning with the report due August 31, 2011, and ending with the report due August 31, 2012, the volume balance under §§ 80.598(b)(9)(ix) and 80.599(d)(2).

* * * * *

■ 29. Section 80.602 is amended as follows:

■ a. By revising the section heading.

■ b. By revising paragraphs (a) introductory text, (a)(2) introductory text, and (a)(3).

■ c. By revising paragraphs (b) introductory text, (b)(4)(i), and (b)(4)(ii).

■ d. By revising paragraphs (g)(1) and (g)(2).

§ 80.602 What records must be kept by entities in the NRLM diesel fuel, ECA marine fuel, and diesel fuel additive production, importation, and distribution systems?

(a) *Records that must be kept by parties in the NRLM diesel fuel, ECA marine fuel and diesel fuel additive production, importation, and distribution systems.* Beginning June 1, 2007, or June 1, 2006, if that is the first period credits are generated under § 80.535, any person who produces, imports, sells, offers for sale, dispenses, distributes, supplies, offers for supply, stores, or transports nonroad, locomotive or marine diesel fuel, or ECA marine fuel (beginning June 1, 2014) subject to the provisions of this subpart, must keep all the following records:

* * * * *

(2) For any sampling and testing for sulfur content for a batch of NRLM diesel fuel produced or imported and subject to the 15 ppm sulfur standard or any sampling and testing for sulfur content as part of a quality assurance testing program, and any sampling and testing for cetane index, aromatics content, marker solvent yellow 124 content or dye solvent red 164 content of NRLM diesel fuel, ECA marine fuel, NRLM diesel fuel additives or heating oil:

* * * * *

(3) The actions the party has taken, if any, to stop the sale or distribution of any NRLM diesel fuel or ECA marine fuel found not to be in compliance with the sulfur standards specified in this subpart, and the actions the party has taken, if any, to identify the cause of any noncompliance and prevent future instances of noncompliance.

(b) *Additional records to be kept by refiners and importers of NRLM diesel fuel and ECA marine fuel.* Beginning June 1, 2007, or June 1, 2006, pursuant to the provisions of §§ 80.535 or 80.554(d) (or June 1, 2014, pursuant to the provisions of § 80.510(k)), any refiner producing distillate or residual fuel subject to a sulfur standard under §§ 80.510, 80.513, 80.536, 80.554, 80.560, or 80.561, for each of its refineries, and any importer importing such fuel separately for each facility, shall keep records that include the following information for each batch of NRLM diesel fuel, ECA marine fuel, or heating oil produced or imported:

* * * * *

(4) * * *

(i) NRLM diesel fuel, NR diesel fuel, LM diesel fuel, ECA marine fuel, or heating oil, as applicable.

(ii) Meeting the 500 ppm sulfur standard of § 80.510(a), the 15 ppm sulfur standard of § 80.510(b) and (c), the 1,000 ppm sulfur standard of § 80.510(k), or other applicable standard.

* * * * *

(g) * * *

(1) All the following information for each batch of distillate fuel (or residual fuel with a sulfur level of 1,000 ppm or less if such fuel is intended for use in an ECA) produced by the refinery and sent over the aggregated facility's truck rack:

(i) The batch volume.

(ii) The batch number, assigned under the batch numbering procedures under §§ 80.65(d)(3) and 80.502(d)(1).

(iii) The date of production.

(iv) A record designating the batch as one of the following:

(A) NRLM diesel fuel, NR diesel fuel, LM diesel fuel, ECA marine fuel, or heating oil, as applicable.

(B) Meeting the 500 ppm sulfur standard of § 80.510(a), the 15 ppm sulfur standard of § 80.510(b) and (c), the 1,000 ppm sulfur standard of § 80.510(k), or other applicable standard.

(C) Dyed or undyed with visible evidence of solvent red 164.

(D) Marked or unmarked with solvent yellow 124.

(2) Hand-off reports for all distillate fuel (or residual fuel with a sulfur level of 1,000 ppm or less if such fuel is intended for use in an ECA) from external sources (*i.e.,* from another refiner or importer), as described in § 80.601(f)(2).

■ 30. Section 80.606 is amended as follows:

■ a. By revising the section heading.

■ b. By revising paragraph (a) introductory text and paragraph (a)(1).

■ c. By revising paragraph (b).

■ d. By adding paragraph (c).

§ 80.606 What national security exemption applies to fuels covered under this subpart?

(a) The standards of all the fuels listed in paragraph (b) of this section do not apply to fuel that is produced, imported, sold, offered for sale, supplied, offered for supply, stored, dispensed, or transported for use in any of the following:

(1) Tactical military motor vehicles or tactical military nonroad engines, vehicles or equipment, including locomotive and marine, having an EPA national security exemption from the motor vehicle emission standards under 40 CFR 85.1708, or from the nonroad engine emission standards under 40 CFR part 89, 92, 94, 1042, or 1068.

* * * * *

(b) The exempt fuel must meet any of the following:

(1) The motor vehicle diesel fuel standards of § 80.520(a)(1), (a)(2), and (c).

(2) The nonroad, locomotive, and marine diesel fuel standards of § 80.510(a), (b), and (c).

(3) The 1,000 ppm ECA marine fuel standards of § 80.510(k).

(c) The exempt fuel must meet all the following conditions:

(1) It must be accompanied by product transfer documents as required under § 80.590.

(2) It must be segregated from non-exempt MVNRLM diesel fuel and ECA marine fuel at all points in the distribution system.

(3) It must be dispensed from a fuel pump stand, fueling truck or tank that is labeled with the appropriate designation of the fuel, such as "JP–5" or "JP–8".

(4) It may not be used in any motor vehicles or nonroad engines, equipment or vehicles, including locomotive and marine, other than the vehicles, engines, and equipment referred to in paragraph (a) of this section.

■ 31. Section 80.607 is amended as follows:

■ a. By revising the section heading.

■ b. By revising paragraph (a).

■ c. By revising paragraphs (c)(3)(iv) and (c)(4).

■ d. By revising paragraphs (d)(2), (d)(3), and (d)(4).

■ e. By revising paragraph (e)(1).

■ f. By revising paragraph (f).

§ 80.607 What are the requirements for obtaining an exemption for diesel fuel or ECA marine fuel used for research, development or testing purposes?

(a) *Written request for a research and development exemption.* Any person may receive an exemption from the provisions of this subpart for diesel fuel or ECA marine fuel used for research, development, or testing purposes by submitting the information listed in paragraph (c) of this section to: Director, Transportation and Regional Programs Division (6406J), U.S. Environmental Protection Agency, 1200 Pennsylvania Avenue, NW., Washington, DC 20460 (postal mail); or Director, Transportation and Regional Programs Division, U.S. Environmental Protection Agency, 1310 L Street, NW., 6th floor, Washington, DC 20005 (express mail/courier); and Director, Air Enforcement Division (2242A), U.S. Environmental Protection Agency, Ariel Rios Building, 1200 Pennsylvania Avenue, NW., Washington, DC 20460.

* * * * *

(c) * * *

(3) * * *

(iv) The quantity of fuel which does not comply with the requirements of §§ 80.520 and 80.521 for motor vehicle diesel fuel, or § 80.510 for NRLM diesel fuel or ECA marine fuel.

(4) With regard to control, a demonstration that the program affords EPA a monitoring capability, including all the following:

(i) The site(s) of the program (including facility name, street address, city, county, State, and zip code).

(ii) The manner in which information on vehicles and engines used in the program will be recorded and made available to the Administrator upon request.

(iii) The manner in which information on the fuel used in the program (including quantity, fuel properties, name, address, telephone number and contact person of the supplier, and the date received from the supplier), will be recorded and made available to the Administrator upon request.

(iv) The manner in which the party will ensure that the research and development fuel will be segregated from motor vehicle diesel fuel, NRLM diesel fuel, or ECA marine fuel, as applicable, and how fuel pumps will be labeled to ensure proper use of the research and development fuel.

(v) The name, address, telephone number and title of the person(s) in the organization requesting an exemption from whom further information on the application may be obtained.

(vi) The name, address, telephone number and title of the person(s) in the organization requesting an exemption who is responsible for recording and making available the information specified in this paragraph (c), and the location where such information will be maintained.

(d) * * *

(2) The research and development fuel must be designated by the refiner or supplier, as applicable, as research and development fuel.

(3) The research and development fuel must be kept segregated from non-exempt MVNRLM diesel fuel and ECA marine fuel at all points in the distribution system.

(4) The research and development fuel must not be sold, distributed, offered for sale or distribution, dispensed, supplied, offered for supply, transported to or from, or stored by a fuel retail outlet, or by a wholesale purchaser-consumer facility, unless the wholesale purchaser-consumer facility is associated with the research and development program that uses the fuel.

* * * * *

(e) * * *

(1) The volume of fuel subject to the approval shall not exceed the estimated amount under paragraph (c)(3)(iv) of this section, unless EPA grants a greater amount in writing.

* * * * *

(f) *Effects of exemption.* Motor vehicle diesel fuel, NRLM diesel fuel, or ECA marine fuel that is subject to a research and development exemption under this section is exempt from other provisions of this subpart provided that the fuel is used in a manner that complies with the purpose of the program under paragraph (c) of this section and the requirements of this section.

* * * * *

■ 32. Section 80.608 is revised to read as follows:

§ 80.608 What requirements apply to diesel fuel and ECA marine fuel for use in the Territories?

The sulfur standards of § 80.520(a)(1) and (c) related to motor vehicle diesel fuel, of § 80.510(a), (b), and (c) related to NRLM diesel fuel, and of § 80.510(k) related to ECA marine fuel, do not apply to fuel that is produced, imported, sold, offered for sale, supplied, offered for supply, stored, dispensed, or transported for use in the Territories of Guam, American Samoa or the Commonwealth of the Northern Mariana Islands, provided that such diesel fuel is all the following:

(a) Designated by the refiner or importer as high sulfur diesel fuel only for use in Guam, American Samoa, or the Commonwealth of the Northern Mariana Islands.

(b) Used only in Guam, American Samoa, or the Commonwealth of the Northern Mariana Islands.

(c) Accompanied by documentation that complies with the product transfer document requirements of § 80.590(b)(1).

(d) Segregated from non-exempt MVNRLM diesel fuel and/or non-exempt ECA marine fuel at all points in the distribution system from the point the fuel is designated as exempt fuel only for use in Guam, American Samoa, or the Commonwealth of the Northern Mariana Islands, while the exempt fuel is in the United States (or the United States Emission Control Area) but outside these Territories.

■ 33. Section 80.610 is amended as follows:

■ a. By revising paragraph (a)(1).

■ b. By revising paragraph (b).

■ c. By revising paragraph (c).

■ d. By revising paragraphs (e)(3)(iii) and (e)(4)(iii) and adding paragraph (e)(6).

■ e. By revising paragraph (g).

§ 80.610 What acts are prohibited under the diesel fuel sulfur program?

* * * * *

(a) * * *

(1) Produce, import, sell, offer for sale, dispense, supply, offer for supply, store or transport motor vehicle diesel fuel,

NRLM diesel fuel, ECA marine fuel or heating oil that does not comply with the applicable standards, dye, marking or any other product requirements under this subpart I and 40 CFR part 69, except as allowed by 40 CFR part 1043 for ECA marine fuel.

* * * * *

(b) *Designation and volume balance violation.* Produce, import, sell, offer for sale, dispense, supply, offer for supply, store or transport motor vehicle diesel, NRLM diesel fuel, ECA marine fuel, heating oil or other fuel that does not comply with the applicable designation or volume balance requirements under §§ 80.598 and 80.599.

(c) *Additive violation.* (1) Produce, import, sell, offer for sale, dispense, supply, offer for supply, store or transport any fuel additive for use at a downstream location that does not comply with the applicable requirements of § 80.521.

(2) Blend or permit the blending into motor vehicle diesel fuel, NRLM diesel fuel, or ECA marine fuel at a downstream location, or use, or permit the use, in motor vehicle diesel fuel, NRLM diesel fuel, or ECA marine fuel, of any additive that does not comply with the applicable requirements of § 80.521.

* * * * *

(e) * * *

(3) * * *

(iii) This prohibition begins December 1, 2014, in all other areas.

(4) * * *

(iii) This prohibition begins December 1, 2014, in all other areas.

* * * * *

(6) Beginning January 1, 2015, introduce (or permit the introduction of) any fuel with a sulfur content greater than 1,000 ppm for use in a Category 3 marine vessel within an ECA, except as allowed by 40 CFR part 1043. This prohibition is in addition to other prohibitions in this section.

* * * * *

(g) *Cause violating fuel or additive to be in the distribution system.* Cause motor vehicle diesel fuel, NRLM diesel fuel, or ECA marine fuel to be in the diesel fuel distribution system which does not comply with the applicable standard, dye or marker requirements or the product segregation requirements of this subpart I, or cause any fuel additive to be in the fuel additive distribution system which does not comply with the applicable sulfur standards under § 80.521.

■ 34. Section 80.612 is amended by revising paragraph (b) introductory text to read as follows:

§ 80.612 Who is liable for violations of this subpart?

* * * * *

(b) *Persons liable for failure to comply with other provisions of this subpart.* Any person who:

* * * * *

■ 35. Section 80.613 is amended by revising paragraph (a)(1)(iv) introductory text to read as follows:

§ 80.613 What defenses apply to persons deemed liable for a violation of a prohibited act under this subpart?

(a) * * *

(1) * * *

(iv) For refiners and importers of diesel fuel subject to the 15 ppm sulfur standard under § 80.510(b) or (c) or § 80.520(a)(1), the 500 ppm sulfur standard under § 80.510(a) or § 80.520(c), and/or the 1,000 ppm sulfur standard under § 80.510(k), test results that—

* * * * *

■ 36. Section 80.615 is amended by revising paragraphs (b)(2) and (b)(4) to read as follows:

§ 80.615 What penalties apply under this subpart?

* * * * *

(b) * * *

(2) Any person liable under § 80.612(a)(2) for causing motor vehicle diesel fuel, NRLM diesel fuel, ECA marine fuel, heating oil, or other distillate fuel to be in the distribution system which does not comply with an applicable standard or requirement of this subpart I, except as allowed under 40 CFR part 1043, is subject to a separate day of violation for each and every day that the noncomplying fuel remains any place in the diesel fuel distribution system.

* * * * *

(4) For purposes of this paragraph (b):

(i) The length of time the motor vehicle diesel fuel, NRLM diesel fuel, ECA marine fuel, heating oil, or other distillate fuel in question remained in the diesel fuel distribution system is deemed to be 25 days, except as further specified in paragraph (b)(4)(ii) of this section.

(ii) The length of time is deemed not to be 25 days if a person subject to liability demonstrates by reasonably specific showings, by direct or circumstantial evidence, that the non-complying motor vehicle, NR diesel fuel, NRLM diesel fuel, ECA marine fuel, heating oil, or distillate fuel remained in the distribution system for fewer than or more than 25 days.

* * * * *

PART 85—CONTROL OF AIR POLLUTION FROM MOBILE SOURCES

■ 37. The authority citation for part 85 continues to read as follows:

Authority: 42 U.S.C. 7401–7671q.

Subpart R—[Amended]

■ 38. Section 85.1703 is amended by revising the section heading and paragraph (a) introductory text to read as follows:

§ 85.1703 Definition of motor vehicle.

(a) For the purpose of determining the applicability of section 216(2), a vehicle which is self-propelled and capable of transporting a person or persons or any material or any permanently or temporarily affixed apparatus shall be deemed a motor vehicle, unless any one or more of the criteria set forth below are met, in which case the vehicle shall be deemed not a motor vehicle:

* * * * *

■ 39. A new § 85.1715 is added to subpart R to read as follows:

§ 85.1715 Aircraft meeting the definition of motor vehicle.

This section applies for aircraft meeting the definition of motor vehicle in § 85.1703.

(a) For the purpose of this section, aircraft means any vehicle capable of sustained air travel above treetop heights.

(b) The standards, requirements, and prohibitions of 40 CFR part 86 do not apply for aircraft or aircraft engines. Standards apply separately to certain aircraft engines, as described in 40 CFR part 87.

PART 86—CONTROL OF EMISSIONS FROM NEW AND IN-USE HIGHWAY VEHICLES AND ENGINES

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

Authority: 42 U.S.C. 7401–7671q.

Subpart A—[Amended]

§§ 86.000–15, 86.000–21, 86000–23, 86.000–25, 86.001–1, 86.087–38, 86.090–8, 86.091–10, 86.094–1. 86.094–15, 86.094–17, 86.094–23, 86.094–9, 86.096–9, 86.096–10, 86.096–11, 86.096–14, 86.096–23, 86.098–7, 86.098–8, 86.098–11, 86.098–15, 86.098–17, 86.098–21, 86.098–22, 86.099–1, and 86.099–30 [Removed]

■ 41. Subpart A is amended by removing the following sections: 86.000–15, 86.000–21, 86.000–23, 86.000–25, 86.001–1, 86.087–38, 86.090–8, 86.091–10, 86.094–1, 86.094–15, 86.094–17, 86.094–23, 86.094–9, 86.096–9, 86.096–10, 86.096–11,

86.096–14, 86.096–23, 86.098–7, 86.098–8, 86.098–11, 86.098–15, 86.098–17, 86.098–21, 86.098–22, 86.099–1, 86.099–30.

§ 86.000–28—[Amended]

■ 42. Section 86.000–28 is amended as follows:
■ a. By removing the introductory text.
■ b. By removing and reserving paragraph (a)(3).
■ c. By removing paragraph (a)(4)(i) introductory text.
■ d. By removing and reserving paragraphs (a)(4)(i)(A) through (a)(4)(i)(B)(*2*)(*i*).
■ e. By removing paragraphs (a)(4)(i)(B)(*2*)(*iii*) through (a)(4)(i)(D)(*2*).
■ f. By removing and reserving paragraph (a)(4)(ii)(B).
■ g. By removing paragraphs (a)(4)(ii)(C) and (a)(4)(iv) and (v).
■ h. By removing and reserving paragraphs (a)(5) and (a)(6).
■ i. By removing paragraph (a)(7)(i) introductory text.
■ j. By removing and reserving paragraphs (a)(7)(ii) through (b)(4)(i).
■ k. By removing paragraphs (b)(7) through (h).

■ 43. Section 86.008–10 is amended by revising paragraph (a)(2) to read as follows:

§ 86.008–10 Emission standards for 2008 and later model year Otto-cycle heavy-duty engines and vehicles.

* * * * *

(a) * * *

(2) The standards set forth in paragraph (a)(1) of this section refer to the exhaust emitted over the operating schedule set forth in paragraph (f)(1) of Appendix I to this part, and measured and calculated in accordance with the procedures set forth in subpart N or P of this part:

(i) Perform the test interval set forth in paragraph (f)(1) of Appendix I of this part with a cold-start according to 40 CFR part 1065, subpart F. This is the cold-start test interval.

(ii) Shut down the engine after completing the test interval and allow 20 minutes to elapse. This is the hot soak.

(iii) Repeat the test interval. This is the hot-start test interval.

(iv) Calculate the total emission mass of each constituent, m, and the total work, W, over each test interval according to 40 CFR 1065.650.

(v) Determine your engine's brake-specific emissions using the following calculation, which weights the emissions from the cold-start and hot-start test intervals:

$$\text{brake-specific emissions} = \frac{m_{\text{cold-start}} + 6 \cdot m_{\text{hot-start}}}{W_{\text{cold-start}} + 6 \cdot W_{\text{hot-start}}}$$

* * * * *

■ 44. Section 86.010–38 is amended by revising paragraphs (j) introductory text and (j)(15)(i) introductory text to read as follows:

§ 86.010–38 Maintenance instructions.

* * * * *

(j) The following provisions describe requirements related to emission control diagnostic service information for heavy-duty engines used in vehicles over 14,000 pounds gross vehicle weight (GVW):

* * * * *

(15) * * *

(i) By July 1, 2013, manufacturers shall make available for sale to the persons specified in paragraph (j)(3)(i) of this section their own manufacturer-specific diagnostic tools at a fair and reasonable cost. These tools shall also be made available in a timely fashion either through the manufacturer Web site or through a manufacturer-designated intermediary. Upon Administrator approval, manufacturers will not be required to make available manufacturer-specific tools with reconfiguration capabilities if they can demonstrate to the satisfaction of the Administrator that these tools are not essential to the completion of an emissions-related repair, such as recalibration. As a condition of purchase, manufacturers may request that the purchaser take all necessary training offered by the engine manufacturer. Any required training materials and classes must comply with the following:

* * * * *

§ 86.091–7 [Amended]

■ 45. Section 86.091–7 is amended by removing paragraph (a)(3) and removing and reserving paragraphs (c)(3) and (d)(2).

§ 86.094–7 [Amended]

■ 46. Section 86.094–7 is amended as follows:

■ a. By removing the introductory text.

■ b. By removing and reserving paragraphs (a) introductory text through (a)(2).

■ c. By removing and reserving paragraphs (b) through (c)(2), (c)(4) through (d)(1)(v), (d)(3) through (g), and (h)(1).

■ d. By removing paragraphs (h)(6) and (i).

§ 86.094–14 [Amended]

■ 47. Section 86.094–14 is amended as follows:

■ a. By removing paragraph (c)(7)(i)(C)(*4*).

■ b. By removing and reserving paragraph (c)(11)(ii)(B)(*1*).

■ c. By removing paragraphs (c)(11)(ii)(B)(*16*) through (*18*).

■ d. By removing and reserving paragraphs (c)(11)(ii)(C) and (c)(11)(ii)(D)(*1*) through (*6*)

§ 86.094–21 [Amended]

■ 48. Section 86.094–21 is amended by removing and reserving paragraph (b)(6).

§ 86.094–22 [Amended]

■ 49. Section 86.094–22 is amended by removing and reserving paragraph (d)(1).

§ 86.094–26 [Amended]

■ 50. Section 86.094–26 is amended as follows:
■ a. By removing and reserving paragraph (a)(2).
■ b. By removing the text of paragraph (a)(3) introductory text and the (a)(3)(i) paragraph heading.
■ c. By removing and reserving paragraphs (a)(3)(i)(A), (a)(3)(i)(C), (a)(3)(ii)(C), and (a)(4)(i)(C).
■ d. By removing paragraph (a)(6)(iii).
■ e. By removing and reserving paragraphs (a)(9)(ii) and (b)(2)(i) and (ii).
■ f. By removing paragraphs (b)(2)(iv) and (b)(4)(i)(C), and (D).
■ g. By removing and reserving paragraphs (b)(4)(ii), (c), and (d)(2)(ii).

§ 86.094–28 [Amended]

■ 51. Section 86.094–28 is amended as follows:
■ a. By removing and reserving paragraphs (a)(1) and (2).
■ b. By removing the text of paragraphs (a)(4) introductory text and (a)(4)(i) introductory text.
■ c. By removing and reserving paragraph (a)(4)(i)(B)(*2*)(*ii*).

■ d. By removing paragraph (a)(4)(i)(C).
■ e. By removing and reserving paragraph (a)(4)(ii) and(iii).
■ f. By removing paragraph (a)(4)(v).
■ g. By removing paragraph and reserving (a)(7) introductory text.
■ h. By removing and reserving paragraphs (a)(7)(i), (b)(1) and (2), and (b)(4)(ii).
■ i. By removing paragraphs (b)(4)(iii) and (iv), (b)(5) through (8), and (c) and (d).

§ 86.094–30 [Amended]

■ 52. Section 86.094–30 is amended as follows:
■ a. By removing and reserving paragraphs (a)(3) and (a)(4)(i) and (ii).
■ b. By removing and reserving paragraph (a)(4)(iv) introductory text.
■ c. By removing and reserving paragraphs (a)(10), (11), (13), (b)(1)(ii)(B), (b)(1)(ii)(D), and (b)(2).
■ d. By removing and reserving paragraph (b)(4)(ii) introductory text.
■ e. By removing and reserving paragraph (b)(4)(ii)(B).
■ f. By removing paragraphs (b)(4)(iii) and (iv) and (f).

§ 86.095–14 [Amended]

■ 53. Section 86.095–14 is amended by removing the introductory text and removing and reserving paragraphs (a) through (c)(11)(ii)(B)(*15*) and (c)(11)(ii)(D)(*7*) through (c)(15).

§ 86.095–23 [Amended]

■ 54. Section 86.095–23 is amended as follows:
■ a. By removing and reserving paragraphs (a) and (b).
■ b. By removing and reserving paragraph (c)(2).
■ c. By removing and reserving paragraphs (d) and (e).
■ d. By removing and reserving paragraphs (h) through (k).

§ 86.095–26 [Amended]

■ 55. Section 86.095–26 is amended as follows:
■ a. By removing the introductory text.
■ b. By removing and reserving paragraphs (a) through (b)(4)(i)(C) and (b)(4)(ii)(C).
■ c. By removing paragraphs (b)(4)(iii) through (d).

§ 86.095–30 [Amended]

■ 56. Section 86.095–30 is amended as follows:
■ a. By removing the introductory text.
■ b. By removing and reserving paragraphs (a)(1) through (a)(3) and (a)(4)(i) through (iii).
■ c. By removing paragraphs (a)(4)(iv)(A) through (C).
■ d. By removing and reserving paragraphs (a)(5) through (12).
■ e. By removing paragraph (a)(14).
■ f. By removing and reserving paragraph (b).
■ g. By removing paragraphs (c) through (f).

§ 86.095–35 [Amended]

■ 57. Section 86.095–35 is amended as follows:
■ a. By removing the introductory text.
■ b. By removing and reserving paragraphs (a)(2) introductory text through (a)(2)(iii)(C).
■ c. By removing and reserving paragraph (c).

§ 86.096–7 [Amended]

■ 58. Section 86.096–7 is amended as follows:
■ a. By removing the introductory text.
■ b. By removing and reserving paragraphs (a) through (h)(5).
■ c. By removing the heading for paragraph (h)(6) introductory text and removing and reserving paragraph (h)(6)(i).
■ d. By removing paragraph (h)(7)(vii).

§ 86.096–8 [Amended]

■ 59. Section 86.096–8 is amended as follows:
■ a. By removing paragraph (a)(1)(iii).
■ b. By removing and reserving paragraph (a)(2).
■ c. By removing paragraph (a)(3).
■ d. By removing and reserving paragraphs (b) introductory text through (b)(4).

§ 86.096–21 [Amended]

■ 60. Section 86.096–21 is amended by removing the introductory text and removing and reserving paragraphs (a) through (j).

§ 86.096–24 [Amended]

■ 61. Section 86.096–24 is amended as follows:
■ a. By removing and reserving paragraphs (a)(5) through (7), (b)(1)(i) and (ii), and (b)(1)(vii).
■ b. By removing and reserving paragraphs (b)(1)(viii) introductory text and (b)(1)(viii)(A).
■ c. By removing and reserving paragraph (f).
■ d. By removing paragraph (g)(3).

§ 86.096–26 [Amended]

■ 62. Section 86.096–26 is amended as follows:
■ a. By removing the introductory text.
■ b. By removing and reserving paragraphs (a) and (b).
■ c. By removing and reserving paragraphs (c)(1) through (c)(3).
■ d. By removing paragraph (d).

§ 86.096–30 [Amended]

■ 63. Section 86.096–30 is amended as follows:
■ a. By removing the introductory text.
■ b. By removing and reserving paragraphs (a)(1) through (14).
■ c. By removing paragraphs (a)(19) through (24).
■ d. By removing and reserving paragraph (b).
■ e. By removing paragraphs (c) through (f).

§ 86.097–9 [Amended]

■ 64. Section 86.097–9 is amended as follows:
■ a. By removing paragraph (a)(1)(iv).
■ b. By removing and reserving paragraph (a)(2).
■ c. By removing paragraph (a)(3).
■ d. By removing and reserving paragraphs (b) and (d) through (f).

§ 86.098–10 [Amended]

■ 65. Section 86.098–10 is amended by removing and reserving paragraph (b).

§ 86.098–23 [Amended]

■ 66. Section 86.098–23 is amended as follows:
■ a. By removing the introductory text.
■ b. By removing and reserving paragraphs (b)(2), (c), and (d)(2).
■ c. By removing paragraph (d)(3).
■ d. By removing and reserving paragraphs (f) through (g) and (l).

§ 86.098–24 [Amended]

■ 67. Section 86.098–24 is amended as follows:
■ a. By removing the introductory text.
■ b. By removing paragraph (a) introductory text.
■ c. By removing and reserving paragraphs (a)(1) through (4).
■ d. By removing paragraph (a)(8) through (15).
■ e. By removing and reserving paragraphs (b) introductory text and(b)(1) introductory text.
■ f. By removing and reserving paragraphs (b)(1)(i) through (vi) and (b)(1)(viii)(B).
■ g. By removing paragraphs (b)(1)(ix) through (xii).
■ h. By removing and reserving paragraph (b)(2).
■ i. By removing paragraphs (b)(3) and (c) through (h).

§ 86.098–25 [Amended]

■ 68. Section 86.098–25 is amended as follows:
■ a. By removing the introductory text.
■ b. By removing and reserving paragraph (a).
■ c. By removing and reserving paragraph (b) introductory text.

■ d. By removing and reserving paragraphs (b)(1) through (2).
■ e. By removing and reserving paragraph (b)(3) introductory text through (b)(3)(vi)(D).
■ f. By removing paragraphs (b)(3)(vii), (b)(4) through (7), and (c) through (h).

§ 86.098–26 [Amended]

■ 69. Section 86.098–26 is amended as follows:
■ a. By removing the introductory text.
■ b. By removing and reserving paragraphs (a)(1) and (2).
■ c. By removing and reserving paragraphs (a)(3) introductory text and (a)(3)(i)(A) and (B).
■ d. By removing paragraph (a)(3)(i)(D).
■ e. By removing and reserving paragraph (a)(3)(ii)(A) and (B).
■ h. By removing paragraphs (a)(3)(ii)(D) and (a)(4) through (11).
■ i. By removing and reserving paragraph (b).
■ j. By removing paragraphs (c) through (d).

§ 86.098–28 [Amended]

■ 70. Section 86.098–28 is amended as follows:
■ a. By removing the introductory text.
■ b. By removing and reserving paragraphs (a)(1) through (a)(3).
■ c. By removing and reserving paragraphs (a)(4)(i) introductory text, (a)(4)(i)(A) and (B), and (a)(4)(ii)(A) .
■ d. By removing and reserving paragraphs (a)(4)(iii) and (iv).
■ f. By removing and reserving paragraphs (a)(5) and (6), (a)(7)(i) and (ii), and (b).
■ g. By removing paragraphs (c) through (h).

§ 86.098–30 [Amended]

■ 71. Section 86.098–30 is amended as follows:
■ a. By removing the introductory text.
■ b. By removing and reserving paragraphs (a)(1) through (18), (b)(1), and (b)(3).
■ c. By removing and reserving paragraphs (b)(4) introductory text, (b)(4)(i), and (b)(4)(ii)(A).
■ d. By removing paragraphs (b)(5) through (f).

§ 86.099–8 [Amended]

■ 72. Section 86.099–8 is amended as follows:
■ a. By removing the introductory text.
■ b. By removing and reserving paragraph (a)(1) introductory text.
■ c. By removing and reserving paragraphs (a)(1)(i) and (ii), (b)(5), and (c).
■ d. By removing paragraphs (e) through (k).

§ 86.099–9 [Amended]

■ 73. Section 86.099–9 is amended as follows:
■ a. By removing the introductory text.
■ b. By removing and reserving paragraph (a)(1) introductory text.
■ c. By removing and reserving paragraphs (a)(1)(i) through (iii).
■ d. By removing paragraph (c) through (k).

Subpart B—[Amended]

■ 74. Section 86.138–96 is amended by revising paragraph (k) to read as follows:

§ 86.138–96 Hot soak test.

* * * * *

(k) For the supplemental two-diurnal test sequence (*see* § 86.130–96), perform a hot soak test as described in this section, except that the test shall be conducted within seven minutes after completion of the hot start exhaust test and temperatures throughout the hot soak measurement period must be between 68 ° and 86 °F. This hot soak test is followed by two consecutive diurnal heat builds, described in § 86.133–96(p).

* * * * *

■ 75. Section 86.144–94 is amended by revising paragraph (c)(7)(ii) to read as follows:

§ 86.144–94 Calculations; exhaust emissions.

* * * * *

(c) * * *

(7) * * *

(ii) For methanol-fueled vehicles, where fuel composition is $C_xH_yO_z$ as measured, or calculated, for the fuel used:

$$DF = \frac{100 \cdot \left(\frac{X}{x + y/2 + 3.76 \cdot \left(x + y/4 - z/2 \right)} \right)}{CO_{2e} + \left(HC_e + CO_e + C_{CH_3OH_e} + C_{HCHO_e} \right) \cdot 10^{-4}}$$

* * * * *

Subpart E—[Amended]

■ 76. Section 86.415–78 is amended by revising paragraph (b) to read as follows:

§ 86.415–78 Production vehicles.

* * * * *

(b) Any manufacturer obtaining certification shall notify the Administrator of the number of vehicles of each engine family-engine displacement-emission control system-fuel system-transmission type-inertial mass category combination produced for sale in the United States during the preceding year. This report must be submitted every year within 45 days after the end of the model year.

* * * * *

Subpart G—Selective Enforcement Auditing of New Light-Duty Vehicles, Light-Duty Trucks, and Heavy-Duty Vehicles

■ 77. The heading for subpart G is revised as set forth above.

■ 78. Section 86.601–84 is amended by revising the introductory text to read as follows:

§ 86.601–84 Applicability.

The provisions of this subpart apply to light-duty vehicles, light-duty trucks, and heavy-duty vehicles. However, manufacturers that optionally certify heavy-duty vehicles based on chassis testing under § 86.1863–07 may choose instead to perform selective enforcement audits using the procedures specified in 40 CFR part 1068, subpart E. References to "light-duty vehicle" or "LDT" in this subpart G shall be deemed to include light-duty trucks and heavy-duty vehicles as appropriate.

* * * * *

■ 79. Subpart K, consisting of § 86.1001, is revised to read as follows:

Subpart K—Selective Enforcement Auditing of New Heavy-Duty Engines

§ 86.1001 Applicability.

(a) The selective enforcement auditing program described in 40 CFR part 1068,

subpart E, applies for all heavy-duty engines as described in this section. In addition, the provisions of 40 CFR 1068.10 and 1068.20 apply for any selective enforcement audits of these engines.

(b) For heavy-duty engines, the prescribed test procedure is the Federal Test Procedure as described in subparts I, N, and P of this part (including provisions of 40 CFR part 1065 as specified in this part), except that they shall not be subject to the test procedures specified in §§ 86.1360(b)(2) and (f), 86.1370, 86.1372, and 86.1380. The Administrator may, on the basis of a written application by a manufacturer, approve optional test procedures other than those in subparts I, N, and P of this part for any heavy-duty vehicle which is not susceptible to satisfactory testing using the procedures in subparts I, N, and P of this part.

Subpart N—[Amended]

■ 80. Section 86.1305–2010 is amended by revising paragraph (h)(2) to read as follows:

§ 86.1305–2010 Introduction; structure of subpart.

* * * * *

(h) * * *

(2) Follow the provisions of 40 CFR 1065.342 to verify the performance of any sample dryers in your system. Correct your measurements according to 40 CFR 1065.659, except use the value of K_w in § 86.1342–90(i) as the value of $(1 - x_{H2Oexh})$ in Equation 1065.659–1.

* * * * *

Subpart T—[Amended]

■ 81. Section 86.1910 is amended by revising paragraph (d) to read as follows:

§ 86.1910 How must I prepare and test my in-use engines?

* * * * *

(d) You must test the selected engines while they remain installed in the vehicle. Use portable emission sampling equipment and field-testing procedures referenced in § 86.1375. Measure emissions of THC, NMHC (by any method specified in 40 CFR part 1065, subpart J), CO, NO_X, PM (as appropriate), and CO_2. Measure or determine O_2 emissions using good engineering judgment.

* * * * *

PART 94—CONTROL OF EMISSIONS FROM MARINE COMPRESSION–IGNITION ENGINES

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

Authority: 42 U.S.C. 7401–7671q.

Subpart A—[Amended]

■ 83. Section 94.1 is amended by revising paragraph (b)(3) to read as follows:

§ 94.1 Applicability.

* * * * *

(b) * * *

(3) Marine engines subject to the standards of 40 CFR part 1042, and marine engines that optionally certify (to the Tier 1 or Tier 2 standards) under the provisions of 40 CFR part 1042. Note that 40 CFR 1042.1 specifies that marine compression-ignition engines that are not certified under this part are subject to 40 CFR part 1042. Such engines may also be subject to the standards of this part 94.

* * * * *

■ 84. Section 94.12 is amended by adding paragraph (j) to read as follows:

§ 94.12 Interim provisions.

* * * * *

(j) *Transition to new category thresholds.* Beginning model year 2012, engines with maximum engine power at or below 3700 kW with per-cylinder displacement at or above 5.0 liters and below 7.0 liters are Category 1 engines subject to 40 CFR part 1042. Similarly, beginning model year 2014, engines with maximum engine power above 3700 kW with per-cylinder displacement at or above 5.0 liters and below 7.0 liters are Category 1 engines subject to 40 CFR part 1042. For purposes of this paragraph (j), maximum engine power has the meaning given in 40 CFR 1042.901.

Subpart J—[Amended]

■ 85. Section 94.904 is amended by revising paragraph (a) to read as follows:

§ 94.904 Exemptions.

(a) Except as specified otherwise in this subpart, the provisions of §§ 94.904 through 94.913 exempt certain new engines from the standards, other requirements, and prohibitions of this part, except for the requirements of this subpart and the requirements of § 94.1104. Additional requirements may apply for imported engines; these are described in subpart I of this part. Engines may also be exempted from the standards of this part under the provisions of 40 CFR part 1042 or part 1068.

* * * * *

PART 1027—FEES FOR ENGINE, VEHICLE, AND EQUIPMENT COMPLIANCE PROGRAMS

■ 86. The authority citation for part 1027 continues to read as follows:

Authority: 42 U.S.C. 7401–7671q.

■ 87. Section 1027.101 is amended as follows:

■ a. By revising paragraph (a)(2)(iii).

■ b. By adding paragraph (a)(4).

■ c. By revising paragraph (d).

§ 1027.101 To whom do these requirements apply?

(a) * * *

(2) * * *

(iii) Marine compression-ignition engines we regulate under 40 CFR part 94, 1042, or 1043.

* * * * *

(4) Portable fuel containers we regulate under 40 CFR part 59, subpart F.

* * * * *

(d) Paragraph (a) of this section identifies the parts of the CFR that define emission standards and other requirements for particular types of engines, vehicles, and fuel-system components. This part 1027 refers to each of these other parts generically as the "standard-setting part." For example, 40 CFR part 1051 is always the standard-setting part for recreational vehicles. For some nonroad engines, we allow for certification related to evaporative emissions separate from exhaust emissions. In this case, 40 CFR part 1060 is the standard-setting part for the equipment or fuel system components you produce.

■ 88. Section 1027.105 is amended by revising paragraph (b)(3) to read as follows:

§ 1027.105 How much are the fees?

* * * * *

(b) * * *

(3) The following fees apply for nonroad and stationary engines, vehicles, equipment, and components:

Category	Certificate type	Fee
(i) Locomotives and locomotive engines	All	$826
(ii) Marine compression-ignition engines and stationary compression-ignition engines with per-cylinder displacement at or above 10 liters.	All, including EIAPP	826

Category	Certificate type	Fee
(iii) Other nonroad compression-ignition engines and stationary compression-ignition engines with per-cylinder displacement below 10 liters.	All	1,822
(iv) Large SI engines	All	826
(v) Stationary spark-ignition engines above 19 kW	All	826
(vi) Marine SI engines and Small SI engines	Exhaust only	826
(vii) Stationary spark-ignition engines at or below 19 kW	Exhaust only	826
(viii) Recreational vehicles	Exhaust (or combined exhaust and evap)	826
(ix) Equipment and fuel-system components associated with nonroad and stationary spark-ignition engines, including portable fuel containers.	Evap (where separate certification is required).	241

* * * * *

■ 89. Section 1027.115 is amended by revising paragraph (g) to read as follows:

§ 1027.115 What special provisions apply for certification related to nonroad and stationary engines?

* * * * *

(g) For marine compression-ignition engines, if you apply for a Federal certificate and an EIAPP certificate for the same engine family, a single fee applies for the engine family (*see* 40 CFR parts 94, 1042, and 1043).

* * * * *

■ 89b. Section 1027.150 is amended by revising the section heading to read as follows and removing the definition of "Annex VI."

§ 1027.150 What definitions apply to this part?

* * * * *

PART 1033—CONTROL OF EMISSIONS FROM LOCOMOTIVES

■ 90. The authority citation for part 1033 continues to read as follows:

Authority: 42 U.S.C. 7401–7671q.

Subpart A—[Amended]

■ 91. Section 1033.15 is amended by revising paragraph (a) to read as follows:

§ 1033.15 Other regulation parts that apply for locomotives.

(a) Part 1065 of this chapter describes procedures and equipment specifications for testing engines to measure exhaust emissions. Subpart F of this part 1033 describes how to apply the provisions of part 1065 of this chapter to test locomotives to determine whether they meet the exhaust emission standards in this part.

* * * * *

■ 92. A new § 1033.30 is added to subpart A to read as follows:

§ 1033.30 Submission of information.

(a) This part includes various requirements to record data or other information. Refer to § 1033.925 and 40 CFR 1068.25 regarding recordkeeping requirements. Unless we specify otherwise, store these records in any format and on any media and keep them readily available for one year after you send an associated application for certification, or one year after you generate the data if they do not support an application for certification. You must promptly send us organized, written records in English if we ask for them. We may review them at any time.

(b) The regulations in § 1033.255 and 40 CFR 1068.101 describe your obligation to report truthful and complete information and the consequences of failing to meet this obligation. This includes information not related to certification.

(c) Send all reports and requests for approval to the Designated Compliance Officer (*see* § 1033.901).

(d) Any written information we require you to send to or receive from another company is deemed to be a required record under this section. Such records are also deemed to be submissions to EPA. We may require you to send us these records whether or not you are a certificate holder.

Subpart B—[Amended]

■ 93. Section 1033.101 is amended by revising paragraph (d) to read as follows:

§ 1033.101 Exhaust emission standards.

* * * * *

(d) *Averaging, banking, and trading.* You may generate or use emission credits under the averaging, banking, and trading (ABT) program as described in subpart H of this part to comply with the NO_X and/or PM standards of this part. You may also use ABT to comply with the Tier 4 HC standards of this part as described in paragraph (j) of this section. Generating or using emission credits requires that you specify a family emission limit (FEL) for each pollutant you include in the ABT program for each engine family. These FELs serve as the emission standards for the engine family with respect to all required testing instead of the standards specified in paragraphs (a) and (b) of this section. FELs may not be higher than the following limits:

(1) FELs for Tier 0 and Tier 1 locomotives originally manufactured before 2002 may have any value.

(2) FELs for Tier 1 locomotives originally manufactured 2002 through 2004 may not exceed 9.5 g/bhp-hr for NO_X emissions or 0.60 g/bhp-hr for PM emissions measured over the line-haul duty cycle. FELs for these locomotives may not exceed 14.4 g/bhp-hr for NO_X emissions or 0.72 g/bhp-hr for PM emissions measured over the switch duty cycle.

(3) FELs for Tier 2 and Tier 3 locomotives may not exceed the Tier 1 standards of this section.

(4) FELs for Tier 4 locomotives may not exceed the Tier 3 standards of this section.

* * * * *

■ 94. Section 1033.115 is amended by revising paragraph (f) to read as follows:

§ 1033.115 Other requirements.

* * * * *

(f) *Defeat devices.* You may not equip your locomotives with a defeat device. A defeat device is an auxiliary emission control device (AECD) that reduces the effectiveness of emission controls under conditions that the locomotive may reasonably be expected to encounter during normal operation and use.

(1) This does not apply to AECDs you identify in your application for certification if any of the following is true:

(i) The conditions of concern were substantially included in the applicable duty cycle test procedures described in subpart F of this part.

(ii) You show your design is necessary to prevent locomotive damage or accidents.

(iii) The reduced effectiveness applies only to starting the locomotive.

(iv) The locomotive emissions when the AECD is functioning are at or below the notch caps of § 1033.101.

(2) This does not apply to AECDs related to hotel mode that conform to the specifications of this paragraph (f)(2). This provision is intended for AECDs that have the primary function of operating the engine at a different speed than would be done to generate

the same propulsive power when not operating in hotel mode. Identify and describe these AECDs in your application for certification. We may allow the AECDs to modify engine calibrations where we determine that such modifications are environmentally beneficial or needed for proper engine function. You must obtain preliminary approval under § 1033.210 before incorporating such modifications. Otherwise, you must apply the same injection timing and intake air cooling strategies in hotel mode and non-hotel mode.

* * * * *

■ 95. Section 1033.120 is amended by revising paragraph (c) to read as follows:

§ 1033.120 Emission-related warranty requirements.

* * * * *

(c) *Components covered.* The emission-related warranty covers all components whose failure would increase a locomotive's emissions of any regulated pollutant. This includes components listed in 40 CFR part 1068, Appendix I, and components from any other system you develop to control emissions. The emission-related warranty covers the components you sell even if another company produces the component. Your emission-related warranty does not need to cover components whose failure would not increase a locomotive's emissions of any regulated pollutant. For remanufactured locomotives, your emission-related warranty is required to cover only those parts that you supply or those parts for which you specify allowable part manufacturers. It does not need to cover used parts that are not replaced during the remanufacture.

* * * * *

■ 95b. Section 1033.150 amended by revising paragraph (a)(4) and redesignating paragraph (k)(1) as paragraph (l) to read as follows:

§ 1033.150 Interim provisions.

* * * * *

(a) * * *

(4) Estimate costs as follows:

(i) The cost limits described in paragraph (a)(1) of this section are specified in terms of 2007 dollars. Adjust these values for future years according to the following equation:

Actual Limit = (2007 Limit) × [(0.6000) × (Commodity Index) + (0.4000) × (Earnings Index)]

Where:

2007 Limit = The value specified in paragraph (a)(1) of this section ($250,000 or $125,000).

Commodity Index = The U.S. Bureau of Labor Statistics Producer Price Index for Industrial Commodities Less Fuel (Series WPU03T15M05) for the month prior to the date you submit your application divided by 173.1.

Earnings Index = The U.S. Bureau of Labor Statistics Estimated Average Hourly Earnings of Production Workers for Durable Manufacturing (Series CES3100000008) for the month prior to the date you submit your application divided by 18.26.

(ii) Calculate all costs in current dollars (for the month prior to the date you submit your application). Calculate fuel costs based on a fuel price adjusted by the Association of American Railroads' monthly railroad fuel price index (P), which is available at *https://www.aar.org//media/AAR/RailCost Indexes/Index_MonthlyFuelPrices.ashx.* (Use the value for the column in which P equals 539.8 for November 2007.) Calculate a new fuel price using the following equation:

Fuel Price = ($2.76 per gallon) × (P/539.8)

* * * * *

Subpart C—[Amended]

■ 96. Section 1033.220 is amended by revising the introductory text and paragraph (a) to read as follows:

§ 1033.220 Amending maintenance instructions.

You may amend your emission-related maintenance instructions after you submit your application for certification, as long as the amended instructions remain consistent with the provisions of § 1033.125. You must send the Designated Compliance Officer a request to amend your application for certification for an engine family if you want to change the emission-related maintenance instructions in a way that could affect emissions. In your request, describe the proposed changes to the maintenance instructions. If owners/operators follow the original maintenance instructions rather than the newly specified maintenance, this does not allow you to disqualify those locomotives from in-use testing or deny a warranty claim.

(a) If you are decreasing or eliminating any of the specified maintenance, you may distribute the new maintenance instructions to your customers 30 days after we receive your request, unless we disapprove your request. This would generally include replacing one maintenance step with another. We may approve a shorter time or waive this requirement.

* * * * *

■ 97. Section 1033.225 is amended as follows:

■ a. By revising the introductory text.

■ b. By revising paragraphs (b) introductory text and (b)(2).

■ c. By revising paragraphs (e) and (f).

§ 1033.225 Amending applications for certification.

Before we issue you a certificate of conformity, you may amend your application to include new or modified locomotive configurations, subject to the provisions of this section. After we have issued your certificate of conformity, you may send us an amended application requesting that we include new or modified locomotive configurations within the scope of the certificate, subject to the provisions of this section. You must also amend your application if any changes occur with respect to any information that is included or should be included in your application. For example, you must amend your application if you determine that your actual production variation for an adjustable parameter exceeds the tolerances specified in your application.

* * * * *

(b) To amend your application for certification, send the relevant information to the Designated Compliance Officer.

* * * * *

(2) Include engineering evaluations or data showing that the amended engine family complies with all applicable requirements. You may do this by showing that the original emission-data locomotive is still appropriate for showing that the amended family complies with all applicable requirements.

* * * * *

(e) For engine families already covered by a certificate of conformity, you may start producing the new or modified locomotive anytime after you send us your amended application, before we make a decision under paragraph (d) of this section. However, if we determine that the affected locomotives do not meet applicable requirements, we will notify you to cease production of the locomotives and may require you to recall the locomotives at no expense to the owner. Choosing to produce locomotives under this paragraph (e) is deemed to be consent to recall all locomotives that we determine do not meet applicable emission standards or other requirements and to remedy the nonconformity at no expense to the owner. If you do not provide information required under paragraph

(c) of this section within 30 days after we request it, you must stop producing the new or modified locomotives.

(f) You may ask us to approve a change to your FEL in certain cases after the start of production. The changed FEL may not apply to locomotives you have already introduced into U.S. commerce, except as described in this paragraph (f). If we approve a changed FEL after the start of production, you must include the new FEL on the emission control information label for all locomotives produced after the change. You may ask us to approve a change to your FEL in the following cases:

(1) You may ask to raise your FEL for your engine family at any time. In your request, you must show that you will still be able to meet the emission standards as specified in subparts B and H of this part. If you amend your application by submitting new test data to include a newly added or modified locomotive, as described in paragraph (b)(3) of this section, use the appropriate FELs with corresponding production volumes to calculate emission credits for the model year, as described in subpart H of this part. In all other circumstances, you must use the higher FEL for the entire family to calculate emission credits under subpart H of this part.

(2) You may ask to lower the FEL for your emission family only if you have test data from production locomotives showing that emissions are below the proposed lower FEL. The lower FEL applies only to engines or fuel-system components you produce after we approve the new FEL. Use the appropriate FELs with corresponding production volumes to calculate emission credits for the model year, as described in subpart H of this part.

■ 98. Section 1033.235 is amended by revising paragraphs (c) and (d) introductory text to read as follows:

§ 1033.235 Emission testing required for certification.

* * * * *

(c) We may measure emissions from any of your emission-data locomotives or other locomotives from the engine family.

(1) We may decide to do the testing at your plant or any other facility. If we do this, you must deliver the locomotive to a test facility we designate. If we do the testing at your plant, you must schedule it as soon as possible and make available the instruments, personnel, and equipment we need.

(2) If we measure emissions from one of your locomotives, the results of that testing become the official emission results for the locomotive. Unless we later invalidate these data, we may decide not to consider your data in determining if your engine family meets applicable requirements.

(3) Before we test one of your locomotives, we may set its adjustable parameters to any point within the adjustable ranges (*see* § 1033.115(b)).

(4) Before we test one of your locomotives, we may calibrate it within normal production tolerances for anything we do not consider an adjustable parameter. For example, this would apply where we determine that an engine parameter is not an adjustable parameter (as defined in § 1033.901) but that it is subject to production variability.

(d) You may ask to use carryover emission data from a previous model year instead of doing new tests if all the following are true:

* * * * *

■ 99. Section 1033.240 is amended by revising paragraph (a) introductory text and paragraph (b) introductory text to read as follows:

§ 1033.240 Demonstrating compliance with exhaust emission standards.

(a) For purposes of certification, your engine family is considered in compliance with the applicable numerical emission standards in § 1033.101 if all emission-data locomotives representing that family have test results showing official emission results and deteriorated emission levels at or below these standards.

* * * * *

(b) Your engine family is deemed not to comply if any emission-data locomotive representing that family has test results showing an official emission result or a deteriorated emission level for any pollutant that is above an applicable emission standard. Use the following steps to determine the deteriorated emission level for the test locomotive:

* * * * *

■ 100. Section 1033.255 is amended by revising paragraph (b) to read as follows:

§ 1033.255 EPA decisions.

* * * * *

(b) We may deny your application for certification if we determine that your engine family fails to comply with emission standards or other requirements of this part or the Clean Air Act. We will base our decision on all available information. If we deny your application, we will explain why in writing.

* * * * *

Subpart D—[Amended]

■ 101. Section 1033.325 is amended by revising paragraph (d) to read as follows:

§ 1033.325 Maintenance of records; submittal of information.

* * * * *

(d) Nothing in this section limits our authority to require you to establish, maintain, keep or submit to us information not specified by this section. We may also ask you to send less information.

* * * * *

Subpart F—[Amended]

■ 102. Section 1033.501 is amended by revising paragraph (i) to read as follows:

§ 1033.501 General provisions.

* * * * *

(i) For passenger locomotives that can generate hotel power from the main propulsion engine, the locomotive must comply with the emission standards when in non-hotel setting. For hotel mode, the locomotive is subject to the notch cap provisions of § 1033.101 and the defeat device prohibition of § 1033.115.

■ 103. Section 1033.505 is amended by revising paragraph (a) to read as follows:

§ 1033.505 Ambient conditions.

* * * * *

(a) *Temperature.* (1) Testing may be performed with ambient temperatures from 15.5 °C (60 °F) to 40.5 °C (105 °F). Do not correct emissions for temperature effects within this range.

(2) It is presumed that combustion air will be drawn from the ambient air. Thus, the ambient temperature limits of this paragraph (a) apply for intake air upstream of the engine. If you do not draw combustion air from the ambient air, use good engineering judgment to ensure that any temperature difference (between the ambient air and combustion air) does not cause the emission measurement to be unrepresentative of in-use emissions.

(3) If we allow you to perform testing at ambient temperatures below 15.5 °C, you must correct NO_X emissions for temperature effects, consistent with good engineering judgment. For example, if the intake air temperature (at the manifold) is lower at the test temperature than it would be for equivalent operation at an ambient temperature of 15.5 °C, you generally will need to adjust your measured NO_X emissions to account for the effect of the lower intake air temperature. However, if you maintain a constant manifold air

temperature, you will generally not need to correct emissions.

* * * * *

■ 104. Section 1033.515 is amended by revising the section heading and paragraphs (d) and (e) to read as follows:

§ 1033.515 Discrete-mode steady-state emission tests of locomotives and locomotive engines.

* * * * *

(d) Use one of the following approaches for sampling PM emissions during discrete-mode steady-state testing:

(1) *Engines certified to a PM standard/FEL at or above 0.05 g/bhp-hr.* Use a separate PM filter sample for each test mode of the locomotive test cycle according to the procedures specified in paragraph (a) through (c) of this section. You may ask to use a shorter sampling period if the total mass expected to be collected would cause unacceptably high pressure drop across the filter before reaching the end of the required sampling time. We will not allow sampling times shorter than 60 seconds. When we conduct locomotive emission tests, we will adhere to the time limits for each of the numbered modes in Table 1 to this section.

(2) *Engines certified to a PM standard/FEL below 0.05 g/bhp-hr.* (i) You may use separate PM filter samples for each test mode as described in paragraph (d)(1) of this section; however, we recommend that you do not. The low rate of sample filter loading will result in very long sampling times and the large number of filter samples may induce uncertainty stack-up that will lead to unacceptable PM measurement accuracy. Instead, we recommend that you measure PM emissions as specified in paragraph (d)(2)(ii) of this section.

(ii) You may use a single PM filter for sampling PM over all of the test modes of the locomotive test cycle as specified in this paragraph (d)(2). Vary the sample time to be proportional to the applicable line-haul or switch weighting factors specified in § 1033.530 for each mode. The minimum sampling time for each mode is 400 seconds multiplied by the weighting factor. For example, for a mode with a weighting factor of 0.030, the minimum sampling time is 12.0 seconds. PM sampling in each mode must be proportional to engine exhaust flow as specified in 40 CFR part 1065. Begin proportional sampling of PM emissions at the beginning of each test mode as is specified in paragraph (c) of this section. End the sampling period for each test mode so that sampling times are proportional to the weighting factors for the applicable duty cycles. If necessary, you may extend the time limit for each of the test modes beyond the sampling times in Table 1 to this section to increase the sampled mass of PM emissions or to account for proper weighting of the PM emission sample over the entire cycle, using good engineering judgment.

(e) This paragraph (e) describes how to test locomotive engines when not installed in a locomotive. Note that the test procedures for dynamometer engine testing of locomotive engines are intended to produce emission measurements that are the same as emission measurements produced during testing of complete locomotives using the same engine configuration. The following requirements apply for all engine tests:

(1) Specify a second-by-second set of engine speed and load points that are representative of in-use locomotive operation for each of the set-points of the locomotive test cycle described in Table 1 to this section, including transitions from one notch to the next. This is your reference cycle for validating your cycle. You may ignore points between the end of the sampling period for one mode and the point at which you change the notch setting to begin the next mode.

(2) Keep the temperature of the air entering the engine after any charge air cooling to within 5 °C of the typical intake manifold air temperature when the engine is operated in the locomotive under similar ambient conditions.

(3) Proceed as specified in paragraphs (a) through (d) of this section for testing complete locomotives.

■ 105. Section 1033.530 is amended by revising paragraphs (e) and (h) to read as follows:

§ 1033.530 Duty cycles and calculations.

* * * * *

(e) *Automated Start-Stop.* For a locomotive equipped with features that shut the engine off after prolonged periods of idle, multiply the measured idle mass emission rate over the idle portion of the applicable test cycles by a factor equal to one minus the estimated fraction reduction in idling time that will result in use from the shutdown feature. Do not apply this factor to the weighted idle power. Application of this adjustment is subject to our approval if the fraction reduction in idling time that is estimated to result from the shutdown feature is greater than 25 percent. This paragraph (e) does not apply if the locomotive is (or will be) covered by a separate certificate for idle control.

* * * * *

(h) *Calculation adjustments for energy-saving design features.* The provisions of this paragraph (h) apply for locomotives equipped with new energy-saving locomotive design features. They do not apply for features that only improve the engine's brake-specific fuel consumption. They also do not apply for features that were commonly incorporated in locomotives before 2008. *See* paragraph (h)(6) of this section for provisions related to determining whether certain features are considered to have been commonly incorporated in locomotives before 2008.

(1) Manufacturers/remanufacturers choosing to adjust emissions under this paragraph (h) must do all of the following for certification:

(i) Describe the energy-saving features in your application for certification.

(ii) Describe in your installation instruction and/or maintenance instructions all steps necessary to utilize the energy-saving features.

(2) If your design feature will also affect the locomotives' duty cycle, you must comply with the requirements of paragraph (g) of this section.

(3) Calculate the energy savings as follows:

(i) Estimate the expected mean in-use fuel consumption rate (on a BTU per ton-mile basis) with and without the energy saving design feature, consistent with the specifications of paragraph (h)(4) of this section. The energy savings is the ratio of fuel consumed from a locomotive operating with the new feature to fuel consumed from a locomotive operating without the feature under identical conditions. Include an estimate of the 80 percent confidence interval for your estimate of the mean and other statistical parameters we specify.

(ii) Your estimate must be based on in-use operating data, consistent with good engineering judgment. Where we have previously certified your design feature under this paragraph (h), we may require you to update your analysis based on all new data that are available. You must obtain approval before you begin collecting operational data for this purpose.

(iii) We may allow you to consider the effects of your design feature separately for different route types, regions, or railroads. We may require that you certify these different locomotives in different engine families and may restrict their use to the specified applications.

(iv) Design your test plan so that the operation of the locomotives with and without is as similar as possible in all material aspects (other than the design

feature being evaluated). Correct all data for any relevant differences, consistent with good engineering judgment.

(v) Do not include any brake-specific energy savings in your calculated values. If it is not possible to exclude such effects from your data gathering, you must correct for these effects, consistent with good engineering judgment.

(4) Calculate adjustment factors as described in this paragraph (h)(4). If the energy savings will apply broadly, calculate and apply the adjustment on a cycle-weighted basis. Otherwise, calculate and apply the adjustment separately for each notch. To apply the adjustment, multiply the emissions (either cycle-weighted or notch-specific, as applicable) by the adjustment. Use the lower bound of the 80 percent confidence interval of the estimate of the mean as your estimated energy savings rate. We may cap your energy savings rate for this paragraph (h)(4) at 80 percent of the estimate of the mean. Calculate the emission adjustment factors as:

$$AF = 1.000 - (\text{energy savings rate})$$

(5) We may require you to collect and report data from locomotives we allow you to certify under this paragraph (h) and to recalculate the adjustment factor for future model years based on such data.

(6) Features that are considered to have not been commonly incorporated in locomotives before 2008 include but are not limited to those identified in this paragraph (h)(6).

(i) Electronically controlled pneumatic (ECP) brakes, computerized throttle management control, and advanced hybrid technology were not commonly incorporated in locomotives before 2008. Manufacturers may claim full credit for energy savings that result from applying these features to freshly manufactured and/or remanufactured locomotives.

(ii) Distributed power systems that use radio controls to optimize operation of locomotives in the middle and rear of a train were commonly incorporated in some but not all locomotives in 2008. Manufacturers may claim credit for incorporating these features into locomotives as follows:

(A) Manufacturers may claim prorated credit for incorporating distributed power systems in freshly manufactured locomotives. Multiply the energy saving rate by 0.50 when calculating the adjustment factor:

$$AF = 1.000 - (\text{energy savings rate}) \times (0.50)$$

(B) Manufacturers may claim full credit for retrofitting distributed power systems in remanufactured locomotives.

Subpart G—[Amended]

■ 106. Section 1033.601 is amended by revising paragraph (a) to read as follows:

§ 1033.601 General compliance provisions.

* * * * *

(a) *Meaning of terms.* When used in 40 CFR part 1068, apply meanings for specific terms as follows:

(1) "Manufacturer" means manufacturer and/or remanufacturer.

(2) "Date of manufacture" means date of original manufacture for freshly manufactured locomotives and the date on which a remanufacture is completed for remanufactured engines.

* * * * *

■ 107. Section 1033.625 is amended by revising paragraphs (a)(1), (b), and (c) to read as follows:

§ 1033.625 Special certification provisions for non-locomotive-specific engines.

* * * * *

(a) * * *

(1) Before being installed in the locomotive, the engines were covered by a certificate of conformity issued under 40 CFR Part 1039 (or part 89) that is effective for the calendar year in which the manufacture or remanufacture occurs. You may use engines certified during the previous years if they were subject to the same standards. You may not make any modifications to the engines unless we approve them.

* * * * *

(b) To certify your locomotives by design under this section, submit your application as specified in § 1033.205, with the following exceptions:

(1) Include the following instead of the locomotive test data otherwise required by § 1033.205:

(i) A description of the engines to be used, including the name of the engine manufacturer and engine family identifier for the engines.

(ii) A brief engineering analysis describing how the engine's emission controls will function when installed in the locomotive throughout the locomotive's useful life.

(iii) The emission data submitted under 40 CFR part 1039 (or part 89).

(2) You may separately submit some of the information required by § 1033.205, consistent with the provisions of § 1033.1(d). For example, this may be an appropriate way to submit detailed information about proprietary engine software. Note that this allowance to separately submit some of the information required by § 1033.205 is also available for applications not submitted under this section.

(c) Locomotives certified under this section are subject to all the requirements of this part except as specified in paragraph (b) of this section. The engines used in such locomotives are not considered to be included in the otherwise applicable engines family of 40 CFR part 1039 (or part 89).

* * * * *

■ 108. A new § 1033.652 is added to subpart G to read as follows:

§ 1033.652 Special provisions for exported locomotives.

(a) *Uncertified locomotives.* Locomotives covered by an export exemption under 40 CFR 1068.230 may be introduced into U.S. commerce prior to being exported, but may not be used in any revenue generating service in the United States. Locomotives covered by this paragraph (a) may not include any EPA emission control information label. Such locomotives may include emission control information labels for the country to which they are being exported.

(b) *Locomotives covered by export-only certificates.* Locomotives may be certified for export under 40 CFR 1068.230. Such locomotives may be introduced into U.S. commerce prior to being exported, but may not be used in any revenue generating service in the United States.

(c) *Locomotives included in a certified engine family.* Except as specified in paragraph (d) of this section, locomotives included in a certified engine family may be exported without restriction. Note that § 1033.705 requires that exported locomotives be excluded from emission credit calculations in certain circumstances.

(d) *Locomotives certified to FELs above the standards.* The provisions of this paragraph (d) apply for locomotive configurations included in engine families certified to one or more FELs above any otherwise applicable standard. Individual locomotives that will be exported may be excluded from an engine family if they are unlabeled. For locomotives that were labeled during production, you may remove the emission control information labels prior to export. All unlabeled locomotives that will be exported are subject to the provisions of paragraph (a) of this section. Locomotives that are of a configuration included in an engine family certified to one of more FELs above any otherwise applicable standard that include an EPA emission control information label when exported

are considered to be part of the engine family and must be included in credit calculations under § 1033.705. Note that this requirement does not apply for locomotives that do not have an EPA emission control information label, even if they have other labels (such as an export-only label).

Subpart H—[Amended]

■ 109. Section 1033.705 is amended by revising paragraph (b) introductory text to read as follows:

§ 1033.705 Calculating emission credits.

* * * * *

(b) For each participating engine family, calculate positive or negative emission credits relative to the otherwise applicable emission standard. For the end of year report, round the sum of emission credits to the nearest one hundredth of a megagram (0.01 Mg). Round your end of year emission credit balance to the nearest megagram (Mg). Use consistent units throughout the calculation. When useful life is expressed in terms of megawatt-hrs, calculate credits for each engine family from the following equation:

* * * * *

■ 110. Section 1033.715 is revised to read as follows:

§ 1033.715 Banking emission credits.

(a) Banking is the retention of emission credits by the manufacturer/remanufacturer generating the emission credits (or owner/operator, in the case of transferred credits) for use in future model years for averaging, trading, or transferring. You may use banked emission credits only as allowed by § 1033.740.

(b) You may designate any emission credits you plan to bank in the reports you submit under § 1033.730 as reserved credits. During the model year and before the due date for the final report, you may designate your reserved emission credits for averaging, trading, or transferring.

(c) Reserved credits become actual emission credits when you submit your final report. However, we may revoke these emission credits if we are unable to verify them after reviewing your reports or auditing your records.

■ 111. Section 1033.725 is amended by revising paragraph (b)(2) to read as follows:

§ 1033.725 Requirements for your application for certification.

* * * * *

(b) * * *

(2) Detailed calculations of projected emission credits (positive or negative) based on projected production volumes. We may require you to include similar calculations from your other engine families to demonstrate that you will be able to avoid a negative credit balance for the model year. If you project negative emission credits for a family, state the source of positive emission credits you expect to use to offset the negative emission credits.

■ 112. Section 1033.730 is amended by revising paragraphs (b)(3) and (b)(5) to read as follows:

§ 1033.730 ABT reports.

* * * * *

(b) * * *

(3) The FEL for each pollutant. If you change the FEL after the start of production, identify the date that you started using the new FEL and/or give the engine identification number for the first engine covered by the new FEL. In this case, identify each applicable FEL and calculate the positive or negative emission credits as specified in § 1033.225.

* * * * *

(5) Rated power for each locomotive configuration, and the average locomotive power weighted by U.S.-directed production volumes for the engine family.

* * * * *

■ 113. Section 1033.735 is amended by revising paragraphs (b), (d), and (e) to read as follows:

§ 1033.735 Required records.

* * * * *

(b) Keep the records required by this section for at least eight years after the due date for the end-of-year report. You may not use emission credits for any engines if you do not keep all the records required under this section. You must therefore keep these records to continue to bank valid credits. Store these records in any format and on any media, as long as you can promptly send us organized, written records in English if we ask for them. You must keep these records readily available. We may review them at any time.

* * * * *

(d) Keep records of the engine identification number for each locomotive you produce that generates or uses emission credits under the ABT program. If you change the FEL after the start of production, identify the date you started using each FEL and the range of engine identification numbers associated with each FEL. You must also be able to identify the purchaser and destination for each engine you produce.

(e) We may require you to keep additional records or to send us relevant information not required by this section in accordance with the Clean Air Act.

Subpart J—[Amended]

■ 114. Section 1033.901 is amended by revising the definitions for "Carryover", "Total hydrocarbon equivalent", and "Useful life" and adding a new definition for "Alcohol-fueled locomotive" in alphabetical order to read as follows:

§ 1033.901 Definitions.

* * * * *

Alcohol-fueled locomotive means a locomotive with an engine that is designed to run using an alcohol fuel. For purposes of this definition, alcohol fuels do not include fuels with a nominal alcohol content below 25 percent by volume.

* * * * *

Carryover means relating to certification based on emission data generated from an earlier model year as described in § 1033.235(d).

* * * * *

Total hydrocarbon equivalent has the meaning given in 40 CFR 1065.1001. This generally means the sum of the carbon mass contributions of non-oxygenated hydrocarbons, alcohols and aldehydes, or other organic compounds that are measured separately as contained in a gas sample, expressed as exhaust hydrocarbon from petroleum-fueled locomotives. The atomic hydrogen-to-carbon mass ratio of the equivalent hydrocarbon is 1.85:1.

* * * * *

Useful life means the period during which the locomotive engine is designed to properly function in terms of reliability and fuel consumption, without being remanufactured, specified as work output or miles. It is the period during which a locomotive is required to comply with all applicable emission standards. *See* § 1033.101(g).

* * * * *

■ 115. Section 1033.905 is amended by adding "ABT", "AF", and U.S." in alphabetical order to read as follows:

§ 1033.925 Symbols, acronyms, and abbreviations.

* * * * *

ABT averaging, banking, and trading.

* * * * *

AF adjustment factor (*see* § 1033.530).

* * * * *

U.S. United States.

* * * * *

■ 116. A new § 1033.925 is added to subpart J to read as follows:

§ 1033.925 Reporting and recordkeeping requirements.

Under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), the Office of Management and Budget approves the reporting and recordkeeping specified in the applicable regulations. Failing to properly report information and keep the records we specify violates 40 CFR 1068.101(a)(2), which may involve civil or criminal penalties. The following items illustrate the kind of reporting and recordkeeping we require for engines regulated under this part:

(a) We specify the following requirements related to engine certification in this part 1033:

(1) In § 1033.150 we state the requirements for interim provisions.

(2) In subpart C of this part we identify a wide range of information required to certify engines.

(3) In § 1033.325 we specify certain records related to production-line testing.

(4) In subpart G of this part we identify several reporting and recordkeeping items for making demonstrations and getting approval related to various special compliance provisions.

(5) In §§ 1033.725, 1033.730, and 1033.735 we specify certain records related to averaging, banking, and trading.

(6) In subpart I of this part we specify certain records related to meeting requirements for remanufactured engines.

(b) We specify the following requirements related to testing in 40 CFR part 1065:

(1) In 40 CFR 1065.2 we give an overview of principles for reporting information.

(2) In 40 CFR 1065.10 and 1065.12 we specify information needs for establishing various changes to published test procedures.

(3) In 40 CFR 1065.25 we establish basic guidelines for storing test information.

(4) In 40 CFR 1065.695 we identify the specific information and data items to record when measuring emissions.

(c) We specify the following requirements related to the general compliance provisions in 40 CFR part 1068:

(1) In 40 CFR 1068.5 we establish a process for evaluating good engineering judgment related to testing and certification.

(2) In 40 CFR 1068.25 we describe general provisions related to sending and keeping information.

(3) In 40 CFR 1068.27 we require manufacturers to make engines available for our testing or inspection if we make such a request.

(4) In 40 CFR 1068.105 we require vessel manufacturers to keep certain records related to duplicate labels from engine manufacturers.

(5) In 40 CFR 1068.120 we specify recordkeeping related to rebuilding engines.

(6) In 40 CFR part 1068, subpart C, we identify several reporting and recordkeeping items for making demonstrations and getting approval related to various exemptions.

(7) In 40 CFR part 1068, subpart D, we identify several reporting and recordkeeping items for making demonstrations and getting approval related to importing engines.

(8) In 40 CFR 1068.450 and 1068.455 we specify certain records related to testing production-line engines in a selective enforcement audit.

(9) In 40 CFR 1068.501 we specify certain records related to investigating and reporting emission-related defects.

(10) In 40 CFR 1068.525 and 1068.530 we specify certain records related to recalling nonconforming engines.

PART 1039—CONTROL OF EMISSIONS FROM NEW AND IN-USE NONROAD COMPRESSION-IGNITION ENGINES

■ 117. The authority citation for part 1039 continues to read as follows:

Authority: 42 U.S.C. 7401–7671q.

Subpart A—[Amended]

■ 118. Section 1039.2 is revised to read as follows:

§ 1039.2 Who is responsible for compliance?

The regulations in this part 1039 contain provisions that affect both engine manufacturers and others. However, the requirements of this part are generally addressed to the engine manufacturer. The term "you" generally means the engine manufacturer, as defined in § 1039.801, especially for issues related to certification.

■ 119. Section 1039.5 is amended by revising paragraph (a) to read as follows:

§ 1039.5 Which engines are excluded from this part's requirements?

* * * * *

(a) *Locomotive engines.* (1) The following locomotive engines are not subject to the provisions of this part 1039:

(i) Engines in locomotives certified under 40 CFR part 1033.

(ii) Engines in locomotives that are exempt from the standards of 40 CFR part 92 or 1033 pursuant to the provisions of 40 CFR part 1033 or 1068 (except for the provisions of 40 CFR 1033.150(e)).

(2) The following locomotive engines are subject to the provisions of this part 1039:

(i) Engines in locomotives exempt from 40 CFR part 1033 pursuant to the provisions of 40 CFR 1033.150(e).

(ii) Locomotive engines excluded from the definition of locomotive in 40 CFR 1033.901.

* * * * *

■ 120. Section 1039.15 is amended by revising paragraph (a) to read as follows:

§ 1039.15 Do any other regulation parts apply to me?

(a) Part 1065 of this chapter describes procedures and equipment specifications for testing engines to measure exhaust emissions. Subpart F of this part 1039 describes how to apply the provisions of part 1065 of this chapter to determine whether engines meet the exhaust emission standards in this part.

* * * * *

■ 121. A new § 1039.30 is added to subpart A to read as follows:

§ 1039.30 Submission of information.

(a) This part includes various requirements to record data or other information. Refer to § 1039.825 and 40 CFR 1068.25 regarding recordkeeping requirements. Unless we specify otherwise, store these records in any format and on any media and keep them readily available for one year after you send an associated application for certification, or one year after you generate the data if they do not support an application for certification. You must promptly send us organized, written records in English if we ask for them. We may review them at any time.

(b) The regulations in § 1039.255 and 40 CFR 1068.101 describe your obligation to report truthful and complete information and the consequences of failing to meet this obligation. This includes information not related to certification.

(c) Send all reports and requests for approval to the Designated Compliance Officer (*see* § 1039.801).

(d) Any written information we require you to send to or receive from another company is deemed to be a required record under this section. Such records are also deemed to be submissions to EPA. We may require you to send us these records whether or not you are a certificate holder.

Subpart B—[Amended]

■ 122. Section 1039.104 is amended by adding paragraph (h) to read as follows:

§ 1039.104 Are there interim provisions that apply only for a limited time?

* * * * *

(h) *Delayed compliance with labeling requirements.* Before the 2011 model year, you may omit the dates of manufacture from the emission control information label as specified in § 1039.135(c)(6) if you keep those records and provide them to us upon request.

■ 123. Section 1039.120 is amended by revising paragraph (c) to read as follows:

§ 1039.120 What emission-related warranty requirements apply to me?

* * * * *

(c) *Components covered.* The emission-related warranty covers all components whose failure would increase an engine's emissions of any regulated pollutant, including components listed in 40 CFR part 1068, Appendix I, and components from any other system you develop to control emissions. The emission-related warranty covers these components even if another company produces the component. Your emission-related warranty does not need to cover components whose failure would not increase an engine's emissions of any regulated pollutant.

* * * * *

■ 124. Section 1039.125 is amended as follows:

■ a. By revising paragraphs (a)(1)(iii), (a)(2)(ii), and (a)(3)(ii).

■ b. By redesignating paragraph (a)(4) as paragraph (a)(6).

■ c. By adding a new paragraph (a)(4).

■ d. By adding paragraph (a)(5).

■ e. By revising paragraphs (c), (d), and (g) introductory text to read as follows:

§ 1039.125 What maintenance instructions must I give to buyers?

* * * * *

(a) * * *

(1) * * *

(iii) You provide the maintenance free of charge and clearly say so in your maintenance instructions.

* * * * *

(2) * * *

(ii) For the following components, including associated sensors and actuators, the minimum interval is 3,000 hours: Fuel injectors, turbochargers, catalytic converters, electronic control units, EGR systems (including related components, but excluding filters and coolers), and other add-on components.

(3) * * *

(ii) For the following components, including associated sensors and actuators, the minimum interval is 4,500 hours: Fuel injectors, turbochargers, catalytic converters, electronic control units, EGR systems (including related components, but excluding filters and coolers), and other add-on components.

(4) For particulate traps, trap oxidizers, and components related to either of these, scheduled maintenance may include cleaning or repair at the intervals specified in paragraph (a)(2) or (3) of this section, as applicable. Scheduled maintenance may include a shorter interval for cleaning or repair and may also include adjustment or replacement, but only if we approve it. We will approve your request if you provide the maintenance free of charge and clearly state this in your maintenance instructions, and you provide us additional information as needed to convince us that the maintenance will occur.

(5) You may ask us to approve a maintenance interval shorter than that specified in paragraphs (a)(2) and (3) of this section under § 1039.210, including emission-related components that were not in widespread use with nonroad compression-ignition engines before 2011. In your request you must describe the proposed maintenance step, recommend the maximum feasible interval for this maintenance, include your rationale with supporting evidence to support the need for the maintenance at the recommended interval, and demonstrate that the maintenance will be done at the recommended interval on in-use engines. In considering your request, we will evaluate the information you provide and any other available information to establish alternate specifications for maintenance intervals, if appropriate. We will announce any decision we make under this paragraph (a)(5) in the **Federal Register.** Anyone may request a hearing regarding such a decision (*see* § 1039.820).

* * * * *

(c) *Special maintenance.* You may specify more frequent maintenance to address problems related to special situations, such as atypical engine operation. You must clearly state that this additional maintenance is associated with the special situation you are addressing. We may disapprove your maintenance instructions if we determine that you have specified special maintenance steps to address engine operation that is not atypical, or that the maintenance is unlikely to occur in use. If we determine that certain maintenance items do not qualify as special maintenance under this paragraph (c), you may identify this as recommended additional maintenance under paragraph (b) of this section.

(d) *Noncritical emission-related maintenance.* Subject to the provisions of this paragraph (d), you may schedule any amount of emission-related inspection or maintenance that is not covered by paragraph (a) of this section (that is, maintenance that is neither explicitly identified as critical emission-related maintenance, nor that we approve as critical emission-related maintenance). Noncritical emission-related maintenance generally includes maintenance on the components we specify in 40 CFR part 1068, Appendix I, that is not covered in paragraph (a) of this section. You must state in the owners manual that these steps are not necessary to keep the emission-related warranty valid. If operators fail to do this maintenance, this does not allow you to disqualify those engines from in-use testing or deny a warranty claim. Do not take these inspection or maintenance steps during service accumulation on your emission-data engines.

* * * * *

(g) *Payment for scheduled maintenance.* Owners are responsible for properly maintaining their engines. This generally includes paying for scheduled maintenance. However, manufacturers must pay for scheduled maintenance during the useful life if the regulations require it or if it meets all the following criteria:

* * * * *

■ 125. Section 1039.135 is amended by revising paragraphs (c)(6) and (c)(8) to read as follows:

§ 1039.135 How must I label and identify the engines I produce?

* * * * *

(c) * * *

(6) State the date of manufacture [DAY (optional), MONTH, and YEAR]; however, you may omit this from the label if you stamp, engrave, or otherwise permanently identify it elsewhere on the engine, in which case you must also describe in your application for certification where you will identify the date on the engine.

* * * * *

(8) Identify the emission-control system. Use terms and abbreviations as described in 40 CFR 1068.45. You may omit this information from the label if there is not enough room for it and you put it in the owners manual instead.

* * * * *

Subpart C—[Amended]

■ 126. Section 1039.201 is amended by adding paragraph (h) to read as follows:

§ 1039.201 What are the general requirements for obtaining a certificate of conformity?

* * * * *

(h) For engines that become new after being placed into service, such as engines converted to nonroad use after being used in motor vehicles, we may specify alternate certification provisions consistent with the intent of this part. *See* the definition of "new nonroad engine" in § 1039.801.

■ 127. Section 1039.220 is revised to read as follows:

§ 1039.220 How do I amend the maintenance instructions in my application?

You may amend your emission-related maintenance instructions after you submit your application for certification as long as the amended instructions remain consistent with the provisions of § 1039.125. You must send the Designated Compliance Officer a written request to amend your application for certification for an engine family if you want to change the emission-related maintenance instructions in a way that could affect emissions. In your request, describe the proposed changes to the maintenance instructions. If operators follow the original maintenance instructions rather than the newly specified maintenance, this does not allow you to disqualify those engines from in-use testing or deny a warranty claim.

(a) If you are decreasing or eliminating any specified maintenance, you may distribute the new maintenance instructions to your customers 30 days after we receive your request, unless we disapprove your request. This would generally include replacing one maintenance step with another. We may approve a shorter time or waive this requirement.

(b) If your requested change would not decrease the specified maintenance, you may distribute the new maintenance instructions anytime after you send your request. For example, this paragraph (b) would cover adding instructions to increase the frequency of filter changes for engines in severe-duty applications.

(c) You need not request approval if you are making only minor corrections (such as correcting typographical mistakes), clarifying your maintenance instructions, or changing instructions for maintenance unrelated to emission control. We may ask you to send us copies of maintenance instructions revised under this paragraph (c).

■ 128. Section 1039.225 is amended by revising the section heading, the introductory text, and paragraphs (b) introductory text, (b)(2), (e), and (f) to read as follows:

§ 1039.225 How do I amend my application for certification?

Before we issue you a certificate of conformity, you may amend your application to include new or modified engine configurations, subject to the provisions of this section. After we have issued your certificate of conformity, you may send us an amended application requesting that we include new or modified engine configurations within the scope of the certificate, subject to the provisions of this section. You must amend your application if any changes occur with respect to any information that is included or should be included in your application.

* * * * *

(b) To amend your application for certification, send the relevant information to the Designated Compliance Officer.

* * * * *

(2) Include engineering evaluations or data showing that the amended engine family complies with all applicable requirements. You may do this by showing that the original emission-data engine is still appropriate for showing that the amended family complies with all applicable requirements.

* * * * *

(e) For engine families already covered by a certificate of conformity, you may start producing the new or modified engine configuration anytime after you send us your amended application and before we make a decision under paragraph (d) of this section. However, if we determine that the affected engines do not meet applicable requirements, we will notify you to cease production of the engines and may require you to recall the engines at no expense to the owner. Choosing to produce engines under this paragraph (e) is deemed to be consent to recall all engines that we determine do not meet applicable emission standards or other requirements and to remedy the nonconformity at no expense to the owner. If you do not provide information required under paragraph (c) of this section within 30 days after we request it, you must stop producing the new or modified engines.

(f) You may ask us to approve a change to your FEL in certain cases after the start of production. The changed FEL may not apply to engines you have already introduced into U.S. commerce, except as described in this paragraph (f). If we approve a changed FEL after the start of production, you must include the new FEL on the emission control information label for all engines produced after the change. You may ask us to approve a change to your FEL in the following cases:

(1) You may ask to raise your FEL for your engine family at any time. In your request, you must show that you will still be able to meet the emission standards as specified in subparts B and H of this part. If you amend your application by submitting new test data to include a newly added or modified engine, as described in paragraph (b)(3) of this section, use the appropriate FELs with corresponding production volumes to calculate emission credits for the model year, as described in subpart H of this part. In all other circumstances, you must use the higher FEL for the entire engine family to calculate emission credits under subpart H of this part.

(2) You may ask to lower the FEL for your engine family only if you have test data from production engines showing that emissions are below the proposed lower FEL. The lower FEL applies only to engines you produce after we approve the new FEL. Use the appropriate FELs with corresponding production volumes to calculate emission credits for the model year, as described in subpart H of this part.

■ 129. Section 1039.230 is amended by revising paragraphs (b) and (d) to read as follows:

§ 1039.230 How do I select engine families?

* * * * *

(b) Group engines in the same engine family if they are the same in all the following aspects:

(1) The combustion cycle and fuel.

(2) The cooling system (water-cooled vs. air-cooled).

(3) Method of air aspiration.

(4) Method of exhaust aftertreatment (for example, catalytic converter or particulate trap).

(5) Combustion chamber design.

(6) Bore and stroke.

(7) Cylinder arrangement (such as in-line vs. vee configurations). This applies for engines with aftertreatment devices only.

(8) Method of control for engine operation other than governing (*i.e.,* mechanical or electronic).

(9) Power category.

(10) Numerical level of the emission standards that apply to the engine.

* * * * *

(d) In unusual circumstances, you may group engines that are not identical

with respect to the things listed in paragraph (b) of this section in the same engine family if you show that their emission characteristics during the useful life will be similar.

* * * * *

■ 130. Section 1039.235 is amended by revising the section heading and paragraphs (c) and (d) introductory text to read as follows:

§ 1039.235 What testing requirements apply for certification?

* * * * *

(c) We may measure emissions from any of your emission-data engines or other engines from the engine family, as follows:

(1) We may decide to do the testing at your plant or any other facility. If we do this, you must deliver the engine to a test facility we designate. The engine you provide must include appropriate manifolds, aftertreatment devices, electronic control units, and other emission-related components not normally attached directly to the engine block. If we do the testing at your plant, you must schedule it as soon as possible and make available the instruments, personnel, and equipment we need.

(2) If we measure emissions on one of your engines, the results of that testing become the official emission results for the engine. Unless we later invalidate these data, we may decide not to consider your data in determining if your engine family meets applicable requirements.

(3) Before we test one of your engines, we may set its adjustable parameters to any point within the physically adjustable ranges (*see* § 1039.115(e)).

(4) Before we test one of your engines, we may calibrate it within normal production tolerances for anything we do not consider an adjustable parameter. For example, this would apply for an engine parameter that is subject to production variability because it is adjustable during production, but is not considered an adjustable parameter (as defined in § 1039.801) because it is permanently sealed.

(d) You may ask to use carryover emission data from a previous model year instead of doing new tests, but only if all the following are true:

* * * * *

■ 131. Section 1039.240 is amended by revising paragraphs (a), (b), and (c)(1) to read as follows:

§ 1039.240 How do I demonstrate that my engine family complies with exhaust emission standards?

(a) For purposes of certification, your engine family is considered in compliance with the emission standards in § 1039.101(a) and (b), § 1039.102(a) and (b), § 1039.104, and § 1039.105 if all emission-data engines representing that family have test results showing official emission results and deteriorated emission levels at or below these standards. This also applies for all test points for emission-data engines within the family used to establish deterioration factors. Note that your FELs are considered to be the applicable emission standards with which you must comply if you participate in the ABT program in subpart H of this part.

(b) Your engine family is deemed not to comply if any emission-data engine representing that family has test results showing an official emission result or a deteriorated emission level for any pollutant that is above an applicable emission standard. Similarly, your engine family is deemed not to comply if any emission-data engine representing that family has test results showing any emission level above the applicable not-to-exceed emission standard for any pollutant. This also applies for all test points for emission-data engines within the family used to establish deterioration factors.

(c) * * *

(1) *Additive deterioration factor for exhaust emissions.* Except as specified in paragraph (c)(2) of this section, use an additive deterioration factor for exhaust emissions. An additive deterioration factor is the difference between exhaust emissions at the end of the useful life and exhaust emissions at the low-hour test point. In these cases, adjust the official emission results for each tested engine at the selected test point by adding the factor to the measured emissions. If the factor is less than zero, use zero. Additive deterioration factors must be specified to one more decimal place than the applicable standard.

* * * * *

■ 132. Section 1039.245 is amended by revising the introductory text to read as follows:

§ 1039.245 How do I determine deterioration factors from exhaust durability testing?

This section describes how to determine deterioration factors, either with an engineering analysis, with pre-existing test data, or with new emission measurements. Apply these deterioration factors to determine whether your engines will meet the duty-cycle emission standards throughout the useful life as described in § 1039.240.

* * * * *

■ 133. Section 1039.250 is amended by revising paragraphs (a) introductory text and (c) and removing paragraph (e) to read as follows:

§ 1039.250 What records must I keep and what reports must I send to EPA?

(a) Within 45 days after the end of the model year, send the Designated Compliance Officer a report describing the following information about engines you produced during the model year:

* * * * *

(c) Keep data from routine emission tests (such as test cell temperatures and relative humidity readings) for one year after we issue the associated certificate of conformity. Keep all other information specified in this section for eight years after we issue your certificate.

* * * * *

■ 134. Section 1039.255 is amended by revising paragraph (b) to read as follows:

§ 1039.255 What decisions may EPA make regarding my certificate of conformity?

* * * * *

(b) We may deny your application for certification if we determine that your engine family fails to comply with emission standards or other requirements of this part or the Clean Air Act. We will base our decision on all available information. If we deny your application, we will explain why in writing.

* * * * *

■ 135. Section 1039.510 is amended by revising paragraph (b) and adding paragraph (c) to read as follows:

§ 1039.510 Which duty cycles do I use for transient testing?

* * * * *

(b) The transient test sequence consists of an initial run through the transient duty cycle from a cold start, 20 minutes with no engine operation, then a final run through the same transient duty cycle. Start sampling emissions immediately after you start the engine. Calculate the official transient emission result from the following equation:

$$\text{Official transient emission result} = \frac{0.05 \cdot \text{cold-start emissions (g)} + 0.95 \cdot \text{hot-start emissions (g)}}{0.05 \cdot \text{cold-start work (kW} \cdot \text{hr)} + 0.95 \cdot \text{hot-start work (kW} \cdot \text{hr)}}$$

(c) Calculate cycle statistics and compare with the established criteria as specified in 40 CFR 1065.514 to confirm that the test is valid.

Subpart G—[Amended]

■ 136. Section 1039.605 is amended by revising paragraph (d)(3) introductory text to read as follows:

§ 1039.605 What provisions apply to engines certified under the motor-vehicle program?

* * * * *

(d) * * *

(3) You must show that fewer than 50 percent of the engine family's total sales in the United States are used in nonroad applications. This includes engines used in any application without regard to which company manufactures the vehicle or equipment. Show this as follows:

* * * * *

■ 137. Section 1039.610 is amended by revising paragraph (d)(3) introductory text to read as follows:

§ 1039.610 What provisions apply to vehicles certified under the motor-vehicle program?

* * * * *

(d) * * *

(3) You must show that fewer than 50 percent of the engine family's total sales in the United States are used in nonroad applications. This includes any type of vehicle, without regard to which company completes the manufacturing of the nonroad equipment. Show this as follows:

* * * * *

■ 138. Section 1039.627 is amended by revising paragraphs (a)(3)(ii) and (a)(3)(iii) to read as follows:

§ 1039.627 What are the incentives for equipment manufacturers to use cleaner engines?

* * * * *

(a) * * *

(3) * * *

*	*	*	*	*
(ii) 56 ≤ kW < 130	Two engines	NO_X standards in § 1039.102(e)(1), and NMHC standard of 0.19 g/kW-hr, a PM standard of 0.02 g/kW-hr, and a CO standard of 5.0 g/kW-hr.	Standards in Tables 2 through 7 of § 1039.102 or in § 1039.101.	One engine.
(iii) 130 ≤ kW < 560	Two engines	NO_X standards in § 1039.102(e)(2), an NMHC standard of 0.19 g/kW-hr, a PM standard of 0.02 g/kW-hr, and a CO standard of 3.5 g/kW-hr.	Standards in Tables 2 through 7 of § 1039.102 or in § 1039.101.	One engine.

* * * * *

Subpart H—[Amended]

■ 139. Section 1039.705 is amended by revising paragraph (b) introductory text (before the equation) to read as follows:

§ 1039.705 How do I generate and calculate emission credits?

* * * * *

(b) For each participating family, calculate positive or negative emission credits relative to the otherwise applicable emission standard. Calculate positive emission credits for a family that has an FEL below the standard. Calculate negative emission credits for a family that has an FEL above the standard. Sum your positive and negative credits for the model year before rounding. Round the sum of emission credits to the nearest kilogram (kg), using consistent units throughout the following equation:

* * * * *

■ 140. Section 1039.715 is revised to read as follows:

§ 1039.715 How do I bank emission credits?

(a) Banking is the retention of emission credits by the manufacturer generating the emission credits for use in future model years for averaging or trading.

(b) You may designate any emission credits you plan to bank in the reports you submit under § 1039.730 as reserved credits. During the model year and before the due date for the final report, you may designate your reserved emission credits for averaging or trading.

(c) Reserved credits become actual emission credits when you submit your final report. However, we may revoke these emission credits if we are unable to verify them after reviewing your reports or auditing your records.

■ 141. Section 1039.720 is amended by revising paragraph (b) to read as follows:

§ 1039.720 How do I trade emission credits?

* * * * *

(b) You may trade actual emission credits as described in this subpart. You may also trade reserved emission credits, but we may revoke these emission credits based on our review of your records or reports or those of the company with which you traded emission credits. You may trade banked credits within an averaging set to any certifying manufacturer.

* * * * *

■ 142. Section 1039.725 is amended by revising paragraph (b)(2) to read as follows:

§ 1039.725 What must I include in my application for certification?

* * * * *

(b) * * *

(2) Detailed calculations of projected emission credits (positive or negative) based on projected production volumes. We may require you to include similar calculations from your other engine families to demonstrate that you will be able to avoid a negative credit balance for the model year. If you project negative emission credits for a family, state the source of positive emission credits you expect to use to offset the negative emission credits.

■ 143. Section 1039.730 is amended by revising paragraphs (b)(3), (b)(4), (b)(5), and (f) to read as follows:

§ 1039.730 What ABT reports must I send to EPA?

* * * * *

(b) * * *

(3) The FEL for each pollutant. If you change the FEL after the start of production, identify the date that you started using the new FEL and/or give the engine identification number for the first engine covered by the new FEL. In this case, identify each applicable FEL and calculate the positive or negative emission credits as specified in § 1039.225.

(4) The projected and actual U.S.-directed production volumes for the model year. If you changed an FEL during the model year, identify the actual production volume associated with each FEL.

(5) Maximum engine power for each engine configuration, and the average engine power weighted by U.S.-directed production volumes for the engine family.

* * * * *

(f) Correct errors in your end-of-year report or final report as follows:

(1) You may correct any errors in your end-of-year report when you prepare the final report, as long as you send us the final report by the time it is due.

(2) If you or we determine within 270 days after the end of the model year that errors mistakenly decreased your balance of emission credits, you may correct the errors and recalculate the balance of emission credits. You may not make these corrections for errors that are determined more than 270 days after the end of the model year. If you report a negative balance of emission credits, we may disallow corrections under this paragraph (f)(2).

(3) If you or we determine anytime that errors mistakenly increased your balance of emission credits, you must correct the errors and recalculate the balance of emission credits.

■ 144. Section 1039.735 is amended by revising paragraphs (b), (d), and (e) to read as follows:

§ 1039.735 What records must I keep?

* * * * *

(b) Keep the records required by this section for at least eight years after the due date for the end-of-year report. You may not use emission credits for any engines if you do not keep all the records required under this section. You must therefore keep these records to continue to bank valid credits. Store these records in any format and on any media, as long as you can promptly send us organized, written records in English if we ask for them. You must keep these records readily available. We may review them at any time.

* * * * *

(d) Keep records of the engine identification number for each engine you produce that generates or uses emission credits under the ABT program. You may identify these numbers as a range. If you change the FEL after the start of production, identify the date you started using each FEL and the range of engine identification numbers associated with each FEL. You must also identify the purchaser and destination for each engine you produce to the extent this information is available.

(e) We may require you to keep additional records or to send us relevant information not required by this section in accordance with the Clean Air Act.

Subpart I—[Amended]

■ 145. Section 1039.801 is amended as follows:

■ a. By adding definitions for "Alcohol-fueled engine", "Carryover", and "Date of manufacture" in alphabetical order.

■ b. By revising the definitions for "Engine configuration", "Model year", "New nonroad engine", "Total hydrocarbon", "Total hydrocarbon equivalent", and "Useful life.

§ 1039.801 What definitions apply to this part?

* * * * *

Alcohol-fueled engine means an engine that is designed to run using an alcohol fuel. For purposes of this definition, alcohol fuels do not include fuels with a nominal alcohol content below 25 percent by volume.

* * * * *

Carryover means relating to certification based on emission data generated from an earlier model year as described in § 1039.235(d).

* * * * *

Date of manufacture has the meaning given in 40 CFR 1068.30.

* * * * *

Engine configuration means a unique combination of engine hardware and calibration within an engine family. Engines within a single engine configuration differ only with respect to normal production variability or factors unrelated to emissions.

* * * * *

Model year means one of the following things:

(1) For freshly manufactured equipment and engines (*see* definition of "new nonroad engine," paragraph (1)), model year means one of the following:

(i) Calendar year.

(ii) Your annual new model production period if it is different than the calendar year. This must include January 1 of the calendar year for which the model year is named. It may not begin before January 2 of the previous calendar year and it must end by December 31 of the named calendar year.

(2) For an engine that is converted to a nonroad engine after being placed into service as a stationary engine, or being certified and placed into service as a motor vehicle engine, model year means the calendar year in which the engine was originally produced. For a motor vehicle engine that is converted to be a nonroad engine without having been certified, model year means the calendar year in which the engine becomes a new nonroad engine. (*See* definition of "new nonroad engine," paragraph (2).)

(3) For a nonroad engine excluded under § 1039.5 that is later converted to operate in an application that is not excluded, model year means the calendar year in which the engine was originally produced (*see* definition of "new nonroad engine," paragraph (3)).

(4) For engines that are not freshly manufactured but are installed in new nonroad equipment, model year means the calendar year in which the engine is installed in the new nonroad equipment (*see* definition of "new nonroad engine," paragraph (4)).

(5) For imported engines:

(i) For imported engines described in paragraph (5)(i) of the definition of "new nonroad engine," *model year* has the meaning given in paragraphs (1) through (4) of this definition.

(ii) For imported engines described in paragraph (5)(ii) of the definition of "new nonroad engine," *model year* has the meaning given in 40 CFR 89.602 for independent commercial importers.

(iii) For imported engines described in paragraph (5)(iii) of the definition of "new nonroad engine," *model year* means the calendar year in which the engine is first assembled in its imported configuration, unless specified otherwise in this part or in 40 CFR part 1068.

* * * * *

New nonroad engine means any of the following things:

(1) A freshly manufactured nonroad engine for which the ultimate purchaser has never received the equitable or legal title. This kind of engine might commonly be thought of as "brand new." In the case of this paragraph (1), the engine is new from the time it is produced until the ultimate purchaser receives the title or the product is placed into service, whichever comes first.

(2) An engine originally manufactured as a motor vehicle engine or a stationary engine that is later used or intended to be used in a piece of nonroad equipment. In this case, the engine is no longer a motor vehicle or stationary engine and becomes a "new nonroad engine." The engine is no longer new when it is placed into nonroad service. This paragraph (2) applies if a motor vehicle engine or a stationary engine is installed in nonroad equipment, or if a motor vehicle or a piece of stationary equipment is modified (or moved) to become nonroad equipment.

(3) A nonroad engine that has been previously placed into service in an application we exclude under § 1039.5, when that engine is installed in a piece of equipment that is covered by this part 1039. The engine is no longer new when it is placed into nonroad service covered by this part 1039. For example, this would apply to marine diesel engine that is no longer used in a marine vessel but is instead installed in a piece of nonroad equipment subject to the provisions of this part.

(4) An engine not covered by paragraphs (1) through (3) of this definition that is intended to be installed in new nonroad equipment. This generally includes installation of used engines in new equipment. The engine is no longer new when the ultimate purchaser receives a title for the equipment or the product is placed into service, whichever comes first.

(5) An imported nonroad engine, subject to the following provisions:

(i) An imported nonroad engine covered by a certificate of conformity issued under this part that meets the criteria of one or more of paragraphs (1) through (4) of this definition, where the original engine manufacturer holds the certificate, is new as defined by those applicable paragraphs.

(ii) An imported engine covered by a certificate of conformity issued under this part, where someone other than the original engine manufacturer holds the certificate (such as when the engine is modified after its initial assembly), is a new nonroad engine when it is imported. It is no longer new when the ultimate purchaser receives a title for the engine or it is placed into service, whichever comes first.

(iii) An imported nonroad engine that is not covered by a certificate of conformity issued under this part at the time of importation is new, but only if it was produced on or after the dates shown in the following table. This addresses uncertified engines and equipment initially placed into service that someone seeks to import into the United States. Importation of this kind of engine (or equipment containing such an engine) is generally prohibited by 40 CFR part 1068. However, the importation of such an engine is not prohibited if the engine has an earlier model year than that identified in the following table:

APPLICABILITY OF EMISSION STANDARDS FOR NONROAD DIESEL ENGINES

Maximum engine power	Initial date of emission standards
kW < 19	January 1, 2000.
19 ≤ kW < 37	January 1, 1999.
37 ≤ kW < 75	January 1, 1998.
75 ≤ kW < 130	January 1, 1997.
130 ≤ kW ≤ 560	January 1, 1996.
kW > 560	January 1, 2000.

* * * * *

Total hydrocarbon has the meaning given in 40 CFR 1065.1001. This generally means the combined mass of organic compounds measured by the specified procedure for measuring total hydrocarbon, expressed as a hydrocarbon with an atomic hydrogen-to-carbon ratio of 1.85:1.

Total hydrocarbon equivalent has the meaning given in 40 CFR 1065.1001. This generally means the sum of the carbon mass contributions of non-oxygenated hydrocarbons, alcohols and aldehydes, or other organic compounds that are measured separately as contained in a gas sample, expressed as exhaust hydrocarbon from petroleum-fueled engines. The atomic hydrogen-to-carbon ratio of the equivalent hydrocarbon is 1.85:1.

* * * * *

Useful life means the period during which the engine is designed to properly function in terms of reliability and fuel consumption, without being remanufactured, specified as a number of hours of operation or calendar years, whichever comes first. It is the period during which a nonroad engine is required to comply with all applicable emission standards. *See* § 1039.101(g).

* * * * *

§ 1039.810 [Removed]

■ 146. Section 1039.810 is removed.

PART 1042—CONTROL OF EMISSIONS FROM NEW AND IN-USE MARINE COMPRESSION-IGNITION ENGINES AND VESSELS

■ 147. The authority citation for part 1042 continues to read as follows:

Authority: 42 U.S.C. 7401–7671q.

Subpart A—[Amended]

■ 148. Section 1042.1 is revised to read as follows:

§ 1042.1 Applicability.

Except as provided in this section and § 1042.5, the regulations in this part 1042 apply for all new compression-ignition marine engines (including new engines deemed to be compression-ignition engines under this section) and vessels containing such engines. *See* § 1042.901 for the definitions of engines and vessels considered to be new.

(a) The emission standards of this part 1042 for freshly manufactured engines apply for new marine engines starting with the model years noted in the following tables:

TABLE 1 TO § 1042.1—PART 1042 APPLICABILITY BY MODEL YEAR

Engine category	Maximum engine power [a]	Displacement (L/cyl) or application	Model year
Category 1	kW < 75	disp. < 0.9	[b] 2009
	75 ≤ kW ≤ 3700	disp. < 0.9	2012
		0.9 ≤ disp. < 1.2	2013
		1.2 ≤ disp. < 2.5	2014
		2.5 ≤ disp. < 3.5	2013
		3.5 ≤ disp. < 7.0	2012

TABLE 1 TO § 1042.1—PART 1042 APPLICABILITY BY MODEL YEAR—Continued

Engine category	Maximum engine power [a]	Displacement (L/cyl) or application	Model year
	kW > 3700	disp. < 7.0	2014
Category 2	kW ≤ 3700	7.0 < disp. < 15.0	2013
	kW > 3700	7.0 ≤ disp. < 15.0	2014
	All	15 ≤ disp. < 30	2014
Category 3	All	disp. ≥ *30*	*2011*

[a] *See* § 1042.140, which describes how to determine maximum engine power.
[b] *See* Table 1 of § 1042.101 for the first model year in which this part 1042 applies for engines with maximum engine power below 75 kW and displacement at or above 0.9 L/cyl.

(b) New engines with maximum engine power below 37 kW and originally manufactured and certified before the model years identified in Table 1 to this section are subject to emission standards and requirements of 40 CFR part 89. The provisions of this part 1042 do not apply for such engines certified under 40 CFR part 89, except as follows beginning June 29, 2010:

(1) The allowances of this part apply.

(2) The definitions of "new marine engine" and "model year" apply.

(c) Freshly manufactured engines with maximum engine power at or above 37 kW and originally manufactured and certified before the model years identified in Table 1 to this section are subject to emission standards and requirements of 40 CFR part 94. The provisions of this part 1042 do not apply for such engines certified under 40 CFR part 89, except as follows beginning June 29, 2010:

(1) The allowances of this part apply.

(2) The definitions of "new marine engine" and "model year" apply.

(3) The remanufacturing provisions in subpart I of this part may apply for remanufactured engines originally manufactured in model years before the model years identified in Table 1 to this section.

(4) 40 CFR part 94 specifies other provisions from this part 1042 that apply.

(d) Engines with model years before those specified in Table 1 to this section are generally subject to the Tier 1 or Tier 2 standards of 40 CFR part 94. Such engines may be certified to those standards under this part 1042. All the provisions of this part except the emission standards apply to such engines if they are certified under this part. Note that engines subject to, but not certified to, the standards of 40 CFR part 94 are subject to the requirements and prohibitions of this part and 40 CFR part 1068.

(e) The requirements of subpart I of this part apply to remanufactured Category 1 and Category 2 engines beginning July 7, 2008.

(f) The marine engines listed in this paragraph (f) are subject to all the requirements of this part even if they do not meet the definition of "compression-ignition" in § 1042.901. The following engines are deemed to be compression-ignition engines for purposes of this part:

(1) Marine engines powered by natural gas or other gaseous fuels with maximum engine power at or above 250 kW. Note that gaseous-fueled engines with maximum engine power below 250 kW may or may not meet the definition of "compression-ignition" in § 1042.901.

(2) Marine gas turbine engines.

(3) Other marine internal combustion engines that do not meet the definition of "spark-ignition" in § 1042.901.

(g) Some of the provisions of this part may apply for other engines as specified in 40 CFR part 1043.

■ 149. Section 1042.2 is revised to read as follows:

§ 1042.2 Who is responsible for compliance?

The regulations in this part 1042 contain provisions that affect both engine manufacturers and others. However, the requirements of this part, other than those of subpart I of this part, are generally addressed to the engine manufacturer for freshly manufactured marine engines or other certificate holders. The term "you" generally means the engine manufacturer, as defined in § 1042.901, especially for issues related to certification (including production-line testing, reporting, *etc.*).

■ 150. Section 1042.5 is amended by revising paragraph (a) and adding paragraph (c) to read as follows:

§ 1042.5 Exclusions.

* * * * *

(a) *Foreign vessels.* The requirements and prohibitions of this part do not apply to engines installed on foreign vessels, as defined in § 1042.901. Note however, that the requirements and prohibitions of this part do apply to engines installed on any formerly foreign vessels that are reflagged as U.S.-flagged vessels.

* * * * *

(c) *Recreational gas turbine engines.* The requirements and prohibitions of this part do not apply to gas turbine engines installed on recreational vessels, as defined in § 1042.901.

■ 151. Section 1042.15 is revised to read as follows:

§ 1042.15 Do any other regulation parts apply to me?

(a) Part 1043 of this chapter describes requirements related to international pollution prevention that apply for some of the engines subject to this part.

(b) The evaporative emission requirements of part 1060 of this chapter apply to vessels that include installed engines fueled with a volatile liquid fuel as specified in § 1042.107. (Note: Conventional diesel fuel is not considered to be a volatile liquid fuel.)

(c) Part 1065 of this chapter describes procedures and equipment specifications for testing engines to measure exhaust emissions. Subpart F of this part 1042 describes how to apply the provisions of part 1065 of this chapter to determine whether engines meet the exhaust emission standards in this part.

(d) The requirements and prohibitions of part 1068 of this chapter apply to everyone, including anyone who manufactures, imports, installs, owns, operates, or rebuilds any of the engines subject to this part 1042, or vessels containing these engines. Part 1068 of this chapter describes general provisions, including these seven areas:

(1) Prohibited acts and penalties for engine manufacturers, vessel manufacturers, and others.

(2) Rebuilding and other aftermarket changes.

(3) Exclusions and exemptions for certain engines.

(4) Importing engines.

(5) Selective enforcement audits of your production.

(6) Defect reporting and recall.

(7) Procedures for hearings.

(e) Other parts of this chapter apply if referenced in this part.

■ 152. A new § 1042.30 is added to subpart A to read as follows:

§ 1042.30 Submission of information.

(a) This part includes various requirements to record data or other information. Refer to § 1042.925 and 40 CFR 1068.25 regarding recordkeeping requirements. Unless we specify otherwise, store these records in any format and on any media and keep them readily available for one year after you send an associated application for certification, or one year after you generate the data if they do not support an application for certification. You must promptly send us organized, written records in English if we ask for them. We may review them at any time.

(b) The regulations in § 1042.255 and 40 CFR 1068.101 describe your obligation to report truthful and complete information and the consequences of failing to meet this obligation. This includes information not related to certification.

(c) Send all reports and requests for approval to the Designated Compliance Officer (*see* § 1042.901).

(d) Any written information we require you to send to or receive from another company is deemed to be a required record under this section. Such records are also deemed to be submissions to EPA. We may require you to send us these records whether or not you are a certificate holder.

Subpart B—[Amended]

■ 153. Section 1042.101 is amended by revising the section heading, Table 1 in paragraph (a)(3), and paragraph (d)(1)(iii) to read as follows:

§ 1042.101 Exhaust emission standards for Category 1 engines and Category 2 engines.

(a) * * *

(3) * * *

BILLING CODE 6560–50–P

Table 1 to §1042.101— Tier 3 Standards for Category 1 Engines Below 3700 kW [a]

Power Density and Application	Displacement (L/cyl)	Maximum Engine Power	Model Year	PM (g/kW-hr)	NOx+HC (g/kW-hr) [b]
All	disp.< 0.9	kW <19	2009+	0.40	7.5
		19 ≤ kW < 75	2009-2013	0.30	7.5
			2014+	0.30	4.7
Commercial engines with kW/L ≤ 35[b]	disp.< 0.9	kW ≥ 75	2012+	0.14	5.4
	0.9 ≤ disp. < 1.2	all	2013+	0.12	5.4
	1.2 ≤ disp. < 2.5	kW < 600	2014-2017	0.11	5.6
			2018+	0.10	5.6
		kW ≥ 600	2014+	0.11	5.6
	2.5 ≤ disp. < 3.5	kW < 600	2013-2017	0.11	5.6
			2018+	0.10	5.6
		kW ≥ 600	2013+	0.11	5.6
	3.5 ≤ disp.< 7.0	kW < 600	2012-2017	0.11	5.8
			2018+	0.10	5.8
		kW ≥ 600	2012+	0.11	5.8
Commercial engines with kW/L > 35 and all recreational engines[b]	disp. < 0.9	kW ≥ 75	2012+	0.15	5.8
	0.9 ≤ disp. < 1.2	all	2013+	0.14	5.8
	1.2 ≤ disp. < 2.5		2014+	0.12	5.8
	2.5 ≤ disp. < 3.5		2013+	0.12	5.8
	3.5 ≤ disp. < 7.0		2012+	0.11	5.8

[a] No Tier 3 standards apply for commercial Category 1 engines at or above 3700 kW. See §1042.1(c) and paragraph (a)(7) of this section for the standards that apply for these engines.
[b] The applicable NOx+HC standards specified for Tier 2 engines in Appendix I of this part continue to apply instead of the values noted in the table for commercial engines at or above 2000 kW. FELs for these engines may not be higher than the Tier 1 NOx standard specified in Appendix I of this part.

BILLING CODE 6560–50–C

* * * * *

(d) * * *

(1) * * *

(iii) Diesel-fueled and all other engines not described in paragraph (d)(1)(i) or (ii) of this section must comply with Tier 3 HC standards based on THC emissions and with Tier 4 standards based on NMHC emissions.

* * * * *

■ 154. A new § 1042.104 is added to subpart B to read as follows:

§ 1042.104 Exhaust emission standards for Category 3 engines.

(a) *Duty-cycle standards.* Exhaust emissions from your engines may not exceed emission standards, as follows:

(1) Measure emissions using the test procedures described in subpart F of this part. Note that while no PM standards apply for Category 3 engines, PM emissions must be measured for certification testing and reported under § 1042.205. Note also that you are not required to measure PM emissions for other testing.

(2) NO_X standards apply based on the engine's model year and maximum in-use engine speed as shown in the following table:

TABLE 1 TO § 1042.104—NO_X EMISSION STANDARDS FOR CATEGORY 3 ENGINES (G/KW-HR)

Emission standards	Model year	Maximum in-use engine speed		
		Less than 130 RPM	130–2000 RPM [a]	Over 2000 RPM
Tier 1	2004–2010 [b]	17.0	$45.0 \cdot n^{(-0.20)}$	9.8
Tier 2	2011–2015	14.4	$44.0 \cdot n^{(-0.23)}$	7.7
Tier 3	2016 and later	3.4	$9.0 \cdot n^{(-0.20)}$	2.0

[a] Applicable standards are calculated from n (maximum in-use engine speed, in RPM, as specified in § 1042.140). Round the standards to one decimal place.

[b] Tier 1 NO_X standards apply as specified in 40 CFR part 94 for engines originally manufactured in model years 2004 through 2010. They are shown here only for reference.

(3) The HC standard for Tier 2 and later engines is 2.0 g/kW-hr. This standard applies as follows:

(i) Alcohol-fueled engines must comply with HC standards based on THCE emissions.

(ii) Natural gas-fueled engines must comply with HC standards based on NMHC emissions.

(iii) Diesel-fueled and all other engines not described in paragraph (a)(3)(i) or (ii) of this section must comply with HC standards based on THC emissions.

(4) The CO standard for Tier 2 and later engines is 5.0 g/kW-hr.

(b) *Averaging, banking, and trading.* Category 3 engines are not eligible for participation in the averaging, banking, and trading (ABT) program as described in subpart H of this part.

(c) *Mode caps.* Measured NO_X emissions may not exceed the cap specified in this paragraph (c) for any applicable duty-cycle test modes with power greater than 10 percent maximum engine power. Calculate the mode cap by multiplying the applicable NO_X standard by 1.5 and rounding to the nearest 0.1 g/kW-hr. Note that mode caps do not apply for pollutants other than NO_X and do not apply for any modes of operation outside of the applicable duty cycles in § 1042.505. Category 3 engines are not subject to not-to-exceed standards.

(d) *Useful life.* Your engines must meet the exhaust emission standards of this section over their full useful life, expressed as a period in years or hours of engine operation, whichever comes first.

(1) The minimum useful life value is 3 years or 10,000 hours of operation.

(2) Specify a longer useful life in hours for an engine family under either of two conditions:

(i) If you design, advertise, or market your engine to operate longer than the minimum useful life (your recommended hours until rebuild indicates a longer design life).

(ii) If your basic mechanical warranty is longer than the minimum useful life.

(e) *Applicability for testing.* The duty-cycle emission standards in this section apply to all testing performed according to the procedures in § 1042.505, including certification, production-line, and in-use testing. *See* paragraph (g) of this section for standards that apply for certain other test procedures, such as some production-line testing.

(f) *Domestic engines.* Engines installed on vessels excluded from 40 CFR part 1043 because they operate only domestically may not be certified for use with residual fuels.

(g) *Alternate installed-engine standards.* NO_X emissions may not exceed the standard specified in this paragraph (g) for test of engines installed on vessels when you are unable to operate the engine at the test points for the specified duty cycle, and you approximate these points consistent with the specifications of section 6 of Appendix 8 to the NO_X Technical Code (incorporated by reference in § 1042.910). Calculate the alternate installed-engine standard by multiplying the applicable NO_X standard by 1.1 and rounding to the nearest 0.1 g/kW-hr.

■ 155. Section 1042.110 is amended by revising paragraph (a)(2) and adding paragraphs (a)(3) and (d) to read as follows:

§ 1042.110 Recording reductant use and other diagnostic functions.

(a) * * *

(2) The onboard computer log must record in nonvolatile computer memory all incidents of engine operation with inadequate reductant injection or reductant quality. Use good engineering judgment to ensure that the operator can readily access the information to submit the report required by § 1042.660. For example, you may meet this requirement by documenting the incident in a text file that can be downloaded or printed by the operator.

(3) SCR systems must also conform to the provisions of paragraph (d) of this section if they are equipped with on-off controls as allowed under § 1042.115(g).

* * * * *

(d) For Category 3 engines equipped with on-off NO_X controls (as allowed by § 1042.115(g)), you must also equip your engine to continuously monitor NO_X concentrations in the exhaust. *See* § 1042.650 to determine if this requirement applies for a given Category 1 or Category 2 engine. Use good engineering judgment to alert operators if measured NO_X concentrations indicate malfunctioning emission controls. Record any such operation in nonvolatile computer memory. You are not required to monitor NO_X concentrations during operation for which the emission controls may be disabled under § 1042.115(g). For the purpose of this paragraph (d), "malfunctioning emission controls" means any condition in which the measured NO_X concentration exceeds the highest value expected when the engine is in compliance with the installed engine standard of § 1042.104(g). Use good engineering judgment to determine these expected values during production-line testing of the engine using linear interpolation between test points and accounting for the degree to which the cycle-weighted emissions of the engine are below the standard. You may also use additional intermediate test points measured during the production-line test. Note that the provisions of paragraph (a) of this section also apply for SCR systems covered by this paragraph (d). For engines subject to both the provisions of paragraph (a) of this section and this paragraph (d), use good engineering judgment to integrate diagnostic features to comply with both paragraphs.

■ 156. Section 1042.115 is amended by revising paragraphs (d)(2) introductory text, (f) introductory text, and adding paragraphs (f)(4) and (g) to read as follows:

§ 1042.115 Other requirements.

* * * * *

(d) * * *

(2) Category 2 and Category 3 engines that have adjustable parameters must meet all the requirements of this part for any adjustment in the specified adjustable range. You must specify in your application for certification the adjustable range of each adjustable parameter on a new engine to—

* * * * *

(f) *Defeat devices.* You may not equip your engines with a defeat device. A defeat device is an auxiliary emission control device that reduces the effectiveness of emission controls under conditions that the engine may reasonably be expected to encounter during normal operation and use. (Note that this means emission control for operation outside of and between the official test modes is generally expected to be similar to emission control demonstrated at the test modes.) This does not apply to auxiliary emission control devices you identify in your application for certification if any of the following is true:

* * * * *

(4) The engine is a Category 3 engine and the AECD conforms to the requirements of paragraph (g) of this section. *See* § 1042.650 to determine if this allowance applies for a given Category 1 or Category 2 engine.

(g) *On-off controls for Category 3 engines.* Manufacturers may equip Category 3 engines with features that disable Tier 3 NO_X emission controls subject to the provisions of this paragraph (g). *See* § 1042.650 to determine if this allowance applies for a given Category 1 or Category 2 engine. Where this paragraph (g) applies for a Category 1 or Category 2 engine, read "Tier 2" to mean "Tier 3" and read "Tier 3" to mean "Tier 4".

(1) Features that disable Tier 3 emission controls are considered to be AECDs whether or not they meet the definition of an AECD. For example, manually operated on-off features are AECDs under this paragraph (g). The features must be identified in your application for certification as AECDs. For purposes of this paragraph (g), the term "features that disable Tier 3 emission controls" includes (but is not limited to) any combination of the following that cause the engine's emissions to exceed any Tier 3 emission standard:

(i) Bypassing of exhaust aftertreatment.

(ii) Reducing or eliminating flow of reductant to an SCR system.

(iii) Modulating engine calibration in a manner that increases engine-out emissions of a regulated pollutant.

(2) You must demonstrate that the AECD will not disable emission controls while operating in areas where emissions could reasonably be expected to adversely affect U.S. air quality. If an ECA has been established for U.S. waters, this means you must demonstrate that the AECD will not disable emission control while operating in waters within the ECA or any ECA associated area. (Note: *See* the regulations in 40 CFR part 1043 for requirements related to operation in ECAs, including foreign ECAs.) Compliance with this paragraph will generally require that the AECD operation be based on Global Positioning System (GPS) inputs. We may consider any relevant information to determine whether your AECD conforms to this paragraph (g).

(3) The onboard computer log must record in nonvolatile computer memory all incidents of engine operation with the Tier 3 emission controls disabled.

(4) The engine must comply fully with the Tier 2 standards when the Tier 3 emission controls are disabled.

■ 157. Section 1042.120 is amended by adding paragraph (b)(2) and revising paragraph (c) to read as follows:

§ 1042.120 Emission-related warranty requirements.

* * * * *

(b) * * *

(2) For Category 3 engines, your emission-related warranty must be valid throughout the engine's full useful life as specified in § 1042.104(d).

* * * * *

(c) *Components covered.* The emission-related warranty covers all components whose failure would increase an engine's emissions of any regulated pollutant, including components listed in 40 CFR part 1068, Appendix I, and components from any other system you develop to control emissions. The emission-related warranty for freshly manufactured marine engines covers these components even if another company produces the component. Your emission-related warranty does not need to cover components whose failure would not increase an engine's emissions of any regulated pollutant. For remanufactured engines, your emission-related warranty is required to cover only those parts that you supply or those parts for which you specify allowable part manufacturers. It does not need to cover used parts that are not replaced during the remanufacture.

* * * * *

■ 158. Section 1042.125 is amended by revising the section heading, introductory text, and paragraphs (a)(1)(iii) and (d) to read as follows:

§ 1042.125 Maintenance instructions.

Give the ultimate purchaser of each new engine written instructions for properly maintaining and using the engine, including the emission control system, as described in this section. The maintenance instructions also apply to service accumulation on your emission-data engines as described in § 1042.245 and in 40 CFR part 1065. The restrictions specified in paragraphs (a) through (e) of this section related to allowable maintenance apply only to Category 1 and Category 2 engines. Manufacturers may specify any maintenance for Category 3 engines.

(a) * * *

(1) * * *

(iii) You provide the maintenance free of charge and clearly say so in your maintenance instructions.

* * * * *

(d) *Noncritical emission-related maintenance.* Subject to the provisions of this paragraph (d), you may schedule any amount of emission-related inspection or maintenance that is not covered by paragraph (a) of this section (that is, maintenance that is neither explicitly identified as critical emission-related maintenance, nor that we approve as critical emission-related maintenance). Noncritical emission-related maintenance generally includes maintenance on the components we specify in 40 CFR part 1068, Appendix I that is not covered in paragraph (a) of this section. You must state in the owners manual that these steps are not necessary to keep the emission-related warranty valid. If operators fail to do this maintenance, this does not allow you to disqualify those engines from in-use testing or deny a warranty claim. Do not take these inspection or maintenance steps during service accumulation on your emission-data engines.

* * * * *

■ 159. Section 1042.135 is amended by revising paragraphs (c)(5), (c)(8), (c)(9), and (c)(11) and adding paragraphs (c)(12) and (c)(13) to read as follows:

§ 1042.135 Labeling.

* * * * *

(c) * * *

(5) State the date of manufacture [DAY (optional), MONTH, and YEAR]; however, you may omit this from the label if you stamp, engrave, or otherwise permanently identify it elsewhere on the engine, in which case you must also describe in your application for certification where you will identify the date on the engine.

* * * * *

(8) State the useful life for your engine family if the applicable useful life is based on the provisions of § 1042.101(e)(2) or (3), or § 1042.104(d)(2).

(9) Identify the emission control system. Use terms and abbreviations as described in 40 CFR 1068.45. You may omit this information from the label if there is not enough room for it and you put it in the owners manual instead.

* * * * *

(11) For a Category 1 or Category 2 engine that can be modified to operate on residual fuel, but has not been certified to meet the standards on such a fuel, include the statement: "THIS ENGINE IS CERTIFIED FOR OPERATION ONLY WITH DIESEL FUEL. MODIFYING THE ENGINE TO OPERATE ON RESIDUAL OR INTERMEDIATE FUEL MAY BE A VIOLATION OF FEDERAL LAW SUBJECT TO CIVIL PENALTIES."

(12) For an engine equipped with on-off emissions controls as allowed by § 1042.115, include the statement: "THIS ENGINE IS CERTIFIED WITH ON-OFF EMISSION CONTROLS. OPERATION OF THE ENGINE CONTRARY TO 40 CFR 1042.115(g) IS A VIOLATION OF FEDERAL LAW SUBJECT TO CIVIL PENALTIES."

(13) For engines intended for installation on domestic or public vessels, include the following statement: "THIS ENGINE DOES NOT COMPLY WITH INTERNATIONAL MARINE REGULATIONS FOR COMMERCIAL VESSELS UNLESS IT IS ALSO COVERED BY AN EIAPP CERTIFICATE."

* * * * *

■ 160. Section 1042.140 is amended by revising the section heading and introductory text and adding paragraph (g) to read as follows:

§ 1042.140 Maximum engine power, displacement, power density, and maximum in-use engine speed.

This section describes how to determine the maximum engine power, displacement, and power density of an engine for the purposes of this part. Note that maximum engine power may differ from the definition of "maximum test power" in § 1042.901. This section also specifies how to determine maximum in-use engine speed for Category 3 engines.

* * * * *

(g) Calculate a maximum test speed for the nominal power curve as specified in 40 CFR 1065.610. This is the maximum in-use engine speed used for calculating the NO_X standard in § 1042.104 for Category 3 engines. Alternatively, you may use a lower value if engine speed will be limited in actual use to that lower value.

■ 161. Section 1042.145 is amended by revising paragraph (a) and the heading of paragraph (c) introductory text and adding paragraphs (h) and (i) to read as follows:

§ 1042.145 Interim provisions.

(a) *General.* The provisions in this section apply instead of other provisions in this part. This section describes when these interim provisions expire. Only the provisions of paragraph (h) of this section apply for Category 3 engines.

* * * * *

(c) *Part 1065 test procedures for Category 1 and Category 2 engines.*

* * *

* * * * *

(h) The following interim provisions apply for Category 3 engines:

(1) *Applicability of Tier 3 standards to Category 3 engines operating in Alaska, Hawaii, and U.S. territories.* (i) Category 3 engines are not required to comply with the Tier 3 NO_X standard when operating in areas of Guam, American Samoa, the Commonwealth of the Northern Mariana Islands, Puerto Rico, or U.S. Virgin Islands. Category 3 engines are also not required to comply with the Tier 3 NO_X standards when operating in the waters of the smallest Hawaiian islands or in the waters of Alaska west of Kodiak. For the purpose of this paragraph (h)(1), "the smallest Hawaiian islands" includes all Hawaiian islands other than Hawaii, Kahoolawe, Kauai, Lanai, Maui, Molokai, Niihau, and Oahu. Engines must comply fully with the appropriate Tier 2 NO_X standard and all other applicable requirements when operating in the areas identified in this paragraph (h)(1).

(ii) The provisions of paragraph (h)(1)(i) of this section do not apply to ships operating in an ECA or an ECA associated area. The Tier 3 standards apply in full for any area included in an ECA or an ECA associated area.

(2) *Part 1065 test procedures.* You must generally use the test procedures specified in subpart F of this part for Category 3 engines, including the applicable test procedures in 40 CFR part 1065. You may use a combination of the test procedures specified in this part and the test procedures specified in 40 CFR part 94 before January 1, 2016 without request. After this date, you must use test procedures only as specified in subpart F of this part.

(i) *Limitation of 40 CFR 1068.101 before July 1, 2010.* Notwithstanding other provisions of this part or 40 CFR part 94, for the period June 29, 2010 through July 1, 2010, it is not a violation of 40 CFR 1068.101 to operate in U.S. waters uncertified engines installed on vessels manufactured outside of the United States before June 29, 2010. Operation of such vessels in U.S. waters on or after July 1, 2010 is deemed to be introduction into U.S. commerce of a new marine engine.

Subpart C—[Amended]

■ 162. Section 1042.201 is amended by revising paragraph (h) to read as follows:

§ 1042.201 General requirements for obtaining a certificate of conformity.

* * * * *

(h) For engines that become new after being placed into service, such as engines installed on imported vessels, we may specify alternate certification provisions consistent with the intent of this part. *See* the definition of "new marine engine" in § 1042.901.

■ 163. Section 1042.205 is amended by adding paragraph (b)(12) and revising paragraphs (i), (o), and (s)(5) to read as follows:

§ 1042.205 Application requirements.

* * * * *

(b) * * *

(12) Include any other information required by this part with respect to AECDs. For example, *see* § 1042.115 for requirements related to on-off technologies.

* * * * *

(i) Include the maintenance and warranty instructions you will give to the ultimate purchaser of each new engine (*see* §§ 1042.120 and 1042.125). Describe your plan for meeting warranty obligations under § 1042.120.

* * * * *

(o) Present emission data for HC, NO_X, PM, and CO on an emission-data engine to show your engines meet emission standards as specified in §§ 1042.101 or 1042.104. Note that you must submit PM data for all engines, whether or not a PM standard applies. Show emission figures before and after applying adjustment factors for regeneration and deterioration factors for each pollutant and for each engine. If we specify more than one grade of any fuel type (for example, high-sulfur and low-sulfur diesel fuel), you need to submit test data only for one grade, unless the regulations of this part specify otherwise for your engine. Include emission results for each mode for Category 3 engines or for other engines if you do discrete-mode testing under § 1042.505. Note that §§ 1042.235

and 1042.245 allows you to submit an application in certain cases without new emission data.

* * * * *

(s) * * *

(5) For Category 2 and Category 3 engines, propose a range of adjustment for each adjustable parameter, as described in § 1042.115(d). Include information showing why the limits, stops, or other means of inhibiting adjustment are effective in preventing adjustment of parameters on in-use engines to settings outside your proposed adjustable ranges.

* * * * *

■ 164. Section 1042.220 is revised to read as follows:

§ 1042.220 Amending maintenance instructions.

You may amend your emission-related maintenance instructions after you submit your application for certification as long as the amended instructions remain consistent with the provisions of § 1042.125. You must send the Designated Compliance Officer a written request to amend your application for certification for an engine family if you want to change the emission-related maintenance instructions in a way that could affect emissions. In your request, describe the proposed changes to the maintenance instructions. If operators follow the original maintenance instructions rather than the newly specified maintenance, this does not allow you to disqualify those engines from in-use testing or deny a warranty claim.

(a) If you are decreasing or eliminating any specified maintenance, you may distribute the new maintenance instructions to your customers 30 days after we receive your request, unless we disapprove your request. This would generally include replacing one maintenance step with another. We may approve a shorter time or waive this requirement.

(b) If your requested change would not decrease the specified maintenance, you may distribute the new maintenance instructions anytime after you send your request. For example, this paragraph (b) would cover adding instructions to increase the frequency of filter changes for engines in severe-duty applications.

(c) You need not request approval if you are making only minor corrections (such as correcting typographical mistakes), clarifying your maintenance instructions, or changing instructions for maintenance unrelated to emission control. We may ask you to send us copies of maintenance instructions revised under this paragraph (c).

■ 165. Section 1042.225 is amended by revising the introductory text, paragraphs (b) introductory text, (b)(2), (e), and (f) to read as follows:

§ 1042.225 Amending applications for certification.

Before we issue you a certificate of conformity, you may amend your application to include new or modified engine configurations, subject to the provisions of this section. After we have issued your certificate of conformity, you may send us an amended application requesting that we include new or modified engine configurations within the scope of the certificate, subject to the provisions of this section. You must amend your application if any changes occur with respect to any information that is included or should be included in your application.

* * * * *

(b) To amend your application for certification as specified in paragraph (a) of this section, send the relevant information to the Designated Compliance Officer.

* * * * *

(2) Include engineering evaluations or data showing that the amended engine family complies with all applicable requirements. You may do this by showing that the original emission-data engine is still appropriate for showing that the amended family complies with all applicable requirements.

* * * * *

(e) For engine families already covered by a certificate of conformity, you may start producing the new or modified engine configuration anytime after you send us your amended application and before we make a decision under paragraph (d) of this section. However, if we determine that the affected engines do not meet applicable requirements, we will notify you to cease production of the engines and may require you to recall the engines at no expense to the owner. Choosing to produce engines under this paragraph (e) is deemed to be consent to recall all engines that we determine do not meet applicable emission standards or other requirements and to remedy the nonconformity at no expense to the owner. If you do not provide information required under paragraph (c) of this section within 30 days after we request it, you must stop producing the new or modified engines.

(f) You may ask us to approve a change to your FEL in certain cases after the start of production. The changed FEL may not apply to engines you have already introduced into U.S. commerce, except as described in this paragraph (f). If we approve a changed FEL after the start of production, you must include the new FEL on the emission control information label for all engines produced after the change. You may ask us to approve a change to your FEL in the following cases:

(1) You may ask to raise your FEL for your engine family at any time. In your request, you must show that you will still be able to meet the emission standards as specified in subparts B and H of this part. If you amend your application by submitting new test data to include a newly added or modified engine, as described in paragraph (b)(3) of this section, use the appropriate FELs with corresponding production volumes to calculate emission credits for the model year, as described in subpart H of this part. In all other circumstances, you must use the higher FEL for the entire family to calculate emission credits under subpart H of this part.

(2) You may ask to lower the FEL for your engine family only if you have test data from production engines showing that emissions are below the proposed lower FEL. The lower FEL applies only to engines you produce after we approve the new FEL. Use the appropriate FELs with corresponding production volumes to calculate emission credits for the model year, as described in subpart H of this part.

■ 166. Section 1042.230 is amended by revising paragraphs (a), (b), (f) introductory text, and (g) and adding paragraph (d) to read as follows:

§ 1042.230 Engine families.

(a) For purposes of certification, divide your product line into families of engines that are expected to have similar emission characteristics throughout the useful life as described in this section. You may not group engines in different engine categories in the same family. Your engine family is limited to a single model year.

(b) For Category 1 engines, group engines in the same engine family if they are the same in all the following aspects:

(1) The combustion cycle and the fuel with which the engine is intended or designed to be operated.

(2) The cooling system (for example, raw-water vs. separate-circuit cooling).

(3) Method of air aspiration.

(4) Method of exhaust aftertreatment (for example, catalytic converter or particulate trap).

(5) Combustion chamber design.

(6) Nominal bore and stroke.

(7) Cylinder arrangement (such as in-line vs. vee configurations). This applies for engines with aftertreatment devices only.

(8) Method of control for engine operation other than governing (*i.e.,* mechanical or electronic).

(9) Application (commercial or recreational).

(10) Numerical level of the emission standards that apply to the engine, except as allowed under paragraphs (f) and (g) of this section.

* * * * *

(d) For Category 3 engines, group engines into engine families based on the criteria specified in Section 4.3 of the NO_X Technical Code (incorporated by reference in § 1042.910), except as allowed in paragraphs (e) and (f) of this section.

* * * * *

(f) You may group engines that are not identical with respect to the things listed in paragraph (b), (c), or (d) of this section in the same engine family, as follows:

* * * * *

(g) If you combine engines that are subject to different emission standards into a single engine family under paragraph (f) of this section, you must certify the engine family to the more stringent set of standards for that model year. For Category 3 engine families that include a range of maximum in-use engine speeds, use the highest value of maximum in-use engine speed to establish the applicable NO_X emission standard.

■ 167. Section 1042.235 is amended by revising the section heading, the introductory text, and paragraphs (a), (c), and (d) introductory text to read as follows:

§ 1042.235 Emission testing related to certification.

This section describes the emission testing you must perform to show compliance with the emission standards in § 1042.101(a) or § 1042.104. *See* § 1042.205(p) regarding emission testing related to the NTE standards. *See* §§ 1042.240 and 1042.245 and 40 CFR part 1065, subpart E, regarding service accumulation before emission testing. *See* § 1042.655 for special testing provisions available for Category 3 engines subject to Tier 3 standards.

(a) Select an emission-data engine from each engine family for testing. For engines at or above 560 kW, you may use a development engine that is equivalent in design to the engine being certified. For Category 3 engines, you may use a single-cylinder version of the engine. Using good engineering judgment, select the engine configuration most likely to exceed an applicable emission standard over the useful life, considering all exhaust emission constituents and the range of installation options available to vessel manufacturers.

* * * * *

(c) We may measure emissions from any of your emission-data engines or other engines from the engine family, as follows:

(1) We may decide to do the testing at your plant or any other facility. If we do this, you must deliver the engine to a test facility we designate. The engine you provide must include appropriate manifolds, aftertreatment devices, electronic control units, and other emission-related components not normally attached directly to the engine block. If we do the testing at your plant, you must schedule it as soon as possible and make available the instruments, personnel, and equipment we need.

(2) If we measure emissions from one of your engines, the results of that testing become the official emission results for the engine. Unless we later invalidate these data, we may decide not to consider your data in determining if your engine family meets applicable requirements.

(3) Before we test one of your engines, we may set its adjustable parameters to any point within the specified adjustable ranges (*see* § 1042.115(d)).

(4) Before we test one of your engines, we may calibrate it within normal production tolerances for anything we do not consider an adjustable parameter. For example, this would apply for an engine parameter that is subject to production variability because it is adjustable during production, but is not considered an adjustable parameter (as defined in § 1042.901) because it is permanently sealed.

(d) You may ask to use carryover emission data from a previous model year instead of doing new tests, but only if all the following are true:

* * * * *

■ 168. Section 1042.240 is amended by revising paragraphs (a), (b), and (c) introductory text and adding paragraphs (e) and (f) to read as follows:

§ 1042.240 Demonstrating compliance with exhaust emission standards.

(a) For purposes of certification, your engine family is considered in compliance with the emission standards in § 1042.101(a) or § 1042.104 if all emission-data engines representing that family have test results showing official emission results and deteriorated emission levels at or below these standards. This also applies for all test points for emission-data engines within the family used to establish deterioration factors. *See* paragraph (f) of this section for provisions related to demonstrating compliance with non-duty-cycle standards, such as NTE standards. Note that your FELs are considered to be the applicable emission standards with which you must comply if you participate in the ABT program in subpart H of this part.

(b) Your engine family is deemed not to comply if any emission-data engine representing that family has test results showing an official emission result or a deteriorated emission level for any pollutant that is above an applicable emission standard. Similarly, your engine family is deemed not to comply if any emission-data engine representing that family has test results showing any emission level above the applicable not-to-exceed emission standard for any pollutant. This also applies for all test points for emission-data engines within the family used to establish deterioration factors.

(c) To compare emission levels from the emission-data engine with the applicable emission standards, apply deterioration factors to the measured emission levels for each pollutant. Section 1042.245 specifies how to test your Category 1 or Category 2 engine to develop deterioration factors that represent the deterioration expected in emissions over your engines' full useful life. *See* paragraph (e) of this section for determining deterioration factors for Category 3 engines. Your deterioration factors must take into account any available data from in-use testing with similar engines. Small-volume engine manufacturers and post-manufacture marinizers may use assigned deterioration factors that we establish. Apply deterioration factors as follows:

* * * * *

(e) For Category 3 engines, determine a deterioration factor based on an engineering analysis. The engineering analysis must describe how the measured emission levels from the emission-data engine show that engines comply with applicable emission standards throughout the useful life. Include this analysis in your application for certification and add a statement that all data, analyses, evaluations, and other information you used are available for our review upon request.

(f) For NTE standards and mode caps, use good engineering judgment to demonstrate compliance throughout the useful life. You may, but are not required to, apply the same deterioration factors used to show compliance with the applicable duty-cycle standards. We will deny your application for certification if we determine that your test data show that

your engines would exceed one or more NTE standard or mode cap during their useful lives.

■ 169. Section 1042.245 is amended by revising the introductory text and paragraph (a) to read as follows:

§ 1042.245 Deterioration factors.

This section describes how to determine deterioration factors for Category 1 and Category 2 engines, either with an engineering analysis, with pre-existing test data, or with new emission measurements. Apply these deterioration factors to determine whether your engines will meet the duty-cycle emission standards throughout the useful life as described in § 1042.240. This section does not apply for Category 3 engines.

(a) You may ask us to approve deterioration factors for an engine family with established technology based on engineering analysis instead of testing. Engines certified to a NO_X+HC standard or FEL greater than the Tier 3 NO_X+HC standard are considered to rely on established technology for control of gaseous emissions, except that this does not include any engines that use exhaust-gas recirculation or aftertreatment. In most cases, technologies used to meet the Tier 1 and Tier 2 emission standards would qualify as established technology. We must approve your plan to establish a deterioration factor under this paragraph (a) before you submit your application for certification.

* * * * *

■ 170. Section 1042.250 is amended by revising paragraphs (a) and (c) and removing paragraph (e) to read as follows:

§ 1042.250 Recordkeeping and reporting.

(a) Send the Designated Compliance Officer information related to your U.S.-directed production volumes as described in § 1042.345. In addition, within 45 days after the end of the model year, you must send us a report describing information about engines you produced during the model year as follows:

(1) State the total production volume for each engine family that is not subject to reporting under § 1042.345.

(2) State the total production volume for any engine family for which you produce engines after completing the reports required in § 1042.345.

* * * * *

(c) Keep data from routine emission tests (such as test cell temperatures and relative humidity readings) for one year after we issue the associated certificate of conformity. Keep all other information specified in this section for eight years after we issue your certificate.

* * * * *

■ 171. Section 1042.255 is amended by revising paragraph (b) to read as follows:

§ 1042.255 EPA decisions.

* * * * *

(b) We may deny your application for certification if we determine that your engine family fails to comply with emission standards or other requirements of this part or the Clean Air Act. We will base our decision on all available information. If we deny your application, we will explain why in writing.

* * * * *

Subpart D—[Amended]

■ 172. Section 1042.301 is amended by revising paragraphs (a)(2), (c), (e), and (f) to read as follows:

§ 1042.301 General provisions.

(a) * * *

(2) We may exempt Category 1 engine families with a projected U.S.-directed production volume below 100 engines from routine testing under this subpart. Request this exemption in your application for certification and include your basis for projecting a production volume below 100 units. We will approve your request if we agree that you have made good-faith estimates of your production volumes. Your exemption is approved when we grant your certificate. You must promptly notify us if your actual production exceeds 100 units during the model year. If you exceed the production limit or if there is evidence of a nonconformity, we may require you to test production-line engines under this subpart, or under 40 CFR part 1068, subpart E, even if we have approved an exemption under this paragraph (a)(2).

* * * * *

(c) Other regulatory provisions authorize us to suspend, revoke, or void your certificate of conformity, or order recalls for engine families, without regard to whether they have passed these production-line testing requirements. The requirements of this subpart do not affect our ability to do selective enforcement audits, as described in 40 CFR part 1068. Individual engines in families that pass these production-line testing requirements must also conform to all applicable regulations of this part and 40 CFR part 1068.

* * * * *

(e) If you certify a Category 1 or Category 2 engine family with carryover emission data, as described in § 1042.235(d), and these equivalent engine families consistently pass the production-line testing requirements over the preceding two-year period, you may ask for a reduced testing rate for further production-line testing for that family. The minimum testing rate is one engine per engine family. If we reduce your testing rate, we may limit our approval to any number of model years. In determining whether to approve your request, we may consider the number of engines that have failed the emission tests.

(f) We may ask you to make a reasonable number of production-line engines available for a reasonable time so we can test or inspect them for compliance with the requirements of this part. For Category 3 engines, you are not required to deliver engines to us, but we may inspect and test your engines at any facility at which they are assembled or installed in vessels.

■ 173. A new § 1042.302 is added to subpart D to read as follows:

§ 1042.302 Applicability of this subpart for Category 3 engines.

If you produce Tier 3 or later Category 3 engines that are certified under this part, you must test them as described in this subpart, except as specified in this section.

(a) You must test each engine at the sea trial of the vessel in which it is installed or within the first 300 hours of operation, whichever occurs first. Since you must test each engine, the provisions of §§ 1042.310 and 1042.315(b) do not apply for Category 3 engines. If we determine that an engine failure under this subpart is caused by defective components or design deficiencies, we may revoke or suspend your certificate for the engine family as described in § 1042.340. If we determine that an engine failure under this subpart is caused only by incorrect assembly, we may suspend your certificate for the engine family as described in § 1042.325. If the engine fails, you may continue operating only to complete the sea trial and return to port. It is a violation of 40 CFR 1068.101(b)(1) to operate the vessel further until you remedy the cause of failure. Each two-hour period of such operation constitutes a separate offense. A violation lasting less than two hours constitutes a single offense.

(b) You are only required to measure NO_X emissions. You do not need to measure HC, CO or PM emissions under this subpart.

(c) If you are unable to operate the engine at the test points for the specified duty cycle, you may approximate these

points consistent with the specifications of section 6 of Appendix 8 to the NO_X Technical Code (incorporated by reference in § 1042.910) and show compliance with the alternate installed-engine standard of § 1042.104(g). You must obtain EPA approval of your test procedure prior to testing the engine. Include in your request a description of your basis for concluding that the engine cannot be tested at the actual test points of the specified duty cycle.

(d) You may measure NO_X emissions at additional test points for the purposes of the continuous NO_X monitoring requirements of § 1042.110(d). If you do, you must report these values along with your other test results. Describe in your application for certification how you plan to use these values for continuous NO_X monitoring.

(e) You may ask to measure emissions according to the Direct Measurement and Monitoring method specified in section 6.4 of the NO_X Technical Code (incorporated by reference in § 1042.910).

■ 174. Section 1042.305 is amended by revising paragraphs (a), (d) introductory text, (d)(2), (e)(2), and (g) to read as follows:

§ 1042.305 Preparing and testing production-line engines.

* * * * *

(a) *Test procedures.* Test your production-line engines using the applicable testing procedures in subpart F of this part to show you meet the duty-cycle emission standards in subpart B of this part. For Category 1 and Category 2 engines, the not-to-exceed standards apply for this testing of Category 1 and Category 2 engines, but you need not do additional testing to show that production-line engines meet the not-to-exceed standards. The mode cap standards apply for the testing of Category 3 engines.

* * * * *

(d) *Setting adjustable parameters.* Before any test, we may require you to adjust any adjustable parameter on a Category 1 engine to any setting within its physically adjustable range. We may adjust or require you to adjust any adjustable parameter on a Category 2 or Category 3 engine to any setting within its specified adjustable range.

* * * * *

(2) We may specify adjustments within the physically adjustable range or the specified adjustable range by considering their effect on emission levels. We may also consider how likely it is that someone will make such an adjustment with in-use engines.

(e) * * *

(2) For Category 2 or Category 3 engines, you may ask us to approve a Green Engine Factor for each regulated pollutant for each engine family. Use the Green Engine Factor to adjust measured emission levels to establish a stabilized low-hour emission level.

* * * * *

(g) *Retesting after invalid tests.* You may retest an engine if you determine an emission test is invalid under subpart F of this part. Explain in your written report reasons for invalidating any test and the emission results from all tests. If we determine that you improperly invalidated a test, we may require you to ask for our approval for future testing before substituting results of the new tests for invalid ones.

■ 175. Section 1042.310 is amended by revising the section heading to read as follows:

§ 1042.310 Engine selection for Category 1 and Category 2 engines.

* * * * *

■ 176. Section 1042.315 is amended by revising paragraphs (a) and (b) to read as follows:

§ 1042.315 Determining compliance.

* * * * *

(a) Calculate your test results as follows:

(1) *Initial and final test results.* Calculate and round the test results for each engine. If you do several tests on an engine, calculate the initial results for each test, then add all the test results together and divide by the number of tests. Round this final calculated value for the final test results on that engine. Include the Green Engine Factor to determine low-hour emission results, if applicable.

(2) *Final deteriorated test results.* Apply the deterioration factor for the engine family to the final test results (*see* § 1042.240(c)).

(3) *Round deteriorated test results.* Round the results to the number of decimal places in the emission standard expressed to one more decimal place.

(b) For Category 1 and Category 2 engines, if a production-line engine fails to meet emission standards and you test two additional engines as described in § 1042.310, calculate the average emission level for each pollutant for the three engines. If the calculated average emission level for any pollutant exceeds the applicable emission standard, the engine family fails the production-line testing requirements of this subpart. Tell us within ten working days if this happens. You may request to amend the application for certification to raise the FEL of the engine family as described in § 1042.225(f).

■ 177. Section 1042.320 is amended by revising paragraph (a)(2) to read as follows:

§ 1042.320 What happens if one of my production-line engines fails to meet emission standards?

(a) * * *

(2) Include the test results and describe the remedy for each engine in the written report required under § 1042.345.

* * * * *

■ 178. Section 1042.325 is amended by revising paragraph (e) to read as follows:

§ 1042.325 What happens if an engine family fails the production-line testing requirements?

* * * * *

(e) You may request to amend the application for certification to raise the FEL of the entire engine family before or after we suspend your certificate as described in § 1042.225(f). We will approve your request if the failure is not caused by a defect and it is clear that you used good engineering judgment in establishing the original FEL.

■ 179. Section 1042.345 is amended by revising paragraphs (a)(6) and (b) to read as follows:

§ 1042.345 Reporting.

(a) * * *

(6) Provide the test number; the date, time and duration of testing; test procedure; all initial test results; final test results; and final deteriorated test results for all tests. Provide the emission results for all measured pollutants. Include information for both valid and invalid tests and the reason for any invalidation.

* * * * *

(b) We may ask you to add information to your written report so we can determine whether your new engines conform with the requirements of this subpart. We may also ask you to send less information.

* * * * *

■ 180. Section 1042.350 is amended by revising paragraphs (b), (e), and (f) to read as follows:

§ 1042.350 Recordkeeping.

* * * * *

(b) Keep paper or electronic records of your production-line testing for eight years after you complete all the testing required for an engine family in a model year.

* * * * *

(e) If we ask, you must give us a more detailed description of projected or actual production figures for an engine family. We may ask you to divide your

production figures by maximum engine power, displacement, fuel type, or assembly plant (if you produce engines at more than one plant).

(f) Keep records of the engine identification number for each engine you produce under each certificate of conformity. You may identify these numbers as a range. Give us these records within 30 days if we ask for them.

* * * * *

Subpart F—[Amended]

■ 181. Section 1042.501 is amended by revising paragraphs (a) and (c) and adding paragraph (g) to read as follows:

§ 1042.501 How do I run a valid emission test?

(a) Use the equipment and procedures for compression-ignition engines in 40 CFR part 1065 to determine whether engines meet the duty-cycle emission standards in §§ 1042.101 or 1042.104. Measure the emissions of all regulated pollutants as specified in 40 CFR part 1065. Use the applicable duty cycles specified in § 1042.505.

* * * * *

(c) Use the fuels and lubricants specified in 40 CFR part 1065, subpart H, for all the testing we require in this part, except as specified in this section and § 1042.515.

(1) For service accumulation, use the test fuel or any commercially available fuel that is representative of the fuel that in-use engines will use.

(2) For diesel-fueled engines, use the appropriate diesel fuel specified in 40 CFR part 1065, subpart H, for emission testing. Unless we specify otherwise, the appropriate diesel test fuel for Category 1 and Category 2 engines is the ultra low-sulfur diesel fuel. If we allow you to use a test fuel with higher sulfur levels, identify the test fuel in your application for certification. Unless we specify otherwise, the appropriate diesel test fuel for Category 3 engines is the high-sulfur diesel fuel. For Category 2 and Category 3 engines, you may ask to use commercially available diesel fuel similar but not necessarily identical to the applicable fuel specified in 40 CFR part 1065, subpart H; we will approve your request if you show us that it does not affect your ability to demonstrate compliance with the applicable emission standards.

(3) For Category 1 and Category 2 engines that are expected to use a type of fuel (or mixed fuel) other than diesel fuel (such as natural gas, methanol, or residual fuel), use a commercially available fuel of that type for emission testing. If a given engine is designed to operate on different fuels, we may (at our discretion) require testing on each fuel. Propose test fuel specifications that take into account the engine design and the properties of commercially available fuels. Describe these test fuel specifications in the application for certification.

* * * * *

(g) For Category 3 engines, instead of test data collected as specified in 40 CFR part 1065, you may submit test data for NO_X, HC, and CO emissions that were collected as specified in the NO_X Technical Code (incorporated by reference in § 1042.910). For example, this allowance includes the allowance to perform the testing using test fuels allowed under the NO_X Technical Code that do not meet the sulfur specifications of this section. We may require you to include a brief engineering analysis showing how these data demonstrate that your engines would meet the applicable emission standards if you had used the test procedures specified in 40 CFR part 1065.

■ 182. Section 1042.505 is amended by revising paragraph (b) introductory text to read as follows:

§ 1042.505 Testing engines using discrete-mode or ramped-modal duty cycles.

* * * * *

(b) Measure emissions by testing the engine on a dynamometer with one of the following duty cycles (as specified) to determine whether it meets the emission standards in §§ 1042.101 or 1042.104:

* * * * *

■ 183. Section 1042.525 is amended by revising paragraph (b) and adding paragraph (g) to read as follows:

§ 1042.525 How do I adjust emission levels to account for infrequently regenerating aftertreatment devices?

* * * * *

(b) *Calculating average adjustment factors.* Calculate the average adjustment factor (EF_A) based on the following equation:

$$EF_A = (F)(EF_H) + (1 - F)(EF_L)$$

Where:

F = The frequency of the regeneration event during normal in-use operation, expressed in terms of the fraction of equivalent tests during which the regeneration occurs. You may determine F from in-use operating data or running replicate tests. For example, if you observe that the regeneration occurs 125 times during 1,000 MW-hrs of operation, and your engine typically accumulates 1 MW-hr per test, F would be (125) ÷ (1,000) ÷ (1) = 0.125. No further adjustments, including weighting factors, may be applied to F.

EF_H = Measured emissions from a test segment in which the regeneration occurs.

EF_L = Measured emissions from a test segment in which the regeneration does not occur.

* * * * *

(g) *Category 3 engines.* We may specify an alternate methodology to account for regeneration events from Category 3 engines. If we do not, the provisions of this section apply as specified.

Subpart G—[Amended]

■ 184. Section 1042.601 is amended by revising paragraph (b) and adding paragraphs (g), (h), and (i) to read as follows:

§ 1042.601 General compliance provisions for marine engines and vessels.

* * * * *

(b) Subpart I of this part describes how the prohibitions of 40 CFR 1068.101(a)(1) apply for certain remanufactured engines. The provisions of 40 CFR 1068.105 do not allow the installation of a new remanufactured engine in a vessel that is defined as a new vessel unless the remanufactured engine is subject to the same standards as the standards applicable to freshly manufactured engines of the required model year.

* * * * *

(g) The selective enforcement audit provisions of 40 CFR part 1068 do not apply for Category 3 engines.

(h) The defect reporting requirements of 40 CFR 1068.501 apply for Category 3 engines, except the threshold for filing a defect report is two engines.

(i) You may not circumvent the requirements of this part or the Clean Air Act by manufacturing a vessel outside the United States or initially flagging a vessel in another country. The definition of "new marine engine" in § 1042.901 includes provisions for U.S.-flagged vessels that are manufactured or reflagged outside of U.S. waters. These provisions have the effect of applying the prohibitions of 40 CFR 1068.101(a)(1) to such vessels no later than when they first enter U.S. waters. The inclusion of these provisions does not affect requirements or prohibitions of the Clean Air Act or other statutes that may apply to the vessel before it first enters U.S. waters.

■ 185. Section 1042.605 is amended by revising paragraph (a) to read as follows:

§ 1042.605 Dressing engines already certified to other standards for nonroad or heavy-duty highway engines for marine use.

(a) *General provisions.* If you are an engine manufacturer (including someone who marinizes a land-based engine), this section allows you to introduce new marine engines into U.S. commerce if they are already certified to the requirements that apply to compression-ignition engines under 40 CFR parts 85 and 86 or 40 CFR part 89, 92, 1033, or 1039 for the appropriate model year. If you comply with all the provisions of this section, we consider the certificate issued under 40 CFR part 86, 89, 92, 1033, or 1039 for each engine to also be a valid certificate of conformity under this part 1042 for its model year, without a separate application for certification under the requirements of this part 1042. This section does not apply for Category 3 engines.

* * * * *

■ 186. Section 1042.610 is amended by revising the introductory text to read as follows:

§ 1042.610 Certifying auxiliary marine engines to land-based standards.

This section applies to auxiliary marine engines that are identical to certified land-based engines. *See* § 1042.605 for provisions that apply to propulsion marine engines or auxiliary marine engines that are modified for marine applications. This section does not apply for Category 3 engines.

* * * * *

■ 187. Section 1042.615 is amended by revising the introductory text and paragraph (a)(4) and adding paragraph (d) to read as follows:

§ 1042.615 Replacement engine exemption.

For Category 1 and Category 2 replacement engines, apply the provisions of 40 CFR 1068.240 as described in this section. In unusual circumstances, you may ask us to allow you to apply these provisions for a new Category 3 engine.

(a) * * *

(4) The replacement engine must conform to the applicable requirements of 40 CFR part 1043. Note that 40 CFR 1043.10 specifies allowances for vessels that operate only domestically.

* * * * *

(d) We may reduce the reporting and recordkeeping requirements in this section.

■ 188. Section 1042.620 is revised to read as follows:

§ 1042.620 Engines used solely for competition.

The provisions of this section apply for new Category 1 engines and vessels built on or after January 1, 2009.

(a) We may grant you an exemption from the standards and requirements of this part for a new engine on the grounds that it is to be used solely for competition. The requirements of this part, other than those in this section, do not apply to engines that we exempt for use solely for competition.

(b) We will exempt engines that we determine will be used solely for competition. The basis of our determination is described in paragraphs (c) and (d) of this section. Exemptions granted under this section are good for only one model year and you must request renewal for each subsequent model year. We will not approve your renewal request if we determine the engine will not be used solely for competition.

(c) Engines meeting all the following criteria are considered to be used solely for competition:

(1) Neither the engine nor any vessels containing the engine may be displayed for sale in any public dealership or otherwise offered for sale to the general public. Note that this does not preclude display of these engines as long as they are not available for sale to the general public.

(2) Sale of the vessel in which the engine is installed must be limited to professional racing teams, professional racers, or other qualified racers. For replacement engines, the sale of the engine itself must be limited to professional racing teams, professional racers, other qualified racers, or to the original vessel manufacturer.

(3) The engine and the vessel in which it is installed must have performance characteristics that are substantially superior to noncompetitive models.

(4) The engines are intended for use only as specified in paragraph (e) of this section.

(d) You may ask us to approve an exemption for engines not meeting the criteria listed in paragraph (c) of this section as long as you have clear and convincing evidence that the engines will be used solely for competition.

(e) Engines are considered to be used solely for competition only if their use is limited to competition events sanctioned by the U.S. Coast Guard or another public organization with authorizing permits for participating competitors. Operation of such engines may include only racing events, trials to qualify for racing events, and practice associated with racing events. Authorized attempts to set speed records are also considered racing events. Engines will not be considered to be used solely for competition if they are ever used for any recreational or other noncompetitive purpose. Use of exempt engines in any recreational events, such as poker runs and lobsterboat races, is a violation of 40 CFR 1068.101(b)(4).

(f) You must permanently label engines exempted under this section to clearly indicate that they are to be used only for competition. Failure to properly label an engine will void the exemption for that engine.

(g) If we request it, you must provide us any information we need to determine whether the engines are used solely for competition. This would include documentation regarding the number of engines and the ultimate purchaser of each engine as well as any documentation showing a vessel manufacturer's request for an exempted engine. Keep these records for five years.

■ 189. Section 1042.625 is amended by adding introductory text to read as follows:

§ 1042.625 Special provisions for engines used in emergency applications.

This section describes an exemption that is available for certain Category 1 and Category 2 engines. This exemption is not available for Category 3 engines.

* * * * *

■ 190. Section 1042.630 is amended by revising the introductory text to read as follows:

§ 1042.630 Personal-use exemption.

This section applies to individuals who manufacture vessels for personal use with used Category 1 engines. If you and your vessel meet all the conditions of this section, the vessel and its engine are considered to be exempt from the standards and requirements of this part that apply to new engines and new vessels. The prohibitions in § 1068.101(a)(1) do not apply to engines exempted under this section. For example, you may install an engine that was not certified as a marine engine.

* * * * *

■ 191. Section 1042.635 is amended by revising paragraph (a) to read as follows:

§ 1042.635 National security exemption.

* * * * *

(a) An engine is exempt without a request if it will be used or owned by an agency of the Federal government responsible for national defense, where the vessel in which it is installed has armor, permanently attached weaponry,

specialized electronic warfare systems, unique stealth performance requirements, and/or unique combat maneuverability requirements. This applies to both remanufactured and freshly manufactured marine engines. Gas turbine engines are also exempt without a request if they will be owned by an agency of the Federal government responsible for national defense.

* * * * *

■ 192. Section 1042.650 is amended by revising the section heading and the introductory text and adding a new paragraph (d) to read as follows:

§ 1042.650 Exemptions for migratory vessels and auxiliary engines on Category 3 vessels.

The provisions of this section apply for Category 1 and Category 2 engines, including auxiliary engines installed on vessels with Category 3 propulsion engines. These provisions do not apply for any Category 3 engines. All engines exempted under this section must comply with the applicable requirements of 40 CFR part 1043.

* * * * *

(d) *Auxiliary engines on Category 3 vessels.* As specified in this paragraph (d), auxiliary engines on vessels with Category 3 propulsion engines are exempt from the standards of this part.

(1) To be eligible for this exemption, the engine must meet all of the following criteria.

(i) The engine must conform fully to the applicable NO_X standards of Annex VI and meet all other applicable requirements of 40 CFR part 1043. Engines installed on vessels constructed on or after January 1, 2016 must conform fully to the Annex VI Tier III NO_X standards under 40 CFR part 1043 and meet all other applicable requirements in 40 CFR part 1043. Engines that would otherwise be subject to the Tier 4 standards of this part must also conform fully to the Annex VI Tier III NO_X standards under 40 CFR part 1043.

(ii) The engine may not be used for propulsion (except for emergency engines).

(iii) The engine may be equipped with on-off NO_X controls, provided it conforms to the requirements of § 1042.115(g).

(2) You must notify the Designated Compliance Officer of your intent to use this exemption when applying for the EIAPP certificate for the engine under 40 CFR part 1043.

(3) The remanufactured engine requirements of subpart I of this part do not apply.

(4) If you introduce an engine into U.S. commerce under this paragraph (d), you must meet the labeling requirements in § 1042.135, but add the following statement instead of the compliance statement in § 1042.135(c)(10):

THIS ENGINE DOES NOT COMPLY WITH CURRENT U.S. EPA EMISSION STANDARDS UNDER 40 CFR 1042.650 AND IS FOR USE SOLELY IN VESSELS WITH CATEGORY 3 PROPULSION ENGINES. INSTALLATION OR USE OF THIS ENGINE IN ANY OTHER APPLICATION MAY BE A VIOLATION OF FEDERAL LAW SUBJECT TO CIVIL PENALTY.

■ 193. A new § 1042.655 is added to subpart G to read as follows:

§ 1042.655 Special certification provisions for—Category 3 engines with aftertreatment.

This section describes an optional approach for demonstrating for certification that catalyst-equipped engines (or engines equipped with other aftertreatment devices) comply with applicable emission standards. You must use good engineering judgment for all aspects of this allowance.

(a) *Eligibility.* You may use the provisions of this section without our prior approval to demonstrate that aftertreatment-equipped Category 3 engines meet the Tier 3 standards. In unusual circumstances, we may also allow you to use this approach to demonstrate that aftertreatment-equipped Category 2 engines meet the Tier 4 standards. We will generally approve this for Category 2 engines only if the engines are too large to be practically tested in a laboratory with a fully assembled aftertreatment system. If we approve this approach for a Category 2 engine, interpret references to Tier 3 in this section to mean Tier 4, and interpret references to Tier 2 in this section to mean Tier 3.

(b) *Required testing.* The emission-data engine must be tested as specified in Subpart F to verify that the engine-out emissions comply with the Tier 2 standards. The catalyst material or other aftertreatment device must be tested under conditions that accurately represent actual engine conditions for the test points. This catalyst or aftertreatment testing may be performed on a benchscale.

(c) *Engineering analysis.* Include with your application a detailed engineering analysis describing how the test data collected for the engine and aftertreatment demonstrate that all engines in the family will meet all applicable emission standards. We may require that you submit this analysis separately from your application, or that you obtain preliminary approval under § 1042.210.

(d) *Verification.* You must verify your design by testing a complete production engine with installed aftertreatment in the final assembled configuration. Unless we specify otherwise, do this by complying with production-line testing requirements of subpart D of this part.

(e) *Other requirements.* All other requirements of this part, including the non-testing requirements for certification, apply for these engines. Nothing in this section affects requirements in other regulatory parts, such as Coast Guard safety requirements.

■ 194. Section 1042.660 is revised to read as follows:

§ 1042.660 Requirements for vessel manufacturers, owners, and operators.

(a) For vessels equipped with emission controls requiring the use of specific fuels, lubricants, or other fluids, owners and operators must comply with the manufacturer/remanufacturer's specifications for such fluids when operating the vessels. Failure to comply with the requirements of this paragraph is a violation of 40 CFR 1068.101(b)(1). For marine vessels that are excluded from the requirements of 40 CFR part 1043 because they operate only domestically, it is also a violation of 40 CFR 1068.101(b)(1) to operate the vessel using residual fuel on or after January 1, 2015. Note that 40 CFR part 80 also includes provisions that restrict the use of certain fuels by certain marine engines.

(b) For vessels equipped with SCR systems requiring the use of urea or other reductants, owners and operators must report to us within 30 days any operation of such vessels without the appropriate reductant. Failure to comply with the requirements of this paragraph is a violation of 40 CFR 1068.101(a)(2). Note that such operation is a violation of 40 CFR 1068.101(b)(1).

(c) The provisions of this paragraph (c) apply for marine vessels containing Category 3 engines.

(1) The requirements of this paragraph (c)(1) apply only for Category 3 engines. All maintenance, repair, adjustment, and alteration of Category 3 engines subject to the provisions of this part performed by any owner, operator or other maintenance provider must be perform using good engineering judgment, in such a manner that the engine continues (after the maintenance, repair, adjustment or alteration) to meet the emission standards it was certified as meeting prior to the need for service. This includes but is not limited to complying with the maintenance

instructions described in § 1042.125. Adjustments are limited to the range specified by the engine manufacturer in the approved application for certification. Note that where a repair (or other maintenance) cannot be completed while at sea, it is not a violation to continue operating the engine to reach your destination.

(2) It is a violation of 40 CFR 1068.101(b)(1) to operate the vessel with the engine adjusted outside of the specified adjustable range. Each two-hour period of such operation constitutes a separate offense. A violation lasting less than two hours constitutes a single offense.

(3) The owner and operator of the engine must maintain on board the vessel records of all maintenance, repair, and adjustment that could reasonably affect the emission performance of any engine subject to the provision of this part. Owners and operators must also maintain, on board the vessel, records regarding certification, parameter adjustment, and fuels used. For engines that are automatically adjusted electronically, all adjustments must be logged automatically. Owners and operators must make these records available to EPA upon request. These records must include the following:

(i) The Technical File, Record Book of Engine Parameters, and bunker delivery notes as specified in 40 CFR 1043.70. The Technical File must be transferred to subsequent purchasers in the event of a sale of the engine or vessel. (ii) Specific descriptions of engine maintenance, repair, adjustment, and alteration (including rebuilding). The descriptions must include at least the date, time, and nature of the maintenance, repair, adjustment, or alteration and the position of the vessel when the maintenance, repair, adjustment, or alteration was made.

(iii) Emission-related maintenance instructions provided by the manufacturer. These instructions must be transferred to subsequent purchasers in the event of a sale of the engine or vessel.

(4) Owners and operators of engines equipped with on-off emission controls must comply with the requirements of this paragraph (c)(4) whenever a malfunction of the emission controls is indicated as specified in § 1042.110(d). You must determine the cause of the malfunction and remedy it consistent with paragraph (c)(1) of this section. *See* paragraph (b) of this section if the malfunction is due to either a lack of reductant or inadequate reductant quality. If the malfunction occurs during the useful life, report the malfunction to the certificate holder for investigation and compliance with defect reporting requirements of 40 CFR 1068.501 (unless the malfunction is due to operation without adequate urea or other malmaintenance).

(d) For each marine vessel containing a Category 3 engine, the owner must annually review the vessel's records and submit to EPA a signed statement certifying compliance during the preceding year with the requirements of this part that are applicable to owners and operators of such vessels. Alternately, if review of the vessel's records indicates that there has been one or more violations of the requirements of this part, the owner must submit to EPA a signed statement specifying the noncompliance, including the nature of the noncompliance, the time of the noncompliance, and any efforts made to remedy the noncompliance. The statement of compliance (or noncompliance) required by this paragraph must be signed by the executive with responsibility for marine activities of the owner. If the vessel is operated by a different business entity than the vessel owner, the reporting requirements of this paragraph (e) apply to both the owner and the operator. Compliance with these review and certification requirements by either the vessel owner or the vessel operator with respect to a compliance statement will be considered compliance with these requirements by both of these parties for that compliance statement. The executive(s) may authorize a captain or other primary operator to conduct this review and submit the certification, provided that the certification statement is accompanied by written authorization for that individual to submit such statements. The Administrator may waive the requirements of this paragraph when equivalent assurance of compliance is otherwise available.

(e) Manufacturers, owners and operators must allow emission tests and inspections required by this part to be conducted and must provide reasonable assistance to perform such tests or inspections.

■ 195. A new § 1042.670 is added to subpart G to read as follows:

§ 1042.670 Special provisions for gas turbine engines.

The provisions of this section apply for gas turbine engines.

(a) *Implementation schedule.* The requirements of this part do not apply for gas turbine engines below 600 kW before the 2014 model year. The requirements of this part do not apply for Tier 3 or earlier gas turbine engines at or above 600 kW. The provisions of 40 CFR part 1068 also do not apply for gas turbine engines produced in these earlier model years.

(b) *Special test procedures.* Manufacturers seeking certification of gas turbine engines must obtain preliminary approval of the test procedures to be used, consistent with § 1042.210 and 40 CFR 1065.10.

(c) *Remanufacturing.* The requirements of subpart I of this part do not apply for gas turbine engines.

(d) *Equivalent displacement.* Apply displacement-based provisions of this part by calculating an equivalent displacement from the maximum engine power. The equivalent per-cylinder displacement (in liters) equals the maximum engine power in kW multiplied by 0.00311, except that all gas turbines with maximum engine power above 9,300 kW are considered to have an equivalent per-cylinder displacement of 29.0 liters.

(e) *Emission-related components.* All components meeting the criteria of 40 CFR 1068.501(a)(1) are considered to be emission-related components with respect to maintenance, warranty, and defect reporting for gas turbine engines.

(f) *Engines used for national defense. See* § 1042.635 for provisions related to exempting gas turbine engines used for national defense.

Subpart H—[Amended]

■ 196. Section 1042.701 is amended by adding introductory text to read as follows:

§ 1042.701 General provisions.

This subpart describes how you may use emission credits to demonstrate that Category 1 and Category 2 engines comply with emission standards under this part. The provisions of this subpart do not apply for Category 3 engines.

* * * * *

■ 197. Section 1042.705 is amended by revising paragraph (a) introductory text, before the equation, to read as follows:

§ 1042.705 Generating and calculating emission credits.

* * * * *

(a) For each participating family, calculate positive or negative emission credits relative to the otherwise applicable emission standard. Calculate positive emission credits for a family that has an FEL below the standard. Calculate negative emission credits for a family that has an FEL above the standard. Sum your positive and negative credits for the model year before rounding. Round the sum of emission credits to the nearest kilogram

(kg) using consistent units throughout the following equation:

* * * * *

■ 198. Section 1042.715 is revised to read as follows:

§ 1042.715 Banking emission credits.

(a) Banking is the retention of emission credits by the manufacturer generating the emission credits for use in future model years for averaging or trading.

(b) You may designate any emission credits you plan to bank in the reports you submit under § 1042.730 as reserved credits. During the model year and before the due date for the final report, you may designate your reserved emission credits for averaging or trading.

(c) Reserved credits become actual emission credits when you submit your final report. However, we may revoke these emission credits if we are unable to verify them after reviewing your reports or auditing your records.

■ 199. Section 1042.720 is amended by revising paragraph (b) to read as follows:

§ 1042.720 Trading emission credits.

* * * * *

(b) You may trade actual emission credits as described in this subpart. You may also trade reserved emission credits, but we may revoke these emission credits based on our review of your records or reports or those of the company with which you traded emission credits. You may trade banked credits within an averaging set to any certifying manufacturer.

* * * * *

■ 200. Section 1042.725 is amended by revising paragraph (b)(2) to read as follows:

§ 1042.725 Information required for the application for certification.

* * * * *

(b) * * *

(2) Detailed calculations of projected emission credits (positive or negative) based on projected production volumes. We may require you to include similar calculations from your other engine families to demonstrate that you will be able to avoid a negative credit balance for the model year. If you project negative emission credits for a family, state the source of positive emission credits you expect to use to offset the negative emission credits.

■ 201. Section 1042.730 is amended by revising paragraphs (b)(3), (b)(4), and (b)(5) to read as follows:

§ 1042.730 ABT reports.

* * * * *

(b) * * *

(3) The FEL for each pollutant. If you change the FEL after the start of production, identify the date that you started using the new FEL and/or give the engine identification number for the first engine covered by the new FEL. In this case, identify each applicable FEL and calculate the positive or negative emission credits under each FEL.

(4) The projected and actual U.S.-directed production volumes for the model year, as described in § 1042.705(c). If you changed an FEL during the model year, identify the actual production volume associated with each FEL.

(5) Maximum engine power for each engine configuration, and the average engine power weighted by U.S.-directed production volumes for the engine family.

* * * * *

■ 202. Section 1042.735 is amended by revising paragraphs (b), (d), and (e) to read as follows:

§ 1042.735 Recordkeeping.

* * * * *

(b) Keep the records required by this section for at least eight years after the due date for the end-of-year report. You may not use emission credits for any engines if you do not keep all the records required under this section. You must therefore keep these records to continue to bank valid credits. Store these records in any format and on any media as long as you can promptly send us organized, written records in English if we ask for them. You must keep these records readily available. We may review them at any time.

* * * * *

(d) Keep records of the engine identification number for each engine you produce that generates or uses emission credits under the ABT program. You may identify these numbers as a range. If you change the FEL after the start of production, identify the date you started using each FEL and the range of engine identification numbers associated with each FEL. You must also identify the purchaser and destination for each engine you produce to the extent this information is available.

(e) We may require you to keep additional records or to send us relevant information not required by this section in accordance with the Clean Air Act.

Subpart I—[Amended]

■ 203. Section 1042.801 is amended by revising the introductory text and paragraph (a) to read as follows:

§ 1042.801 General provisions.

This subpart describes how the provisions of this part 1042 apply for certain remanufactured marine engines.

(a) The requirements of this subpart apply for remanufactured Tier 2 and earlier commercial Category 1 and Category 2 marine engines at or above 600 kW, excluding those engines originally manufactured before 1973. Note that the requirements of this subpart do not apply for engines below 600 kW, Category 3 engines, engines installed on recreational vessels, or Tier 3 and later engines.

* * * * *

■ 204. Section 1042.836 is amended by revising the introductory text and paragraphs (a) introductory text and (c) to read as follows:

§ 1042.836 Marine certification of locomotive remanufacturing systems.

If you certify a Tier 0, Tier 1, or Tier 2 remanufacturing system for locomotives under 40 CFR part 1033, you may also certify the system under this part 1042, according to the provisions of this section. Note that in certain cases before 2013, locomotives may be certified under 40 CFR part 1033 to the standards of 40 CFR part 92.

(a) Include the following with your application for certification under 40 CFR part 1033 (or as an amendment to your application):

* * * * *

(c) Systems certified to the standards of 40 CFR part 92 are subject to the following restrictions:

(1) Tier 0 locomotives systems may not be used for any Category 1 engines or Tier 1 or later Category 2 engines.

(2) Where systems certified to the standards of 40 CFR part 1033 are also available for an engine, you may not use a system certified to the standards of 40 CFR part 92.

■ 205. Section 1042.850 is amended by revising paragraph (c) to read as follows:

§ 1042.850 Exemptions and hardship relief.

* * * * *

(c) If you believe that a remanufacturing system that we identified as being available cannot be installed without significant modification of your vessel, you may ask us to determine that a remanufacturing system is not considered available for your vessel because the cost would exceed the total marginal cost threshold in § 1042.815(a)(2).

* * * * *

Subpart J—[Amended]

■ 206. Section 1042.901 is amended as follows:

■ a. By revising the definitions for "Carryover", "Category 1", "Category 2", "Category 3", "Compression-ignition", "Deterioration factor", "Engine configuration", "Freshly manufactured marine engine", "Hydrocarbon (HC)", "Manufacture", "Manufacturer", "Model year", "New marine engine", "Residual fuel", "Small-volume boat builder", "Small-volume engine manufacturer", "Tier 2", "Tier 3", "Total hydrocarbon equivalent", and "Useful life".

■ b. Adding new definitions for "2008 Annex VI", "Alcohol-fueled engine", "Date of manufacture", "ECA associated area", "Emission control area (ECA)", "Gas turbine engine", "Maximum in-use engine speed", "Reflag", "NO_X Technical Code", and "U.S. waters" in alphanumeric order.

■ c. By removing the definition for "Annex VI Technical Code".

§ 1042.901 Definitions.

* * * * *

2008 Annex VI means MARPOL Annex VI, which is an annex to the International Convention on the Prevention of Pollution from Ships, 1973, as modified by the protocol of 1978 relating thereto (incorporated by reference in § 1042.910).

* * * * *

Alcohol-fueled engine means an engine that is designed to run using an alcohol fuel. For purposes of this definition, alcohol fuels do not include fuels with a nominal alcohol content below 25 percent by volume.

* * * * *

Carryover means relating to certification based on emission data generated from an earlier model year as described in § 1042.235(d).

Category 1 means relating to a marine engine with specific engine displacement below 7.0 liters per cylinder. *See* § 1042.670 to determine equivalent per-cylinder displacement for nonreciprocating marine engines (such as gas turbine engines).

Category 2 means relating to a marine engine with a specific engine displacement at or above 7.0 liters per cylinder but less than 30.0 liters per cylinder. *See* § 1042.670 to determine equivalent per-cylinder displacement for nonreciprocating marine engines (such as gas turbine engines).

Category 3 means relating to a reciprocating marine engine with a specific engine displacement at or above 30.0 liters per cylinder.

* * * * *

Compression-ignition means relating to a type of reciprocating, internal-combustion engine that is not a spark-ignition engine. Note that certain other marine engines (such as those powered by natural gas with maximum engine power at or above 250 kW) are deemed to be compression-ignition engines in § 1042.1.

* * * * *

Date of manufacture has the meaning given in 40 CFR 1068.30.

* * * * *

Deterioration factor means the relationship between emissions at the end of useful life and emissions at the low-hour test point (*see* §§ 1042.240 and 1042.245), expressed in one of the following ways:

(1) For multiplicative deterioration factors, the ratio of emissions at the end of useful life to emissions at the low-hour test point.

(2) For additive deterioration factors, the difference between emissions at the end of useful life and emissions at the low-hour test point.

* * * * *

ECA associated area has the meaning given in 40 CFR 1043.20.

Emission control area (ECA) has the meaning given in 40 CFR 1043.20.

* * * * *

Engine configuration means a unique combination of engine hardware and calibration within an engine family. Engines within a single engine configuration differ only with respect to normal production variability or factors unrelated to emissions.

* * * * *

Freshly manufactured marine engine means a marine engine that has not been placed into service. An engine becomes freshly manufactured when it is originally manufactured. *See* the definition of "New marine engine" for provisions that specify that certain other types of new engines are treated as freshly manufactured engines.

* * * * *

Gas turbine engine has the meaning given in 40 CFR 1068.30. In general, this means anything commercially known as a gas turbine engine. It does not include external combustion steam engines.

* * * * *

Hydrocarbon (HC) means the hydrocarbon group on which the emission standards are based for each fuel type, as described in § 1042.101(d) and § 1042.104(a).

* * * * *

Manufacture means the physical and engineering process of designing, constructing, and assembling an engine or a vessel, or modifying or operating an engine or vessel in a way that makes it a new marine engine or new marine vessel.

Manufacturer means any person who manufactures (*see* definition of "manufacture" in this section) a new engine or vessel or imports such engines or vessels for resale. All manufacturing entities under the control of the same person are considered to be a single manufacturer.

(1) This term includes, but is not limited to:

(i) Any person who manufactures an engine or vessel for sale in the United States or otherwise introduces a new marine engine into U.S. commerce.

(ii) Importers who import engines or vessels for resale.

(iii) Post-manufacture marinizers.

(iv) Vessel owners/operators that reflag a formerly foreign vessel as a U.S.-flagged vessel.

(v) Any person who modifies or operates an engine or vessel in a way that makes it a new marine engine or new marine vessel.

(2) Dealers that do not cause an engine or vessel to become new are not manufacturers.

* * * * *

Maximum in-use engine speed has the meaning given in § 1042.140.

* * * * *

Model year means any of the following:

(1) For freshly manufactured marine engines (*see* definition of "new marine engine," paragraph (1)), model year means one of the following:

(i) Calendar year.

(ii) Your annual new model production period if it is different than the calendar year. This must include January 1 of the calendar year for which the model year is named. It may not begin before January 2 of the previous calendar year and it must end by December 31 of the named calendar year. For seasonal production periods not including January 1, model year means the calendar year in which the production occurs, unless you choose to certify the applicable engine family with the following model year. For example, if your production period is June 1, 2010 through November 30, 2010, your model year would be 2010 unless you choose to certify the engine family for model year 2011.

(2) For an engine that is converted to a marine engine after being certified and placed into service as a motor vehicle engine, a nonroad engine that is not a marine engine, or a stationary engine, model year means the calendar year in which the engine was originally produced. For an engine that is

converted to a marine engine after being placed into service as a motor vehicle engine, a nonroad engine that is not a marine engine, or a stationary engine without having been certified, model year means the calendar year in which the engine becomes a new marine engine. (*See* definition of "new marine engine," paragraph (2)).

(3) For an uncertified marine engine excluded under § 1042.5 that is later subject to this part 1042 as a result of being installed in a different vessel, model year means the calendar year in which the engine was installed in the non-excluded vessel. For a marine engine excluded under § 1042.5 that is later subject to this part 1042 as a result of reflagging the vessel, model year means the calendar year in which the engine was originally manufactured. For a marine engine that become new under paragraph (7) of the definition of "new marine engine," model year means the calendar year in which the engine was originally manufactured. (*See* definition of "new marine engine," paragraphs (3) and (7)).

(4) For engines that do not meet the definition of "freshly manufactured" but are installed in new vessels, model year means the calendar year in which the engine is installed in the new vessel. (*See* definition of "new marine engine," paragraph (4)).

(5) For remanufactured engines, model year means the calendar year in which the remanufacture takes place.

(6) For imported engines:

(i) For imported engines described in paragraph (5)(i) of the definition of "new marine engine," *model year* has the meaning given in paragraphs (1) through (4) of this definition.

(ii) For imported engines described in paragraph (5)(ii) of the definition of "new marine engine," *model year* means the calendar year in which the engine is remanufactured.

(iii) For imported engines described in paragraph (5)(iii) of the definition of "new marine engine," *model year* means the calendar year in which the engine is first assembled in its imported configuration, unless specified otherwise in this part or in 40 CFR part 1068.

(iv) For imported engines described in paragraph (5)(iv) of the definition of "new marine engine," *model year* means the calendar year in which the engine is imported.

(7) [Reserved].

(8) For freshly manufactured vessels, model year means the calendar year in which the keel is laid or the vessel is at a similar stage of construction. For vessels that become new under paragraph (2) of the definition of "new vessel" (as a result of modifications), model year means the calendar year in which the modifications physically begin.

* * * * *

New marine engine means any of the following:

(1) A freshly manufactured marine engine for which the ultimate purchaser has never received the equitable or legal title. This kind of engine might commonly be thought of as "brand new." In the case of this paragraph (1), the engine is new from the time it is produced until the ultimate purchaser receives the title or the product is placed into service, whichever comes first.

(2) An engine originally manufactured as a motor vehicle engine, a nonroad engine that is not a marine engine, or a stationary engine that is later used or intended to be used as a marine engine. In this case, the engine is no longer a motor vehicle, nonmarine, or stationary engine and becomes a "new marine engine." The engine is no longer new when it is placed into marine service as a marine engine. This paragraph (2) applies for engines we exclude under § 1042.5, where that engine is later installed as a marine engine in a vessel that is covered by this part 1042. For example, this would apply to an engine that is no longer used in a foreign vessel. An engine converted to a marine engine without having been certified is treated as a freshly manufactured engine under this part 1042.

(3) A marine engine that has been previously placed into service in an application we exclude under § 1042.5, where that engine is installed in a vessel that is covered by this part 1042. The engine is new when it first enters U.S. waters on a vessel covered by this part 1042. For example, this would apply to an engine that is no longer used in a foreign vessel and for engines on a vessel that is reflagged as a U.S. vessel. Note paragraph (7) of this definition may also apply.

(4) An engine not covered by paragraphs (1) through (3) of this definition that is intended to be installed in a new vessel. This generally includes installation of used engines in new vessels. The engine is no longer new when the ultimate purchaser receives a title for the vessel or it is placed into service, whichever comes first. Such an engine is treated as a freshly manufactured engine under this part 1042, whether or not it meets the definition of "freshly manufactured marine engine."

(5) A remanufactured marine engine. An engine becomes new when it is remanufactured (as defined in this section) and ceases to be new when placed back into service.

(6) An imported marine engine, subject to the following provisions:

(i) An imported marine engine covered by a certificate of conformity issued under this part that meets the criteria of one or more of paragraphs (1) through (4) of this definition, where the original engine manufacturer holds the certificate, is new as defined by those applicable paragraphs.

(ii) An imported remanufactured engine that would have been required to be certified if it had been remanufactured in the United States.

(iii) An imported engine that will be covered by a certificate of conformity issued under this part, where someone other than the original engine manufacturer holds the certificate (such as when the engine is modified after its initial assembly), is a new marine engine when it is imported. It is no longer new when the ultimate purchaser receives a title for the engine or it is placed into service, whichever comes first.

(iv) An imported marine engine that is not covered by a certificate of conformity issued under this part at the time of importation is new, but only if it was produced on or after the dates shown in the following table. This addresses uncertified engines and vessels initially placed into service that someone seeks to import into the United States. Importation of this kind of engine (or vessel containing such an engine) is generally prohibited by 40 CFR part 1068.

APPLICABILITY OF EMISSION STANDARDS FOR COMPRESSION-IGNITION MARINE ENGINES

Engine category and type	Power (kW)	Per-cylinder displacement (L/cyl)	Initial model year of emission standards
Category 1	P < 19	All	2000

APPLICABILITY OF EMISSION STANDARDS FOR COMPRESSION-IGNITION MARINE ENGINES—Continued

Engine category and type	Power (kW)	Per-cylinder displacement (L/cyl)	Initial model year of emission standards
Category 1	19 ≤ P < 37	All	1999
Category 1, Recreational	P ≥ 37	disp. < 0.9	2007
Category 1, Recreational	All	0.9 ≤ disp. < 2.5	2006
Category 1, Recreational	All	disp. ≥ 2.5	2004
Category 1, Commercial	P ≥ 37	disp. < 0.9	2005
Category 1, Commercial	All	disp. ≥ 0.9	2004
Category 2 and Category 3	All	disp. ≥ 5.0	2004

(7) A marine engine that is not covered by a certificate of conformity issued under this part on a U.S.-flag vessel entering U.S. waters is new, but only if it was produced on or after the dates identified in paragraph (6)(iv) of this definition. Such entrance is deemed to be introduction into U.S. commerce.

* * * * *

NO_X Technical Code means the "Technical Code on Control of Emission of Nitrogen Oxides from Marine Diesel Engines" adopted by the International Maritime Organization (incorporated by reference in § 1042.910). The Technical Code is part of 2008 Annex VI.

* * * * *

Reflag means to register as a U.S. vessel any vessel that previously had a foreign registry or had been placed into service without registration.

* * * * *

Residual fuel means any fuel with a T_{90} greater than 700 °F as measured with the distillation test method specified in 40 CFR 1065.1010. This generally includes all RM grades of marine fuel without regard to whether they are known commercially as residual fuel. For example, fuel marketed as intermediate fuel may be residual fuel.

* * * * *

Small-volume boat builder means a boat manufacturer with fewer than 500 employees and with annual worldwide production of fewer than 100 boats. For manufacturers owned by a parent company, these limits apply to the combined production and number of employees of the parent company and all its subsidiaries. Manufacturers that produce vessels with Category 3 engines are not small-volume boat builders.

Small-volume engine manufacturer means a manufacturer of Category 1 and/or Category 2 engines with annual worldwide production of fewer than 1,000 internal combustion engines (marine and nonmarine). For manufacturers owned by a parent company, the limit applies to the production of the parent company and all its subsidiaries. Manufacturers that certify or produce any Category 3 engines are not small-volume engine manufacturers.

* * * * *

Tier 2 means relating to the Tier 2 emission standards, as shown in § 1042.104 and Appendix I.

Tier 3 means relating to the Tier 3 emission standards, as shown in § 1042.101 and § 1042.104.

* * * * *

Total hydrocarbon equivalent has the meaning given in 40 CFR 1065.1001. This generally means the sum of the carbon mass contributions of non-oxygenated hydrocarbons, alcohols and aldehydes, or other organic compounds that are measured separately as contained in a gas sample, expressed as exhaust hydrocarbon from petroleum-fueled engines. The atomic hydrogen-to-carbon ratio of the equivalent hydrocarbon is 1.85:1.

* * * * *

U.S. waters includes U.S. navigable waters and the U.S. EEZ.

Useful life means the period during which the engine is designed to properly function in terms of reliability and fuel consumption, without being remanufactured, specified as a number of hours of operation or calendar years, whichever comes first. It is the period during which an engine is required to comply with all applicable emission standards. *See* §§ 1042.101(e) and 1042.104(d).

■ 207. Section 1042.905 is amended by adding the acronyms "ECA", "EEZ", and "IMO" in alphabetical order to read as follows:

§ 1042.905 Symbols, acronyms, and abbreviations.

* * * * *

ECA Emission Control Area.
EEZ Exclusive Economic Zone.

* * * * *

IMO International Maritime Organization.

* * * * *

■ 208. Section 1042.910 is revised to read as follows:

§ 1042.910 Reference materials.

Documents listed in this section have been incorporated by reference into this part. The Director of the Federal Register approved the incorporation by reference as prescribed in 5 U.S.C. 552(a) and 1 CFR part 51. Anyone may inspect copies at the U.S. EPA, Air and Radiation Docket and Information Center, 1301 Constitution Ave., NW., Room B102, EPA West Building, Washington, DC 20460, (202) 566–1744, or at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202–741–6030, or go to: *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.*

(a) *IMO material.* This paragraph (a) lists material from the International Maritime Organization that we have incorporated by reference. Anyone may purchase copies of these materials from the International Maritime Organization, 4 Albert Embankment, London SE1 7SR, United Kingdom, or *http://www.imo.org,* or 44–(0)20–7735–7611.

(1) Revised MARPOL Annex VI, Regulations for the Prevention of Air Pollution from Ships, and NO_X Technical Code 2008, 2009 edition.

(i) Revised MARPOL Annex VI, Regulations for the Prevention of Pollution from Ships ("2008 Annex VI"); IBR approved for § 1042.901.

(ii) NO_X Technical Code 2008 ("NO_X Technical Code"); IBR approved for §§ 1042.104(g), 1042.230(d), 1042.302(c) and (e), 1042.501(g), and 1042.901.

(2) [Reserved]

(b) [Reserved]

■ 209. Appendix I to part 1042 is amended by revising paragraphs (b)(2) introductory text and (b)(3) to read as follows:

Appendix I to Part 1042—Summary of Previous Emission Standards

* * * * *

(b) * * *

(2) *Tier 2 primary standards.* Exhaust emissions from Category 1 engines at or

above 37 kW and all Category 2 engines may not exceed the values shown in the following table:

* * * * *

(3) *Tier 2 supplemental standards.* The not-to-exceed emission standards specified in 40 CFR 94.8(e) apply for all engines subject to the Tier 2 standards described in paragraph (b)(2) of this appendix.

■ 210. A new part 1043 is added to subchapter U to read as follows:

PART 1043—CONTROL OF NO_X, SO_X, AND PM EMISSIONS FROM MARINE ENGINES AND VESSELS SUBJECT TO THE MARPOL PROTOCOL

Sec.

1043.1 Overview.
1043.5 Effective dates.
1043.10 Applicability.
1043.20 Definitions.
1043.30 General obligations.
1043.40 EIAPP certificates.
1043.41 EIAPP certification process.
1043.50 Approval of methods to meet Tier 1 retrofit NO_X standards.
1043.55 Applying equivalent controls instead of complying with fuel requirements.
1043.60 Operating requirements for engines and vessels subject to this part.
1043.70 General recordkeeping and reporting requirements.
1043.80 Recordkeeping and reporting requirements for fuel suppliers.
1043.90 [RESERVED]
1043.95 Interim provisions.
1043.100 Reference materials.

Authority: 33 U.S.C. 1901–1915.

§ 1043.1 Overview.

The Act to Prevent Pollution from Ships (APPS) requires engine manufacturers, owners and operators of vessels, and other persons to comply with Annex VI of the MARPOL Protocol. This part implements portions of APPS as it relates to Regulations 13, 14 and 18 of Annex VI. These regulations clarify the application of some Annex VI provisions; provide procedures and criteria for the issuance of EIAPP certificates; and specify requirements applicable to ships that are not registered by Parties to Annex VI. This part includes provisions to apply the equivalency provisions of Regulation 4 of Annex VI with respect to Regulations 14 and 18 of Annex VI. Additional regulations may also apply with respect to the Annex VI, such as those issued separately by the U.S. Coast Guard. Note that references in this part to a specific subsection of an Annex VI regulation (such as Regulation 13.5.1) reflect the regulation numbering of the 2008 Annex VI (incorporated by reference in § 1043.100).

(a) The general requirements for non-public U.S.-flagged and other Party vessels are specified in Annex VI, as implemented by 33 U.S.C. 1901–1915. These requirements apply to engine manufacturers, owners and operators of vessels, and other persons.

(b) The provisions of this part specify how Regulations 13, 14 and 18 of Annex VI, as implemented by APPS, will be applied to U.S.-flagged vessels that operate only domestically.

(c) This part implements section 33 U.S.C. 1902(e) by specifying that non-public vessels flagged by a country that is not a party to Annex VI are subject to certain provisions under this part that are equivalent to the substantive requirements of Regulations 13, 14 and 18 of Annex VI as implemented by APPS.

(d) This part also describes where the requirements of Regulation 13.5.1 of Annex VI and Regulation 14.4 of Annex VI will apply.

(e) This part 1043 does not limit the requirements specified in Annex VI, as implemented by APPS, except as specified in § 1043.10(a)(2) and (b)(3).

(f) Nothing in this part limits the operating requirements and restrictions applicable for engines and vessels subject to 40 CFR part 1042 or the requirements and restrictions applicable for fuels subject to 40 CFR part 80.

(g) The provisions of this part specify how to obtain EIAPP certificates and certificates for Approved Methods.

§ 1043.5 Effective dates.

(a) The requirement of APPS for marine vessels to comply with Annex VI of the MARPOL Protocol is in effect.

(b) The amendments to Annex VI adopted on October 8, 2008 enter into force July 1, 2010. The requirement of APPS for marine vessels to comply with the amended Annex VI is effective July 1, 2010, although some requirements do not become applicable until later dates.

(c) Compliance with the applicable regulations of this part is required for all persons as of July 1, 2010. (Note that certain requirements begin later, as described in paragraph (d) of this section.) Note also that compliance with §§ 1043.40 and 1043.41 is required to obtain EIAPP certificates under this part whether the application is submitted before July 1, 2010 or later.

(d) Compliance with the requirements related to ECAs are effective as follows:

(1) Compliance with the ECA NO_X requirements (*see* § 1043.60(a)) is required beginning on the date on which the ECA enters into force for the United States under Annex VI.

(2) Compliance with the fuel content requirements applicable within ECAs and ECA associated areas (*see* § 1043.60(b)) is required beginning 12 months after date on which the ECA enters into force for the United States under Annex VI.

§ 1043.10 Applicability.

(a) *U.S.-flagged vessels.* The provisions of this part apply for all U.S.-flagged vessels wherever they are located (including engines installed or intended to be installed on such vessels), except as specified in this paragraph (a) or in § 1043.95.

(1) Public vessels are excluded from this part.

(2) Vessels that operate only domestically and conform to the requirements of this paragraph (a)(2) are excluded from Regulation 13 of Annex VI (including the requirement to obtain an EIAPP certificate) and the NO_X-related requirements of this part. For the purpose of this exclusion, the phrase "operate only domestically" means the vessels do not enter waters subject to the jurisdiction or control of any foreign country, except for Canadian portions of the Great Lakes. (*See* §§ 1043.60 and 1043.70 for provisions related to fuel use by such vessels). To be excluded, the vessel must conform to each of the following provisions:

(i) All compression-ignition engines on the vessel must conform fully to all applicable provisions of 40 CFR parts 94 and 1042.

(ii) The vessel may not contain any engines with a specific engine displacement at or above 30.0 liters per cylinder.

(iii) Any engine installed in the vessel that is not covered by an EIAPP must be labeled as specified in 40 CFR 1042.135 with respect to whether it meets the requirements of Regulation 13 of Annex VI.

(b) *Foreign-flagged vessels.* The provisions of this part apply for all non-public foreign-flagged vessels (including engines installed on such vessels) as follows:

(1) The requirements of this part apply for foreign-flagged vessels operating in U.S. navigable waters or the U.S. EEZ.

(2) For non-public vessels flagged by a country that is not a party to Annex VI, the requirements of this part apply in the same manner as apply for Party vessels, except as otherwise provided in this part. For example, *see* § 1043.30(b)(3) for provisions related to showing compliance with this requirement without an EIAPP certificate. *See* § 1043.60 for specific operating requirements.

(3) Canadian vessels that operate only within the Great Lakes and are subject to an alternative NO_X control measure established by the Canadian government

are excluded from the NO_X-related requirements of this part.

(c) *Fuel suppliers.* The provisions of § 1043.80 apply for all persons supplying fuel to any vessel subject to this part.

(d) *Sea bed mineral exploration.* This part does not apply to emissions directly arising from the exploration, exploitation, and associated offshore processing of sea-bed mineral resources. Note that other regulations apply with respect to these emissions in certain circumstances, and that engines that are not solely dedicated to such activities are otherwise subject to all requirements of this part.

§ 1043.20 Definitions.

The following definitions apply to this part:

2008 Annex VI means Annex VI to the MARPOL Protocol, including amendments adopted in October 2008. The 2008 Annex VI is incorporated by reference in § 1043.100. Note that this version of Annex VI does not include any amendments that may be adopted in the future. This 2008 version applies for certain provisions of this part such as those applicable for internal waters and for non-Party vessels.

Administrator means the Administrator of the Environmental Protection Agency.

Annex VI means Annex VI of the MARPOL Protocol.

APPS means the Act to Prevent Pollution from Ships (33 U.S.C. 1901–1915).

Designated Certification Officer means the EPA official to whom the Administrator has delegated authority to issue EIAPP certificates. Note that the Designated Certification Officer is also delegated certain authorities under this part in addition to the authority to issue EIAPP certificates.

ECA associated area means the U.S. internal waters that are navigable from the ECA. This term does not include internal waters that are shoreward of ocean waters that are not part of an emission control area.

EIAPP certificate means a certificate issued to certify initial compliance with Regulation 13 of Annex VI. (Note that EIAPP stands for Engine International Air Pollution Prevention under Annex VI.)

Emission control area (ECA) means an area designated pursuant to Annex VI as an Emission Control Area that:

(1) Is in force; and

(2) Includes waters of the U.S. territorial sea and/or EEZ.

Engine has the meaning given in 40 CFR 1068.30.

EPA means the United States Environmental Protection Agency.

Foreign-flagged vessel means a vessel of foreign registry or a vessel operated under the authority of a country other than the United States.

Good engineering judgment has the meaning given in 40 CFR 1068.30. We will evaluate engineering judgments as described in 40 CFR 1068.5.

Great Lakes means all the streams, rivers, lakes, and other bodies of water that are within the drainage basin of the St. Lawrence River, west of Anticosti Island.

IMO means the International Maritime Organization.

Major conversion has the meaning given in 2008 Annex VI (incorporated by reference in § 1043.100).

MARPOL Protocol has the meaning given in 33 U.S.C. 1901.

Navigable waters has the meaning given in 33 U.S.C. 1901.

Non-Party vessel means a vessel flagged by a country that is not a party to Annex VI.

NO_X Technical Code means the "Technical Code on Control of Emission of Nitrogen Oxides from Marine Diesel Engines" adopted by IMO (incorporated by reference in § 1043.100). The Technical Code is part of 2008 Annex VI.

Operator has the meaning given in 33 U.S.C. 1901.

Owner has the meaning given in 33 U.S.C. 1901.

Party vessel means a vessel flying the flag of, registered in, or operating under the authority of a country that is a party to Annex VI.

Person has the meaning given in 33 U.S.C. 1901.

Public vessels means warships, naval auxiliary vessels, and other vessels owned or operated by a sovereign country when engaged in noncommercial service.

Secretary has the meaning given in 33 U.S.C. 1901.

U.S. EEZ means the Exclusive Economic Zone of the United States, as defined in Presidential Proclamation 5030 of March 10, 1983.

U.S.-flagged vessel means a vessel of U.S. registry or a vessel operated under the authority of the United States.

Vessel has the meaning given to "ship" in APPS.

We means EPA.

§ 1043.30 General obligations.

(a) 33 U.S.C. 1907 prohibits any person from violating any provisions of the MARPOL Protocol, whether or not they are a manufacturer, owner or operator. For manufacturers, owners and operators of vessels subject to this part, it is the responsibility of such manufacturers, owners and operators to ensure that all employees and other agents operating on their behalf comply with these requirements.

(b) Manufacturers of engines to be installed on U.S. vessels subject to this part must obtain an EIAPP certificate for an engine prior to it being installed in a vessel.

(c) Engines with power output of more than 130 kW that are listed in this paragraph (c) must be covered by a valid EIAPP certificate, certifying the engine meets the applicable emission standards of Annex VI, unless the engine is excluded under § 1043.10 or paragraph (d) of this section. An EIAPP certificate is valid for a given engine only if it certifies compliance with the tier of standards applicable to that engine and the vessel into which it is being installed (or a later tier). Note that none of the requirements of this paragraph (c) are limited to new engines.

(1) Engines meeting any of the following criteria must be covered by a valid EIAPP certificate:

(i) Engines installed (or intended to be installed) on vessels that were constructed on or after January 1, 2000. This includes engines that met the definition of "new marine engine" in 40 CFR 1042.901 at any time on or after January 1, 2000, unless such engines are installed on vessels that were constructed before January 1, 2000.

(ii) Engines that undergo a major conversion on or after January 1, 2000, unless the engines have been exempt from this requirement under paragraph (e) of this section.

(2) For such engines intended to be installed on U.S.-flagged vessels, the engine may not be introduced into U.S. commerce before it is covered by a valid EIAPP certificate, except as allowed by this paragraph (c)(2).

(i) This paragraph (c)(2) does not apply for engines installed on vessels excluded under this part 1043.

(ii) Engines without a valid EIAPP certificate (because they are intended for domestic use only) may be introduced into U.S. commerce, but may not be installed on vessels that do not meet the requirements of § 1043.10(a)(2).

(iii) Engines that have been temporarily exempted by EPA under 40 CFR part 1042 or part 1068 may be introduced into U.S. commerce without a valid EIAPP certificate to the same extent they are allowed to be introduced into U.S. commerce without a valid part 1042 certificate of conformity, however, this allowance does not affect whether the engine must ultimately be covered by an EIAPP certificate. Unless otherwise excluded or exempted under this part 1043, the engine must be covered by an EIAPP certificate before

being placed into service. For example, engines allowed to be temporarily distributed in an uncertified configuration under 40 CFR 1068.260 would not be required to be covered by an EIAPP certificate while it is covered by the temporary exemption under 40 CFR 1068.260; however, it would be required to be covered by an EIAPP certificate before being placed into service.

(iv) All uninstalled marine engines within the United States are presumed to be intended to be installed on a U.S.-flagged vessel, unless there is clear and convincing evidence to the contrary.

(3) For engines installed on Party vessels, the engine may not operate in the U.S. navigable waters or the U.S. exclusive economic zone, or other areas designated under 33 U.S.C. 1902(a)(5)(B)(iii), (C)(iii), or (D)(iv) unless it is covered by a valid EIAPP certificate.

(4) Engines installed on non-Party vessels are not required to have EIAPP certificates, but the operator must have evidence of conformity with Regulation 13 of Annex VI issued by either the government of a country that is party to Annex VI or a recognized classification society. For the purposes of this paragraph, "recognized classification society" means a classification society that is a participating member of the International Association of Classification Societies (IACS).

(d) In addition to the engines excluded under § 1043.10, the following engines are excluded from the requirement to have an EIAPP certificate (or equivalent demonstration of compliance in the case of non-Party vessels) or otherwise meet the requirements of Regulation 13 of Annex VI.

(1) Spark-ignition engines.

(2) Non-reciprocating engines.

(3) Engines that do not use liquid fuel.

(4) Engines intended to be used solely for emergencies. This includes engines that power equipment such as pumps that are intended to be used solely for emergencies and engines installed in lifeboats intended to be used solely for emergencies. It does not include engines to be used for both emergency and non-emergency purposes.

(e) The following requirements apply to Party vessels, including U.S.-flagged vessels:

(1) The requirements specified in Annex VI apply for vessels subject to this part for operation in U.S. navigable waters or the U.S. EEZ. (*See* § 1043.60 for a summary of the standards included in these requirements.)

(2) Vessels operating in an ECA must also comply with the requirements of Annex VI applicable to operation in an ECA.

(3) Vessels operating in waters of an ECA associated area must also comply with the requirements in § 1043.60.

(f) The following requirements apply to non-Party vessels:

(1) Non-Party vessels operating in U.S. navigable waters or the U.S. EEZ must comply with the operating and recordkeeping requirements of the 2008 Annex VI (incorporated by reference in § 1043.100) related to Regulations 13, 14 and 18 of the 2008 Annex VI. This paragraph (f)(1) does not address requirements of other portions of Annex VI.

(2) Non-Party vessels operating in an ECA or ECA associated area must also comply with the requirements in § 1043.60.

(g) A replacement engine may be exempted by EPA from Regulation 13 of Annex VI and the NO_X-related requirements of this part if it is identical to the engine being replaced and the old engine was not subject to Regulation 13 of Annex VI. Send requests for such exemptions to the Designated Certification Officer.

(h) Compliance with the provisions of this part 1043 does not affect your responsibilities under 40 CFR part 1042 for engines subject to that part 1042.

§ 1043.40 EIAPP certificates.

(a) Engine manufacturers seeking EIAPP certificates for new engines to be used in U.S.-flagged vessels must apply to EPA for an EIAPP certificate in compliance with the requirements of this section (which references 40 CFR part 1042). Note that under APPS engine manufacturers must comply with the applicable requirements of Regulation 13 of Annex VI to obtain a certificate. Note also that only the Administrator or the EPA official designated by the Administrator may issue EIAPP certificates on behalf of the U.S. Government.

(b) Persons other than engine manufacturers may apply for and obtain EIAPP certificates for new engines to be used in U.S.-flagged vessels by complying with the requirements of this section (which references 40 CFR part 1042) and the applicable requirements of Regulation 13 of Annex VI.

(c) In appropriate circumstances, EPA may issue an EIAPP certificate under this section for non-new engines or engines for vessels that will not initially be flagged in the U.S.

(d) The process for obtaining an EIAPP certificate is described in § 1043.41. That section references regulations in 40 CFR part 1042, which apply under the Clean Air Act. References in that part to certificates of conformity are deemed to mean EIAPP certificates. References in that part to the Clean Air Act as the applicable statute are deemed to mean 33 U.S.C. 1901–1915.

(e) For engines that undergo a major conversion or for engines installed on imported vessels that become subject to the requirements of this part, we may specify alternate certification provisions consistent with the intent of this part.

(f) This paragraph (f) applies for engines that were originally excluded from this part because they were intended for domestic use and were introduced into U.S. commerce without an EIAPP certificate. Note that such engines must be labeled as specified under 40 CFR 1042.135 to indicate that they are intended for domestic use. Such engines may be installed on vessels not intended only for domestic operation provided the engine manufacturer, vessel manufacturer, or vessel owner obtains an EIAPP certificate. Similarly, vessels originally intended only for domestic operation may be used internationally provided the engine manufacturer, vessel manufacturer, or vessel owner obtains an EIAPP certificate. In either case, the Technical File must specify that the engine was originally certified for domestic use only, prior to being covered by an EIAPP certificate. Engine manufacturers may provide a supplemental label to clarify that the engine is no longer limited to domestic service. An engine manufacturer, vessel manufacturer, or vessel owner may also ask to apply the provisions of this paragraph to engines originally certified for public vessels.

§ 1043.41 EIAPP certification process.

This section describes the process for obtaining the EIAPP certificate required by § 1043.40.

(a) You must send the Designated Certification Officer a separate application for an EIAPP certificate for each engine family. An EIAPP certificate is valid starting with the indicated effective date and is valid for any production until such time as the design of the engine family changes or more stringent emission standards become applicable, whichever comes first. You may obtain preliminary approval of portions of the application under 40 CFR 1042.210.

(b) The application must contain all the information required by this part. It must not include false or incomplete statements or information (*see* 40 CFR 1042.255). Include the information specified in 40 CFR 1042.205 except as follows:

(1) You must include the dates on which the test engines were built and the locations where the test engines were built.

(2) Include a copy of documentation required by this part related to maintenance and in-use compliance for operators, such as the Technical File and onboard NO_X verification procedures as specified by the NO_X Technical Code (incorporated by reference in § 1043.100).

(3) You are not required to provide information specified in 40 CFR 1042.205 regarding useful life, emission labels, deterioration factors, PM emissions, or not-to-exceed standards.

(4) You must include a copy of your warranty instructions, but are not required to describe how you will meet warranty obligations.

(c) We may ask you to include less information than we specify in this section as long as you maintain all the information required by paragraph (b) of this section.

(d) You must use good engineering judgment for all decisions related to your application (*see* 40 CFR 1068.5).

(e) An authorized representative of your company must approve and sign the application.

(f) *See* 40 CFR 1042.255 for provisions describing how we will process your application.

(g) Your application, including the Technical File and onboard NO_X verification procedures, is subject to amendment as described in 40 CFR 1042.225.

(h) Perform emission tests as follows:

(1) Select an emission-data engine from each engine family for testing. For engines at or above 560 kW, you may use a development engine that is equivalent in design to the engine being certified. For Category 3 engines, you may use a single-cylinder version of the engine. Using good engineering judgment, select the engine configuration most likely to exceed an applicable emission standard, considering all exhaust emission constituents and the range of installation options available to vessel manufacturers.

(2) Test your emission-data engines using the procedures and equipment specified in 40 CFR part 1042, subpart F, or in the NO_X Technical Code (incorporated by reference in § 1043.100). We may require that your test be witnessed by an EPA official.

(3) We may measure emissions from any of your test engines or other engines from the engine family, as follows:

(i) We may decide to do the testing at your plant or any other facility. You must deliver the test engine to any test facility we designate. The test engine you provide must include appropriate manifolds, aftertreatment devices, electronic control units, and other emission-related components not normally attached directly to the engine block. If we do the testing at your plant, you must schedule it as soon as possible and make available the instruments, personnel, and equipment we need.

(ii) If we measure emissions from one of your test engines, the results of that testing become the official emission results for the engine. Unless we later invalidate these data, we may decide not to consider your data in determining if your engine family meets applicable requirements.

(iii) Before we test one of your engines, we may set its adjustable parameters to any point within the specified adjustable ranges (*see* 40 CFR 1042.115(d)).

(iv) Before we test one of your engines, we may calibrate it within normal production tolerances for anything we do not consider an adjustable parameter.

(4) We may require you to test a second engine of the same or different configuration in addition to the engine tested under paragraph (b) of this section.

(5) If you use an alternate test procedure under 40 CFR 1065.10 and later testing shows that such testing does not produce results that are equivalent to the procedures otherwise required by this part, we may reject data you generated using the alternate procedure.

(i) Collect emission data using measurements to one more decimal place than the applicable standard, then round the value to the same number of decimal places as the emission standard. Compare the rounded emission levels to the emission standard for each emission-data engine.

(j) Your engine family is considered in compliance with the emission standards in Regulation 13 of Annex VI if all emission-data engines representing that family have test results showing emission levels at or below these standards. Your engine family is deemed not to comply if any emission-data engine representing that family has test results showing an emission level above an applicable emission standard for any pollutant.

(k) If we determine your application is complete and shows that the engines meet all the requirements of this part, we will issue an EIAPP certificate for your engines. We may make the approval subject to additional conditions.

§ 1043.50 Approval of methods to meet Tier 1 retrofit NO_X standards.

Regulation 13 of Annex VI provides for certification of Approved Methods, which are retrofit procedures that enable Pre-Tier 1 engines to meet the Tier 1 NO_X standard of regulation 13 of Annex VI. Any person may request approval of such a method by submitting an application for certification of an Approve Method to the Designated Certification Officer. If we determine that your application conforms to the requirements of Regulation 13 of Annex VI, we will issue a certificate and notify IMO that your Approved Method has been certified.

§ 1043.55 Applying equivalent controls instead of complying with fuel requirements.

Regulation 4 of Annex VI allows Administrations to approve the use of fuels not meeting the requirements of Regulation 14 of the Annex, provided the vessel applies a method that results in equivalent emission reductions. This section describes provisions related to applying this allowance.

(a) Any person may request approval of such equivalent methods for controlling emissions on U.S.-flagged vessels by submitting an application for certification of an equivalent control method to the Designated Certification Officer. If we determine that your control method achieves emission levels equivalent to those achieved by the use of fuels meeting the requirements of Regulation 14 of Annex VI, we will issue a certificate and notify IMO that your method has been certified.

(b) The provisions of this paragraph (b) apply for vessels equipped with controls certified by the Administration of a foreign flag vessel to achieve emission levels equivalent to those achieved by the use of fuels meeting the applicable fuel sulfur limits of Regulation 14 of Annex VI. Fuels not meeting the applicable fuel sulfur limits of Regulation 14 of Annex VI may be used on such vessels consistent with the provisions of the IAPP certificate, APPS and Annex VI.

(c) Compliance with the requirements of this section does not affect the applicability of requirements or prohibitions specified by other statutes or regulations with respect to water pollution.

§ 1043.60 Operating requirements for engines and vessels subject to this part.

This section specifies the operating requirements of this part. Note that it does not limit the operating requirements of APPS or Annex VI that

are applicable to U.S.-flagged vessels outside of U.S. domestic waters.

(a) Except as specified otherwise in this part, NO_X emission limits apply to all vessels subject to this part as specified in the following table:

TABLE 1 TO § 1043.60 ANNEX VI NO_X EMISSION STANDARDS (G/KW-HR)

Tier	Area of applicability	Model year	Maximum in-use engine speed		
			Less than 130 RPM	130–2000 RPM[a]	Over 2000 RPM
Tier 1	All U.S. navigable waters and EEZ	2004–2010	17.0	$45.0 \cdot n^{(-0.20)}$	9.8
Tier 2	All U.S. navigable waters and EEZ	2011–2015	14.4	$44.0 \cdot n^{(-0.23)}$	7.7
Tier 2	All U.S. navigable waters and EEZ, exluding ECA and ECA associated areas.	2016 and later	14.4	$44.0 \cdot n^{(-0.23)}$	7.7
Tier 3	ECA and ECA associated areas	2016 and later	3.4	$9.0 \cdot n^{(-0.20)}$	2.0

[a] Applicable standards are calculated from n (maximum in-use engine speed, in RPM, as specified in § 1042.140). Round the standards to one decimal place.

(b) Except as specified otherwise in this part, fuel sulfur limits apply to all vessels subject to this part as specified in the following table:

TABLE 2 TO § 1043.60 ANNEX VI FUEL SULFUR LIMITS

[wt %]

Calendar years	Sulfur limit in all U.S. navigable waters and EEZ (percent)	Sulfur limit in ECA and ECA associated areas (percent)
2010–2011	4.50	1.00
2012–2015	3.50	1.00
2016–2019	3.50	0.10
2020 and later	0.50	0.10

(c) Operators of non-Party vessels must comply with the requirements of paragraphs (a) and (b) of this section as well as other operating requirements and restrictions specified in 2008 Annex VI (incorporated by reference in § 1043.100) related to Regulations 13, 14, and 18.

(d) This paragraph (d) applies for vessels that are excluded from Regulation 13 of Annex VI and the NO_X-related requirements of this part under § 1043.10(a)(2) or (b)(3) because they operate only domestically. Where the vessels operate using only fuels meeting the specifications of 40 CFR part 80 for distillate fuel, they are deemed to be in full compliance with the fuel use requirements and prohibitions of this part and of Regulations 14 and 18 of Annex VI.

(e) Except as noted in paragraph (d) of this section, nothing in this section limits the operating requirements and restrictions of Annex VI, as implemented by APPS, for Party vessels, including U.S.-flagged vessels. Note also that nothing in this part limits the operating requirements and restrictions applicable for engines and vessels subject to 40 CFR part 1042 or the requirements and restrictions applicable for fuels subject to 40 CFR part 80.

(f) We may exempt historic steamships from the fuel requirements of this part for operation in U.S. internal waters. Send requests for exemptions to the Designated Certification Officer.

§ 1043.70 General recordkeeping and reporting requirements.

(a) Under APPS, owners and operators of Party vessels must keep records related to NO_X standards and in-use fuel specifications such as the Technical File, the Engine Book of Record Parameters, and bunker delivery notes. Owners and operators of non-Party vessels must keep these records as specified in the NO_X Technical Code and Regulations 13, 14, and 18 of Annex VI (incorporated by reference in § 1043.100). We may inspect these records as allowed by APPS. As part of our inspection, we may require that the owner submit copies of these records to us.

(b) Nothing in this part limits recordkeeping and reporting the Secretary may require, nor does it preclude the Secretary from providing copies of any records to EPA.

(c) Nothing in this part limits the recordkeeping and reporting requirements applicable with respect to engines and vessels subject to 40 CFR part 1042 or with respect to fuels subject to 40 CFR part 80.

(d) This paragraph (d) applies for vessels that are excluded from Regulation 13 of Annex VI and the NO_X-related requirements of this part under § 1043.10(a)(2) or (b)(3) because they operate only domestically. Where the vessel operator has fuel receipts (or equivalent records) for the preceding three years showing it operated using only fuels meeting the specifications of 40 CFR part 80 for distillate fuel, they are deemed to be in full compliance with the fuel recordkeeping requirements and prohibitions of this part and Annex VI.

§ 1043.80 Recordkeeping and reporting requirements for fuel suppliers.

Under APPS, fuel suppliers must provide bunker delivery notes to vessel operators for any fuel for an engine on any vessel identified in paragraph (a) of this section. Fuel suppliers must also keep copies of these records.

(a) The requirements of this section apply for fuel delivered to any of the following vessels:

(1) Vessels of 400 gross tonnage and above engaged in voyages to ports or offshore terminals under the jurisdiction of other Parties.

(2) Platforms and drilling rigs engaged in voyages to waters under the sovereignty or jurisdiction of other Parties.

(b) Except as allowed by paragraph (c) of this section, the bunker delivery note must contain the following:

(1) The name and IMO number of the receiving vessel.

(2) Port (or other description of the location, if the delivery does not take place at a port).

(3) Date the fuel is delivered to the vessel (or date on which the delivery begins where the delivery begins on one day and ends on a later day).

(4) Name, address, and telephone number of fuel supplier.

(5) Fuel type and designation under 40 CFR part 80.

(6) Quantity in metric tons.

(7) Density at 15 °C, in kg/m^3.

(8) Sulfur content in weight percent.

(9) A signed statement by an authorized representative of fuel supplier certifying that the fuel supplied conforms to Regulations 14 and 18 of Annex VI consistent with it designation, intended use, and the date on which it is to be used. For example, with respect to conformity to Regulation 14 of Annex VI, a fuel designated and intended for use in an ECA any time between July 1, 2010 and January 1, 2015 may not have a sulfur content above 1.00 weight percent. This statement is not required where the vessel conforms to the requirements of § 1043.55.

(c) You may measure density and sulfur content according to the specifications of Annex VI, or according to other equivalent methods that we approve. Where the density and/or sulfur content of the delivered fuel cannot be measured, we may allow the use of alternate methods to specify the density and/or sulfur content of the fuel. For example, where fuel is supplied from multiple tanks on a supply vessel, we may allow the density and sulfur content of the fuel to be calculated as a weighted average of the measured densities and sulfur contents of the fuel that is supplied from each tank.

§ 1043.90 [Reserved]

§ 1043.95 Interim provisions.

The interim provisions of this section apply for vessels operating exclusively in the Great Lakes.

(a) Notwithstanding other provisions of this part, the requirements of this part do not apply for vessels propelled by steam turbine engines or reciprocating steam engines (also known as steamships), provided they were propelled by steam engines and operated within the Great Lakes before October 30, 2009 and continue to operate exclusively within the Great Lakes.

(b) In cases of serious economic hardship, we may exempt Great Lakes vessels from the otherwise applicable fuel use requirements under this part.

(1) To be eligible, you must demonstrate that all of the following are true:

(i) Unusual circumstances exist that impose serious economic hardship and significantly affect your ability to comply.

(ii) You have taken all reasonable steps to minimize the extent of the nonconformity.

(iii) No other allowances are available under the regulations in this chapter to avoid the impending violation.

(2) Send the Designated Certification Officer a written request for an exemption no later than January 1, 2014.

(3) Applicants must provide, at a minimum, the following information:

(i) Detailed description of existing contract freight rates, the additional operating costs attributed to complying with the regulations, any loan covenants or other requirements regarding vessel financial instruments or agreements.

(ii) Bond rating of entity that owns the vessels in question (in the case of joint ventures, include the bond rating of the joint venture entity and the bond ratings of all partners; in the case of corporations, include the bond ratings of any parent or subsidiary corporations).

(iii) Estimated capital investment needed to comply with the requirements of this part by the applicable date.

(4) In determining whether to grant the exemptions, we will consider all relevant factors, including the following:

(i) The number of vessels to be exempted.

(ii) The size of your company and your ability to endure the hardship.

(iii) The length of time a vessel is expected to remain out of compliance with this part.

(iv) The ability of an individual vessel to recover capital investments incurred to repower or otherwise modify a vessel to reduce air emissions.

(5) In addition to the application requirements of paragraphs (b)(1) through (4) of this section, your application for temporary relief under this paragraph (b) must also include a compliance plan that shows the period over which the waiver is needed.

(6) We may impose conditions on the waiver, including conditions to limit or recover any environmental loss.

(c) Prior to January 1, 2015, it is not a violation of this part for vessels operating exclusively in the Great Lakes to use a residual fuel not meeting the sulfur limits of Regulation 14.4.2 of Annex VI, where the operator bunkers with the lowest sulfur marine residual fuel that was available within the port area where the vessel bunkered the fuel. For purposes of this paragraph (c), port area means the geographic limits of the port as specified by the Army Corps of Engineers. The reporting and recordkeeping requirements of this part continue to apply for such operation. In addition, if you operate using a residual fuel not meeting the sulfur limits of Regulation 14.4.2 under this paragraph (c), you must send a report to the Designated Certification Officer that identifies the fuel that was used and documents how you determined that no compliant fuel was available. You must send this report within three months after the fueling event.

§ 1043.100 Reference materials.

Documents listed in this section have been incorporated by reference into this part. The Director of the Federal Register approved the incorporation by reference as prescribed in 5 U.S.C. 552(a) and 1 CFR part 51. Anyone may inspect copies at the U.S. EPA, Air and Radiation Docket and Information Center, 1301 Constitution Ave., NW., Room B102, EPA West Building, Washington, DC 20460, (202) 566–1744, or at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202–741–6030, or go to: *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.*

(a) *IMO material.* This paragraph (a) lists material from the International Maritime Organization that we have incorporated by reference. Anyone may purchase copies of these materials from the International Maritime Organization, 4 Albert Embankment, London SE1 7SR, United Kingdom, or *http://www.imo.org,* or 44–(0)20–7735–7611.

(1) Revised MARPOL Annex VI, Regulations for the Prevention of Air Pollution from Ships, and NO_X Technical Code 2008, 2009 edition.

(i) Revised MARPOL Annex VI, Regulations for the Prevention of Pollution from Ships ("2008 Annex VI"); IBR approved for § 1043.1, 1043.20, 1043.30(f), and 1043.60(c), and 1043.70(a).

(ii) NO_X Technical Code 2008 ("NO_X Technical Code"); IBR approved for §§ 1043.20, 1043.41(b) and (h), and 1043.70(a).

(2) [Reserved]

(b) [Reserved]

PART 1045—CONTROL OF EMISSIONS FROM SPARK-IGNITION PROPULSION MARINE ENGINES AND VESSELS

■ 211. The authority citation for part 1045 continues to read as follows:

Authority: 42 U.S.C. 7401–7671q.

Subpart B—[Amended]

■ 212. Section 1045.103 is amended by revising paragraph (b) introductory text to read as follows:

§ 1045.103 What exhaust emission standards must my outboard and personal watercraft engines meet?

* * * * *

(b) *Averaging, banking, and trading.* You may generate or use emission credits under the averaging, banking, and trading (ABT) program described in subpart H of this part for demonstrating compliance with $HC+NO_X$ emission standards. For CO emissions, you may generate or use emission credits for averaging as described in subpart H of this part, but such credits may not be banked or traded. To generate or use emission credits, you must specify a family emission limit for each pollutant you include in the ABT program for each engine family. These family emission limits serve as the emission standards for the engine family with respect to all required testing instead of the standards specified in this section. An engine family meets emission standards even if its family emission limit is higher than the standard, as long as you show that the whole averaging set of applicable engine families meets the emission standards using emission credits and the engines within the family meet the family emission limit. The following FEL caps apply:

* * * * *

■ 213. Section 1045.125 is amended as follows:

■ a. By revising paragraphs (a)(2).

■ b. By adding paragraph (a)(3).

■ c. By revising paragraph (c).

§ 1045.125 What maintenance instructions must I give to buyers?

* * * * *

(a) * * *

(2) You may not schedule critical emission-related maintenance within the useful life period for aftertreatment devices, pulse-air valves, fuel injectors, oxygen sensors, electronic control units, superchargers, or turbochargers, except as specified in paragraph (a)(3), (b), or (c) of this section.

(3) You may ask us to approve a maintenance interval shorter than that specified in paragraph (a)(2) of this section. In your request you must describe the proposed maintenance step, recommend the maximum feasible interval for this maintenance, include your rationale with supporting evidence to support the need for the maintenance at the recommended interval, and demonstrate that the maintenance will be done at the recommended interval on in-use engines. In considering your request, we will evaluate the information you provide and any other available information to establish alternate specifications for maintenance intervals, if appropriate.

* * * * *

(c) *Special maintenance.* You may specify more frequent maintenance to address problems related to special situations, such as atypical engine operation. You must clearly state that this additional maintenance is associated with the special situation you are addressing. We may disapprove your maintenance instructions if we determine that you have specified special maintenance steps to address engine operation that is not atypical, or that the maintenance is unlikely to occur in use. If we determine that certain maintenance items do not qualify as special maintenance under this paragraph (c), you may identify this as recommended additional maintenance under paragraph (b) of this section.

* * * * *

■ 214. Section 1045.140 is amended by revising paragraph (a) to read as follows:

§ 1045.140 What is my engine's maximum engine power?

(a) An engine configuration's maximum engine power is the maximum brake power point on the nominal power curve for the engine configuration, as defined in this section. Round the power value to the nearest whole kilowatt for engines above 30 kW and to the nearest 0.1 kilowatt for engines at or below 30 kW.

* * * * *

■ 215. Section 1045.145 is amended by adding paragraph (o) to read as follows:

§ 1045.145 Are there interim provisions that apply only for a limited time?

* * * * *

(o) *Banking early credits for jet boat engines.* Banked emission credits that were originally generated from outboard and personal watercraft engines under 40 CFR part 91 may be used to certify jet boat engines under the provisions § 1045.660.

Subpart C—[Amended]

■ 216. Section 1045.201 is amended by adding paragraph (h) to read as follows:

§ 1045.201 What are the general requirements for obtaining a certificate of conformity?

* * * * *

(h) For engines that become new after being placed into service, such as engines installed on imported vessels or engines converted to run on a different fuel, we may specify alternate certification provisions consistent with the intent of this part. *See* § 1045.645 and the definition of "new propulsion marine engine" in § 1045.801.

■ 217. Section 1045.220 is amended by revising paragraph (a) to read as follows:

§ 1045.220 How do I amend the maintenance instructions in my application?

* * * * *

(a) If you are decreasing or eliminating any specified maintenance, you may distribute the new maintenance instructions to your customers 30 days after we receive your request, unless we disapprove your request. This would generally include replacing one maintenance step with another. We may approve a shorter time or waive this requirement.

* * * * *

■ 218. Section 1045.230 is amended by revising paragraph (b)(4) to read as follows:

§ 1045.230 How do I select engine families?

* * * * *

(b) * * *

(4) The number, arrangement (such as in-line or vee configuration), and approximate bore diameter of cylinders.

* * * * *

■ 219. Section 1045.240 is amended by revising paragraphs (a) and (b) and adding paragraph (e) to read as follows:

§ 1045.240 How do I demonstrate that my engine family complies with exhaust emission standards?

(a) For purposes of certification, your engine family is considered in compliance with the duty-cycle emission standards in § 1045.103 or § 1045.105 if all emission-data engines representing that family have test results showing official emission results and deteriorated emission levels at or below these standards. This also applies for all test points for emission-data engines within the family used to establish deterioration factors. Note that your FELs are considered to be the applicable

emission standards with which you must comply if you participate in the ABT program in subpart H of this part. *See* paragraph (e) of this section for provisions related to demonstrating compliance with NTE standards.

(b) Your engine family is deemed not to comply with the duty-cycle emission standards in § 1045.103 or § 1045.105 if any emission-data engine representing that family has test results showing an official emission result or a deteriorated emission level for any pollutant that is above an applicable emission standard. Similarly, your engine family is deemed not to comply if any emission-data engine representing that family has test results showing any emission level above the applicable not-to-exceed emission standard for any pollutant. This also applies for all test points for emission-data engines within the family used to establish deterioration factors.

* * * * *

(e) Use good engineering judgment to demonstrate compliance with NTE standards throughout the useful life. You may, but are not required to, apply the same deterioration factors used to show compliance with the applicable duty-cycle standards.

Subpart E—[Amended]

■ 220. Section 1045.405 is amended by revising paragraphs (c) and (e) to read as follows:

§ 1045.405 How does this program work?

* * * * *

(c) Send us an in-use testing plan for engine families selected for testing as described in this paragraph (c). Complete the testing within 36 months after we direct you to test a particular engine family. Send us a complete in-use testing plan according to the following deadlines:

(1) Within six months after we direct you to test a particular engine family.

(2) By February 28 of the following year if you select engine families for testing under paragraph (b)(1) of this section.

(3) Within six months after we approve certification for engine families subject to the requirements of paragraph (b)(2) of this section.

(4) If we request additional information or require you to modify your plan to meet the requirements of this subpart, you must provide the information or the modified plan within 30 days of our request.

* * * * *

(e) In appropriate extreme and unusual circumstances that are clearly outside your control and could not have been avoided by the exercise of prudence, diligence, and due care, we may allow more time to complete testing or we may waive the in-use testing requirement for an engine family. For example, if your test fleet is destroyed by severe weather during service accumulation and we agree that completion of testing is not possible, we would generally waive testing requirements for that engine family.

Subpart F—[Amended]

■ 221. Section 1045.515 is amended by revising paragraph (c)(5) introductory text to read as follows:

§ 1045.515 What are the test procedures related to not-to-exceed standards?

* * * * *

(c) * * *

(5) For two-stroke engines not equipped with a catalyst, the NTE zone described in paragraph (c)(3) of this section is divided into subzones for testing to determine compliance with the applicable NTE standards. Measure emissions to get an NTE result by collecting emissions at five points as described in this paragraph (c)(5). Calculate a weighted test result for these emission measurements using the weighting factors from Appendix II of this part for the corresponding modal result (similar to discrete-mode testing for certification). Test engines over the following modes corresponding to the certification duty cycle:

* * * * *

Subpart H—[Amended]

■ 222. Section 1045.701 is amended by revising paragraphs (d), (g), (j)(4) and (j)(5) to read as follows:

§ 1045.701 General provisions.

* * * * *

(d) Sterndrive/inboard engines certified under § 1045.660 for jet boats may use HC+NO_x and CO exhaust credits generated from outboard and personal watercraft engines, as long as the credit-using engine is the same model as an engine model from an outboard or personal watercraft family. Such emission credits that you generate under this part 1045 may be used for averaging, but not for banking or trading. The FEL caps for such jet boat families are the HC+NO_x and CO standard for outboard and personal watercraft engines. U.S.-directed sales from jet boat engines using the provisions of this paragraph (d) may not be greater than the U.S.-directed sales of the same engine model for outboard or personal watercraft engines.

* * * * *

(g) Emission credits may be used for averaging in the model year they are generated or banked for averaging in future model years, except that CO emission credits for outboard and personal watercraft engines may not be banked or traded.

* * * * *

(j) * * *

(4) Engines or vessels not subject to the requirements of this part, such as those excluded under § 1045.5.

(5) Any other engines or vessels where we indicate elsewhere in this part 1045 that they are not to be included in the calculations of this subpart.

■ 223. Section 1045.705 is amended by revising paragraph (a) to read as follows:

§ 1045.705 How do I generate and calculate exhaust emission credits?

* * * * *

(a) For each participating family, calculate positive or negative emission credits relative to the otherwise applicable emission standard. Calculate positive emission credits for a family that has an FEL below the standard. Calculate negative emission credits for a family that has an FEL above the standard. Sum your positive and negative credits for the model year before rounding. Round the sum of emission credits to the nearest kilogram (kg) using consistent units throughout the following equation:

$$\text{Emission credits (kg)} = (\text{STD} - \text{FEL}) \times (\text{Volume}) \times (\text{Power}) \times (\text{UL}) \times (\text{LF}) \times (10^{-3})$$

Where:

STD = the emission standard, in g/kW-hr.

FEL = the family emission limit for the family, in g/kW-hr.

Volume = the number of engines eligible to participate in the averaging, banking, and trading program within the given family during the model year, as described in § 1045.701(j).

Power = maximum engine power for the family, in kilowatts (*see* § 1045.140).

UL = The useful life for the given family.

LF = load factor. Use 0.207. We may specify a different load factor if we approve the use of special test procedures for an engine family under 40 CFR 1065.10(c)(2), consistent with good engineering judgment.

* * * * *

Subpart I—[Amended]

■ 224. Section 1045.801 is amended by revising the definition of "Fuel system" and paragraphs (2) and (5)(iii) of the definition of "Model year" to read as follows:

§ 1045.801 What definitions apply to this part?

* * * * *

Fuel system means all components involved in transporting, metering, and mixing the fuel from the fuel tank to the combustion chamber(s), including the fuel tank, fuel tank cap, fuel pump, fuel filters, fuel lines, carburetor or fuel-injection components, and all fuel-system vents. In the case where the fuel tank cap or other components (excluding fuel lines) are directly mounted on the fuel tank, they are considered to be a part of the fuel tank.

* * * * *

Model year * * *

(2) For an engine that is converted to a propulsion marine engine after being certified and placed into service as a motor vehicle engine, a nonroad engine that is not a propulsion marine engine, or a stationary engine, model year means the calendar year in which the engine was originally produced. For an engine that is converted to a propulsion marine engine after being placed into service as a motor vehicle engine, a nonroad engine that is not a propulsion marine engine, or a stationary engine without having been certified, model year means the calendar year in which the engine becomes a new propulsion marine engine. (*See* definition of "new propulsion marine engine," paragraph (2).)

* * * * *

(5) * * *

(iii) For imported engines described in paragraph (5)(iii) of the definition of "new propulsion marine nonroad engine," *model year* means the calendar year in which the engine is first assembled in its imported configuration, unless specified otherwise in this part or in 40 CFR part 1068.

* * * * *

PART 1048—CONTROL OF EMISSIONS FROM NEW, LARGE NONROAD SPARK-IGNITION ENGINES

■ 225. The authority citation for part 1048 continues to read as follows:

Authority: 42 U.S.C. 7401–7671q.

Subpart A—[Amended]

■ 226. Section 1048.15 is amended by revising paragraph (b) to read as follows:

§ 1048.15 Do any other regulation parts apply to me?

* * * * *

(b) Part 1065 of this chapter describes procedures and equipment specifications for testing engines to measure exhaust emissions. Subpart F of this part 1048 describes how to apply the provisions of part 1065 of this chapter to determine whether engines meet the exhaust emission standards in this part.

* * * * *

■ 227. A new § 1048.30 is added to subpart A to read as follows:

§ 1048.30 Submission of information.

(a) This part includes various requirements to record data or other information. Refer to § 1048.825 and 40 CFR 1068.25 regarding recordkeeping requirements. Unless we specify otherwise, store these records in any format and on any media and keep them readily available for one year after you send an associated application for certification, or one year after you generate the data if they do not support an application for certification. You must promptly send us organized, written records in English if we ask for them. We may review them at any time.

(b) The regulations in § 1048.255 and 40 CFR 1068.101 describe your obligation to report truthful and complete information and the consequences of failing to meet this obligation. This includes information not related to certification.

(c) Send all reports and requests for approval to the Designated Compliance Officer (*see* § 1048.801).

(d) Any written information we require you to send to or receive from another company is deemed to be a required record under this section. Such records are also deemed to be submissions to EPA. We may require you to send us these records whether or not you are a certificate holder.

Subpart B—[Amended]

■ 228. Section 1048.120 is amended by revising paragraph (b) to read as follows:

§ 1048.120 What emission-related warranty requirements apply to me?

* * * * *

(b) *Warranty period.* Your emission-related warranty for evaporative emission controls must be valid for at least two years. Your emission-related warranty for exhaust emission controls must be valid for at least 50 percent of the engine's useful life in hours of operation or at least three years, whichever comes first. In the case of a high-cost warranted part, the warranty must be valid for at least 70 percent of the engine's useful life in hours of operation or at least five years, whichever comes first. You may offer an emission-related warranty more generous than we require. The emission-related warranty for the engine may not be shorter than any published warranty you offer without charge for the engine. Similarly, the emission-related warranty for any component may not be shorter than any published warranty you offer without charge for that component. If an engine has no hour meter, we base the warranty periods in this paragraph (b) only on the engine's age (in years). The warranty period begins when the engine is placed into service.

* * * * *

■ 229. Section 1048.125 is amended by adding paragraph (a)(4) and revising paragraph (c) to read as follows:

§ 1048.125 What maintenance instructions must I give to buyers?

* * * * *

(a) * * *

(4) You may ask us to approve a maintenance interval shorter than that specified in paragraphs (a)(2) of this section. In your request you must describe the proposed maintenance step, recommend the maximum feasible interval for this maintenance, include your rationale with supporting evidence to support the need for the maintenance at the recommended interval, and demonstrate that the maintenance will be done at the recommended interval on in-use engines. In considering your request, we will evaluate the information you provide and any other available information to establish alternate specifications for maintenance intervals, if appropriate.

* * * * *

(c) *Special maintenance.* You may specify more frequent maintenance to address problems related to special situations, such as substandard fuel or atypical engine operation. For example, you may specify more frequent cleaning of fuel system components for engines you have reason to believe will be using fuel that causes substantially more engine performance problems than commercial fuels of the same type that are generally available across the United States. You must clearly state that this additional maintenance is associated with the special situation you are addressing. We may disapprove your maintenance instructions if we determine that you have specified special maintenance steps to address engine operation that is not atypical, or that the maintenance is unlikely to occur in use. If we determine that certain maintenance items do not qualify as special maintenance under this paragraph (c), you may identify this as recommended additional maintenance under paragraph (b) of this section.

* * * * *

Subpart C—[Amended]

■ 230. Section 1048.201 is amended by adding paragraph (h) to read as follows:

§ 1048.201 What are the general requirements for obtaining a certificate of conformity?

* * * * *

(h) For engines that become new after being placed into service, such as engines converted to nonroad use after being used in motor vehicles, we may specify alternate certification provisions consistent with the intent of this part. *See* the definition of "new nonroad engine" in § 1048.801.

■ 231. Section 1048.220 is amended by revising paragraphs (a) and (c) to read as follows:

§ 1048.220 How do I amend the maintenance instructions in my application?

* * * * *

(a) If you are decreasing or eliminating any specified maintenance, you may distribute the new maintenance instructions to your customers 30 days after we receive your request, unless we disapprove your request. This would generally include replacing one maintenance step with another. We may approve a shorter time or waive this requirement.

* * * * *

(c) You need not request approval if you are making only minor corrections (such as correcting typographical mistakes), clarifying your maintenance instructions, or changing instructions for maintenance unrelated to emission control. We may ask you to send us copies of maintenance instructions revised under this paragraph (c).

■ 232. Section 1048.230 is amended by revising paragraph (b)(6) to read as follows:

§ 1048.230 How do I select engine families?

* * * * *

(b) * * *

(6) The number, arrangement (such as in-line or vee configuration), and approximate bore diameter of cylinders.

* * * * *

■ 233. Section 1048.240 is amended by revising paragraphs (a) and (b) and adding paragraph (e) to read as follows:

§ 1048.240 How do I demonstrate that my engine family complies with exhaust emission standards?

(a) For purposes of certification, your engine family is considered in compliance with the applicable numerical emission standards in § 1048.101(a) and (b) if all emission-data engines representing that family have test results showing official emission results and deteriorated emission levels at or below these standards. This includes all test points over the course of the durability demonstration. This also applies for all test points for emission-data engines within the family used to establish deterioration factors. *See* paragraph (e) of this section for provisions related to demonstrating compliance with field-testing standards.

(b) Your engine family is deemed not to comply if any emission-data engine representing that family has test results showing an official emission result or a deteriorated emission level for any pollutant that is above an applicable emission standard from § 1048.101(a) and (b). Similarly, your engine family is deemed not to comply if any emission-data engine representing that family has test results showing any emission level above the applicable field-testing standard for any pollutant. This also applies for all test points for emission-data engines within the family used to establish deterioration factors.

* * * * *

(e) Use good engineering judgment to demonstrate compliance with field-testing standards throughout the useful life. You may, but are not required to, apply the same deterioration factors used to show compliance with the applicable duty-cycle standards.

■ 234. Section 1048.245 is amended by revising paragraph (e) to read as follows:

§ 1048.245 How do I demonstrate that my engine family complies with evaporative emission standards?

* * * * *

(e) You may demonstrate that your engine family complies with the evaporative emission standards by demonstrating that you use the following control technologies:

(1) For certification to the standards specified in § 1048.105(c), with the following technologies:

(i) Use a tethered or self-closing gas cap on a fuel tank that stays sealed up to a positive pressure of 24.5 kPa (3.5 psig); however, they may contain air inlets that open when there is a vacuum pressure inside the tank. Nonmetal fuel tanks must also use one of the qualifying designs for controlling permeation emissions specified in 40 CFR 1060.240.

(ii) [Reserved]

(2) For certification to the standards specified in § 1048.105(d), demonstrating that you use design features to prevent fuel boiling under all normal operation. If you install engines in equipment, you may do this using fuel temperature data measured during normal operation. Otherwise, you may do this by including appropriate information in your emission-related installation instructions.

(3) We may establish additional options for design-based certification where we find that new test data demonstrate that a technology will ensure compliance with the emission standards in this section.

■ 235. Section 1048.255 is amended by revising paragraph (b) to read as follows:

§ 1048.255 What decisions may EPA make regarding my certificate of conformity?

* * * * *

(b) We may deny your application for certification if we determine that your engine family fails to comply with emission standards or other requirements of this part or the Clean Air Act. We will base our decision on all available information. If we deny your application, we will explain why in writing.

* * * * *

Subpart E—[Amended]

■ 236. Section 1048.405 is amended by revising paragraphs (b) and (d) to read as follows:

§ 1048.405 How does this program work?

* * * * *

(b) Send us an in-use testing plan within six months after we direct you to test a particular engine family. If we request additional information or require you to modify your plan to meet the requirements of this subpart, you must provide the information or the modified plan within 30 days of our request. Complete the testing within 36 months after we direct you to test a particular engine family.

* * * * *

(d) In appropriate extreme and unusual circumstances that are clearly outside your control and could not have been avoided by the exercise of prudence, diligence, and due care, we may allow more time to complete testing or we may waive the in-use testing requirement for an engine family. For example, if your test fleet is destroyed by severe weather during service accumulation and we agree that completion of testing is not possible, we would generally waive testing requirements for that engine family.

Subpart F—[Amended]

■ 237. Section 1048.505 is amended by revising the section heading and paragraph (b)(5)(i) and Table 3 to read as follows:

§ 1048.505 How do I test engines using steady-state duty cycles, including ramped-modal testing?

* * * * *

(b) * * *

(5) * * *

(i) The following duty cycle applies for discrete-mode testing:

TABLE 3 OF § 1048.505

Mode No.	Engine speed	Torque (percent) [1]	Minimum time in mode (minutes)	Weighting factors
1	Maximum test speed	100	3.0	0.50
2	Maximum test speed	75	3.0	0.50

[1] The percent torque is relative to the maximum torque at maximum test speed.

* * * * *

■ 238. Section 1048.510 is amended by adding paragraph (b) to read as follows:

§ 1048.510 What transient duty cycles apply for laboratory testing?

* * * * *

(b) Calculate cycle statistics and compare with the established criteria as specified in 40 CFR 1065.514 to confirm that the test is valid.

* * * * *

Subpart I—[Amended]

■ 239. Section 1048.801 is amended by adding definitions for "Carryover" and "Date of manufacture" in alphabetical order to read as follows:

§ 1048.801 What definitions apply to this part?

* * * * *

Carryover means relating to certification based on emission data generated from an earlier model year as described in § 1048.235(d).

* * * * *

Date of manufacture has the meaning given in 40 CFR 1068.30.

* * * * *

PART 1051—CONTROL OF EMISSIONS FROM RECREATIONAL ENGINES AND VEHICLES

■ 240. The authority citation for part 1051 continues to read as follows:

Authority: 42 U.S.C. 7401–7671q.

Subpart A—[Amended]

■ 241. Section 1051.15 is amended by revising paragraph (a) to read as follows:

§ 1051.15 Do any other regulation parts apply to me?

(a) Parts 86 and 1065 of this chapter describe procedures and equipment specifications for testing vehicles and engines to measure exhaust emissions. Subpart F of this part 1051 describes how to apply the provisions of parts 86 and 1065 of this chapter to determine whether vehicles meet the exhaust emission standards in this part.

* * * * *

■ 242. Section 1051.20 is amended by adding paragraph (g) to read as follows:

§ 1051.20 May I certify a recreational engine instead of the vehicle?

* * * * *

(g) Apply the provisions of 40 CFR part 1068 for engines certified under this section as if they were subject to engine-based standards. For example, you may rely on the provisions of 40 CFR 1068.261 to have vehicle manufacturers install catalysts that you describe in your application for certification.

■ 243. A new § 1051.30 is added to subpart A to read as follows:

§ 1051.30 Submission of information.

(a) This part includes various requirements to record data or other information. Refer to § 1051.825 and 40 CFR 1068.25 regarding recordkeeping requirements. Unless we specify otherwise, store these records in any format and on any media and keep them readily available for one year after you send an associated application for certification, or one year after you generate the data if they do not support an application for certification. You must promptly send us organized, written records in English if we ask for them. We may review them at any time.

(b) The regulations in § 1051.255 and 40 CFR 1068.101 describe your obligation to report truthful and complete information and the consequences of failing to meet this obligation. This includes information not related to certification.

(c) Send all reports and requests for approval to the Designated Compliance Officer (*see* § 1051.801).

(d) Any written information we require you to send to or receive from another company is deemed to be a required record under this section. Such records are also deemed to be submissions to EPA. We may require you to send us these records whether or not you are a certificate holder.

Subpart B—[Amended]

■ 244. Section 1051.125 is amended by adding paragraph (a)(3) and revising paragraph (c) to read as follows:

§ 1051.125 What maintenance instructions must I give to buyers?

* * * * *

(a) * * *

(3) You may ask us to approve a maintenance interval shorter than that specified in paragraph (a)(2) of this section. In your request you must describe the proposed maintenance step, recommend the maximum feasible interval for this maintenance, include your rationale with supporting evidence to support the need for the maintenance at the recommended interval, and demonstrate that the maintenance will be done at the recommended interval on in-use engines. In considering your request, we will evaluate the information you provide and any other available information to establish alternate specifications for maintenance intervals, if appropriate.

* * * * *

(c) *Special maintenance.* You may specify more frequent maintenance to address problems related to special situations, such as atypical engine operation. You must clearly state that this additional maintenance is associated with the special situation you are addressing. We may disapprove your maintenance instructions if we determine that you have specified special maintenance steps to address engine operation that is not atypical, or that the maintenance is unlikely to occur in use. If we determine that certain maintenance items do not qualify as special maintenance under this paragraph (c), you may identify this as recommended additional maintenance under paragraph (b) of this section.

* * * * *

■ 245. Section 1051.135 is amended by revising paragraph (c)(12) to read as follows:

§ 1051.135 How must I label and identify the vehicles I produce?

* * * * *

(c) * * *

(12) State: "THIS VEHICLE MEETS U.S. EPA REGULATIONS FOR [MODEL YEAR] [SNOWMOBILES or OFF–ROAD MOTORCYCLES or ATVs or OFFROAD UTILITY VEHICLES]."

* * * * *

Subpart C—[Amended]

■ 246. Section 1051.201 is amended by adding paragraph (h) to read as follows:

§ 1051.201 What are the general requirements for obtaining a certificate of conformity?

* * * * *

(h) For vehicles that become new after being placed into service, such as vehicles converted to run on a different fuel, we may specify alternate certification provisions consistent with the intent of this part. *See* § 1051.650 and the definition of "new" in § 1051.801.

■ 247. Section 1051.220 is amended by revising paragraphs (a) and (c) to read as follows:

§ 1051.220 How do I amend the maintenance instructions in my application?

* * * * *

(a) If you are decreasing or eliminating any specified maintenance, you may distribute the new maintenance instructions to your customers 30 days after we receive your request, unless we disapprove your request. This would generally include replacing one maintenance step with another. We may approve a shorter time or waive this requirement.

* * * * *

(c) You need not request approval if you are making only minor corrections (such as correcting typographical mistakes), clarifying your maintenance instructions, or changing instructions for maintenance unrelated to emission control. We may ask you to send us copies of maintenance instructions revised under this paragraph (c).

■ 248. Section 1051.230 is amended by revising paragraph (b)(7) to read as follows:

§ 1051.230 How do I select engine families?

* * * * *

(b) * * *

(7) The number, arrangement (such as in-line or vee configuration), and approximate bore diameter of cylinders.

* * * * *

■ 249. Section 1051.255 is amended by revising paragraph (b) to read as follows:

§ 1051.255 What decisions may EPA make regarding my certificate of conformity?

* * * * *

(b) We may deny your application for certification if we determine that your engine family fails to comply with emission standards or other requirements of this part or the Clean Air Act. We will base our decision on all available information. If we deny your application, we will explain why in writing.

* * * * *

Subpart I—[Amended]

■ 250. Section 1051.801 is amended by revising paragraph (2) of the definition for "All-terrain vehicle" and the definition for "Offroad utility vehicle" to read as follows:

§ 1051.801 What definitions apply to this part?

* * * * *

All-terrain vehicle means * * *

(2) Other all-terrain vehicles have three or more wheels and one or more seats, are designed for operation over rough terrain, are intended primarily for transportation, and have a maximum vehicle speed higher than 25 miles per hour. Golf carts generally do not meet these criteria since they are generally not designed for operation over rough terrain.

* * * * *

Offroad utility vehicle means a nonroad vehicle that has four or more wheels, seating for two or more persons, is designed for operation over rough terrain, and has either a rear payload capacity of 350 pounds or more or seating for six or more passengers. Vehicles intended primarily for recreational purposes that are not capable of transporting six passengers (such as dune buggies) are not offroad utility vehicles. (**Note:** § 1051.1(a) specifies that some offroad utility vehicles are required to meet the requirements that apply for all-terrain vehicles.) Unless there is significant information to the contrary, we consider vehicles to be intended primarily for recreational purposes if they are marketed for recreational use, have a rear payload capacity no greater than 1,000 pounds, and meet at least five of the following criteria:

(1) Front and rear suspension travel is greater than 18 cm.

(2) The vehicle has no tilt bed.

(3) The vehicle has no mechanical power take-off (PTO) and no permanently installed hydraulic system for operating utility-oriented accessory devices.

(4) The engine has in-use operating speeds at or above 4,000 rpm.

(5) Maximum vehicle speed is greater than 35 miles per hour.

(6) The speed at which the engine produces peak power is above 4,500 rpm and the engine is equivalent to engines in ATVs certified by the same manufacturer. For the purpose of this paragraph (6), the engine is considered equivalent if it could be included in the same emission family based on the characteristics specified in § 1051.230(b).

(7) Gross Vehicle Weight Rating is no greater than 3,750 pounds. This is the maximum design loaded weight of the vehicle as defined in 40 CFR 86.1803–01, including passengers and cargo.

* * * * *

PART 1054—CONTROL OF EMISSIONS FROM NEW, SMALL NONROAD SPARK-IGNITION ENGINES AND EQUIPMENT

■ 251. The authority citation for part 1054 continues to read as follows:

Authority: 42 U.S.C. 7401–7671q.

Subpart A—[Amended]

■ 252. Section 1054.1 is amended by revising paragraph (a)(4) to read as follows:

§ 1054.1 Does this part apply for my engines and equipment?

(a) * * *

(4) This part 1054 applies for other spark-ignition engines as follows:

(i) The provisions of §§ 1054.620 and 1054.801 apply for new engines used solely for competition beginning January 1, 2010.

(ii) The provisions of §§ 1054.660 and 1054.801 apply for new engines used in emergency rescue equipment beginning January 1, 2010.

* * * * *

Subpart B—[Amended]

■ 253. Section 1054.125 is amended by adding paragraph (a)(4) and revising paragraph (c) to read as follows:

§ 1054.125 What maintenance instructions must I give to buyers?

* * * * *

(a) * * *

(4) You may ask us to approve a maintenance interval shorter than that specified in paragraph (a)(3) of this

section. In your request you must describe the proposed maintenance step, recommend the maximum feasible interval for this maintenance, include your rationale with supporting evidence to support the need for the maintenance at the recommended interval, and demonstrate that the maintenance will be done at the recommended interval on in-use engines. In considering your request, we will evaluate the information you provide and any other available information to establish alternate specifications for maintenance intervals, if appropriate.

* * * * *

(c) *Special maintenance.* You may specify more frequent maintenance to address problems related to special situations, such as atypical engine operation. You must clearly state that this additional maintenance is associated with the special situation you are addressing. We may disapprove your maintenance instructions if we determine that you have specified special maintenance steps to address engine operation that is not atypical, or that the maintenance is unlikely to occur in use. If we determine that certain maintenance items do not qualify as special maintenance under this paragraph (c), you may identify this as recommended additional maintenance under paragraph (b) of this section.

* * * * *

■ 254. Section 1054.145 is amended by adding paragraph (o) to read as follows:

§ 1054.145 Are there interim provisions that apply only for a limited time?

* * * * *

(o) *Interim bonding provisions.* Through 2012, the maximum value of the bond under § 1054.690 is $10 million. This maximum value applies without adjustment for inflation.

Subpart C—[Amended]

■ 255. Section 1054.201 is amended by adding paragraph (h) to read as follows:

§ 1054.201 What are the general requirements for obtaining a certificate of conformity?

* * * * *

(h) For engines that become new after being placed into service, such as engines converted to run on a different fuel, we may specify alternate certification provisions consistent with the intent of this part. *See* § 1054.645 and the definition of "new nonroad engine" in § 1054.801.

■ 256. Section 1054.205 is amended by revising paragraph (b) to read as follows:

§ 1054.205 What must I include in my application?

* * * * *

(b) Explain how the emission control systems operate. Describe the evaporative emission controls and show how your design will prevent running loss emissions, if applicable. Also describe in detail all system components for controlling exhaust emissions, including all auxiliary emission control devices (AECDs) and all fuel-system components you will install on any production or test engine. Identify the part number of each component you describe. For this paragraph (b), treat as separate AECDs any devices that modulate or activate differently from each other. Include sufficient detail to allow us to evaluate whether the AECDs are consistent with the defeat device prohibition of § 1054.115. For example, if your engines will routinely experience in-use operation that differs from the specified duty cycle for certification, describe how the fuel-metering system responds to varying speeds and loads not represented by the duty cycle. If you test an emission-data engine by disabling the governor for full-load operation such that the engine operates at an air-fuel ratio significantly different than under full-load operation with an installed governor, explain why these differences are necessary or appropriate. For conventional carbureted engines without electronic fuel controls, it is sufficient to state that there is no significant difference in air-fuel ratios.

* * * * *

■ 257. Section 1054.220 is amended by revising paragraph (a) to read as follows:

§ 1054.220 How do I amend the maintenance instructions in my application?

* * * * *

(a) If you are decreasing or eliminating any specified maintenance, you may distribute the new maintenance instructions to your customers 30 days after we receive your request, unless we disapprove your request. This would generally include replacing one maintenance step with another. We may approve a shorter time or waive this requirement.

* * * * *

■ 258. Section 1054.230 is amended by revising paragraph (b)(6) to read as follows:

§ 1054.230 How do I select emission families?

* * * * *

(b) * * *

(6) The number and arrangement of cylinders (such as in-line or vee configuration) and approximate total displacement.

* * * * *

Subpart G—[Amended]

■ 259. Section 1054.601 is amended by revising the section heading and adding paragraph (c) to read as follows:

§ 1054.601 What compliance provisions apply?

* * * * *

(c) The provisions of 40 CFR 1068.215 apply for cases in which the manufacturer takes possession of engines for purposes of recovering components as described in this paragraph (c). Note that this paragraph (c) does not apply for certified engines that still have the emission control information label since such engines do not need an exemption.

(1) You must label the engine as specified in 40 CFR 1068.215(c)(3), except that the label may be removable as specified in 40 CFR 1068.45(b).

(2) You may not resell the engine. For components other than the engine block, you may generate revenue from the sale of the components that you recover, or from the sale of new engines containing these components. You may also use components other than the engine block for engine rebuilds as otherwise allowed under the regulations. You may use the engine block from an engine that is exempted under this paragraph (c) only to make a new engine, and then only where such an engine has a separate identity from the original engine.

(3) Once the engine has reached its final destination, you may stop collecting records describing the engine's final disposition and how you use the engine. This does not affect the requirement to maintain the records you have already collected under 40 CFR 1068.215. This also does not affect the requirement to maintain records for new engines.

■ 260. Section 1054.690 is amended by revising paragraphs (d), (f), and (j) to read as follows:

§ 1054.690 What bond requirements apply for certified engines?

* * * * *

(d) The minimum value of the bond is $500,000. A higher bond value may apply based on the per-engine bond values shown in Table 1 to this section and on the U.S.-directed production volume from each displacement grouping for the calendar model year. For example, if you have projected U.S.-directed production volumes of 10,000 engines with 180 cc displacement and

10,000 engines with 400 cc displacement in 2013, the appropriate bond amount is $750,000. Adjust the value of the bond as follows:

(1) If your estimated or actual U.S.-directed production volume in any later year increases beyond the level appropriate for your current bond payment, you must post additional bond to reflect the increased volume within 90 days after you change your estimate or determine the actual production volume. You may not decrease your bond.

(2) If you sell engines without aftertreatment components under the provisions of § 1054.610, you must increase the per-engine bond values for the current year by 20 percent.

TABLE 1 TO § 1054.690—PER-ENGINE BOND VALUES

For engines with displacement falling in the following ranges . . .	The per-engine bond value is . . .
Disp. < 225 cc	$25
225 ≤ Disp. < 740 cc	50
740 ≤ Disp. ≤ 1,000 cc	100
Disp. > 1,000 cc	200

* * * * *

(f) You may meet the bond requirements of this section by obtaining a bond from a third-party surety that is cited in the U.S. Department of Treasury Circular 570, "Companies Holding Certificates of Authority as Acceptable Sureties on Federal Bonds and as Acceptable Reinsuring Companies" (*http://www.fms.treas.gov/c570/c570.html#certified*). You must maintain this bond for every year in which you sell certified engines. The surety agent remains responsible for obligations under the bond for two years after the bond is cancelled or expires without being replaced.

* * * * *

(j) The following provisions apply if you import engines for resale when those engines have been certified by someone else (or equipment containing such engines):

(1) You and the certificate holder are each responsible for compliance with the requirements of this part and the Clean Air Act. For example, we may require you to comply with the warranty requirements in § 1054.120.

(2) You do not need to post bond if you or the certificate holder complies with the bond requirements of this section. You also do not need to post bond if the certificate holder complies with the asset requirements of this section and the repair-network provisions of § 1054.120(f)(4).

Subpart H—[Amended]

■ 261. Section 1054.730 is amended by revising paragraph (b)(4) to read as follows:

§ 1054.730 What ABT reports must I send to EPA?

* * * * *

(b) * * *

(4) The projected and actual U.S.-directed production volumes for the model year, as described in § 1054.701(i). For fuel tanks, state the production volume in terms of surface area and production volume for each fuel tank configuration and state the total surface area for the emission family. If you changed an FEL during the model year, identify the actual production volume associated with each FEL.

* * * * *

Subpart I—[Amended]

■ 262. Section 1054.801 is amended by revising the definitions for "Oxides of nitrogen", "Total hydrocarbon", and "Total hydrocarbon equivalent" to read as follows:

§ 1054.801 What definitions apply to this part?

* * * * *

Oxides of nitrogen has the meaning given in 40 CFR 1065.1001.

* * * * *

* * * * *

Total hydrocarbon has the meaning given in 40 CFR 1065.1001. This generally means the combined mass of organic compounds measured by the specified procedure for measuring total hydrocarbon, expressed as an atomic hydrocarbon with a hydrogen-to-carbon ratio of 1.85:1.

Total hydrocarbon equivalent has the meaning given in 40 CFR 1065.1001. This generally means the sum of the carbon mass contributions of non-oxygenated hydrocarbons, alcohols and aldehydes, or other organic compounds that are measured separately as contained in a gas sample, expressed as exhaust hydrocarbon from petroleum-fueled engines. The atomic hydrogen-to-carbon ratio of the equivalent hydrocarbon is 1.85:1.

* * * * *

PART 1060—CONTROL OF EVAPORATIVE EMISSIONS FROM NEW AND IN-USE NONROAD AND STATIONARY EQUIPMENT

■ 263. The authority citation for part 1060 continues to read as follows:

Authority: 42 U.S.C. 7401–7671q.

Subpart B—[Amended]

■ 264. Section 1060.103 is amended by revising paragraph (e) to read as follows:

§ 1060.103 What permeation emission control requirements apply for fuel tanks?

* * * * *

(e) Fuel caps may be certified separately relative to the permeation emission standard in paragraph (b) of this section using the test procedures specified in § 1060.521. Fuel caps certified alone do not need to meet the emission standard. Rather, fuel caps would be certified with a Family Emission Limit, which is used for demonstrating that fuel tanks meet the emission standard as described in § 1060.520(b)(5). For the purposes of this paragraph (e), gaskets or O-rings that are produced as part of an assembly with the fuel cap are considered part of the fuel cap.

* * * * *

■ 265. Section 1060.135 is amended by revising paragraph (a)(5) to read as follows:

§ 1060.135 How must I label and identify the engines and equipment I produce?

* * * * *

(a) * * *

(5) Readily visible in the final installation. It may be under a hinged door or other readily opened cover. It may not be hidden by any cover attached with screws or any similar designs. Labels on marine vessels (except personal watercraft) must be visible from the helm.

* * * * *

■ 266. Section 1060.137 is amended by revising paragraphs (a) introductory text and (a)(4) to read as follows:

§ 1060.137 How must I label and identify the fuel-system components I produce?

* * * * *

(a) Label the components identified in this paragraph (a), unless the components are too small to be properly labeled. Unless we approve otherwise, we consider parts large enough to be properly labeled if they have space for 12 characters in six-point font (approximately 2 mm × 12 mm). For these small parts, you may omit the label as long as you identify those part numbers in your maintenance and installation instructions.

* * * * *

(4) Fuel caps, as described in this paragraph (a)(4). Fuel caps must be labeled if they are separately certified under § 1060.103 or if the diurnal control system requires that the fuel tank hold pressure. Fuel caps must also be labeled if they are mounted directly

on the fuel tank, unless the fuel tank is certified based on a worst-case fuel cap.

* * * * *

Subpart F—[Amended]

■ 267. Section 1060.515 is amended by revising paragraph (c) to read as follows:

§ 1060.515 How do I test EPA Nonroad Fuel Lines and EPA Cold-Weather Fuel Lines for permeation emissions?

* * * * *

(c) Measure fuel line permeation emissions using the equipment and procedures for weight-loss testing specified in SAE J30 or SAE J1527 (incorporated by reference in § 1060.810). Start the measurement procedure within 8 hours after draining and refilling the fuel line. Perform the emission test over a sampling period of 14 days. Determine your final emission result based on the highest measured valued over the 14-day period.

* * * * *

■ 268. Section 1060.520 is amended as follows:

■ a. By adding paragraph (a)(4).

■ b. By removing and reserving paragraph (b)(3).

■ c. By revising paragraphs (b)(5)(ii)(B), (d)(8), (d)(9), and (d)(10).

§ 1060.520 How do I test fuel tanks for permeation emissions?

* * * * *

(a) * * *

(4) *Cap testing.* Perform durability cycles on fuel caps intended for use with handheld equipment by putting the fuel cap on and taking it off 300 times. Tighten the fuel cap each time in a way that represents the typical in-use experience.

(b) * * *

(5) * * *

(ii) * * *

(B) You may seal the fuel inlet with a nonpermeable covering if you separately account for permeation emissions from the fuel cap. This may involve a separate measurement of permeation emissions from a worst-case fuel cap as described in § 1060.521. This may also involve specifying a worst-case Family Emission Limit based on separately certified fuel caps as described in § 1060.103(e).

* * * * *

(d) * * *

(8) Measure weight loss daily by retaring the balance using the reference tank and weighing the sealed test tank. Calculate the cumulative weight loss in grams for each measurement. Calculate the coefficient of determination, r^2, based on a linear plot of cumulative weight loss vs. test days. Use the equation in 40 CFR 1065.602(k), with cumulative weight loss represented by y_i and cumulative time represented by y_{ref}. The daily measurements must be at approximately the same time each day. You may omit up to two daily measurements in any seven-day period. Test for ten full days, then determine when to stop testing as follows:

(i) You may stop testing after the measurement on the tenth day if r^2 is at or above 0.95 or if the measured value is less than 50 percent of the applicable standard. (Note that if a Family Emission Limit applies for the family, it is considered to be the applicable standard for that family.) This means that if you stop testing with an r^2 below 0.95, you may not use the data to show compliance with a Family Emission Limit less than twice the measured value.

(ii) If after ten days of testing your r^2 value is below 0.95 and your measured value is more than 50 percent of the applicable standard, continue testing for a total of 20 days or until r^2 is at or above 0.95. If r^2 is not at or above 0.95 within 20 days of testing, discontinue the test and precondition the fuel tank further until it has stabilized emission levels, then repeat the testing.

(9) Record the difference in mass between the reference tank and the test tank for each measurement. This value is M_i, where *i* is a counter representing the number of days elapsed. Subtract M_i from M_o and divide the difference by the internal surface area of the fuel tank. Divide this g/m^2 value by the number of test days (using at least two decimal places) to calculate the emission rate in g/m^2/day. Example: If a tank with an internal surface area of 0.720 m^2 weighed 1.31 grams less than the reference tank at the beginning of the test and weighed 9.86 grams less than the reference tank after soaking for 10.03 days, the emission rate would be—

$$((-1.31\ g) - (-9.82\ g))/0.720\ m^2/10.03\ days = 1.1784\ g/m^2/day$$

(10) Determine your final emission result based on the cumulative weight loss measured on the final day of testing. Round this result to the same number of decimal places as the emission standard.

* * * * *

Subpart G—[Amended]

■ 269. Section 1060.601 is amended by adding paragraph (h) to read as follows:

§ 1060.601 How do the prohibitions of 40 CFR 1068.101 apply with respect to the requirements of this part?

* * * * *

(h) If equipment manufacturers hold certificates of conformity for their equipment but they use only fuel-system components that have been certified by other companies, they may satisfy their defect-reporting obligations by tracking the information described in 40 CFR 1068.501(b)(1) related to possible defects, reporting this information to the appropriate component manufacturers, and keeping these records for eight years. Such equipment manufacturers will not be considered in violation of 40 CFR 1068.101(b)(6) for failing to perform investigations, make calculations, or submit reports to EPA as specified in 40 CFR 1068.501. *See* § 1060.5(a).

Subpart I—[Amended]

■ 270. Section 1060.801 is amended by revising the definitions for "Detachable fuel line", "Installed marine fuel tank", and "Sealed" and adding definitions for "Installed marine fuel line" and "Portable marine fuel line" to read as follows:

§ 1060.801 What definitions apply to this part?

* * * * *

Detachable fuel line means a fuel line or fuel line assembly intended to be used with a portable nonroad fuel tank and which is connected by special fittings to the fuel tank and/or engine for easy disassembly. Fuel lines that require a wrench or other tools to disconnect are not considered detachable fuel lines. Fuel lines that are labeled or marketed as USCG Type B1 fuel line as specified in 33 CFR 183.540 are not considered detachable fuel lines if they are sold to the ultimate purchaser without quick-connect fittings or similar hardware.

* * * * *

Installed marine fuel line means a fuel line designed for delivering fuel to a Marine SI engine that does not meet the definition of *portable marine fuel line.*

Installed marine fuel tank means a fuel tank designed for delivering fuel to a Marine SI engine that does not meet the definition of *portable marine fuel tanks.*

* * * * *

Portable marine fuel line means a detachable fuel line that is used or intended to be used to supply fuel to a marine engine during operation. This also includes any fuel line labeled or marketed at USCG Type B1 fuel line as specified in 33 CFR 183.540, whether or not it includes detachable connecting hardware; this is often called universal fuel line.

* * * * *

Sealed means lacking openings to the atmosphere that would allow a measurable amount of liquid or vapor to leak out under normal operating pressures or other pressures specified in this part. For example, you may generally establish a maximum value for operating pressures based on the highest pressure you would observe from an installed fuel tank during continuous equipment operation on a sunny day with ambient temperatures of 35 °C. A fuel system may be considered to have no measurable leak if it does not release bubbles when held underwater at the identified tank pressure for 60 seconds. This determination presumes the use of good engineering judgment; for example, it would not be appropriate to test the fuel tank such that small leaks would avoid detection by collecting in a cavity created by holding the tank with a certain orientation. Sealed fuel systems may have openings for emission controls or for fuel lines needed to route fuel to the engine.

* * * * *

PART 1065—ENGINE-TESTING PROCEDURES

■ 271. The authority citation for part 1065 continues to read as follows:

Authority: 42 U.S.C. 7401–7671q.

Subpart A—[Amended]

■ 272. Section 1065.1 is amended by revising paragraphs (d) and (g) to read as follows:

§ 1065.1 Applicability.

* * * * *

(d) Paragraph (a) of this section identifies the parts of the CFR that define emission standards and other requirements for particular types of engines. In this part, we refer to each of these other parts generically as the ”standard-setting part.” For example, 40 CFR part 1051 is always the standard-setting part for snowmobiles. Note that while 40 CFR part 86 is the standard-setting part for heavy-duty highway engines, this refers specifically to 40 CFR part 86, subpart A, and to certain portions of 40 CFR part 86, subpart N, as described in 40 CFR 86.1301.

* * * * *

(g) For additional information regarding these test procedures, visit our Web site at *http://www.epa.gov,* and in particular *http://www.epa.gov/nvfel/testing/regulations.htm*.

■ 273. Section 1065.2 is amended by revising paragraphs (a) and (b) to read as follows:

§ 1065.2 Submitting information to EPA under this part.

(a) You are responsible for statements and information in your applications for certification, requests for approved procedures, selective enforcement audits, laboratory audits, production-line test reports, field test reports, or any other statements you make to us related to this part 1065. If you provide statements or information to someone for submission to EPA, you are responsible for these statements and information as if you had submitted them to EPA yourself.

(b) In the standard-setting part and in 40 CFR 1068.101, we describe your obligation to report truthful and complete information and the consequences of failing to meet this obligation. *See* also 18 U.S.C. 1001 and 42 U.S.C. 7413(c)(2). This obligation applies whether you submit this information directly to EPA or through someone else.

* * * * *

■ 274. Section 1065.10 is amended by revising paragraphs (c)(2) and (c)(7) introductory text to read as follows:

§ 1065.10 Other procedures.

* * * * *

(c) * * *

(2) You may request to use special procedures if your engine cannot be tested using the specified procedures. For example, this may apply if your engine cannot operate on the specified duty cycle. In this case, tell us in writing why you cannot satisfactorily test your engine using this part's procedures and ask to use a different approach. We will approve your request if we determine that it would produce emission measurements that represent in-use operation and we determine that it can be used to show compliance with the requirements of the standard-setting part. Where we approve special procedures that differ substantially from the specified procedures, we may preclude you from participating in averaging, banking, and trading with the affected engine families.

* * * * *

(7) You may request to use alternate procedures that are equivalent to the allowed procedures, or procedures that are more accurate or more precise than the allowed procedures. The following provisions apply to requests for alternate procedures:

* * * * *

■ 275. Section 1065.15 is amended by revising paragraph (c) to read as follows:

§ 1065.15 Overview of procedures for laboratory and field testing.

* * * * *

(c) We generally set brake-specific emission standards over test intervals and/or duty cycles, as follows:

(1) *Engine operation.* Testing may involve measuring emissions and work in a laboratory-type environment or in the field, as described in paragraph (f) of this section. For most laboratory testing, the engine is operated over one or more duty cycles specified in the standard-setting part. However, laboratory testing may also include non-duty cycle testing (such as simulation of field testing in a laboratory). For field testing, the engine is operated under normal in-use operation. The standard-setting part specifies how test intervals are defined for field testing. Refer to the definitions of “duty cycle” and “test interval” in § 1065.1001. Note that a single duty cycle may have multiple test intervals and require weighting of results from multiple test intervals to calculate a composite brake-specific emissions value to compare to the standard.

(2) *Constituent determination.* Determine the total mass of each constituent over a test interval by selecting from the following methods:

(i) *Continuous sampling.* In continuous sampling, measure the constituent's concentration continuously from raw or dilute exhaust. Multiply this concentration by the continuous (raw or dilute) flow rate at the emission sampling location to determine the constituent's flow rate. Sum the constituent's flow rate continuously over the test interval. This sum is the total mass of the emitted constituent.

(ii) *Batch sampling.* In batch sampling, continuously extract and store a sample of raw or dilute exhaust for later measurement. Extract a sample proportional to the raw or dilute exhaust flow rate. You may extract and store a proportional sample of exhaust in an appropriate container, such as a bag, and then measure HC, CO, and NO_X concentrations in the container after the test interval. You may deposit PM from proportionally extracted exhaust onto an appropriate substrate, such as a filter. In this case, divide the PM by the amount of filtered exhaust to calculate the PM concentration. Multiply batch sampled concentrations by the total (raw or dilute) flow from which it was extracted during the test interval. This product is the total mass of the emitted constituent.

(iii) *Combined sampling.* You may use continuous and batch sampling

simultaneously during a test interval, as follows:

(A) You may use continuous sampling for some constituents and batch sampling for others.

(B) You may use continuous and batch sampling for a single constituent, with one being a redundant measurement. *See* § 1065.201 for more information on redundant measurements.

(3) *Work determination.* Determine work over a test interval by one of the following methods:

(i) *Speed and torque.* Synchronously multiply speed and brake torque to calculate instantaneous values for engine brake power. Sum engine brake power over a test interval to determine total work.

(ii) *Fuel consumed and brake-specific fuel consumption.* Directly measure fuel consumed or calculate it with chemical balances of the fuel, intake air, and exhaust. To calculate fuel consumed by a chemical balance, you must also measure either intake-air flow rate or exhaust flow rate. Divide the fuel consumed during a test interval by the brake-specific fuel consumption to determine work over the test interval. For laboratory testing, calculate the brake-specific fuel consumption using fuel consumed and speed and torque over a test interval. For field testing, refer to the standard-setting part and § 1065.915 for selecting an appropriate value for brake-specific fuel consumption.

* * * * *

Subpart B—[Amended]

■ 276. Section 1065.125 is amended by revising paragraphs (c) and (e) to read as follows:

§ 1065.125 Engine intake air.

* * * * *

(c) Maintain the temperature of intake air to (25 ± 5) °C, except as follows:

(1) Follow the standard-setting part if it specifies different temperatures.

(2) For engines above 560 kW, you may use 35 °C as the upper bound of the tolerance. However, your system must be capable of controlling the temperature to the 25 °C setpoint for any steady-state operation at > 30% of maximum engine power.

(3) You may ask us to allow you to apply a different setpoint for intake air temperature if it is necessary to remain consistent with the provisions of § 1065.10(c)(1) for testing during which ambient temperature will be outside this range.

* * * * *

(e) This paragraph (e) includes provisions for simulating charge-air cooling in the laboratory. This approach is described in paragraph (e)(1) of this section. Limits on using this approach are described in paragraphs (e)(2) and (3) of this section.

(1) Use a charge-air cooling system with a total intake-air capacity that represents production engines' in-use installation. Design any laboratory charge-air cooling system to minimize accumulation of condensate. Drain any accumulated condensate and completely close all drains before starting a duty cycle. Keep the drains closed during the emission test. Maintain coolant conditions as follows:

(i) Maintain a coolant temperature of at least 20 °C at the inlet to the charge-air cooler throughout testing. We recommend maintaining a coolant temperature of 25 ±5 °C at the inlet of the charge-air cooler.

(ii) At the engine conditions specified by the manufacturer, set the coolant flow rate to achieve an air temperature within ±5 °C of the value specified by the manufacturer after the charge-air cooler's outlet. Measure the air-outlet temperature at the location specified by the manufacturer. Use this coolant flow rate set point throughout testing. If the engine manufacturer does not specify engine conditions or the corresponding charge-air cooler air outlet temperature, set the coolant flow rate at maximum engine power to achieve a charge-air cooler air outlet temperature that represents in-use operation.

(iii) If the engine manufacturer specifies pressure-drop limits across the charge-air cooling system, ensure that the pressure drop across the charge-air cooling system at engine conditions specified by the manufacturer is within the manufacturer's specified limit(s). Measure the pressure drop at the manufacturer's specified locations.

(2) Using a constant flow rate as described in paragraph (e)(1) of this section may result in unrepresentative overcooling of the intake air. The provisions of this paragraph (e)(2) apply instead of the provisions of § 1065.10(c)(1) for this simulation. Our allowance to cool intake air as specified in this paragraph (e) does not affect your liability for field testing or for laboratory testing that is done in a way that better represents in-use operation. Where we determine that this allowance adversely affects your ability to demonstrate that your engines would comply with emission standards under in-use conditions, we may require you to use more sophisticated setpoints and controls of charge-air pressure drop, coolant temperature, and flow rate to achieve more representative results.

(3) This approach does not apply for field testing. You may not correct measured emission levels from field testing to account for any differences caused by the simulated cooling in the laboratory.

■ 277. Section 1065.140 is revised amended by revising paragraphs (c)(6), (e) introductory text, and (e)(4) to read as follows:

§ 1065.140 Dilution for gaseous and PM constituents.

* * * * *

(c) * * *

(6) *Aqueous condensation.* This paragraph (c)(6) describes how you must address aqueous condensation in the CVS. As described below, you may meet these requirements by preventing or limiting aqueous condensation in the CVS from the exhaust inlet to the last emission sample probe. *See* that paragraph for provisions related to the CVS between the last emission sample probe and the CVS flow meter. You may heat and/or insulate the dilution tunnel walls, as well as the bulk stream tubing downstream of the tunnel to prevent or limit aqueous condensation. Where we allow aqueous condensation to occur, use good engineering judgment to ensure that the condensation does not affect your ability to demonstrate that your engines comply with the applicable standards (*see* § 1065.10(a)).

(i) *Preventing aqueous condensation.* To prevent condensation, you must keep the temperature of internal surfaces, excluding any sample probes, above the dew point of the dilute exhaust passing through the CVS tunnel. Use good engineering judgment to monitor temperatures in the CVS. For the purposes of this paragraph (c)(6), assume that aqueous condensation is pure water condensate only, even though the definition of "aqueous condensation" in § 1065.1001 includes condensation of any constituents that contain water. No specific verification check is required under this paragraph (c)(6)(i), but we may ask you to show how you comply with this requirement. You may use engineering analysis, CVS tunnel design, alarm systems, measurements of wall temperatures, and calculation of water dew point to demonstrate compliance with this requirement. For optional CVS heat exchangers, you may use the lowest water temperature at the inlet(s) and outlet(s) to determine the minimum internal surface temperature.

(ii) *Limiting aqueous condensation.* This paragraph (c)(6)(ii) specifies limits of allowable condensation and requires

you to verify that the amount of condensation that occurs during each test interval does not exceed the specified limits.

(A) Use chemical balance equations in § 1065.655 to calculate the mole fraction of water in the dilute exhaust continuously during testing. Alternatively, you may continuously measure the mole fraction of water in the dilute exhaust prior to any condensation during testing. Use good engineering judgment to select, calibrate and verify water analyzers/detectors. The linearity verification requirements of § 1065.307 do not apply to water analyzers/detectors used to correct for the water content in exhaust samples.

(B) Use good engineering judgment to select and monitor locations on the CVS tunnel walls prior to the last emission sample probe. If you are also verifying limited condensation from the last emission sample probe to the CVS flow meter, use good engineering judgment to select and monitor locations on the CVS tunnel walls, optional CVS heat exchanger, and CVS flow meter. For optional CVS heat exchangers, you may use the lowest water temperature at the inlet(s) and outlet(s) to determine the minimum internal surface temperature. Identify the minimum surface temperature on a continuous basis.

(C) Identify the maximum potential mole fraction of dilute exhaust lost on a continuous basis during the entire test interval. This value must be less than or equal to 0.02 (*i.e.* 2%). Calculate on a continuous basis the mole fraction of water that would be in equilibrium with liquid water at the measured minimum surface temperature. Subtract this mole fraction from the mole fraction of water that would be in the exhaust without condensation (either measured or from the chemical balance), and set any negative values to zero. This difference is the potential mole fraction of the dilute exhaust that would be lost due to water condensation on a continuous basis.

(D) Integrate the product of the molar flow rate of the dilute exhaust and the potential mole fraction of dilute exhaust lost, and divide by the totalized dilute exhaust molar flow over the test interval. This is the potential mole fraction of the dilute exhaust that would be lost due to water condensation over the entire test interval. Note that this assumes no re-evaporation. This value must be less than or equal to 0.005 (*i.e.* 0.5%).

* * * * *

(e) *Dilution air temperature, dilution ratio, residence time, and temperature control of PM samples.* Dilute PM samples at least once upstream of transfer lines. You may dilute PM samples upstream of a transfer line using full-flow dilution, or partial-flow dilution immediately downstream of a PM probe. In the case of partial-flow dilution, you may have up to 26 cm of insulated length between the end of the probe and the dilution stage, but we recommend that the length be as short as practical. The intent of these specifications is to minimize heat transfer to or from the emission sample before the final stage of dilution, other than the heat you may need to add to prevent aqueous condensation. This is accomplished by initially cooling the sample through dilution. Configure dilution systems as follows:

* * * * *

(4) Control sample temperature to a (47 ±5) °C tolerance, as measured anywhere within 20 cm upstream or downstream of the PM storage media (such as a filter). Measure this temperature with a bare-wire junction thermocouple with wires that are (0.500 ±0.025) mm diameter, or with another suitable instrument that has equivalent performance.

■ 278. Section 1065.145 is revised to read as follows:

§ 1065.145 Gaseous and PM probes, transfer lines, and sampling system components.

(a) *Continuous and batch sampling.* Determine the total mass of each constituent with continuous or batch sampling, as described in § 1065.15(c)(2). Both types of sampling systems have probes, transfer lines, and other sampling system components that are described in this section.

(b) Options for engines with multiple exhaust stacks. Measure emissions from a test engine as described in this paragraph (b) if it has multiple exhaust stacks. You may choose to use different measurement procedures for different pollutants under this paragraph (b) for a given test. For purposes of this part 1065, the test engine includes all the devices related to converting the chemical energy in the fuel to the engine's mechanical output energy. This may or may not involve vehicle- or equipment-based devices. For example, all of an engine's cylinders are considered to be part of the test engine even if the exhaust is divided into separate exhaust stacks. As another example, all the cylinders of a diesel-electric locomotive are considered to be part of the test engine even if they transmit power through separate output shafts, such as might occur with multiple engine-generator sets working in tandem. Use one of the following procedures to measure emissions with multiple exhaust stacks:

(1) Route the exhaust flow from the multiple stacks into a single flow as described in § 1065.130(c)(6). Sample and measure emissions after the exhaust streams are mixed. Calculate the emissions as a single sample from the entire engine. We recommend this as the preferred option, since it requires only a single measurement and calculation of the exhaust molar flow for the entire engine.

(2) Sample and measure emissions from each stack and calculate emissions separately for each stack. Add the mass (or mass rate) emissions from each stack to calculate the emissions from the entire engine. Testing under this paragraph (b)(2) requires measuring or calculating the exhaust molar flow for each stack separately. If the exhaust molar flow in each stack cannot be calculated from combustion air flow(s), fuel flow(s), and measured gaseous emissions, and it is impractical to measure the exhaust molar flows directly, you may alternatively proportion the engine's calculated total exhaust molar flow rate (where the flow is calculated using combustion air mass flow(s), fuel mass flow(s), and emissions concentrations) based on exhaust molar flow measurements in each stack using a less accurate, non-traceable method. For example, you may use a total pressure probe and static pressure measurement in each stack.

(3) Sample and measure emissions from one stack and repeat the duty cycle as needed to collect emissions from each stack separately. Calculate the emissions from each stack and add the separate measurements to calculate the mass (or mass rate) emissions from the entire engine. Testing under this paragraph (b)(3) requires measuring or calculating the exhaust molar flow for each stack separately. You may alternatively proportion the engine's calculated total exhaust molar flow rate based on calculation and measurement limitations as described in paragraph (b)(2) of this section. Use the average of the engine's total power or work values from the multiple test runs to calculate brake-specific emissions. Divide the total mass (or mass rate) of each emission by the average power (or work). You may alternatively use the engine power or work associated with the corresponding stack during each test run if these values can be determined for each stack separately.

(4) Sample and measure emissions from each stack separately and calculate emissions for the entire engine based on the stack with the highest concentration. Testing under this paragraph (b)(4)

requires only a single exhaust flow measurement or calculation for the entire engine. You may determine which stack has the highest concentration by performing multiple test runs, reviewing the results of earlier tests, or using good engineering judgment. Note that the highest concentration of different pollutants may occur in different stacks. Note also that the stack with the highest concentration of a pollutant during a test interval for field testing may be a different stack than the one you identified based on average concentrations over a duty cycle.

(5) Sample emissions from each stack separately and combine the wet sample streams from each stack proportionally to the exhaust molar flows in each stack. Measure the emission concentrations and calculate the emissions for the entire engine based on these weighted concentrations. Testing under this paragraph (b)(5) requires measuring or calculating the exhaust molar flow for each stack separately during the test run to proportion the sample streams from each stack. If it is impractical to measure the exhaust molar flows directly, you may alternatively proportion the wet sample streams based on less accurate, non-traceable flow methods. For example, you may use a total pressure probe and static pressure measurement in each stack. The following restrictions apply for testing under this paragraph (b)(5):

(i) You must use an accurate, traceable measurement or calculation of the engine's total exhaust molar flow rate for calculating the mass of emissions from the entire engine.

(ii) You may dry the single, combined, proportional sample stream; you may not dry the sample streams from each stack separately.

(iii) You must measure and proportion the sample flows from each stack with active flow controls. For PM sampling, you must measure and proportion the diluted sample flows from each stack with active flow controls that use only smooth walls with no sudden change in cross-sectional area. For example, you may control the dilute exhaust PM sample flows using electrically conductive vinyl tubing and a control device that pinches the tube over a long enough transition length so no flow separation occurs.

(iv) For PM sampling, the transfer lines from each stack must be joined so the angle of the joining flows is 12.5° or less. Note that the exhaust manifold must meet the same specifications as the transfer line according to paragraph (d) of this section.

(6) Sample emissions from each stack separately and combine the wet sample streams from each stack equally. Measure the emission concentrations and calculate the emissions for the entire engine based on these measured concentrations. Testing under this paragraph (b)(6) assumes that the raw-exhaust and sample flows are the same for each stack. The following restrictions apply for testing under this paragraph (b)(6):

(i) You must measure and demonstrate that the sample flow from each stack is within 5% of the value from the stack with the highest sample flow. You may alternatively ensure that the stacks have equal flow rates without measuring sample flows by designing a passive sampling system that meets the following requirements:

(A) The probes and transfer line branches must be symmetrical, have equal lengths and diameters, have the same number of bends, and have no filters.

(B) If probes are designed such that they are sensitive to stack velocity, the stack velocity must be similar at each probe. For example, a static pressure probe used for gaseous sampling is not sensitive to stack velocity.

(C) The stack static pressure must be the same at each probe. You can meet this requirement by placing probes at the end of stacks that are vented to atmosphere.

(D) For PM sampling, the transfer lines from each stack must be joined so the angle of the joining flows is 12.5° or less. Note that the exhaust manifold must meet the same specifications as the transfer line according to paragraph (d) of this section.

(ii) You may use the procedure in this paragraph (b)(6) only if you perform an analysis showing that the resulting error due to imbalanced stack flows and concentrations is either at or below 2%. You may alternatively show that the resulting error does not impact your ability to demonstrate compliance with applicable standards. For example, you may use less accurate, non-traceable measurements of emission concentrations and molar flow in each stack and demonstrate that the imbalances in flows and concentrations cause 2% or less error.

(iii) For a two-stack engine, you may use the procedure in this paragraph (b)(6) only if you can show that the stack with the higher flow has the lower average concentration for each pollutant over the duty cycle.

(iv) You must use an accurate, traceable measurement or calculation of the engine's total exhaust molar flow rate for calculating the mass of emissions from the entire engine.

(v) You may dry the single, equally combined, sample stream; you may not dry the sample streams from each stack separately.

(vi) You may determine your exhaust flow rates with a chemical balance of exhaust gas concentrations and either intake air flow or fuel flow.

(c) *Gaseous and PM sample probes.* A probe is the first fitting in a sampling system. It protrudes into a raw or diluted exhaust stream to extract a sample, such that its inside and outside surfaces are in contact with the exhaust. A sample is transported out of a probe into a transfer line, as described in paragraph (d) of this section. The following provisions apply to sample probes:

(1) *Probe design and construction.* Use sample probes with inside surfaces of 300 series stainless steel or, for raw exhaust sampling, use any nonreactive material capable of withstanding raw exhaust temperatures. Locate sample probes where constituents are mixed to their mean sample concentration. Take into account the mixing of any crankcase emissions that may be routed into the raw exhaust. Locate each probe to minimize interference with the flow to other probes. We recommend that all probes remain free from influences of boundary layers, wakes, and eddies—especially near the outlet of a raw-exhaust tailpipe where unintended dilution might occur. Make sure that purging or back-flushing of a probe does not influence another probe during testing. You may use a single probe to extract a sample of more than one constituent as long as the probe meets all the specifications for each constituent.

(2) *Gaseous sample probes.* Use either single-port or multi-port probes for sampling gaseous emissions. You may orient these probes in any direction relative to the raw or diluted exhaust flow. For some probes, you must control sample temperatures, as follows:

(i) For probes that extract NO_X from diluted exhaust, control the probe's wall temperature to prevent aqueous condensation.

(ii) For probes that extract hydrocarbons for THC or NMHC analysis from the diluted exhaust of compression-ignition engines, 2-stroke spark-ignition engines, or 4-stroke spark-ignition engines below 19 kW, we recommend heating the probe to minimize hydrocarbon contamination consistent with good engineering judgment. If you routinely fail the contamination check in the 1065.520 pretest check, we recommend heating

the probe section to approximately 190 °C to minimize contamination.

(3) *PM sample probes.* Use PM probes with a single opening at the end. Orient PM probes to face directly upstream. If you shield a PM probe's opening with a PM pre-classifier such as a hat, you may not use the preclassifier we specify in paragraph (f)(1) of this section. We recommend sizing the inside diameter of PM probes to approximate isokinetic sampling at the expected mean flow rate.

(d) *Transfer lines.* You may use transfer lines to transport an extracted sample from a probe to an analyzer, storage medium, or dilution system, noting certain restrictions for PM sampling in § 1065.140(e). Minimize the length of all transfer lines by locating analyzers, storage media, and dilution systems as close to probes as practical. We recommend that you minimize the number of bends in transfer lines and that you maximize the radius of any unavoidable bend. Avoid using 90° elbows, tees, and cross-fittings in transfer lines. Where such connections and fittings are necessary, take steps, using good engineering judgment, to ensure that you meet the temperature tolerances in this paragraph (d). This may involve measuring temperature at various locations within transfer lines and fittings. You may use a single transfer line to transport a sample of more than one constituent, as long as the transfer line meets all the specifications for each constituent. The following construction and temperature tolerances apply to transfer lines:

(1) *Gaseous samples.* Use transfer lines with inside surfaces of 300 series stainless steel, PTFE, Viton™, or any other material that you demonstrate has better properties for emission sampling. For raw exhaust sampling, use a non-reactive material capable of withstanding raw exhaust temperatures. You may use in-line filters if they do not react with exhaust constituents and if the filter and its housing meet the same temperature requirements as the transfer lines, as follows:

(i) For NO_X transfer lines upstream of either an NO_2-to-NO converter that meets the specifications of § 1065.378 or a chiller that meets the specifications of § 1065.376, maintain a sample temperature that prevents aqueous condensation.

(ii) For THC transfer lines for testing compression-ignition engines, 2-stroke spark-ignition engines, or 4-stroke spark-ignition engines below 19 kW, maintain a wall temperature tolerance throughout the entire line of (191 ±11) °C. If you sample from raw exhaust, you may connect an unheated, insulated transfer line directly to a probe. Design the length and insulation of the transfer line to cool the highest expected raw exhaust temperature to no lower than 191 °C, as measured at the transfer line's outlet. For dilute sampling, you may use a transition zone between the probe and transfer line of up to 92 cm to allow your wall temperature to transition to (191 ±11) °C.

(2) *PM samples.* We recommend heated transfer lines or a heated enclosure to minimize temperature differences between transfer lines and exhaust constituents. Use transfer lines that are inert with respect to PM and are electrically conductive on the inside surfaces. We recommend using PM transfer lines made of 300 series stainless steel. Electrically ground the inside surface of PM transfer lines.

(e) *Optional sample-conditioning components for gaseous sampling.* You may use the following sample-conditioning components to prepare gaseous samples for analysis, as long as you do not install or use them in a way that adversely affects your ability to show that your engines comply with all applicable gaseous emission standards.

(1) *NO_2-to-NO converter.* You may use an NO_2-to-NO converter that meets the converter conversion verification specified in § 1065.378 at any point upstream of a NO_X analyzer, sample bag, or other storage medium.

(2) *Sample dryer.* You may use either type of sample dryer described in this paragraph (e)(2) to decrease the effects of water on gaseous emission measurements. You may not use a chemical dryer, or use dryers upstream of PM sample filters.

(i) *Osmotic-membrane.* You may use an osmotic-membrane dryer upstream of any gaseous analyzer or storage medium, as long as it meets the temperature specifications in paragraph (d)(1) of this section. Because osmotic-membrane dryers may deteriorate after prolonged exposure to certain exhaust constituents, consult with the membrane manufacturer regarding your application before incorporating an osmotic-membrane dryer. Monitor the dewpoint, T_{dew}, and absolute pressure, p_{total}, downstream of an osmotic-membrane dryer. You may use continuously recorded values of T_{dew} and p_{total} in the amount of water calculations specified in § 1065.645. For our testing we may use average temperature and pressure values over the test interval or a nominal pressure value that we estimate as the dryer's average pressure expected during testing as constant values in the amount of water calculations specified in § 1065.645. For your testing, you may use the maximum temperature or minimum pressure values observed during a test interval or duty cycle or the high alarm temperature setpoint or low alarm pressure setpoint as constant values in the calculations specified in § 1065.645. For your testing, you may also use a nominal p_{total}, which you may estimate as the dryer's lowest absolute pressure expected during testing.

(ii) *Thermal chiller.* You may use a thermal chiller upstream of some gas analyzers and storage media. You may not use a thermal chiller upstream of a THC measurement system for compression-ignition engines, 2-stroke spark-ignition engines, or 4-stroke spark-ignition engines below 19 kW. If you use a thermal chiller upstream of an NO_2-to-NO converter or in a sampling system without an NO_2-to-NO converter, the chiller must meet the NO_2 loss-performance check specified in § 1065.376. Monitor the dewpoint, T_{dew}, and absolute pressure, p_{total}, downstream of a thermal chiller. You may use continuously recorded values of T_{dew} and p_{total} in the amount of water calculations specified in § 1065.645. If it is valid to assume the degree of saturation in the thermal chiller, you may calculate T_{dew} based on the known chiller performance and continuous monitoring of chiller temperature, $T_{chiller}$. If it is valid to assume a constant temperature offset between $T_{chiller}$ and T_{dew}, due to a known and fixed amount of sample reheat between the chiller outlet and the temperature measurement location, you may factor in this assumed temperature offset value into emission calculations. If we ask for it, you must show by engineering analysis or by data the validity of any assumptions allowed by this paragraph (e)(2)(ii). For our testing we may use average temperature and pressure values over the test interval or a nominal pressure value that we estimate as the dryer's average pressure expected during testing as constant values in the calculations specified in § 1065.645. For your testing you may use the maximum temperature and minimum pressure values observed during a test interval or duty cycle or the high alarm temperature setpoint and the low alarm pressure setpoint as constant values in the amount of water calculations specified in § 1065.645. For your testing you may also use a nominal p_{total}, which you may estimate as the dryer's lowest absolute pressure expected during testing.

(3) *Sample pumps.* You may use sample pumps upstream of an analyzer or storage medium for any gas. Use sample pumps with inside surfaces of 300 series stainless steel, PTFE, or any other material that you demonstrate has

better properties for emission sampling. For some sample pumps, you must control temperatures, as follows:

(i) If you use a NO_X sample pump upstream of either an NO_2-to-NO converter that meets § 1065.378 or a chiller that meets § 1065.376, it must be heated to prevent aqueous condensation.

(ii) For testing compression-ignition engines, 2-stroke spark-ignition engines, or 4-stroke spark-ignition engines below 19 kW, if you use a THC sample pump upstream of a THC analyzer or storage medium, its inner surfaces must be heated to a tolerance of (191 ±11) °C.

(4) *Ammonia Scrubber.* You may use ammonia scrubbers for any or all gaseous sampling systems to prevent interference with NH_3, poisoning of the NO_2-to-NO converter, and deposits in the sampling system or analyzers. Follow the ammonia scrubber manufacturer's recommendations or use good engineering judgment in applying ammonia scrubbers.

(f) *Optional sample-conditioning components for PM sampling.* You may use the following sample-conditioning components to prepare PM samples for analysis, as long as you do not install or use them in a way that adversely affects your ability to show that your engines comply with the applicable PM emission standards. You may condition PM samples to minimize positive and negative biases to PM results, as follows:

(1) *PM preclassifier.* You may use a PM preclassifier to remove large-diameter particles. The PM preclassifier may be either an inertial impactor or a cyclonic separator. It must be constructed of 300 series stainless steel. The preclassifier must be rated to remove at least 50% of PM at an aerodynamic diameter of 10 μm and no more than 1% of PM at an aerodynamic diameter of 1 μm over the range of flow rates for which you use it. Follow the preclassifier manufacturer's instructions for any periodic servicing that may be necessary to prevent a buildup of PM. Install the preclassifier in the dilution system downstream of the last dilution stage. Configure the preclassifier outlet with a means of bypassing any PM sample media so the preclassifier flow may be stabilized before starting a test. Locate PM sample media within 75 cm downstream of the preclassifier's exit. You may not use this preclassifier if you use a PM probe that already has a preclassifier. For example, if you use a hat-shaped preclassifier that is located immediately upstream of the probe in such a way that it forces the sample flow to change direction before entering the probe, you may not use any other preclassifier in your PM sampling system.

(2) *Other components.* You may request to use other PM conditioning components upstream of a PM preclassifier, such as components that condition humidity or remove gaseous-phase hydrocarbons from the diluted exhaust stream. You may use such components only if we approve them under § 1065.10.

Subpart C—[Amended]

■ 279. Section 1065.201 is amended by revising paragraph (h) to read as follows:

§ 1065.201 Overview and general provisions.

* * * * *

(h) *Recommended practices.* This subpart identifies a variety of recommended but not required practices for proper measurements. We believe in most cases it is necessary to follow these recommended practices for accurate and repeatable measurements. However, we do not specifically require you to follow these recommended practices to perform a valid test, as long as you meet the required calibrations and verifications of measurement systems specified in subpart D of this part. Similarly, we are not required to follow all recommended practices, as long as we meet the required calibrations and verifications. Our decision to follow or not follow a given recommendation when testing your engine is not dependent on whether or not you followed it during your testing.

■ 280. Section 1065.205 is revised to read as follows:

§ 1065.205 Performance specifications for measurement instruments.

Your test system as a whole must meet all the applicable calibrations, verifications, and test-validation criteria specified in subparts D and F of this part or subpart J of this part for using PEMS and for performing field testing. We recommend that your instruments meet the specifications in Table 1 of this section for all ranges you use for testing. We also recommend that you keep any documentation you receive from instrument manufacturers showing that your instruments meet the specifications in Table 1 of this section.

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Table 1 of §1065.205–Recommended performance specifications for measurement instruments

Measurement Instrument	Measured quantity symbol	Complete System Rise time (t_{10-90}) and Fall time (t_{90-10})[a]	Recording update frequency	Accuracy[b]	Repeatability[b]	Noise[b]
Engine speed transducer	f_n	1 s	1 Hz means	2.0 % of pt. or 0.5 % of max.	1.0 % of pt. or 0.25 % of max.	0.05 % of max
Engine torque transducer	T	1 s	1 Hz means	2.0 % of pt. or 1.0 % of max.	1.0 % of pt. or 0.5 % of max	0.05 % of max.
Electrical work (active-power meter)	W	1 s	1 Hz means	2.0 % of pt. or 0.5 % of max.	1.0 % of pt. or 0.25 % of max.	0.05 % of max
General pressure transducer (not a part of another instrument)	p	5 s	1 Hz	2.0 % of pt. or 1.0 % of max.	1.0 % of pt. or 0.50 % of max.	0.1 % of max
Atmospheric pressure meter used for PM-stabilization and balance environments	p_{atmos}	50 s	5 times per hour	50 Pa	25 Pa	5 Pa
General purpose atmospheric pressure meter	p_{atmos}	50 s	5 times per hour	250 Pa	100Pa	50 Pa
Temperature sensor for PM-stabilization and balance environments	T	50 s	0.1 Hz	0.25 K	0.1 K	0.1 K
Other temperature sensor (not a part of another instrument)	T	10 s	0.5 Hz	0.4 % of pt. K or 0.2 % of max. K	0.2 % of pt. K or 0.1 % of max. K	0.1 % of max
Dewpoint sensor for intake air, PM-stabilization and balance environments	T_{dew}	50 s	0.1 Hz	0.25 K	0.1 K	0.02 K
Other dewpoint sensor	T_{dew}	50 s	0.1 Hz	1 K	0.5 K	0.1 K
Fuel flow meter (Fuel totalizer)	$\dot{m}$	5 s (N/A)	1 Hz (N/A)	2.0 % of pt. or 1.5 % of max.	1.0 % of pt. or 0.75 % of max.	0.5 % of max.
Total diluted exhaust meter (CVS) (With heat exchanger before meter)	$\dot{n}$	1 s (5 s)	1 Hz means (1 Hz)	2.0 % of pt. or 1.5 % of max.	1.0 % of pt. or 0.75 % of max.	1.0 % of max.

Dilution air, inlet air, exhaust, and sample flow meters	$\dot{n}$	1 s	1 Hz means of 5 Hz samples	2.5 % of pt. or 1.5 % of max.	1.25 % of pt. or 0.75 % of max.	1.0 % of max.
Continuous gas analyzer	x	5 s	1 Hz	2.0 % of pt. or 2.0 % of meas.	1.0 % of pt. or 1.0 % of meas.	1.0 % of max.
Batch gas analyzer	x	N/A	N/A	2.0 % of pt. or 2.0 % of meas.	1.0 % of pt. or 1.0 % of meas.	1.0 % of max.
Gravimetric PM balance	m_{PM}	N/A	N/A	See §1065.790	0.5 µg	N/A
Inertial PM balance	m_{PM}	5 s	1 Hz	2.0 % of pt. or 2.0 % of meas.	1.0 % of pt. or 1.0 % of meas.	0.2 % of max.

[a] The performance specifications identified in the table apply separately for rise time and fall time.

[b] Accuracy, repeatability, and noise are all determined with the same collected data, as described in §1065.305, and based on absolute values. "pt." refers to the overall flow-weighted mean value expected at the standard; "max." refers to the peak value expected at the standard over any test interval, not the maximum of the instrument's range; "meas" refers to the actual flow-weighted mean measured over any test interval.

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■ 281. Section 1065.240 is amended by revising paragraph (d) introductory text to read as follows:

§ 1065.240 Dilution air and diluted exhaust flow meters.

* * * * *

(d) *Exhaust cooling.* You may cool diluted exhaust upstream of a dilute-exhaust flow meter, as long as you observe all the following provisions:

* * * * *

■ 282. Section 1065.260 is amended by revising paragraph (c) to read as follows:

§ 1065.260 Flame-ionization detector.

* * * * *

(c) *Heated FID analyzers.* For compression-ignition engines, two-stroke spark-ignition engines, and four-stroke spark-ignition engines below 19 kW, you must use heated FID analyzers that maintain all surfaces that are exposed to emissions at a temperature of (191 ± 11) °C.

* * * * *

Subpart D—[Amended]

■ 283. Section 1065.303 is revised to read as follows:

§ 1065.303 Summary of required calibration and verifications

The following table summarizes the required and recommended calibrations and verifications described in this subpart and indicates when these have to be performed:

TABLE 1 OF § 1065.303—SUMMARY OF REQUIRED CALIBRATION AND VERIFICATIONS

Type of calibration or verification	Minimum frequency [a]
§ 1065.305: Accuracy, repeatability and noise	Accuracy: Not required, but recommended for initial installation. Repeatability: Not required, but recommended for initial installation. Noise: Not required, but recommended for initial installation.
§ 1065.307: Linearity verification	Speed: Upon initial installation, within 370 days before testing and after major maintenance. Torque: Upon initial installation, within 370 days before testing and after major maintenance. Electrical power: Upon initial installation, within 370 days before testing and after major maintenance. Fuel flow: Upon initial installation, within 370 days before testing, and after major maintenance. Clean gas and diluted exhaust flows: Upon initial installation, within 370 days before testing and after major maintenance, unless flow is verified by propane check or by carbon or oxygen balance. Raw exhaust flow: Upon initial installation, within 185 days before testing and after major maintenance, unless flow is verified by propane check or by carbon or oxygen balance.

TABLE 1 OF § 1065.303—SUMMARY OF REQUIRED CALIBRATION AND VERIFICATIONS—Continued

Type of calibration or verification	Minimum frequency [a]
	Gas dividers: Upon initial installation, within 370 days before testing, and after major maintenance. Gas analyzers: Upon initial installation, within 35 days before testing and after major maintenance. FTIR and photoacoustic analyzers: Upon initial installation, within 370 days before testing and after major maintenance. GC–ECD: Upon initial installation and after major maintenance. PM balance: Upon initial installation, within 370 days before testing and after major maintenance. Pressure, temperature, and dewpoint: Upon initial installation, within 370 days before testing and after major maintenance.
§ 1065.308: Continuous gas analyzer system response and updating-recording verification—for gas analyzers not continuously compensated for other gas species.	Upon initial installation or after system modification that would affect response.
§ 1065.309: Continuous gas analyzer system-response and updating-recording verification—for gas analyzers continuously compensated for other gas species.	Upon initial installation or after system modification that would affect response.
§ 1065.310: Torque	Upon initial installation and after major maintenance.
§ 1065.315: Pressure, temperature, dewpoint	Upon initial installation and after major maintenance.
§ 1065.320: Fuel flow	Upon initial installation and after major maintenance.
§ 1065.325: Intake flow	Upon initial installation and after major maintenance.
§ 1065.330: Exhaust flow	Upon initial installation and after major maintenance.
§ 1065.340: Diluted exhaust flow (CVS)	Upon initial installation and after major maintenance.
§ 1065.341: CVS and batch sampler verification [b]	Upon initial installation, within 35 days before testing, and after major maintenance.
§ 1065.342 Sample dryer verification	For thermal chillers: Upon installation and after major maintenance. For osmotic membranes; upon installation, within 35 days of testing, and after major maintenance.
§ 1065.345: Vacuum leak	For laboratory testing: Upon initial installation of the sampling system, within 8 hours before the start of the first test interval of each duty-cycle sequence, and after maintenance such as pre-filter changes. For field testing: After each installation of the sampling system on the vehicle, prior to the start of the field test, and after maintenance such as pre-filter changes.
§ 1065.350: CO_2 NDIR H_2O interference	Upon initial installation and after major maintenance.
§ 1065.355: CO NDIR CO_2 and H_2O interference	Upon initial installation and after major maintenance.
§ 1065.360: FID calibration	Calibrate all FID analyzers: Upon initial installation and after major maintenance.
THC FID optimization, and THC FID verification	Optimize and determine CH_4 response for THC FID analyzers: Upon initial installation and after major maintenance. Verify CH_4 response for THC FID analyzers: Upon initial installation, within 185 days before testing, and after major maintenance.
§ 1065.362: Raw exhaust FID O_2 interference	For all FID analyzers: Upon initial installation, and after major maintenance. For THC FID analyzers: Upon initial installation, after major maintenance, and after FID optimization according to § 1065.360.
§ 1065.365: Nonmethane cutter penetration	Upon initial installation, within 185 days before testing, and after major maintenance.
§ 1065.370: CLD CO_2 and H_2O quench	Upon initial installation and after major maintenance.
§ 1065.372: NDUV HC and H_2O interference	Upon initial installation and after major maintenance.
§ 1065.375: N_2O analyzer interference	Upon initial installation and after major maintenance.
§ 1065.376: Chiller NO_2 penetration	Upon initial installation and after major maintenance.
§ 1065.378: NO_2-to-NO converter conversion	Upon initial installation, within 35 days before testing, and after major maintenance.
§ 1065.390: PM balance and weighing	Independent verification: Upon initial installation, within 370 days before testing, and after major maintenance. Zero, span, and reference sample verifications: Within 12 hours of weighing, and after major maintenance.
§ 1065.395: Inertial PM balance and weighing	Independent verification: Upon initial installation, within 370 days before testing, and after major maintenance. Other verifications: Upon initial installation and after major maintenance.

[a] Perform calibrations and verifications more frequently, according to measurement system manufacturer instructions and good engineering judgment.

[b] The CVS verification described in § 1065.341 is not required for systems that agree within ±2% based on a chemical balance of carbon or oxygen of the intake air, fuel, and diluted exhaust.

■ 284. Section 1065.305 is amended by revising paragraphs (d)(4), (d)(5), and (d)(7) to read as follows:

§ 1065.305 Verifications for accuracy, repeatability, and noise.

* * * * *

(d) * * *

(4) Use the instrument to quantify a NIST-traceable reference quantity, $y_{ref.}$ For gas analyzers the reference gas must meet the specifications of § 1065.750. Select a reference quantity near the mean value expected during testing. For all gas analyzers, use a quantity near the flow-weighted mean concentration expected at the standard or expected during testing, whichever is greater. For noise verification, use the same zero gas from paragraph (d)(2) of this section as the reference quantity. In all cases, allow time for the instrument to stabilize while it measures the reference quantity. Stabilization time may include time to purge an instrument and time to account for its response.

(5) Sample and record values for 30 seconds (you may select a longer sampling period if the recording update frequency is less than 0.5 Hz), record the arithmetic mean, $\bar{y}_i$ and record the standard deviation, σ_i of the recorded values. Refer to § 1065.602 for an example of calculating arithmetic mean and standard deviation.

* * * * *

(7) Subtract the reference value, y_{ref} (or $\bar{y}_{refi}$), from the arithmetic mean, $\bar{y}_i$. Record this value as the error, $\varepsilon_{i.}$

* * * * *

■ 285. Section 1065.307 is amended by revising paragraphs (c)(6), (c)(11), (d), (e), and Table 1 of § 1065.307 to read as follows:

§ 1065.307 Linearity verification.

* * * * *

(c) * * *

(6) For all measured quantities, use instrument manufacturer recommendations and good engineering judgment to select reference values, $y_{refi,}$ that cover a range of values that you expect would prevent extrapolation beyond these values during emission testing. We recommend selecting a zero reference signal as one of the reference values of the linearity verification. For pressure, temperature, dewpoint, and GC–ECD linearity verifications, we recommend at least three reference values. For all other linearity verifications select at least ten reference values.

* * * * *

(11) At a recording frequency of at least *f* Hz, specified in Table 1 of § 1065.205, measure the reference value for 30 seconds (you may select a longer sampling period if the recording update frequency is less than 0.5 Hz) and record the arithmetic mean of the recorded values, $\bar{y}_i$. Refer to § 1065.602 for an example of calculating an arithmetic mean.

* * * * *

(d) *Reference signals.* This paragraph (d) describes recommended methods for generating reference values for the linearity-verification protocol in paragraph (c) of this section. Use reference values that simulate actual values, or introduce an actual value and measure it with a reference-measurement system. In the latter case, the reference value is the value reported by the reference-measurement system. Reference values and reference-measurement systems must be NIST-traceable. We recommend using calibration reference quantities that are NIST-traceable within 0.5% uncertainty, if not specified otherwise in other sections of this part 1065. Use the following recommended methods to generate reference values or use good engineering judgment to select a different reference:

(1) *Speed.* Run the engine or dynamometer at a series of steady-state speeds and use a strobe, a photo tachometer, or a laser tachometer to record reference speeds.

(2) *Torque.* Use a series of calibration weights and a calibration lever arm to simulate engine torque. You may instead use the engine or dynamometer itself to generate a nominal torque that is measured by a reference load cell or proving ring in series with the torque-measurement system. In this case use the reference load cell measurement as the reference value. Refer to § 1065.310 for a torque-calibration procedure similar to the linearity verification in this section.

(3) *Electrical power.* Use a controlled source of current and a watt-hour standard reference meter. Complete calibration systems that contain a current source and a reference watt-hour meter are commonly used in the electrical power distribution industry and are therefore commercially available.

(4) *Fuel rate.* Operate the engine at a series of constant fuel-flow rates or re-circulate fuel back to a tank through the fuel flow meter at different flow rates. Use a gravimetric reference measurement (such as a scale, balance, or mass comparator) at the inlet to the fuel-measurement system. Use a stopwatch or timer to measure the time intervals over which reference masses of fuel are introduced to the fuel measurement system. The reference fuel mass divided by the time interval is the reference fuel flow rate.

(5) *Flow rates—inlet air, dilution air, diluted exhaust, raw exhaust, or sample flow.* Use a reference flow meter with a blower or pump to simulate flow rates. Use a restrictor, diverter valve, a variable-speed blower or a variable-speed pump to control the range of flow rates. Use the reference meter's response as the reference values.

(i) *Reference flow meters.* Because the flow range requirements for these various flows are large, we allow a variety of reference meters. For example, for diluted exhaust flow for a full-flow dilution system, we recommend a reference subsonic venturi flow meter with a restrictor valve and a blower to simulate flow rates. For inlet air, dilution air, diluted exhaust for partial-flow dilution, raw exhaust, or sample flow, we allow reference meters such as critical flow orifices, critical flow venturis, laminar flow elements, master mass flow standards, or Roots meters. Make sure the reference meter is calibrated by the flow-meter manufacturer and its calibration is NIST-traceable. If you use the difference of two flow measurements to determine a net flow rate, you may use one of the measurements as a reference for the other.

(ii) *Reference flow values.* Because the reference flow is not absolutely constant, sample and record values of $\dot{n}_{refi}$ for 30 seconds and use the arithmetic mean of the values, $\overline{\dot{n}}_{ref}$, as the reference value. Refer to § 1065.602 for an example of calculating arithmetic mean.

(6) *Gas division.* Use one of the two reference signals:

(i) At the outlet of the gas-division system, connect a gas analyzer that meets the linearity verification described in this section and has not been linearized with the gas divider being verified. For example, verify the linearity of an analyzer using a series of reference analytical gases directly from compressed gas cylinders that meet the specifications of § 1065.750. We recommend using a FID analyzer or a PMD or MPD O_2 analyzer because of their inherent linearity. Operate this analyzer consistent with how you would operate it during an emission test. Connect a span gas to the gas-divider inlet. Use the gas-division system to divide the span gas with purified air or nitrogen. Select gas divisions that you typically use. Use a selected gas division as the measured value. Use the analyzer response divided by the span gas concentration as the reference gas-division value.

Because the instrument response is not absolutely constant, sample and record values of x_{refi} for 30 seconds and use the arithmetic mean of the values, $\bar{x}_{ref}$, as the reference value. Refer to § 1065.602 for an example of calculating arithmetic mean.

(ii) Using good engineering judgment and gas divider manufacturer recommendations, use one or more reference flow meters to measure the flow rates of the gas divider and verify the gas-division value.

(7) *Continuous constituent concentration.* For reference values, use a series of gas cylinders of known gas concentration or use a gas-division system that is known to be linear with a span gas. Gas cylinders, gas-division systems, and span gases that you use for reference values must meet the specifications of § 1065.750.

(8) *Temperature.* You may perform the linearity verification for temperature measurement systems with thermocouples, RTDs, and thermistors by removing the sensor from the system and using a simulator in its place. Use a NIST-traceable simulator that is independently calibrated and, as appropriate, cold-junction compensated. The simulator uncertainty scaled to temperature must be less than 0.5% of $T_{max.}$ If you use this option, you must use sensors that the supplier states are accurate to better than 0.5% of T_{max} compared with their standard calibration curve.

(e) *Measurement systems that require linearity verification.* Table 1 of this section indicates measurement systems that require linearity verifications, subject to the following provisions:

(1) Perform a linearity verification more frequently based on the instrument manufacturer's recommendation or good engineering judgment.

(2) The expression "x_{min}" refers to the reference value used during the linearity verification that is closest to zero. This is the value used to calculate the first tolerance in Table 1 of this section using the intercept, $a_{0.}$ Note that this value may be zero, positive, or negative depending on the reference values. For example, if the reference values chosen to validate a pressure transducer vary from −10 to −1 kPa, x_{min} is −1 kPa. If the reference values used to validate a temperature device vary from 290 to 390 K, x_{min} is 290 K.

(3) The expression "max" generally refers to the absolute value of the reference value used during the linearity verification that is furthest from zero. This is the value used to scale the first and third tolerances in Table 1 of this section using a_0 and *SEE.* For example, if the reference values chosen to validate a pressure transducer vary from −10 to −1 kPa, then p_{max} is +10 kPa. If the reference values used to validate a temperature device vary from 290 to 390 K, then T_{max} is 390 K. For gas dividers where "max" is expressed as, x_{max}/x_{span}; x_{max} is the maximum gas concentration used during the verification, x_{span} is the undivided, undiluted, span gas concentration, and the resulting ratio is the maximum divider point reference value used during the verification (typically 1). The following are special cases where "max" refers to a different value:

(i) For linearity verification with a PM balance, m_{max} refers to the typical mass of a PM filter.

(ii) For linearity verification of torque on the engine's primary output shaft, T_{max} refers to the manufacturer's specified engine torque peak value of the lowest torque engine to be tested.

(4) The specified ranges are inclusive. For example, a specified range of 0.98–1.02 for a_1 means $0.98 \leq a_1 \leq 1.02$.

(5) These linearity verifications are optional for systems that pass the flow-rate verification for diluted exhaust as described in § 1065.341 (the propane check) or for systems that agree within ±2% based on a chemical balance of carbon or oxygen of the intake air, fuel, and exhaust.

(6) You must meet the a_1 criteria for these quantities only if the absolute value of the quantity is required, as opposed to a signal that is only linearly proportional to the actual value.

(7) Linearity checks are required for the following temperature measurements:

(i) The following temperature measurements always require linearity checks:

(A) Air intake.

(B) Aftertreatment bed(s), for engines tested with aftertreatment devices subject to cold-start testing.

(C) Dilution air for PM sampling, including CVS, double-dilution, and partial-flow systems.

(D) PM sample, if applicable.

(E) Chiller sample, for gaseous sampling systems that use thermal chillers to dry samples and use chiller temperature to calculate the dewpoint at the outlet of the chiller. For your testing, if you choose to use a high alarm temperature setpoint for the chiller temperature as a constant value in the amount of water calculations in § 1065.645, you may use good engineering judgment to verify the accuracy of the high alarm temperature setpoint in lieu of the linearity verification on the chiller temperature. We recommend that you input a reference simulated temperature signal below the alarm trip point, increase this signal until the high alarm trips, and verify that the alarm trip point value is no less than 2.0 °C below the reference value at the trip point.

(ii) Linearity checks are required for the following temperature measurements if these temperature measurements are specified by the engine manufacturer:

(A) Fuel inlet.

(B) Air outlet to the test cell's charge air cooler air outlet, for engines tested with a laboratory heat exchanger that simulates an installed charge air cooler.

(C) Coolant inlet to the test cell's charge air cooler, for engines tested with a laboratory heat exchanger that simulates an installed charge air cooler.

(D) Oil in the sump/pan.

(E) Coolant before the thermostat, for liquid-cooled engines.

(8) Linearity checks are required for the following pressure measurements:

(i) The following pressure measurements always require linearity checks:

(A) Air intake restriction.

(B) Exhaust back pressure.

(C) Barometer.

(D) CVS inlet gage pressure.

(E) Sample dryer, for gaseous sampling systems that use either osmotic-membrane or thermal chillers to dry samples. For your testing, if you choose to use a low alarm pressure setpoint for the sample dryer pressure as a constant value in the amount of water calculations in § 1065.645, you may use good engineering judgment to verify the accuracy of the low alarm pressure setpoint in lieu of the linearity verification on the sample dryer pressure. We recommend that you input a reference pressure signal above the alarm trip point, decrease this signal until the low alarm trips, and verify that the trip point value is no more than 4.0 kPa above the reference value at the trip point.

(ii) Linearity checks are required for the following pressure measurements if these pressure measurements are specified by the engine manufacturer:

(A) The test cell's charge air cooler and interconnecting pipe pressure drop, for turbo-charged engines tested with a laboratory heat exchanger that simulates an installed charge air cooler.

(B) Fuel outlet.

TABLE 1 OF § 1065.307—MEASUREMENT SYSTEMS THAT REQUIRE LINEARITY VERIFICATIONS—CONTINUED

Measurement system	Quantity	Minimum verification frequency	Linearity criteria			
			$\lvert x_{min}(a_1 - 1) + a_0 \rvert$	a_1	*SEE*	r^2
Speed	f_n	Within 370 days before testing.	≤0.05% · f_{nmax}	0.98–1.02	≤2% · f_{nmax}	≥0.990
Torque	T	Within 370 days before testing.	≤1% · T_{max}	0.98–1.02	≤2% · T_{max}	≥0.990
Electrical power	P	Within 370 days before testing.	≤1% · P_{max}	0.98–1.02	≤2% · P_{max}	≥0.990
Fuel flow rate	$\dot{m}$	Within 370 days before testing.	≤1% · $\dot{m}_{max}$	0.98–1.02	≤2% · $\dot{m}_{max}$	>0.990
Intake-air flow rate	$\dot{n}$	Within 370 days before testing.	≤1% · $\dot{n}_{max}$	0.98–1.02	≤2% · $\dot{n}_{max}$	≥0.990
Dilution air flow rate	$\dot{n}$	Within 370 days before testing.	≤1% · $\dot{n}_{max}$	0.98–1.02	≤2% · $\dot{n}_{max}$	≥0.990
Diluted exhaust flow rate.	$\dot{n}$	Within 370 days before testing.	≤1% · $\dot{n}_{max}$	0.98–1.02	≤2% · $\dot{n}_{max}$	≥0.990
Raw exhaust flow rate.	$\dot{n}$	Within 185 days before testing.	≤1% · $\dot{n}_{max}$	0.98–1.02	≤2% · $\dot{n}_{max}$	≥0.990
Batch sampler flow rates.	$\dot{n}$	Within 370 days before testing.	≤1% · $\dot{n}_{max}$	0.98–1.02	≤2% · $\dot{n}_{max}$	≥0.990
Gas dividers	x/x_{span}	Within 370 days before testing.	≤0.5% · x_{max}/x_{span}	0.98–1.02	≤2% · x_{max}/x_{span}	>0.990
Gas analyzers for laboratory testing.	x	Within 35 days before testing.	≤0.5% · x_{max}	0.99–1.01	≤1% · x_{max}	≥0.998
Gas analyzers for field testing.	x	Within 35 days before testing.	≤1% · x_{max}	0.99–1.01	≤1% · x_{max}	≥0.998
PM balance	m	Within 370 days before testing.	≤1% · m_{max}	0.99–1.01	≤1% · m_{max}	≥0.998
Pressures	p	Within 370 days before testing.	≤1% · p_{max}	0.99–1.01	≤1% · p_{max}	≥0.998
Dewpoint for intake air, PM-stabilization and balance environments.	T_{dew}	Within 370 days before testing.	≤0.5% · T_{dewmax}	0.99–1.01	≤0.5% · T_{dewmax}	≥0.998
Other dewpoint measurements.	T_{dew}	Within 370 days before testing.	≤1% · T_{dewmax}	0.99–1.01	≤1% · T_{dewmax}	≥0.998
Analog-to-digital conversion of temperature signals.	T	Within 370 days before testing.	≤1% · T_{max}	0.99–1.01	≤1% · T_{max}	≥0.998

■ 286. Section 1065.309 is amended by revising paragraph (d)(2) to read as follows:

§ 1065.309 Continuous gas analyzer system-response and updating-recording verification—for gas analyzers continuously compensated for other gas species.

* * * * *

(d) * * *

(2) *Equipment setup.* We recommend using minimal lengths of gas transfer lines between all connections and fast-acting three-way valves (2 inlets, 1 outlet) to control the flow of zero and blended span gases to the sample system's probe inlet or a tee near the outlet of the probe. Normally the gas flow rate is higher than the probe sample flow rate and the excess is overflowed out the inlet of the probe. If the gas flow rate is lower than the probe flow rate, the gas concentrations must be adjusted to account for the dilution from ambient air drawn into the probe. Select span gases for the species being continuously combined, other than H_2O. Select concentrations of compensating species that will yield concentrations of these species at the analyzer inlet that covers the range of concentrations expected during testing. You may use binary or multi-gas span gases. You may use a gas blending or mixing device to blend span gases. A gas blending or mixing device is recommended when blending span gases diluted in N_2 with span gases diluted in air. You may use a multi-gas span gas, such as NO-CO-CO_2-C_3H_8-CH_4, to verify multiple analyzers at the same time. In designing your experimental setup, avoid pressure pulsations due to stopping the flow through the gas blending device. If H_2O correction is applicable, then span gases must be humidified before entering the analyzer; however, you may not humidify NO_2 span gas by passing it through a sealed humidification vessel that contains water. You must humidify NO_2 span gas with another moist gas stream. We recommend humidifying your NO-CO-CO_2-C_3H_8-CH_4, balance N_2 blended gas by flowing the gas mixture through a sealed vessel that humidifies the gas by bubbling it through distilled water and then mixing the gas with dry NO_2 gas, balance purified synthetic air. If your system does not use a sample dryer to remove water from the sample gas, you must humidify your span gas to the highest sample H_2O content that you estimate during emission sampling. If your system uses a sample dryer during testing, it must pass the sample dryer verification check in § 1065.342, and you must humidify your span gas to an H_2O content greater than or equal to the level determined in § 1065.145(e)(2). If you are humidifying span gases without NO_2, use good engineering judgment to ensure that the wall temperatures in the transfer lines, fittings, and valves from the humidifying system to the probe are above the dewpoint required for the target H_2O content. If you are humidifying span gases with NO_2, use good engineering judgment to ensure that there is no condensation in the transfer lines, fittings, or valves from the point where humidified gas is mixed

with NO_2 span gas to the probe. We recommend that you design your setup so that the wall temperatures in the transfer lines, fittings, and valves from the humidifying system to the probe are at least 5 °C above the local sample gas dewpoint. Operate the measurement and sample handling system as you do for emission testing. Make no modifications to the sample handling system to reduce the risk of condensation. Flow humidified gas through the sampling system before this check to allow stabilization of the measurement system's sampling handling system to occur, as it would for an emission test.

* * * * *

■ 287. Section 1065.315 is amended by revising paragraph (a)(2) to read as follows:

§ 1065.315 Pressure, temperature, and dewpoint calibration.

(a) * * *

(2) *Temperature.* We recommend digital dry-block or stirred-liquid temperature calibrators, with data logging capabilities to minimize transcription errors. We recommend using calibration reference quantities that are NIST-traceable within 0.5% uncertainty. You may perform the linearity verification for temperature measurement systems with thermocouples, RTDs, and thermistors by removing the sensor from the system and using a simulator in its place. Use a NIST-traceable simulator that is independently calibrated and, as appropriate, cold-junction compensated. The simulator uncertainty scaled to temperature must be less than 0.5% of $T_{max.}$ If you use this option, you must use sensors that the supplier states are accurate to better than 0.5% of T_{max} compared with their standard calibration curve.

* * * * *

■ 288. Section 1065.342 is amended by revising paragraphs (a), (c), (d)(4), and (d)(7) to read as follows:

§ 1065.342 Sample dryer verification.

(a) *Scope and frequency.* If you use a sample dryer as allowed in § 1065.145(e)(2) to remove water from the sample gas, verify the performance upon installation, after major maintenance, for thermal chiller. For osmotic membrane dryers, verify the performance upon installation, after major maintenance, and within 35 days of testing.

* * * * *

(c) *System requirements.* The sample dryer must meet the specifications as determined in § 1065.145(e)(2) for dewpoint, $T_{dew,}$ and absolute pressure, $p_{total,}$ downstream of the osmotic-membrane dryer or thermal chiller.

(d) * * *

(4) Maintain the sample lines, fittings, and valves from the location where the humidified gas water content is measured to the inlet of the sampling system at a temperature at least 5 °C above the local humidified gas dewpoint. For dryers used in NO_X sample systems, verify the sample system components used in this verification prevent aqueous condensation as required in § 1065.145(d)(1)(i). We recommend that the sample system components be maintained at least 5 °C above the local humidified gas dewpoint to prevent aqueous condensation.

* * * * *

(7) The sample dryer meets the verification if the dewpoint at the sample dryer pressure as measured in paragraph (d)(6) of this section is less than the dewpoint corresponding to the sample dryer specifications as determined in § 1065.145(e)(2) plus 2 °C or if the mole fraction of water as measured in (d)(6) is less than the corresponding sample dryer specifications plus 0.002 mol/mol.

* * * * *

■ 289. Section 1065.345 is amended by revising paragraphs (a) and (e)(1)(iii) to read as follows:

§ 1065.345 Vacuum-side leak verification.

(a) *Scope and frequency.* Verify that there are no significant vacuum-side leaks using one of the leak tests described in this section. For laboratory testing, perform the vacuum-side leak verification upon initial sampling system installation, within 8 hours before the start of the first test interval of each duty-cycle sequence, and after maintenance such as pre-filter changes. For field testing, perform the vacuum-side leak verification after each installation of the sampling system on the vehicle, prior to the start of the field test, and after maintenance such as pre-filter changes. This verification does not apply to any full-flow portion of a CVS dilution system.

* * * * *

(e) * * *

(1) * * *

(iii) Close a leak-tight valve located in the sample transfer line within 92 cm of the probe.

* * * * *

■ 290. Section 1065.350 is amended by revising paragraph (d) to read as follows:

§ 1065.350 H_2O interference verification for CO_2 NDIR analyzers.

* * * * *

(d) *Procedure.* Perform the interference verification as follows:

(1) Start, operate, zero, and span the CO_2 NDIR analyzer as you would before an emission test. If the sample is passed through a dryer during emission testing, you may run this verification test with the dryer if it meets the requirements of § 1065.342. Operate the dryer at the same conditions as you will for an emission test. You may also run this verification test without the sample dryer.

(2) Create a humidified test gas by bubbling zero gas that meets the specifications in § 1065.750 through distilled water in a sealed vessel. If the sample is not passed through a dryer during emission testing, control the vessel temperature to generate an H_2O level at least as high as the maximum expected during emission testing. If the sample is passed through a dryer during emission testing, control the vessel temperature to generate an H_2O level at least as high as the level determined in § 1065.145(e)(2) for that dryer.

(3) Introduce the humidified test gas into the sample system. You may introduce it downstream of any sample dryer, if one is used during testing.

(4) If the sample is not passed through a dryer during this verification test, measure the water mole fraction, $x_{H2O,}$ of the humidified test gas, as close as possible to the inlet of the analyzer. For example, measure dewpoint, $T_{dew,}$ and absolute pressure, $p_{total,}$ to calculate $x_{H2O.}$ Verify that the water content meets the requirement in paragraph (d)(2) of this section. If the sample is passed through a dryer during this verification test, you must verify that the water content of the humidified test gas downstream of the vessel meets the requirement in paragraph (d)(2) of this section based on either direct measurement of the water content (*e.g.,* dewpoint and pressure) or an estimate based on the vessel pressure and temperature. Use good engineering judgment to estimate the water content. For example, you may use previous direct measurements of water content to verify the vessel's level of saturation.

(5) If a sample dryer is not used in this verification test, use good engineering judgment to prevent condensation in the transfer lines, fittings, or valves from the point where x_{H2O} is measured to the analyzer. We recommend that you design your system so the wall temperatures in the transfer lines, fittings, and valves from the point where x_{H2O} is measured to the analyzer are at

least 5 °C above the local sample gas dewpoint.

(6) Allow time for the analyzer response to stabilize. Stabilization time may include time to purge the transfer line and to account for analyzer response.

(7) While the analyzer measures the sample's concentration, record 30 seconds of sampled data. Calculate the arithmetic mean of this data. The analyzer meets the interference verification if this value is within (0 ±0.4) mmol/mol.

■ 291. Section 1065.355 is amended by revising paragraphs (d) and (e)(1) to read as follows:

§ 1065.355 H_2O and CO_2 interference verification for CO NDIR analyzers.

* * * * *

(d) *Procedure.* Perform the interference verification as follows:

(1) Start, operate, zero, and span the CO NDIR analyzer as you would before an emission test. If the sample is passed through a dryer during emission testing, you may run this verification test with the dryer if it meets the requirements of § 1065.342. Operate the dryer at the same conditions as you will for an emission test. You may also run this verification test without the sample dryer.

(2) Create a humidified CO_2 test gas by bubbling a CO_2 span gas that meets the specifications in § 1065.750 through distilled water in a sealed vessel. If the sample is not passed through a dryer during emission testing, control the vessel temperature to generate an H_2O level at least as high as the maximum expected during emission testing. If the sample is passed through a dryer during emission testing, control the vessel temperature to generate an H_2O level at least as high as the level determined in § 1065.145(e)(2) for that dryer. Use a CO_2 span gas concentration at least as high as the maximum expected during testing.

(3) Introduce the humidified CO_2 test gas into the sample system. You may introduce it downstream of any sample dryer, if one is used during testing.

(4) If the sample is not passed through a dryer during this verification test, measure the water mole fraction, $x_{H2O,}$ of the humidified CO_2 test gas as close as possible to the inlet of the analyzer. For example, measure dewpoint, $T_{dew,}$ and absolute pressure, $p_{total,}$ to calculate $x_{H2O.}$ Verify that the water content meets the requirement in paragraph (d)(2) of this section. If the sample is passed through a dryer during this verification test, you must verify that the water content of the humidified test gas downstream of the vessel meets the requirement in paragraph (d)(2) of this section based on either direct measurement of the water content (*e.g.,* dewpoint and pressure) or an estimate based on the vessel pressure and temperature. Use good engineering judgment to estimate the water content. For example, you may use previous direct measurements of water content to verify the vessel's level of saturation.

(5) If a sample dryer is not used in this verification test, use good engineering judgment to prevent condensation in the transfer lines, fittings, or valves from the point where x_{H2O} is measured to the analyzer. We recommend that you design your system so that the wall temperatures in the transfer lines, fittings, and valves from the point where x_{H2O} is measured to the analyzer are at least 5 °C above the local sample gas dewpoint.

(6) Allow time for the analyzer response to stabilize. Stabilization time may include time to purge the transfer line and to account for analyzer response.

(7) While the analyzer measures the sample's concentration, record its output for 30 seconds. Calculate the arithmetic mean of this data.

(8) The analyzer meets the interference verification if the result of paragraph (d)(7) of this section meets the tolerance in paragraph (c) of this section.

(9) You may also run interference procedures for CO_2 and H_2O separately. If the CO_2 and H_2O levels used are higher than the maximum levels expected during testing, you may scale down each observed interference value by multiplying the observed interference by the ratio of the maximum expected concentration value to the actual value used during this procedure. You may run separate interference concentrations of H_2O (down to 0.025 mol/mol H_2O content) that are lower than the maximum levels expected during testing, but you must scale up the observed H_2O interference by multiplying the observed interference by the ratio of the maximum expected H_2O concentration value to the actual value used during this procedure. The sum of the two scaled interference values must meet the tolerance in paragraph (c) of this section.

(e) * * *

(1) You may omit this verification if you can show by engineering analysis that for your CO sampling system and your emission-calculation procedures, the combined CO_2 and H_2O interference for your CO NDIR analyzer always affects your brake-specific CO emission results within ±0.5% of the applicable CO standard.

* * * * *

■ 292. Section 1065.360 is amended by revising paragraph (e)(2) to read as follows:

§ 1065.360 FID optimization and verification.

* * * * *

(e) * * *

(2) If $RF_{CH4[THC\text{-}FID]}$ is not within the tolerance specified in this paragraph (e), re-optimize the FID response as described in paragraph (c) of this section.

* * * * *

■ 293. Section 1065.370 is amended by revising paragraphs (e)(5) and (g)(1) to read as follows:

§ 1065.370 CLD CO_2 and H_2O quench verification.

* * * * *

(e) * * *

(5) Humidify the NO span gas by bubbling it through distilled water in a sealed vessel. If the humidified NO span gas sample does not pass through a sample dryer for this verification test, control the vessel temperature to generate an H_2O level approximately equal to the maximum mole fraction of H_2O expected during emission testing. If the humidified NO span gas sample does not pass through a sample dryer, the quench verification calculations in § 1065.675 scale the measured H_2O quench to the highest mole fraction of H_2O expected during emission testing. If the humidified NO span gas sample passes through a dryer for this verification test, control the vessel temperature to generate an H_2O level at least as high as the level determined in § 1065.145(e)(2). For this case, the quench verification calculations in § 1065.675 do not scale the measured H_2O quench.

* * * * *

(g) * * *

(1) You may omit this verification if you can show by engineering analysis that for your NO_X sampling system and your emission calculation procedures, the combined CO_2 and H_2O interference for your NO_X CLD analyzer always affects your brake-specific NO_X emission results within no more than ±1.0% of the applicable NO_X standard. If you certify to a combined emission standard (such as a NO_X + NMHC standard), scale your NO_X results to the combined standard based on the measured results (after incorporating deterioration factors, if applicable). For example, if your final NO_X + NMHC value is half of the emission standard,

double the NO_X result to estimate the level of NO_X emissions corresponding to the applicable standard.

* * * * *

■ 294. Section 1065.390 is amended by revising paragraph (d)(9) to read as follows:

§ 1065.390 PM balance verifications and weighing process verification.

* * * * *

(d) * * *

(9) If any of the reference filters' observed mass changes by more than that allowed under this paragraph, you must invalidate all PM mass determinations made since the last successful reference media (*e.g.* filter) mass validation. You may discard reference PM media (*e.g.* filters) if only one of the filter's mass changes by more than the allowable amount and you can positively identify a special cause for that filter's mass change that would not have affected other in-process filters. Thus, the validation can be considered a success. In this case, you do not have to include the contaminated reference media when determining compliance with paragraph (d)(10) of this section, but the affected reference filter must be immediately discarded and replaced prior to the next weighing session.

* * * * *

Subpart F—[Amended]

■ 295. Section 1065.501 is amended by revising paragraph (b)(2) to read as follows:

§ 1065.501 Overview.

* * * * *

(b) * * *

(2) *Steady-state cycles.* Steady-state duty cycles are typically specified in the standard-setting part as a list of discrete operating points (modes or notches), where each operating point has one value of a normalized speed command and one value of a normalized torque (or power) command. Ramped-modal cycles for steady-state testing also list test times for each mode and transition times between modes where speed and torque are linearly ramped between modes, even for cycles with % power. Start a steady-state cycle as a hot running test, where you start to measure emissions after an engine is started, warmed up and running. You may run a steady-state duty cycle as a discrete-mode cycle or a ramped-modal cycle, as follows:

(i) *Discrete-mode cycles.* Before emission sampling, stabilize an engine at the first discrete mode. Sample emissions and other parameters for that mode in the same manner as a transient cycle, with the exception that reference speed and torque values are constant. Record mean values for that mode, and then stabilize the engine at the next mode. Continue to sample each mode discretely as separate test intervals and calculate weighted emission results according to the standard-setting part.

(ii) *Ramped-modal cycles.* Perform ramped-modal cycles similar to the way you would perform transient cycles, except that ramped-modal cycles involve mostly steady-state engine operation. Generate a ramped-modal duty cycle as a sequence of second-by-second (1 Hz) reference speed and torque points. Run the ramped-modal duty cycle in the same manner as a transient cycle and use the 1 Hz reference speed and torque values to validate the cycle, even for cycles with % power. Proportionally sample emissions and other parameters during the cycle and use the calculations in subpart G of this part to calculate emissions.

* * * * *

■ 296. Section 1065.510 is amended by revising paragraphs (b)(5) and (d)(5) to read as follows:

§ 1065.510 Engine mapping.

* * * * *

(b) * * *

(5) Perform one of the following:

(i) For any engine subject only to steady-state duty cycles (*i.e.,* discrete-mode or ramped-modal), you may perform an engine map by using discrete speeds. Select at least 20 evenly spaced setpoints from 95% of warm idle speed to the highest speed above maximum power at which 50% of maximum power occurs. We refer to this 50% speed as the check point speed as described in paragraph (b)(5)(iii) of this section. At each setpoint, stabilize speed and allow torque to stabilize. Record the mean speed and torque at each setpoint. We recommend that you stabilize an engine for at least 15 seconds at each setpoint and record the mean feedback speed and torque of the last (4 to 6) seconds. Use linear interpolation to determine intermediate speeds and torques. Use this series of speeds and torques to generate the power map as described in paragraph (e) of this section.

(ii) For any variable-speed engine, you may perform an engine map by using a continuous sweep of speed by continuing to record the mean feedback speed and torque at 1 Hz or more frequently and increasing speed at a constant rate such that it takes (4 to 6) min to sweep from 95% of warm idle speed to the check point speed as described in paragraph (b)(5)(iii) of this section. Use good engineering judgment to determine when to stop recording data to ensure that the sweep is complete. In most cases, this means that you can stop the sweep at any point after the power falls to 50% of the maximum value. From the series of mean speed and maximum torque values, use linear interpolation to determine intermediate values. Use this series of speeds and torques to generate the power map as described in paragraph (e) of this section.

(iii) The check point speed of the map is the highest speed above maximum power at which 50% of maximum power occurs. If this speed is unsafe or unachievable (*e.g.,* for ungoverned engines or engines that do not operate at that point), use good engineering judgment to map up to the maximum safe speed or maximum achievable speed. For discrete mapping, if the engine cannot be mapped to the check point speed, make sure the map includes at least 20 points from 95% of warm idle to the maximum mapped speed. For continuous mapping, if the engine cannot be mapped to the check point speed, verify that the sweep time from 95% of warm idle to the maximum mapped speed is (4 to 6) min.

(iv) Note that under § 1065.10(c)(1) we may allow you to disregard portions of the map when selecting maximum test speed if the specified procedure would result in a duty cycle that does not represent in-use operation.

* * * * *

(d) * * *

(5) Record at 1 Hz the mean of feedback speed and torque. Use the dynamometer to increase torque at a constant rate. Unless the standard-setting part specifies otherwise, complete the map such that it takes (2 to 4) min to sweep from no-load governed speed to the speed below maximum mapped power at which the engine develops 90% of maximum mapped power. You may map your engine to lower speeds. Stop recording after you complete the sweep. Use this series of speeds and torques to generate the power map as described in paragraph (e) of this section.

* * * * *

■ 297. Section 1065.514 is amended by revising paragraph (d) and Table 1 of § 1065.514 to read as follows:

§ 1065.514 Cycle-validation criteria for operation over specified duty cycles.

* * * * *

(d) *Omitting additional points.* Besides engine cranking, you may omit additional points from cycle-validation

statistics as described in the following table:

TABLE 1 OF § 1065.514—PERMISSIBLE CRITERIA FOR OMITTING POINTS FROM DUTY-CYCLE REGRESSION STATISTICS

When operator demand is at its . . .	you may omit . . .	if . . .
For reference duty cycles that are specified in terms of speed and torque (f_{nref}, T_{ref})		
minimum	power and torque	T_{ref} < 0% (motoring).
minimum	power and speed	f_{nref} = 0% (idle speed) and T_{ref} = 0% (idle torque) and $T_{ref} - (2\% \cdot T_{max\ mapped}) < T < T_{ref} + (2\% \cdot T_{max\ mapped})$.
minimum	power and either torque or speed.	$f_n > f_{nref}$ or $T > T_{ref}$ but not if $f_n > (f_{nref} \cdot 102\%)$ and $T > T_{ref} \pm (2\% \cdot T_{max\ mapped})$.
maximum	power and either torque or speed.	$f_n < f_{nref}$ or $T < T_{ref}$ but not if $f_n < (f_{nref} \cdot 98\%)$ and $T < T_{ref} - (2\% \cdot T_{max\ mapped})$.
For reference duty cycles that are specified in terms of speed and power (f_{nref}, P_{ref})		
minimum	power and torque	P_{ref} < 0% (motoring).
minimum	power and speed	f_{nref} = 0% (idle speed) and P_{ref} = 0% (idle power) and $P_{ref} - (2\% \cdot P_{max\ mapped}) < P < P_{ref} + (2\% \cdot P_{max\ mapped})$.
minimum	power and either torque or speed.	$f_n > f_{nref}$ or $P > P_{ref}$ but not if $f_n > (f_{nref} \cdot 102\%)$ and $P > P_{ref} + (2\% \cdot P_{max\ mapped})$.
maximum	power and either torque or speed.	$f_n < f_{nref}$ or $P < P_{ref}$ but not if $f_n < (f_{nref} \cdot 98\%)$ and $P < P_{ref} - (2\% \cdot P_{max\ mapped})$.

* * * * *

■ 298. Section 1065.520 is amended by revising paragraphs (b) and (g) introductory text to read as follows:

§ 1065.520 Pre-test verification procedures and pre-test data collection.

* * * * *

(b) Unless the standard-setting part specifies different tolerances, verify at some point before the test that ambient conditions are within the tolerances specified in this paragraph (b). For purposes of this paragraph (b), "before the test" means any time from a point just prior to engine starting (excluding engine restarts) to the point at which emission sampling begins.

(1) Ambient temperature of (20 to 30) °C. *See* § 1065.530(j) for circumstances under which ambient temperatures must remain within this range during the test.

(2) Atmospheric pressure of (80.000 to 103.325) kPa and within ±5 kPa of the value recorded at the time of the last engine map. You are not required to verify atmospheric pressure prior to a hot start test interval for testing that also includes a cold start.

(3) Dilution air conditions as specified in § 1065.140, except in cases where you preheat your CVS before a cold start test. We recommend verifying dilution air conditions just prior to the start of each test interval.

* * * * *

(g) Verify the amount of nonmethane contamination in the exhaust and background HC sampling systems within 8 hours before the start of the first test interval of each duty-cycle sequence for laboratory tests. You may verify the contamination of a background HC sampling system by reading the last bag fill and purge using zero gas. For any NMHC measurement system that involves separately measuring methane and subtracting it from a THC measurement, verify the amount of THC contamination using only the THC analyzer response. There is no need to operate any separate methane analyzer for this verification, however you may measure and correct for THC contamination in the CH_4 sample train for the cases where NMHC is determined by subtracting CH_4 from THC, using an NMC as configured in § 1065.365(d), (e), and (f); and the calculations in § 1065.660(b)(2). Perform this verification as follows:

* * * * *

■ 299. Section 1065.530 is amended by revising paragraphs (g)(3)(iv), (g)(4)(i), and (j) to read as follows:

§ 1065.530 Emission test sequence.

* * * * *

(g) * * *

(3) * * *

(iv) Analyze non-conventional gaseous batch samples, such as ethanol (NMHCE) as soon as practical using good engineering judgment.

(4) * * *

(i) For batch and continuous gas analyzers, record the mean analyzer value after stabilizing a zero gas to the analyzer. Stabilization may include time to purge the analyzer of any sample gas, plus any additional time to account for analyzer response.

* * * * *

(j) Measure and record ambient temperature, pressure, and humidity, as appropriate. For testing the following engines, you must record ambient temperature continuously to verify that it remains within the pre-test temperature range as specified in § 1065.520(b):

(1) Air-cooled engines.

(2) Engines equipped with auxiliary emission control devices that sense and respond to ambient temperature.

(3) Any other engine for which good engineering judgment indicates this is necessary to remain consistent with § 1065.10(c)(1).

■ 300. Section 1065.545 is amended by revising the section heading and removing paragraph (d) to read as follows:

§ 1065.545 Validation of proportional flow control for batch sampling.

* * * * *

■ 301. A new § 1065.546 is added to subpart F to read as follows:

§ 1065.546 Validation of minimum dilution ratio for PM batch sampling.

Use continuous flows and/or tracer gas concentrations for transient and ramped modal cycles to validate the minimum dilution ratios for PM batch sampling as specified in § 1065.140(e)(2) over the test interval. You may use mode-average values instead of continuous measurements for discrete mode steady-state duty cycles. Determine the minimum primary and minimum overall dilution ratios using one of the following methods (you may

use a different method for each stage of dilution):

(a) Determine minimum dilution ratio based on molar flow data. This involves determination of at least two of the following three quantities: Raw exhaust flow (or previously diluted flow), dilution air flow, and dilute exhaust flow. You may determine the raw exhaust flow rate based on the measured intake air molar flow rate and the chemical balance terms in § 1065.655. You may alternatively estimate the molar raw exhaust flow rate based on intake air, fuel rate measurements, and fuel properties, consistent with good engineering judgment.

(b) Determine minimum dilution ratio based on tracer gas (*e.g.,* CO_2) concentrations in the raw (or previously diluted) and dilute exhaust corrected for any removed water.

(c) Use good engineering judgment to develop your own method of determining dilution ratios.

■ 302. Section 1065.550 is amended by revising paragraph (b)(2) and adding paragraph (b)(3) to read as follows:

§ 1065.550 Gas analyzer range validation, drift validation, and drift correction.

* * * * *

(b) * * *

(2) For standards consisting of multiple emission mass measurements (such as NMHC + NO_X or separate NO and NO_2 measurements to comply with a NO_X standard), the duty cycle shall be validated for drift if you satisfy one of the following:

(i) For each test interval of the duty cycle and for each individual mass, the difference between the uncorrected and the corrected brake-specific emission values over the test interval is within ±4% of the uncorrected value; or

(ii) For the entire duty cycle the difference between the combined (*e.g.* NMHC + NO_X) uncorrected and combined (*e.g.* NMHC + NO_X) corrected composite brake-specific emissions values over the entire duty cycle is within ±4% of the uncorrected value or the applicable emissions standard, whichever is greater.

(3) If the test is not validated for drift, you may consider the test results for the duty cycle to be valid only if, using good engineering judgment, the observed drift does not affect your ability to demonstrate compliance with the applicable emission standards. For example, if the drift-corrected value is less than the standard by at least two times the absolute difference between the uncorrected and corrected values, you may consider the data to be valid for demonstrating compliance with the applicable standard.

* * * * *

Subpart G—[Amended]

■ 303. Section 1065.601 is amended by revising paragraph (b) to read as follows:

§ 1065.601 Overview.

* * * * *

(b) You may use data from multiple systems to calculate test results for a single emission test, consistent with good engineering judgment. You may also make multiple measurements from a single batch sample, such as multiple weighings of a PM filter or multiple readings from a bag sample. You may not use test results from multiple emission tests to report emissions. We allow weighted means where appropriate. You may discard statistical outliers, but you must report all results.

* * * * *

■ 304. Section 1065.602 is amended by revising paragraphs (b), (e), and (l)(1)(iii) to read as follows:

§ 1065.602 Statistics.

* * * * *

(b) *Arithmetic mean.* Calculate an arithmetic mean, $\bar{y}$, as follows:

$$\bar{y} = \frac{\sum_{i=1}^{N} y_i}{N} \qquad \text{Eq. 1065.602-1}$$

Example:

$N = 3$

$y_1 = 10.60$

$y_2 = 11.91$

$y_N = y_3 = 11.09$

$$\bar{y} = \frac{10.60 + 11.91 + 11.09}{3}$$

$\bar{y} = 11.20$

* * * * *

(e) *Accuracy.* Determine accuracy as described in this paragraph (e). Make multiple measurements of a standard quantity to create a set of observed values, y_i, and compare each observed value to the known value of the standard quantity. The standard quantity may have a single known value, such as a gas standard, or a set of known values of negligible range, such as a known applied pressure produced by a calibration device during repeated applications. The known value of the standard quantity is represented by y_{ref_i} . If you use a standard quantity with a single value, y_{ref_i} would be constant. Calculate an accuracy value as follows:

$$accuracy = \left| \frac{1}{N} \sum_{i=1}^{N} \left(y_i - y_{ref_i} \right) \right| \qquad \text{Eq. 1065.602-4}$$

Example:

$y_{ref} = 1800.0$

$N = 3$

$y_1 = 1806.4$

$y_2 = 1803.1$

$y_3 = 1798.9$

$$accuracy = \left| \frac{1}{3} ((1806.4 - 1800.0) + (1803.1 - 1800.0) + (1798.9 - 1800.0)) \right|$$

$$accuracy = \left| \frac{1}{3} ((6.4) + (3.1) + (-1.1)) \right|$$

$accuracy = 2.8$

* * * * *

(l) * * *

(1) * * *

(iii) Use your estimated values as described in the following example calculation:

$$\bar{x}_{exp} = \frac{e_{std} \cdot W_{ref}}{M \cdot \dot{n}_{exhmax} \cdot \Delta t_{duty\ cycle} \cdot \left(\frac{\bar{P}_{ref} + \left(\bar{P}_{frict} \cdot P_{max} \right)}{P_{max}} \right)} \qquad \text{Eq. 1065.602-13}$$

$$\dot{n}_{exhmax} = \frac{p_{max} \cdot V_{disp} \cdot f_{nmax} \cdot \frac{2}{N_{stroke}} \cdot \eta_V}{R \cdot T_{max}} \qquad \text{Eq. 1065.602-14}$$

Example:

e_{NOx} = 2.5 g/(kW·hr)
W_{ref} = 11.883 kW·hr
M_{NOx} = 46.0055 g/mol = 46.0055·10^{-6} g/µmol
$\Delta t_{dutycycle}$ = 20 min = 1200 s
$\bar{P}_{ref}$ = 35.65 kW
$\bar{P}_{frict}$ = 15%
P_{max} = 125 kW
p_{max} = 300 kPa = 300000 Pa
V_{disp} = 3.0 l = 0.0030 m^3
f_{nmax} = 2800 rev/min = 46.67 rev/s
N_{stroke} = 4 1/rev
η_V = 0.9
R = 8.314472 J/(mol·K)
T_{max} = 348.15 K

$$\dot{n}_{exhmax} = \frac{300000 \cdot 0.0030 \cdot 46.67 \cdot \frac{2}{4} \cdot 0.9}{8.314472 \cdot 348.15}$$

$\dot{n}_{exhmax}$ = 6.53 mol/s

$$\bar{x}_{exp} = \frac{2.5 \cdot 11.883}{46.0055 \cdot 10^{-6} \cdot 6.53 \cdot 1200 \cdot \left(\frac{35.65 + (0.15 \cdot 125)}{125} \right)}$$

$\bar{x}_{exp}$ = 189.4 µmol/mol

* * * * *

■ 305. Section 1065.610 is amended by revising paragraph (c)(3) introductory text to read as follows:

§ 1065.610 Duty cycle generation.

* * * * *

(c) * * *

(3) *Intermediate speed.* If your normalized duty cycle specifies a speed as "intermediate speed," use your torque-versus-speed curve to determine the speed at which maximum torque occurs. This is peak torque speed. If maximum torque occurs in a flat region of the torque-versus-speed curve, your peak torque speed is the midpoint between the lowest and highest speeds at which the trace reaches the flat region. For purposes of this paragraph (c)(3), a flat region is one in which measured torque values are within 2.0% of the maximum recorded value. Identify your reference intermediate speed as one of the following values:

* * * * *

■ 306. Section 1065.640 is amended as follows:

■ a. By revising paragraphs (b)(1), (b)(5), and Table 1 of § 1065.640.

■ b. By revising paragraphs (c)(3), (c)(4) introductory text, and (c)(4)(i).

■ c. By revising paragraph (c)(5), (d)(1) (including Table 4 of § 1065.640), and (e)(3).

§ 1065.640 Flow meter calibration calculations.

* * * * *

(b) * * *

(1) PDP volume pumped per revolution, V_{rev} (m^3/rev):

$$V_{rev} = \frac{\bar{\dot{n}}_{ref} \cdot R \cdot \bar{T}_{in}}{\bar{P}_{in} \cdot \bar{f}_{nPDP}} \qquad \text{Eq. 1065.640-2}$$

Example:

$\bar{\dot{n}}_{ref}$ = 25.096 mol/s
R = 8.314472 J/(mol·K)
$\bar{T}_{in}$ = 299.5 K
$\bar{P}_{in}$ = 98290 Pa
$\bar{f}_{nPDP}$ = 1205.1 rev/min = 20.085 rev/s

$$V_{rev} = \frac{25.096 \cdot 8.314472 \cdot 299.5}{98290 \cdot 20.085}$$

V_{rev} = 0.03166 m^3/rev

* * * * *

(5) The following example illustrates these calculations:

TABLE 1 OF § 1065.640—EXAMPLE OF PDP CALIBRATION DATA

$\bar{f}_{nPDP}$ (rev/min)	a_1 (m^3/min)	a_0 (m^3/rev)
755.0	50.43	0.056
987.6	49.86	−0.013
1254.5	48.54	0.028
1401.3	47.30	−0.061

* * * * *

(c) * * *

(3) Calculate r as follows:

(i) For SSV systems only, calculate r_{SSV} using the following equation:

$$r_{SSV} = 1 - \frac{\Delta p_{SSV}}{p_{in}} \qquad \text{Eq. 1065.640-7}$$

Where:

Δp_{SSV} = Differential static pressure; venturi inlet minus venturi throat.

(ii) For CFV systems only, calculate r_{CFV} iteratively using the following equation:

$$r_{CFV}^{\frac{1-\gamma}{\gamma}} + \left(\frac{\gamma - 1}{2} \right) \cdot \beta^4 \cdot r_{CFV}^{\frac{2}{\gamma}} = \frac{\gamma + 1}{2} \qquad \text{Eq. 1065.640-8}$$

(4) You may make any of the following simplifying assumptions of the governing equations, or you may use good engineering judgment to develop more appropriate values for your testing:

(i) For emission testing over the full ranges of raw exhaust, diluted exhaust and dilution air, you may assume that

the gas mixture behaves as an ideal gas: $Z = 1$.

* * * * *

(5) The following example illustrates the use of the governing equations to calculate the discharge coefficient, C_d of an SSV flow meter at one reference flow meter value. Note that calculating C_d for a CFV flow meter would be similar, except that C_f would be determined from Table 2 of this section or calculated iteratively using values of β and γ as described in paragraph (c)(2) of this section.

Example:

$\dot{n}_{ref}$ = 57.625 mol/s
$Z = 1$
M_{mix} = 28.7805 g/mol = 0.0287805 kg/mol
R = 8.314472 J/(mol·K)
T_{in} = 298.15 K
A_t = 0.01824 m²
p_{in} = 99132.0 Pa
γ = 1.399
β = 0.8
Δp = 2.312 kPa

$$C_f = \left[\frac{2 \cdot 1.399 \cdot \left(0.977^{\frac{1.399-1}{1.399}} - 1 \right)}{(1.399-1) \cdot \left(0.8^4 - 0.977^{\frac{-2}{1.399}} \right)} \right]^{\frac{1}{2}}$$

C_f = 0.274

$$r_{SSV} = 1 - \frac{2.312}{99.132} = 0.977$$

$$C_d = 57.625 \cdot \frac{\sqrt{1 \cdot 0.0287805 \cdot 8.314472 \cdot 298.15}}{0.274 \cdot 0.01824 \cdot 99132.0}$$

C_d = 0.981

(d) * * *

(1) Calculate the Reynolds number, $Re^{\#}$, for each reference molar flow rate, using the throat diameter of the venturi, d_t. Because the dynamic viscosity, μ, is needed to compute $Re^{\#}$, you may use your own fluid viscosity model to determine μ for your calibration gas (usually air), using good engineering judgment. Alternatively, you may use the Sutherland three-coefficient viscosity model to approximate μ, as shown in the following sample calculation for $Re^{\#}$:

$$Re^{\#} = \frac{4 \cdot M_{mix} \cdot \dot{n}_{ref}}{\pi \cdot d_t \cdot \mu} \qquad \text{Eq. 1065.640-10}$$

Where, using the Sutherland three-coefficient viscosity model:

$$\mu = \mu_0 \cdot \left(\frac{T_{in}}{T_0} \right)^{\frac{3}{2}} \cdot \left(\frac{T_0 + S}{T_{in} + S} \right) \qquad \text{Eq. 1065.640-11}$$

Where:

μ = Dynamic viscosity of calibration gas.
μ_0 = Sutherland reference viscosity.
T_0 = Sutherland reference temperature.
S = Sutherland constant.

TABLE 4 OF § 1065.640—SUTHERLAND THREE-COEFFICIENT VISCOSITY MODEL PARAMETERS

Gas [a]	μ_0	T_0	S	Temp range within ± 2% error	Pressure limit
	kg/(m·s)	K	K	K	kPa
Air	$1.716 \cdot 10^{-5}$	273	111	170 to 1,900	≤ 1,800
CO_2	$1.370 \cdot 10^{-5}$	273	222	190 to 1,700	≤ 3,600
H_2O	$1.12 \cdot 10^{-5}$	350	1,064	360 to 1,500	≤ 10,000
O_2	$1.919 \cdot 10^{-5}$	273	139	190 to 2,000	≤ 2,500
N_2	$1.663 \cdot 10^{-5}$	273	107	100 to 1,500	≤ 1,600

[a] Use tabulated parameters only for the pure gases, as listed. Do not combine parameters in calculations to calculate viscosities of gas mixtures.

Example:

$\mu_0 = 1.716 \cdot 10^{-5}$ kg/(m·s)
T_0 = 273.11 K
S = 110.56 K

$$\mu = 1.716 \cdot 10^{-5} \cdot \left(\frac{298.15}{273.11}\right)^{\frac{3}{2}} \cdot \left(\frac{273.11+110.56}{298.15+110.56}\right)$$

$\mu = 1.837 \cdot 10^{-5}$ kg/(m·s)
$M_{mix} = 28.7805$ g/mol
$\dot{n}_{ref} = 57.625$ mol/s
$d_t = 152.4$ mm
$T_{in} = 298.15$ K

$$Re^{\#} = \frac{4 \cdot 28.7805 \cdot 57.625}{3.14159 \cdot 152.4 \cdot 1.837 \cdot 10^{-5}}$$

$Re^{\#} = 7.541 \cdot 10^{5}$

* * * * *

(e) * * *

(3) If the standard deviation of all the C_d values is less than or equal to 0.3% of the mean C_d, use the mean C_d in Eq 1065.642–6, and use the CFV only down to the lowest r measured during calibration using the following equation:

$$r = 1 - \frac{\Delta p_{CFV}}{p_{in}} \qquad \text{Eq. 1065.640-13}$$

Where:
Δp_{CFV} = Differential static pressure; venturi inlet minus venturi outlet.

* * * * *

■ 307. Section 1065.642 is revised to read as follows:

§ 1065.642 SSV, CFV, and PDP molar flow rate calculations.

This section describes the equations for calculating molar flow rates from various flow meters. After you calibrate a flow meter according to § 1065.640, use the calculations described in this section to calculate flow during an emission test.

(a) *PDP molar flow rate.* Based upon the speed at which you operate the PDP for a test interval, select the corresponding slope, a_1, and intercept, a_0, as calculated in § 1065.640, to calculate molar flow rate, $\dot{n}$ as follows:

$$\dot{n} = f_{nPDP} \cdot \frac{p_{in} \cdot V_{rev}}{R \cdot T_{in}} \qquad \text{Eq. 1065.642-1}$$

Where:

$$V_{rev} = \frac{a_1}{\bar{f}_{nPDP}} \cdot \sqrt{\frac{p_{out} - p_{in}}{p_{out}}} + a_0 \qquad \text{Eq. 1065.642-2}$$

Example:
$a_1 = 50.43$ (m³/min) = 0.8405 (m³/s)
$\bar{f}_{nPDP} = 755.0$ rev/min = 12.58 rev/s
$p_{out} = 99950$ Pa
$p_{in} = 98575$ Pa
$a_0 = 0.056$ (m³/rev)
$R = 8.314472$ J/(mol·K)
$T_{in} = 323.5$ K
$C_p = 1000$ (J/m³)/kPa
$C_t = 60$ s/min

$$V_{rev} = \frac{0.8405}{12.58} \cdot \sqrt{\frac{99950 - 98575}{99950}} + 0.056$$

$V_{rev} = 0.06383$ m³/rev

$$\dot{n} = 12.58 \cdot \frac{98575 \cdot 0.06383}{8.314472 \cdot 323.5}$$

$\dot{n} = 29.428$ mol/s

(b) *SSV molar flow rate.* Based on the C_d versus $Re^{\#}$ equation you determined according to § 1065.640, calculate SSV molar flow rate, $\dot{n}$ during an emission test as follows:

$$\dot{n} = C_d \cdot C_f \cdot \frac{A_t \cdot p_{in}}{\sqrt{Z \cdot M_{mix} \cdot R \cdot T_{in}}} \qquad \text{Eq. 1065.642-3}$$

Example:
$A_t = 0.01824$ m²
$p_{in} = 99132$ Pa
$Z = 1$
$M_{mix} = 28.7805$ g/mol = 0.0287805 kg/mol
$R = 8.314472$ J/(mol·K)
$T_{in} = 298.15$ K
$Re^{\#} = 7.232 \cdot 10^{5}$
$\gamma = 1.399$
$\beta = 0.8$
$\Delta p = 2.312$ kPa
Using Eq. 1065.640–7,
$r_{ssv} = 0.997$
Using Eq. 1065.640–6,
$C_f = 0.274$
Using Eq. 1065.640–5,
$C_d = 0.990$

$$\dot{n} = 0.990 \cdot 0.274 \cdot \frac{0.01824 \cdot 99132}{\sqrt{1 \cdot 0.0287805 \cdot 8.314472 \cdot 298.15}}$$

$\dot{n} = 58.173$ mol/s

(c) *CFV molar flow rate.* Some CFV flow meters consist of a single venturi and some consist of multiple venturis, where different combinations of venturis are used to meter different flow rates. If you use multiple venturis and you calibrated each venturi independently to determine a separate discharge coefficient, C_d, for each venturi, calculate the individual molar flow rates through each venturi and sum all their flow rates to determine $\dot{n}$. If you use multiple venturis and you calibrated each combination of venturis, calculate $\dot{n}$ using the sum of the active venturi throat areas as A_t, the sum of the active venturi throat diameters as d_t, and the ratio of venturi throat to inlet diameters as the ratio of the sum of the active venturi throat diameters to the diameter of the common entrance to all of the venturis. To calculate the molar flow rate through one venturi or one combination of venturis, use its respective mean C_d and other constants you determined according to § 1065.640 and calculate its molar flow rate $\dot{n}$ during an emission test, as follows:

$$\dot{n} = C_d \cdot C_f \cdot \frac{A_t \cdot p_{in}}{\sqrt{Z \cdot M_{mix} \cdot R \cdot T_{in}}} \qquad \text{Eq. 1065.642-4}$$

Example:
$C_d = 0.985$
$C_f = 0.7219$
$A_t = 0.00456\ m^2$
$p_{in} = 98836\ Pa$
$Z = 1$
$M_{mix} = 28.7805\ g/mol = 0.0287805\ kg/mol$
$R = 8.314472\ J/(mol \cdot K)$
$T_{in} = 378.15\ K$

$$\dot{n} = 0.985 \cdot 0.7219 \cdot \frac{0.00456 \cdot 98836}{\sqrt{1 \cdot 0.0287805 \cdot 8.314472 \cdot 378.15}}$$

$\dot{n} = 33.690\ mol/s$

■ 308. Section 1065.645 is amended by revising paragraphs (a)(2), (b), and (c) to read as follows:

§ 1065.645 Amount of water in an ideal gas.

* * * * *

(a) * * *

(2) For humidity measurements over ice at ambient temperatures from (−100 to 0) °C, use the following equation:

$$\log_{10}(p_{sat}) = -9.096853 \cdot \left(\frac{273.16}{T_{sat}} - 1\right) - 3.566506 \cdot \log_{10}\left(\frac{273.16}{T_{sat}}\right) + 0.876812 \cdot \left(1 - \frac{T_{sat}}{273.16}\right) - 0.2138602 \qquad \text{Eq. 1065.645-2}$$

Example:
$T_{ice} = -15.4\ °C$
$T_{ice} = -15.4 + 273.15 = 257.75\ K$

$$\log_{10}(p_{sat}) = -9.096853 \cdot \left(\frac{273.16}{257.75} - 1\right) - 3.566506 \cdot \log_{10}\left(\frac{273.16}{257.75}\right) + 0.876812 \cdot \left(1 - \frac{257.75}{273.16}\right) - 0.2138602$$

$\log_{10}(p_{H2O}) = -0.798207$
$p_{H2O} = 10^{0.79821} = 0.159145\ kPa$

(b) *Dewpoint.* If you measure humidity as a dewpoint, determine the amount of water in an ideal gas, x_{H2O}, as follows:

$$x_{H2O} = \frac{p_{H2O}}{p_{abs}} \qquad \text{Eq. 1065.645-3}$$

Where:
x_{H2O} = amount of water in an ideal gas.
p_{H2O} = water vapor pressure at the measured dewpoint, $T_{sat} = T_{dew}$.
p_{abs} = wet static absolute pressure at the location of your dewpoint measurement.
Example::
$p_{abs} = 99.980\ kPa$
$T_{sat} = T_{dew} = 9.5\ °C$
Using Eq. 1065.645–1,
$p_{H2O} = 1.186581\ kPa$
$x_{H2O} = 1.186581/99.980$
$x_{H2O} = 0.011868\ mol/mol$

(c) *Relative humidity.* If you measure humidity as a relative humidity, *RH*%, determine the amount of water in an ideal gas, x_{H2O}, as follows:

$$x_{H2O} = \frac{RH\% \cdot p_{H2O}}{p_{abs}} \qquad \text{Eq. 1065.645-4}$$

Where:
x_{H2O} = amount of water in an ideal gas.
RH% = relative humidity.
p_{H2O} = water vapor pressure at 100% relative humidity at the location of your relative humidity measurement, $T_{sat} = T_{amb}$.
p_{abs} = wet static absolute pressure at the location of your relative humidity measurement.
Example:
RH% = 50.77%
$p_{abs} = 99.980\ kPa$
$T_{sat} = T_{amb} = 20\ °C$
Using Eq. 1065.645–1,
$p_{H2O} = 2.3371\ kPa$
$x_{H2O} = (50.77\% \cdot 2.3371)/99.980$
$x_{H2O} = 0.011868\ mol/mol$

■ 309. Section 1065.650 is amended by revising paragraphs (a), (b), (c) introductory text, (d) introductory text, (d)(7), (e)(2), (f)(4), (g), and (h) to read as follows:

§ 1065.650 Emission calculations.

(a) *General.* Calculate brake-specific emissions over each applicable duty cycle or test interval. For test intervals with zero work (or power), calculate the emission mass (or mass rate), but do not calculate brake-specific emissions. For duty cycles with multiple test intervals, refer to the standard-setting part for calculations you need to determine a composite result, such as a calculation that weights and sums the results of individual test intervals in a duty cycle. If the standard-setting part does not include those calculations, use the equations in paragraph (g) of this section. This section is written based on rectangular integration, where each indexed value (*i.e.,* "$_i$") represents (or approximates) the mean value of the parameter for its respective time interval, delta-t. You may also integrate continuous signals using trapezoidal integration consistent with good engineering judgment.

(b) *Brake-specific emissions over a test interval.* We specify three alternative ways to calculate brake-specific emissions over a test interval, as follows:

(1) For any testing, you may calculate the total mass of emissions, as described in paragraph (c) of this section, and divide it by the total work generated over the test interval, as described in paragraph (d) of this section, using the following equation:

$$e = \frac{m}{W} \qquad \text{Eq. 1065.650-1}$$

Example:
$m_{NOx} = 64.975\ g$
$W = 25.783\ kW \cdot hr$
$e_{NOx} = 64.975/25.783$
$e_{NOx} = 2.520\ g/(kW \cdot hr)$

(2) For discrete-mode steady-state testing, you may calculate the brake-specific emissions over a test interval

using the ratio of emission mass rate to power, as described in paragraph (e) of this section, using the following equation:

$$e = \frac{\bar{\dot{m}}}{\bar{P}} \qquad \text{Eq. 1065.650-2}$$

(3) For field testing, you may calculate the ratio of total mass to total work, where these individual values are determined as described in paragraph (f) of this section. You may also use this approach for laboratory testing, consistent with good engineering judgment. Good engineering judgment dictates that this method not be used if there are any work flow paths described in § 1065.210 that cross the system boundary, other than the primary output shaft (crankshaft). This is a special case in which you use a signal linearly proportional to raw exhaust molar flow rate to determine a value proportional to total emissions. You then use the same linearly proportional signal to determine total work using a chemical balance of fuel, intake air, and exhaust as described in § 1065.655, plus information about your engine's brake-specific fuel consumption. Under this method, flow meters need not meet accuracy specifications, but they must meet the applicable linearity and repeatability specifications in subpart D or subpart J of this part. The result is a brake-specific emission value calculated as follows:

$$e = \frac{\tilde{m}}{\tilde{W}} \qquad \text{Eq. 1065.650-3}$$

Example:

$\tilde{m}$ = 805.5 g
$\tilde{W}$ = 52.102 kW·hr
e_{CO} = 805.5/52.102
e_{CO} = 2.520 g/(kW·hr)

(c) *Total mass of emissions over a test interval.* To calculate the total mass of an emission, multiply a concentration by its respective flow. For all systems, make preliminary calculations as described in paragraph (c)(1) of this section, then use the method in paragraphs (c)(2) through (4) of this section that is appropriate for your system. Calculate the total mass of emissions as follows:

* * * * *

(d) *Total work over a test interval.* To calculate the total work from the engine over a test interval, add the total work from all the work paths described in § 1065.210 that cross the system boundary including electrical energy/work, mechanical shaft work, and fluid pumping work. For all work paths, except the engine's primary output shaft (crankshaft), the total work for the path over the test interval is the integration of the net work flow rate (power) out of the system boundary. When energy/work flows into the system boundary, this work flow rate signal becomes negative; in this case, include these negative work rate values in the integration to calculate total work from that work path. Some work paths may result in a negative total work. Include negative total work values from any work path in the calculated total work from the engine rather than setting the values to zero. The rest of this paragraph (d) describes how to calculate total work from the engine's primary output shaft over a test interval. Before integrating power on the engine's primary output shaft, adjust the speed and torque data for the time alignment used in § 1065.514(c). Any advance or delay used on the feedback signals for cycle validation must also be used for calculating work. Account for work of accessories according to § 1065.110. Exclude any work during cranking and starting. Exclude work during actual motoring operation (negative feedback torques), unless the engine was connected to one or more energy storage devices. Examples of such energy storage devices include hybrid powertrain batteries and hydraulic accumulators, like the ones illustrated in Figure 1 of § 1065.210. Exclude any work during reference zero-load idle periods (0% speed or idle speed with 0 N·m reference torque). Note, that there must be two consecutive reference zero load idle points to establish a period where this applies. Include work during idle points with simulated minimum torque such as Curb Idle Transmissions Torque (CITT) for automatic transmissions in "drive". The work calculation method described in paragraphs (b)(1) through (7) of this section meets these requirements using rectangular integration. You may use other logic that gives equivalent results. For example, you may use a trapezoidal integration method as described in paragraph (b)(8) of this section.

* * * * *

(7) Integrate the resulting values for power over the test interval. Calculate total work as follows:

$$W = \sum_{i=1}^{N} P_i \cdot \Delta t \qquad \text{Eq. 1065.650-10}$$

Where:

W = total work from the primary output shaft
P_i = instantaneous power from the primary output shaft over an interval *i*.

$$P_i = f_{ni} \cdot T_i \qquad \text{Eq. 1065.650-11}$$

Example:

N = 9000
f_{n1} = 1800.2 rev/min
f_{n2} = 1805.8 rev/min
T_1 = 177.23 N·m
T_2 = 175.00 N·m
C_{rev} = 2·π rad/rev
C_{t1} = 60 s/min
C_p = 1000 (N·m·rad/s)/kW
f_{record} = 5 Hz
C_{t2} = 3600 s/hr

$$P_1 = \frac{1800.2 \cdot 177.23 \cdot 2 \cdot 3.14159}{60 \cdot 1000}$$

P_1 = 33.41 kW
P_2 = 33.09 kW
Using Eq. 1065.650–5,
Δt = 1/5 = 0.2 s

$$W = \frac{(33.41 + 33.09 + \ldots + P_{9000}) \cdot 0.2}{3600}$$

W = 16.875 kW·hr

* * * * *

(e) * * *

(2) To calculate an engine's mean steady-state total power, $\bar{P}$, add the mean steady-state power from all the work paths described in § 1065.210 that cross the system boundary including electrical power, mechanical shaft power, and fluid pumping power. For all work paths, except the engine's primary output shaft (crankshaft), the mean steady-state power over the test interval is the integration of the net work flow rate (power) out of the system boundary divided by the period of the test interval. When power flows into the system boundary, the power/work flow rate signal becomes negative; in this case, include these negative power/work rate values in the integration to calculate the mean power from that work path. Some work paths may result in a negative mean power. Include negative mean power values from any work path in the mean total power from the engine rather than setting these values to zero. The rest of this paragraph (e)(2) describes how to calculate the mean power from the engine's primary output shaft. Calculate $\bar{P}$ using Equation 1065.650–13, noting that $\bar{P}$, $\bar{f}_n$ and $\bar{T}$ refer to mean power, mean rotational shaft frequency, and mean torque from the primary output shaft. Account for the power of simulated accessories according to § 1065.110 (reducing the mean primary output shaft power or torque by the accessory power or torque). Set the power to zero during actual motoring operation (negative feedback torques), unless the engine was connected to one or more energy storage devices. Examples of such energy

storage devices include hybrid powertrain batteries and hydraulic accumulators, like the ones illustrated in Figure 1 of § 1065.210. Set the power to zero for modes with a zero reference load (0 N·m reference torque or 0 kW reference power). Include power during idle modes with simulated minimum torque or power.

$$\overline{P} = \overline{f_n} \cdot \overline{T} \qquad \text{Eq. 1065.650-13}$$

* * * * *

(f) * * *

(4) *Example.* The following example shows how to calculate mass of emissions using proportional values:

N= 3000
f_{record} = 5 Hz
e_{fuel} = 285 g/(kW·hr)
w_{fuel} = 0.869 g/g
M_c = 12.0107 g/mol
$\dot{n}_1$= 3.922 ~mol/s = 14119.2 mol/hr
$x_{Ccombdry1}$ = 91.634 mmol/mol = 0.091634 mol/mol
$x_{H2Oexh1}$ = 27.21 mmol/mol = 0.02721 mol/mol
Using Eq. 1065.650–5,
Δt = 0.2 s

$$\tilde{W} = \frac{12.0107\left[\frac{3.922 \cdot 0.091634}{1+0.02721} + \frac{\tilde{\dot{n}}_2 \cdot x_{Ccombdry2}}{1+x_{H2Oexh2}} + \ldots + \frac{\tilde{\dot{n}}_{3000} \cdot x_{Ccombdry3000}}{1+x_{H2Oexh3000}}\right] \cdot 0.2}{285 \cdot 0.869}$$

W= 5.09 (kW·hr)

(g) *Brake-specific emissions over a duty cycle with multiple test intervals.* The standard-setting part may specify a duty cycle with multiple test intervals, such as with discrete-mode steady-state testing. Unless we specify otherwise, calculate composite brake-specific emissions over the duty cycle as described in this paragraph (g). If a measured mass (or mass rate) is negative, set it to zero for calculating composite brake-specific emissions, but leave it unchanged for drift validation. In the case of calculating composite brake-specific emissions relative to a combined emission standard (such as a NO_X + NMHC standard), change any negative mass (or mass rate) values to zero for a particular pollutant before combining the values for the different pollutants.

(1) Use the following equation to calculate composite brake-specific emissions for duty cycles with multiple test intervals all with prescribed durations, such as cold-start and hot-start transient cycles:

$$e_{composite} = \frac{\sum_{i=1}^{N} WF_i \cdot m_i}{\sum_{i=1}^{N} WF_i \cdot W_i} \qquad \text{Eq. 1065.650-17}$$

Where:
i = test interval number.
N = number of test intervals.
WF = weighting factor for the test interval as defined in the standard-setting part.
m = mass of emissions over the test interval as determined in paragraph (c) of this section.
W = total work from the engine over the test interval as determined in paragraph (d) of this section.
Example:
N = 2
WF_1 = 0.1428
WF_2 = 0.8572
m_1 = 70.125 g
m_2 = 64.975 g
W_1 = 25.783 kW·hr
W_2 = 25.783 kW·hr

$$e_{NO_x composite} = \frac{(0.1428 \cdot 70.125) + (0.8572 \cdot 64.975)}{(0.1428 \cdot 25.783) + (0.8572 \cdot 25.783)}$$

$e_{NOxcomposite}$ = 2.548 g/kW·hr

(2) Calculate composite brake-specific emissions for duty cycles with multiple test intervals that allow use of varying duration, such as discrete-mode steady-state duty cycles, as follows:

(i) Use the following equation if you calculate brake-specific emissions over test intervals based on total mass and total work as described in paragraph (b)(1) of this section:

$$e_{composite} = \frac{\sum_{i=1}^{N} WF_i \cdot \frac{m_i}{t_i}}{\sum_{i=1}^{N} WF_i \cdot \frac{W_i}{t_i}} \qquad \text{Eq. 1065.650-18}$$

Where:
i = test interval number.
N = number of test intervals.
WF = weighting factor for the test interval as defined in the standard-setting part.
m = mass of emissions over the test interval as determined in paragraph (c) of this section.

W = total work from the engine over the test interval as determined in paragraph (d) of this section.
t = duration of the test interval.
Example:

$N = 2$
$WF_1 = 0.85$
$WF_2 = 0.15$
$m_1 = 1.3753$ g
$m_2 = 0.4135$ g
$t_1 = 120$ s
$t_2 = 200$ s
$W_1 = 2.8375$ kW·hr
$W_2 = 0.0$ kW·hr

$$e_{NO_x composite} = \frac{\left(0.85 \cdot \frac{1.3753}{120}\right) + \left(0.15 \cdot \frac{0.4135}{200}\right)}{\left(0.85 \cdot \frac{2.8375}{120}\right) + \left(0.15 \cdot \frac{0.0}{200}\right)}$$

$e_{NOxcomposite} = 0.5001$ g/kW·hr

(ii) Use the following equation if you calculate brake-specific emissions over test intervals based on the ratio of mass rate to power as described in paragraph (b)(2) of this section:

$$e_{composite} = \frac{\sum_{i=1}^{N} WF_i \cdot \dot{\bar{m}}_i}{\sum_{i=1}^{N} WF_i \cdot \bar{P}_i} \qquad \text{Eq. 1065.650-19}$$

Where:
i = test interval number.
N = number of test intervals.
WF = weighting factor for the test interval as defined in the standard-setting part.
$\dot{\bar{m}}$= mean steady-state mass rate of emissions over the test interval as determined in paragraph (e) of this section.
$\bar{P}$ is the mean steady-state power over the test interval as described in paragraph (e) of this section.
Example:

$N = 2$
$WF_1 = 0.85$
$WF_2 = 0.15$
$\dot{\bar{m}}_1 = 2.25842$ g/hr
$\dot{\bar{m}}_2 = 0.063443$ g/hr
$\bar{P}_1 = 4.5383$ kW
$\bar{P}_2 = 0.0$ kW

$$e_{NO_x composite} = \frac{(0.85 \cdot 2.25842) + (0.15 \cdot 0.063443)}{(0.85 \cdot 4.5383) + (0.15 \cdot 0.0)}$$

$e_{NOxcomposite} = 0.5001$ g/kW·hr

(h) *Rounding.* Round the final brake-specific emission values to be compared to the applicable standard only after all calculations are complete (including any drift correction, applicable deterioration factors, adjustment factors, and allowances) and the result is in g/(kW·hr) or units equivalent to the units of the standard, such as g/(hp·hr). *See* the definition of "Round" in § 1065.1001.

■ 310. Section 1065.655 is amended by revising paragraphs (c), (d), Table 1 of § 1065.655, and paragraph (e)(3) to read as follows:

§ 1065.655 Chemical balances of fuel, intake air, and exhaust.

* * * * *

(c) *Chemical balance procedure.* The calculations for a chemical balance involve a system of equations that require iteration. We recommend using a computer to solve this system of equations. You must guess the initial values of up to three quantities: The amount of water in the measured flow, x_{H2Oexh}, fraction of dilution air in diluted exhaust, $x_{dil/exh}$, and the amount of products on a C_1 basis per dry mole of dry measured flow, $x_{Ccombdry}$. You may use time-weighted mean values of combustion air humidity and dilution air humidity in the chemical balance; as long as your combustion air and dilution air humidities remain within tolerances of ±0.0025 mol/mol of their respective mean values over the test interval. For each emission concentration, x, and amount of water, x_{H2Oexh}, you must determine their completely dry concentrations, x_{dry} and $x_{H2Oexhdry}$. You must also use your fuel's atomic hydrogen-to-carbon ratio, α, oxygen-to-carbon ratio, β, sulfur-to-carbon ratio, γ, and nitrogen-to-carbon ratio, δ. You may measure α, β, γ, and δ or you may use default values for a given fuel as described in § 1065.655(d). Use the following steps to complete a chemical balance:

(1) Convert your measured concentrations such as, $x_{CO2meas}$, $_{xNOmeas}$, and x_{H2Oint}, to dry concentrations by dividing them by one minus the amount of water present during their respective measurements; for example: $x_{H2OxCO2meas\ x}$, $_{H2OxNOmeas}$, and x_{H2Oint}. If the amount of water present during a "wet" measurement is the same as the unknown amount of water in the exhaust flow, x_{H2Oexh}, iteratively solve for that value in the system of equations. If you measure only total NO_X and not NO and NO_2 separately, use good engineering judgment to estimate a split in your total NO_X concentration between NO and NO_2 for the chemical balances. For example, if you measure emissions from a stoichiometric spark-ignition engine, you may assume all NO_X is NO. For a compression-ignition engine, you may assume that your molar concentration of NO_X, x_{NOx}, is 75% NO and 25% NO_2. For NO_2 storage aftertreatment systems, you may assume x_{NOx} is 25% NO and 75% NO_2. Note that for calculating the mass of NO_X emissions, you must use the molar mass of NO_2 for the effective molar mass of all NO_X species, regardless of the actual NO_2 fraction of NO_X.

(2) Enter the equations in paragraph (c)(4) of this section into a computer program to iteratively solve for x_{H2Oexh},

$x_{Ccombdry}$, and $x_{dil/exh}$. Use good engineering judgment to guess initial values for x_{H2Oexh}, $x_{Ccombdry}$, and $x_{dil/exh}$. We recommend guessing an initial amount of water that is about twice the amount of water in your intake or dilution air. We recommend guessing an initial value of $x_{Ccombdry}$ as the sum of your measured CO_2, CO, and THC values. We also recommend guessing an initial $x_{dil/exh}$ between 0.75 and 0.95, such as 0.8. Iterate values in the system of equations until the most recently updated guesses are all within ± 1% of their respective most recently calculated values.

(3) Use the following symbols and subscripts in the equations for this paragraph (c):

$x_{dil/exh}$ = amount of dilution gas or excess air per mole of exhaust.

x_{H2Oexh} = amount of water in exhaust per mole of exhaust.

$x_{Ccombdry}$ = amount of carbon from fuel in the exhaust per mole of dry exhaust.

x_{H2dry} = amount of H_2 in exhaust per amount of dry exhaust.

K_{H2Ogas} = water-gas reaction equilibrium coefficient. You may use 3.5 or calculate your own value using good engineering judgment.

$x_{H2Oexhdry}$ = amount of water in exhaust per dry mole of dry exhaust.

$x_{prod/intdry}$ = amount of dry stoichiometric products per dry mole of intake air.

$x_{dil/exhdry}$ = amount of dilution gas and/or excess air per mole of dry exhaust.

$x_{int/exhdry}$ = amount of intake air required to produce actual combustion products per mole of dry (raw or diluted) exhaust.

$x_{raw/exhdry}$ = amount of undiluted exhaust, without excess air, per mole of dry (raw or diluted) exhaust.

x_{O2int} = amount of intake air O_2 per mole of intake air.

$x_{CO2intdry}$ = amount of intake air CO_2 per mole of dry intake air. You may use $x_{CO2intdry}$ = 375 μmol/mol, but we recommend measuring the actual concentration in the intake air.

$x_{H2Ointdry}$ = amount of intake air H_2O per mole of dry intake air.

x_{CO2int} = amount of intake air CO_2 per mole of intake air.

x_{CO2dil} = amount of dilution gas CO_2 per mole of dilution gas.

$x_{CO2dildry}$ = amount of dilution gas CO_2 per mole of dry dilution gas. If you use air as diluent, you may use $x_{CO2dildry}$ = 375 μmol/mol, but we recommend measuring the actual concentration in the intake air.

$x_{H2Odildry}$ = amount of dilution gas H_2O per mole of dry dilution gas.

x_{H2Odil} = amount of dilution gas H_2O per mole of dilution gas.

$x_{[emission]meas}$ = amount of measured emission in the sample at the respective gas analyzer.

$x_{[emission]dry}$ = amount of emission per dry mole of dry sample.

$x_{H2O[emission]meas}$ = amount of water in sample at emission-detection location. Measure or estimate these values according to § 1065.145(e)(2).

x_{H2Oint} = amount of water in the intake air, based on a humidity measurement of intake air.nb

α = atomic hydrogen-to-carbon ratio of the mixture of fuel(s) being combusted, weighted by molar consumption.

β = atomic oxygen-to-carbon ratio of the mixture of fuel(s) being combusted, weighted by molar consumption.

γ = atomic sulfur-to-carbon ratio of the mixture of fuel(s) being combusted, weighted by molar consumption.

δ = atomic nitrogen-to-carbon ratio of the mixture of fuel(s) being combusted, weighted by molar consumption.

(4) Use the following equations to iteratively solve for $x_{dil/exh}$, x_{H2Oexh}, and $x_{Ccombdry}$:

$$x_{dil/exh} = 1 - \frac{x_{raw/exhdry}}{1 + x_{H2Oexhdry}} \quad \text{Eq. 1065.655-1}$$

$$x_{H2Oexh} = \frac{x_{H2Oexhdry}}{1 + x_{H2Oexhdry}} \quad \text{Eq. 1065.655-2}$$

$$x_{Ccombdry} = x_{CO2dry} + x_{COdry} + x_{THCdry} - x_{CO2dil} \cdot x_{dil/exhdry} - x_{CO2int} \cdot x_{int/exhdry} \quad \text{Eq. 1065.655-3}$$

$$x_{H2dry} = \frac{x_{COdry} \cdot \left(x_{H2Oexhdry} - x_{H2Odil} \cdot x_{dil/exhdry} \right)}{K_{H2O\text{-}gas} \cdot \left(x_{CO2dry} - x_{CO2dil} \cdot x_{dil/exhdry} \right)} \quad \text{Eq. 1065.655-4}$$

$$x_{H2Oexhdry} = \frac{\alpha}{2} \left(x_{Ccombdry} - x_{THCdry} \right) + x_{H2Odil} \cdot x_{dil/exhdry} + x_{H2Oint} \cdot x_{int/exhdry} - x_{H2dry} \quad \text{Eq. 1065.655-5}$$

$$x_{dil/exhdry} = \frac{x_{dil/exh}}{1 - x_{H2Oexh}} \quad \text{Eq. 1065.655-6}$$

$$x_{int/exhdry} = \frac{1}{2 \cdot x_{O2int}} \left(\left(\frac{\alpha}{2} - \beta + 2 + 2\gamma \right) \left(x_{Ccombdry} - x_{THCdry} \right) - \left(x_{COdry} - x_{NOdry} - 2x_{NO2dry} + x_{H2dry} \right) \right) \quad \text{Eq. 1065.655-7}$$

$$x_{raw/exhdry} = \frac{1}{2} \left(\left(\frac{\alpha}{2} + \beta + \delta \right) \left(x_{Ccombdry} - x_{THCdry} \right) + \left(2x_{THCdry} + x_{COdry} - x_{NO2dry} + x_{H2dry} \right) \right) + x_{int/exhdry} \quad \text{Eq. 1065.655-8}$$

$$x_{O2int} = \frac{0.209820 - x_{CO2intdry}}{1 + x_{H2Ointdry}} \quad \text{Eq. 1065.655-9}$$

$$x_{CO2int} = \frac{x_{CO2intdry}}{1 + x_{H2Ointdry}} \quad \text{Eq. 1065.655-10}$$

$$x_{H2Ointdry} = \frac{x_{H2Oint}}{1 - x_{H2Oint}} \quad \text{Eq. 1065.655-11}$$

$$x_{CO2dil} = \frac{x_{CO2dildry}}{1 + x_{H2Odildry}} \quad \text{Eq. 1065.655-12}$$

$$x_{H2Odildry} = \frac{x_{H2Odil}}{1 - x_{H2Odil}} \quad \text{Eq. 1065.655-13}$$

$$x_{COdry} = \frac{x_{COmeas}}{1 - x_{H2OCOmeas}} \quad \text{Eq. 1065.655-14}$$

$$x_{CO2dry} = \frac{x_{CO2meas}}{1 - x_{H2OCO2meas}} \quad \text{Eq. 1065.655-15}$$

$$x_{NOdry} = \frac{x_{NOmeas}}{1 - x_{H2ONOmeas}} \quad \text{Eq. 1065.655-16}$$

$$x_{NO2dry} = \frac{x_{NO2meas}}{1 - x_{H2ONO2meas}} \quad \text{Eq. 1065.655-17}$$

$$x_{THCdry} = \frac{x_{THCmeas}}{1 - x_{H2OTHCmeas}} \quad \text{Eq. 1065.655-18}$$

(5) The following example is a solution for $x_{dil/exh}$, x_{H2Oexh}, and $x_{Ccombdry}$ using the equations in paragraph (c)(4) of this section:

$$x_{dil/exh} = 1 - \frac{0.184}{1 + \frac{35.38}{1000}} = 0.822 \; mol/mol \qquad x_{H2Oexh} = \frac{35.38}{1 + \frac{35.38}{1000}} = 34.18 \; mmol/mol$$

$$x_{Ccombdry} = 0.025 + \frac{29.3}{1000000} + \frac{47.6}{1000000} - \frac{0.371}{1000} \cdot 0.851 - \frac{0.369}{1000} \cdot 0.172 = 0.0249 \; mol/mol$$

$$x_{H2dry} = \frac{29.3 \cdot (0.034 - 0.012 \cdot 0.851)}{3.5 \cdot \left(\frac{25.2}{1000} - \frac{0.371}{1000} \cdot 0.851 \right)} = 8.5 \mu mol/mol$$

$$x_{H2Oexhdry} = \frac{1.8}{2}\left(0.0249 - \frac{47.6}{1000000}\right) + 0.018 \cdot 0.851 + 0.017 \cdot 0.172 - \frac{8.5}{1000000} = 0.0353\ mol/mol$$

$$x_{dil/exhdry} = \frac{0.822}{1 - 0.034} = 0.851\ mol/mol$$

$$x_{int/exhdry} = \frac{1}{2 \cdot 0.206}\left(\left(\frac{1.8}{2} - 0.050 + 2 + 2 \cdot 0.0003\right)\left(0.0249 - \frac{47.6}{1000000}\right) - \left(\frac{29.3}{1000000} - \frac{50.4}{1000000} - 2 \cdot \frac{12.1}{1000000} + \frac{8.5}{1000000}\right)\right) = 0.172\ mol/mol$$

$$x_{raw/exhdry} = \frac{1}{2}\left(\left(\frac{1.8}{2} + 0.050 + 0.0001\right)\left(0.0249 - \frac{47.6}{1000000}\right) + \left(2 \cdot \frac{47.6}{1000000} + \frac{29.3}{1000000} - \frac{12.1}{1000000} + \frac{8.5}{1000000}\right)\right) + 0.172 = 0.184\ mol/mol$$

$$x_{O2int} = \frac{0.209820 - 0.000375}{1 + \frac{17.22}{1000}} = 0.206\ mol/mol$$

$$x_{CO2int} = \frac{0.000375 \cdot 1000}{1 + \frac{17.22}{1000}} = 0.369\ mmol/mol$$

$$x_{H2Ointdry} = \frac{16.93}{1 - \frac{16.93}{1000}} = 17.22\ mmol/mol \qquad x_{CO2dry} = \frac{24.98}{1 - \frac{8.601}{1000}} = 25.2\ mmol/mol$$

$$x_{CO2dil} = \frac{0.375}{1 + \frac{12.01}{1000}} = 0.371\ mmol/mol \qquad x_{NOdry} = \frac{50.0}{1 - \frac{8.601}{1000}} = 50.4\ mmol/mol$$

$$x_{H2Odildry} = \frac{11.87}{1 - \frac{11.87}{1000}} = 12.01\ mmol/mol \qquad x_{NO2dry} = \frac{12.0}{1 - \frac{8.601}{1000}} = 12.1\ mmol/mol$$

$$x_{COdry} = \frac{29.0}{1 - \frac{8.601}{1000}} = 29.3\ mmol/mol \qquad x_{THCdry} = \frac{46}{1 - \frac{34.18}{1000}} = 47.6\ mmol/mol$$

$\alpha = 1.8$
$\beta = 0.05$
$\gamma = 0.0003$
$\delta = 0.0001$

(d) *Carbon mass fraction.* Determine carbon mass fraction of fuel, w_c, using one of the following methods:

(1) You may calculate w_c as described in this paragraph (d)(1) based on measured fuel properties. To do so, you must determine values for α and β in all cases, but you may set γ and δ to zero if the default value listed in Table 1 of this section is zero. Calculate w_c using the following equation:

$$w_C = \frac{1 \cdot M_C}{1 \cdot M_C + \alpha \cdot M_H + \beta \cdot M_O + \gamma \cdot M_S + \delta \cdot M_N} \qquad \text{Eq. 1065.655-19}$$

Where:
w_C, = carbon mass fraction of fuel.
M_C = molar mass of carbon.
α = atomic hydrogen-to-carbon ratio of the mixture of fuel(s) being combusted, weighted by molar consumption.
M_H = molar mass of hydrogen.
β = atomic oxygen-to-carbon ratio of the mixture of fuel(s) being combusted, weighted by molar consumption.
M_O = molar mass of oxygen.
γ = atomic sulfur-to-carbon ratio of the mixture of fuel(s) being combusted, weighted by molar consumption.
M_S = molar mass of sulfur.
δ = atomic nitrogen-to-carbon ratio of the mixture of fuel(s) being combusted, weighted by molar consumption.
M_N = molar mass of nitrogen.
Example:

$$w_C = \frac{1 \cdot 12.0107}{1 \cdot 12.0107 + 1.8 \cdot 1.01 + 0.05 \cdot 15.9994 + 0.0003 \cdot 32.065 + 0.0001 \cdot 14.0067}$$

$\alpha = 1.8$
$\beta = 0.05$
$\gamma = 0.0003$
$\delta = 0.0001$
$M_C = 12.0107$
$M_H = 1.01$
$M_O = 15.9994$
$M_S = 32.065$
$M_N = 14.0067$

w_C, = 0.8205

(2) You may use the default values in the following table to determine w_c for a given fuel:

TABLE 1 OF § 1065.655—DEFAULT VALUES OF α, β, γ, δ, AND w_c, FOR VARIOUS FUELS

Fuel	Atomic hydrogen, oxygen, sulfur, and nitrogen-to-carbon ratios $CH\alpha O\beta S\gamma N\delta$	Carbon mass fraction, w_c g/g.
Gasoline	$CH_{1.85}O_0S_0N_0$	0.866
#2 Diesel	$CH_{1.80}O_0S_0N_0$	0.869
#1 Diesel	$CH_{1.93}O_0S_0N_0$	0.861
Liquefied Petroleum Gas	$CH_{2.64}O_0S_0N_0$	0.819
Natural gas	$CH_{3.78}O_{0.016}S_0N_0$	0.747
Ethanol	$CH_3O_{0.5}S_0N_0$	0.521
Methanol	$CH_4O_1S_0N_0$	0.375
Residual fuel blends	Must be determined by measured fuel properties as described in paragraph (d)(1) of this section.	

(e) * * *

(3) *Fuel mass flow rate calculation.* Based on $\dot{m}_{fuel}$, calculate $\dot{n}_{exh}$ as follows:

$$\dot{n}_{exh} = \frac{\dot{m}_{fuel} \cdot w_c \cdot (1 + x_{H2Oexhdry})}{M_c \cdot x_{Ccombdry}} \quad \text{Eq. 1065.655-21}$$

Where:
$\dot{n}_{exh}$ = raw exhaust molar flow rate from which you measured emissions.
$\dot{m}_{fuel}$ = fuel flow rate including humidity in intake air.
Example:
$\dot{m}_{fuel}$ = 7.559 g/s
w_C = 0.869 g/g
M_C = 12.0107 g/mol
$x_{Ccombdry}$ = 99.87 mmol/mol = 0.09987 mol/mol
$x_{H20exhdry}$ = 107.64 mmol/mol = 0.10764 mol/mol

$$\dot{n}_{exh} = \frac{7.559 \cdot 0.869 \cdot (1 + 0.10764)}{12.0107 \cdot 0.09987}$$

$\dot{n}_{exh}$= 6.066 mol/s

■ 311. Section 1065.667 is amended by revising paragraphs (d) and (e) to read as follows:

§ 1065.667 Dilution air background emission correction.

* * * * *

(d) The following is an example of using the flow-weighted mean fraction of dilution air in diluted exhaust, $\bar{x}_{dil/exh}$, and the total mass of background emissions calculated using the total flow of diluted exhaust, $n_{dexh,}$ as described in § 1065.650(c):

$$m_{bkgnd} = \bar{x}_{dil/exh} \cdot m_{bkgnddexh} \quad \text{Eq. 1065.667-1}$$

$$m_{bkgnddexh} = M \cdot \bar{x}_{bkgnd} \cdot n_{dexh} \quad \text{Eq. 1065.667-2}$$

Example:
M_{NOx} = 46.0055 g/mol
$\bar{x}_{bkgnd}$ = 0.05 µmol/mol = $0.05 \cdot 10^{-6}$ mol/mol
n_{dexh} = 23280.5 mol
$\bar{x}_{dil/exh}$ = 0.843 mol/mol
$m_{bkgndNOxdexh}$ = $46.0055 \cdot 0.05 \cdot 10^{-6} \cdot 23280.5$
$m_{bkgndNOxdexh}$ = 0.0536 g
$m_{bkgndNOx}$ = $0.843 \cdot 0.0536$
$m_{bkgndNOx}$ = 0.0452 g

(e) The following is an example of using the fraction of dilution air in

diluted exhaust, $x_{dil/exh}$, and the mass rate of background emissions calculated using the flow rate of diluted exhaust, $\dot{n}_{dexh}$, as described in § 1065.650(c):

$$\dot{m}_{bkgnd} = x_{dil/exh} \cdot \dot{m}_{bkgnddexh} \qquad \text{Eq. 1065.667-3}$$

$$\dot{m}_{bkgnddexh} = M \cdot x_{bkgnd} \cdot \dot{n}_{dexh} \qquad \text{Eq. 1065.667-4}$$

Example:
M_{NOx} = 46.0055 g/mol
x_{bkgnd} = 0.05 µmol/mol = $0.05 \cdot 10^{-6}$ mol/mol
$\dot{n}_{dexh}$ = 23280.5 mol/s
$x_{dil/exh}$ = 0.843 mol/mol
$\dot{m}_{bkgndNOxdexh} = 36.0055 \cdot 0.05 \cdot 10^{-6} \cdot 23280.5$
$\dot{m}_{bkgndNOXdexh}$ = 0.0536 g/hr
$\dot{m}_{bkgndNOx} = 0.843 \cdot 0.0536$
$\dot{m}_{bkgndNOx}$ = 0.0452 g/hr

■ 312. Section 1065.670 is revised to read as follows:

§ 1065.670 NO_X intake-air humidity and temperature corrections.

See the standard-setting part to determine if you may correct NO_X emissions for the effects of intake-air humidity or temperature. Use the NO_X intake-air humidity and temperature corrections specified in the standard-setting part instead of the NO_X intake-air humidity correction specified in this part 1065. If the standard-setting part does not prohibit correcting NO_X emissions for intake-air humidity according to this part 1065, first apply any NO_X corrections for background emissions and water removal from the exhaust sample, then correct NO_X concentrations for intake-air humidity. You may use a time-weighted mean combustion air humidity to calculate this correction if your combustion air humidity remains within a tolerance of ±0.0025 mol/mol of the mean value over the test interval. For intake-air humidity correction, use one of the following approaches:

(a) For compression-ignition engines, correct for intake-air humidity using the following equation:

$$x_{NOxcor} = x_{NOxuncor} \cdot \left(9.953 \cdot x_{H20} + 0.832\right) \qquad \text{Eq. 1065.670-1}$$

Example:
$x_{NOxuncor}$ = 700.5 µmol/mol
x_{H2O} = 0.022 mol/mol
$x_{NOxcor} = 700.5 \cdot (9.953 \cdot 0.022 + 0.832)$
x_{NOxcor} = 736.2 µmol/mol

(b) For spark-ignition engines, correct for intake-air humidity using the following equation:

$$x_{NOxcor} = x_{NOxuncor} \cdot \left(18.840 \cdot x_{H20} + 0.68094\right) \qquad \text{Eq. 1065.670-2}$$

Example:
$x_{NOxuncor}$ = 154.7 µmol/mol
x_{H2O} = 0.022 mol/mol
$x_{NOxcor} = 154.7 \cdot (18.840 \cdot 0.022 + 0.68094)$
x_{NOxcor} = 169.5 µmol/mol

(c) Develop your own correction, based on good engineering judgment.

■ 313. Section 1065.672 is amended by revising paragraph (d)(7) to read as follows:

§ 1065.672 Drift correction.

* * * * *

(d) * * *

(7) Usually the reference concentration of the zero gas, $x_{refzero}$, is zero: $x_{refzero}$ = 0 µmol/mol. However, in some cases you might know that $x_{refzero}$ has a non-zero concentration. For example, if you zero a CO_2 analyzer using ambient air, you may use the default ambient air concentration of CO_2, which is 375 µmol/mol. In this case, $x_{refzero}$ = 375 µmol/mol. Note that when you zero an analyzer using a non-zero $x_{refzero}$, you must set the analyzer to output the actual $x_{refzero}$ concentration. For example, if $x_{refzero}$ = 375 µmol/mol, set the analyzer to output a value of 375 µmol/mol when the zero gas is flowing to the analyzer.

■ 314. Section 1065.690 is amended by revising paragraphs (c) and (e) to read as follows:

§ 1065.690 Buoyancy correction for PM sample media.

* * * * *

(c) *Air density.* Because a PM balance environment must be tightly controlled to an ambient temperature of (22 ±1) °C and humidity has an insignificant effect on buoyancy correction, air density is primarily a function of atmospheric pressure. Therefore you may use nominal constant values for temperature and humidity in the buoyancy correction equation in Eq. 1065.690–2.

* * * * *

(e) *Correction calculation.* Correct the PM sample media for buoyancy using the following equations:

$$m_{cor} = m_{uncor} \cdot \left[\frac{1 - \frac{\rho_{air}}{\rho_{weight}}}{1 - \frac{\rho_{air}}{\rho_{media}}}\right] \qquad \text{Eq. 1065.690-1}$$

Where:

m_{cor} = PM mass corrected for buoyancy.
m_{uncor} = PM mass uncorrected for buoyancy.
ρ_{air} = density of air in balance environment.

ρ_{weight} = density of calibration weight used to span balance.
ρ_{media} = density of PM sample media, such as a filter.

$$\rho_{air} = \frac{p_{abs} \cdot M_{mix}}{R \cdot T_{amb}} \qquad \text{Eq.1065.690-2}$$

Where:
p_{abs} = absolute pressure in balance environment.
M_{mix} = molar mass of air in balance environment.
R = molar gas constant.
T_{amb} = absolute ambient temperature of balance environment.

Example:

p_{abs} = 99.980 kPa
$T_{sat} = T_{dew}$ = 9.5 °C
Using Eq. 1065.645–1,
p_{H2O} = 1.1866 kPa
Using Eq. 1065.645–3,
x_{H2O} = 0.011868 mol/mol
Using Eq. 1065.640–9,
M_{mix} = 28.83563 g/mol
R = 8.314472 J/(mol·K)
T_{amb} = 20 °C

$$\rho_{air} = \frac{99.980 \cdot 28.83563}{8.314472 \cdot 293.15}$$

ρ_{air} = 1.18282 kg/m³
m_{uncorr} = 100.0000 mg
ρ_{weight} = 8000 kg/m³
ρ_{media} = 920 kg/m³

$$m_{cor} = 100.0000 \cdot \left[\frac{1 - \frac{1.18282}{8000}}{1 - \frac{1.18282}{920}} \right]$$

m_{cor} = 100.1139 mg

Subpart H— [Amended]

■ 315. Section 1065.701 is amended by revising paragraph (f) and Table 1 of § 1065.701 to read as follows:

§ 1065.701 General requirements for test fuels.

* * * * *

(f) *Service accumulation and field testing fuels.* If we do not specify a service-accumulation or field-testing fuel in the standard-setting part, use an appropriate commercially available fuel such as those meeting minimum specifications from the following table:

TABLE 1 OF § 1065.701—EXAMPLES OF SERVICE-ACCUMULATION AND FIELD-TESTING FUELS

Fuel category	Subcategory	Reference procedure [1]
Diesel	Light distillate and light blends with residual	ASTM D975–07b.
	Middle distillate	ASTM D6985–04a.
	Biodiesel (B100)	ASTM D6751–07b.
Intermediate and residual fuel	All	*See* § 1065.705.
Gasoline	Motor vehicle gasoline	ASTM D4814–07a.
	Minor oxygenated gasoline blends	ASTM D4814–07a.
Alcohol	Ethanol (Ed75–85)	ASTM D5798–07.
	Methanol (M70–M85)	ASTM D5797–07.
Aviation fuel	Aviation gasoline	ASTM D910–07.
	Gas turbine	ASTM D1655–07e01.
	Jet B wide cut	ASTM D6615–06.
Gas turbine fuel	General	ASTM D2880–03l.

[1] ASTM specifications are incorporated by reference in § 1065.1010.

■ 316. Section 1065.703 is amended by revising Table 1 of § 1065.703 to read as follows:

§ 1065.703 Distillate diesel fuel.

* * * * *

TABLE 1 OF § 1065.703—TEST FUEL SPECIFICATIONS FOR DISTILLATE DIESEL FUEL

Item	Units	Ultra low sulfur	Low sulfur	High sulfur	Reference procedure [1]
Cetane Number	.....	40–50	40–50	40–50	ASTM D613–05.
Distillation range: Initial boiling point	°C	171–204	171–204	171–204	ASTM D86–07a.
10 pct. point	.....	204–238	204–238	204–238	
50 pct. point	.....	243–282	243–282	243–282	
90 pct. point	.....	293–332	293–332	293–332	
Endpoint	.....	321–366	321–366	321–366	
Gravity	°API	32–37	32–37	32–37	ASTM D4052–96e01.
Total sulfur, ultra low sulfur	mg/kg	7–15			*See* 40 CFR 80.580.
Total sulfur, low and high sulfur	mg/kg		300–500	800–2500	ASTM D2622–07 or alternates as allowed under 40 CFR 80.580.
Aromatics, min. (Remainder shall be paraffins, naphthalenes, and olefins)	g/kg	100	100	100	ASTM D5186–03.
Flashpoint, min	°C	54	54	54	ASTM D93–07.

TABLE 1 OF § 1065.703—TEST FUEL SPECIFICATIONS FOR DISTILLATE DIESEL FUEL—Continued

Item	Units	Ultra low sulfur	Low sulfur	High sulfur	Reference procedure [1]
Kinematic Viscosity	cSt	2.0–3.2	2.0–3.2	2.0–3.2	ASTM D445–06.

[1] ASTM procedures are incorporated by reference in § 1065.1010. *See* § 1065.701(d) for other allowed procedures.

Subpart I—[Amended]

■ 317. Section 1065.845 is amended by revising paragraph (b) to read as follows:

§ 1065.845 Response factor determination.

* * * * *

(b) Alcohol/carbonyl calibration gases must remain within ±2% of the labeled concentration. You must demonstrate the stability based on a quarterly measurement procedure with a precision of ±2% percent or another method that we approve. Your measurement procedure may incorporate multiple measurements. If the true concentration of the gas changes deviates by more than ±2%, but less than ±10%, the gas may be relabeled with the new concentration.

Subpart J— [Amended]

■ 318. Section 1065.910 is amended by revising paragraphs (a)(3) and (c) to read as follows:

§ 1065.910 PEMS auxiliary equipment for field testing.

* * * * *

(a) * * *

(3) *Flow restriction.* Use flow meters, connectors, and tubing that do not increase flow restriction so much that it exceeds the manufacturer's maximum specified value. You may verify this at the maximum exhaust flow rate by measuring pressure at the manufacturer-specified location with your system connected. You may also perform an engineering analysis to verify an acceptable configuration, taking into account the maximum exhaust flow rate expected, the field test system's flexible connectors, and the tubing's characteristics for pressure drops versus flow.

* * * * *

(c) Use mounting hardware as required for securing flexible connectors, ambient sensors, and other equipment. Use structurally sound mounting points such as vehicle frames, trailer hitch receivers, walk spaces, and payload tie-down fittings. We recommend mounting hardware such as clamps, suction cups, and magnets that are specifically designed for your application. We also recommend considering mounting hardware such as commercially available bicycle racks, trailer hitches, and luggage racks where applicable.

* * * * *

Subpart K—[Amended]

■ 319. Section 1065.1001 is amended by revising the definitions for "Duty cycle" and "Percent" to read as follows:

§ 1065.1001 Definitions.

* * * * *

Duty cycle means one of the following:

(1) A series of speed and torque values (or power values) that an engine must follow during a laboratory test. Duty cycles are specified in the standard-setting part. A single duty cycle may consist of one or more test intervals. A series of speed and torque values meeting the definition of this paragraph (1) may also be considered a test cycle. For example, a duty cycle may be a ramped-modal cycle, which has one test interval; a cold-start plus hot-start transient cycle, which has two test intervals; or a discrete-mode cycle, which has one test interval for each mode.

(2) A set of weighting factors and the corresponding speed and torque values, where the weighting factors are used to combine the results of multiple test intervals into a composite result.

* * * * *

Percent (%) means a representation of exactly 0.01 (with infinite precision). Significant digits for the product of % and another value, or the expression of any other value as a percentage, are defined as follows:

(1) Where we specify some percentage of a total value, the calculated value has the same number of significant digits as the total value. The specified percentage by which the total value is multiplied has infinite precision. Note that not all displayed or recorded digits are significant. For example, 2% of a span value where the span value is 101.3302 is 2.026604. However, where the span value has limited precision such that only one digit to the right of the decimal is significant (*i.e.,* the actual value is 101.3), 2% of the span value is 2.026.

(2) In other cases, determine the number of significant digits using the same method as you would use for determining the number of significant digits of any calculated value. For example, a calculated value of 0.321, where all three digits are significant, is equivalent to 32.1%.

* * * * *

PART 1068—GENERAL COMPLIANCE PROVISIONS FOR ENGINE PROGRAMS

■ 320. The authority citation for part 1068 continues to read as follows:

Authority: 42 U.S.C. 7401–7671q.

■ 321. The heading for part 1068 is revised as set forth above.

Subpart A—[Amended]

■ 322. Section 1068.1 is amended by revising paragraphs (a)(4), (b)(4), (b)(8), and (d)(1) to read as follows:

§ 1068.1 Does this part apply to me?

(a) * * *

(4) Marine compression-ignition engines we regulate under 40 CFR part 1042.

* * * * *

(b) * * *

(4) Land-based nonroad compression-ignition engines we regulate under 40 CFR part 89.

* * * * *

(8) Marine compression-ignition engines we regulate under 40 CFR parts 89 or 94.

* * * * *

(d) * * *

(1) The provisions of §§ 1068.30 and 1068.310 apply for stationary spark-ignition engines built on or after January 1, 2004, and for stationary compression-ignition engines built on or after January 1, 2006.

* * * * *

■ 323. Section 1068.25 is amended by adding paragraph (c) to read as follows:

§ 1068.25 What information must I give to EPA?

* * * * *

(c) You are responsible for statements and information in your applications for certification or any other requests or reports. If you provide statements or information to someone for submission to EPA, you are responsible for these statements and information as if you had submitted them to EPA yourself. For example, knowingly submitting

false information to someone else for inclusion in an application for certification would be deemed to be a submission of false information to the U.S. government in violation of 18 U.S.C. 1001.

■ 324. Section 1068.30 is amended as follows:

■ a. By revising the introductory text of the definition for "Engine".

■ b. By adding a definition for "Engine configuration" in alphabetical order.

■ c. By adding a definition for "Gas turbine engine" in alphabetical order.

■ d. By revising the definition for "Ultimate purchaser".

§ 1068.30 What definitions apply to this part?

* * * * *

Engine means an engine block with an installed crankshaft, or a gas turbine engine. The term engine does not include engine blocks without an installed crankshaft, nor does it include any assembly of reciprocating engine components that does not include the engine block. (**Note:** For purposes of this definition, any component that is the primary means of converting an engine's energy into usable work is considered a crankshaft, whether or not it is known commercially as a crankshaft.) This includes complete and partially complete engines as follows:

* * * * *

Engine configuration means a unique combination of engine hardware and calibration within an engine family. Engines within a single engine configuration differ only with respect to normal production variability or factors unrelated to emissions.

* * * * *

Gas turbine engine means anything commercially known as a gas turbine engine or any collection of assembled engine components that is substantially similar to engines commercially known as gas turbine engines. For example, a jet engine is a gas turbine engine. Gas turbine engines may be complete or partially complete. Turbines that rely on external combustion such as steam engines are not gas turbine engines.

* * * * *

Ultimate purchaser means the first person who in good faith purchases a new engine or new piece of equipment for purposes other than resale.

* * * * *

■ 325. Section 1068.31 is amended by revising paragraph (d) to read as follows:

§ 1068.31 What provisions apply to nonroad or stationary engines that change their status?

* * * * *

(d) Changing the status of a nonroad engine to be a new stationary engine as described in paragraph (e) of this section is a violation of § 1068.101(a)(1) unless the engine complies with all the requirements of this chapter for new stationary engines of the same type (for example, a compression-ignition engine rated at 40 kW) and model year. For a new stationary engine that is required to be certified under 40 CFR part 60, the engine must have been certified to be compliant with all the requirements that apply to new stationary engines of the same type and model year, and must be in its certified configuration. Note that the definitions of "model year" in the standard-setting parts generally identify the engine's original date of manufacture as the basis for determining which standards apply if it becomes a stationary engine after it is no longer new. For example, *see* 40 CFR 60.4219 and 60.4248.

* * * * *

■ 326. Section 1068.40 is revised to read as follows:

§ 1068.40 What special provisions apply for implementing changes in the regulations?

(a) During the 12 months following the effective date of any change in the provisions of this part, you may ask to apply the previously applicable provisions. We will generally approve your request if you can demonstrate that it would be impractical to comply with the new requirements. We may consider the potential for adverse environmental impacts in our decision. Similarly, in unusual circumstances, you may ask for relief under this paragraph (a) from new requirements that apply under the standard-setting part.

(b) During the 60 days following the effective date of any change in the provisions of this part, you may use the previously applicable provisions without request if they meet either of the following criteria:

(1) The new provisions require you to redesign your engines/equipment, modify your engine/equipment labels, or change your production procedures.

(2) The new provisions change what you must include in an application for certification that you submit before the end of this 60-day period. You are not required to amend such applications to comply with the new provisions for that model year; however, this allowance does not apply for later model years, even if you certify an engine family using carryover emission data. This allowance does not affect your obligation to provide information that we request separate from an application for certification.

(c) Prior to the dates listed you may comply with earlier versions of applicable regulations as follows:

(1) Prior to June 1, 2010, you may comply with the provisions of § 1068.240 that were in effect on April 30, 2010.

(2) [Reserved]

■ 327. Section 1068.45 is amended by revising paragraph (c) introductory text to read as follows:

§ 1068.45 General labeling provisions.

* * * * *

(c) *Labels on packaging.* Unless we specify otherwise, where we require engine/equipment labels that may be removable, you may instead label the packaging if the engines/equipment are packaged together as described in this paragraph (c). For example, this may involve packaging engines together by attaching them to a rack, binding them together on a pallet, or enclosing them in a box. The provisions of this paragraph (c) also apply for engines/equipment boxed individually where you do not apply labels directly to the engines/equipment. The following provisions apply if you label the packaging instead of labeling engines/equipment individually:

* * * * *

■ 328. Section 1068.101 is revised to read as follows:

§ 1068.101 What general actions does this regulation prohibit?

This section specifies actions that are prohibited and the maximum civil penalties that we can assess for each violation in accordance with 42 U.S.C. 7522 and 7524. The maximum penalty values listed in paragraphs (a) and (b) of this section apply as of January 12, 2009. As described in paragraph (h) of this section, these maximum penalty limits are different for earlier violations and they may be adjusted as set forth in 40 CFR part 19.

(a) The following prohibitions and requirements apply to manufacturers of new engines, manufacturers of equipment containing these engines, and manufacturers of new equipment, except as described in subparts C and D of this part:

(1) *Introduction into commerce.* You may not sell, offer for sale, or introduce or deliver into commerce in the United States or import into the United States any new engine/equipment after emission standards take effect for the engine/equipment, unless it is covered by a valid certificate of conformity for its model year and has the required label or tag. You also may not take any of the actions listed in the previous sentence with respect to any equipment

containing an engine subject to this part's provisions unless the engine is covered by a valid certificate of conformity for its model year and has the required engine label or tag. We may assess a civil penalty up to $37,500 for each engine or piece of equipment in violation.

(i) For purposes of this paragraph (a)(1), a valid certificate of conformity is one that applies for the same model year as the model year of the equipment (except as allowed by § 1068.105(a)), covers the appropriate category of engines/equipment (such as locomotive or Marine SI), and conforms to all requirements specified for equipment in the standard-setting part. Engines/equipment are considered not covered by a certificate unless they are in a configuration described in the application for certification.

(ii) The requirements of this paragraph (a)(1) also cover new engines you produce to replace an older engine in a piece of equipment, unless the engine qualifies for the replacement-engine exemption in § 1068.240.

(iii) For engines used in equipment subject to equipment-based standards, you may not sell, offer for sale, or introduce or deliver into commerce in the United States or import into the United States any new engine unless it is covered by a valid certificate of conformity for its model year and has the required label or tag. *See* the standard-setting part for more information about how this prohibition applies.

(2) *Reporting and recordkeeping.* This chapter requires you to record certain types of information to show that you meet our standards. You must comply with these requirements to make and maintain required records (including those described in § 1068.501). You may not deny us access to your records or the ability to copy your records if we have the authority to see or copy them. Also, you must give us complete and accurate reports and information without delay as required under this chapter. Failure to comply with the requirements of this paragraph is prohibited. We may assess a civil penalty up to $37,500 for each day you are in violation. In addition, knowingly submitting false information is a violation of 18 U.S.C. 1001, which may involve criminal penalties and up to five years imprisonment.

(3) *Testing and access to facilities.* You may not keep us from entering your facility to test engines/equipment or inspect if we are authorized to do so. Also, you must perform the tests we require (or have the tests done for you). Failure to perform this testing is prohibited. We may assess a civil penalty up to $37,500 for each day you are in violation.

(b) The following prohibitions apply to everyone with respect to the engines and equipment to which this part applies:

(1) *Tampering.* You may not remove or render inoperative any device or element of design installed on or in engines/equipment in compliance with the regulations prior to its sale and delivery to the ultimate purchaser. You also may not knowingly remove or render inoperative any such device or element of design after such sale and delivery to the ultimate purchaser. This includes, for example, operating an engine without a supply of appropriate quality urea if the emissions control system relies on urea to reduce NOx emissions or the use of incorrect fuel or engine oil that renders the emissions control system inoperative. Section 1068.120 describes how this applies to rebuilding engines. *See* the standard-setting part, which may include additional provisions regarding actions prohibited by this requirement. For a manufacturer or dealer, we may assess a civil penalty up to $37,500 for each engine or piece of equipment in violation. For anyone else, we may assess a civil penalty up to $3,750 for each day an engine or piece of equipment is operated in violation. This prohibition does not apply in any of the following situations:

(i) You need to repair the engine/equipment and you restore it to proper functioning when the repair is complete.

(ii) You need to modify the engine/equipment to respond to a temporary emergency and you restore it to proper functioning as soon as possible.

(iii) You modify new engines/equipment that another manufacturer has already certified to meet emission standards and recertify them under your own family. In this case you must tell the original manufacturer not to include the modified engines/equipment in the original family.

(2) *Defeat devices.* You may not knowingly manufacture, sell, offer to sell, or install, any part that bypasses, impairs, defeats, or disables the control of emissions of any regulated pollutant, except as explicitly allowed by the standard-setting part. We may assess a civil penalty up to $3,750 for each part in violation.

(3) *Stationary engines.* For an engine that is excluded from any requirements of this chapter because it is a stationary engine, you may not move it or install it in any mobile equipment except as allowed by the provisions of this chapter. You may not circumvent or attempt to circumvent the residence-time requirements of paragraph (2)(iii) of the nonroad engine definition in § 1068.30. Anyone violating this paragraph (b)(3) is deemed to be a manufacturer in violation of paragraph (a)(1) of this section. We may assess a civil penalty up to $37,500 for each engine or piece of equipment in violation.

(4) *Competition engines/equipment.* For uncertified engines/equipment that are excluded or exempted from any requirements of this chapter because they are to be used solely for competition, you may not use any of them in a manner that is inconsistent with use solely for competition. Anyone violating this paragraph (b)(4) is deemed to be a manufacturer in violation of paragraph (a)(1) of this section. We may assess a civil penalty up to $37,500 for each engine or piece of equipment in violation.

(5) *Importation.* You may not import an uncertified engine or piece of equipment if it is defined to be new in the standard-setting part with a model year for which emission standards applied. Anyone violating this paragraph (b)(5) is deemed to be a manufacturer in violation of paragraph (a)(1) of this section. We may assess a civil penalty up to $37,500 for each engine or piece of equipment in violation. Note the following:

(i) The definition of new is broad for imported engines/equipment; uncertified engines and equipment (including used engines and equipment) are generally considered to be new when imported.

(ii) Used engines/equipment that were originally manufactured before applicable EPA standards were in effect are generally not subject to emission standards.

(6) *Warranty, recall, and maintenance instructions.* You must meet your obligation to honor your emission-related warranty under § 1068.115, including any commitments you identify in your application for certification. You must also fulfill all applicable requirements under subpart F of this part related to emission-related defects and recalls. You must also provide emission-related installation and maintenance instructions as described in the standard-setting part. Failure to meet these obligations is prohibited. Also, except as specifically provided by regulation, you are prohibited from directly or indirectly communicating to the ultimate purchaser or a later purchaser that the emission-related warranty is valid only if the owner has service performed at

authorized facilities or only if the owner uses authorized parts, components, or systems. We may assess a civil penalty up to $37,500 for each engine or piece of equipment in violation.

(7) *Labeling.* (i) You may not remove or alter an emission control information label or other required permanent label except as specified in this paragraph (b)(7) or otherwise allowed by this chapter. Removing or altering an emission control information label is a violation of paragraph (b)(1) of this section. However, it is not a violation to remove a label in the following circumstances:

(A) The engine is destroyed, is permanently disassembled, or otherwise loses its identity such that the original title to the engine is no longer valid.

(B) The regulations specifically direct you to remove the label. For example, *see* § 1068.235.

(C) The part on which the label is mounted needs to be replaced. In this case, you must have a replacement part with a duplicate of the original label installed by the certifying manufacturer or an authorized agent, except that the replacement label may omit the date of manufacture if applicable. We generally require labels to be permanently attached to parts that will not normally be replaced, but this provision allows for replacements in unusual circumstances, such as damage in a collision or other accident.

(D) The original label is incorrect, provided that it is replaced with the correct label from the certifying manufacturer or an authorized agent. This allowance to replace incorrect labels does not affect whether the application of an incorrect original label is a violation.

(ii) Removing or altering a temporary or removable label contrary to the provisions of this paragraph (b)(7)(ii) is a violation of paragraph (b)(1) of this section.

(A) For labels identifying temporary exemptions, you may not remove or alter the label while the engine/equipment is in an exempt status. The exemption is automatically revoked for each engine/equipment for which the label has been removed.

(B) For temporary or removable consumer information labels, only the ultimate purchaser may remove the label.

(iii) You may not apply a false emission control information label. You also may not manufacture, sell, or offer to sell false labels. The application, manufacture, sale, or offer for sale of false labels is a violation of this section (such as paragraph (a)(1) or (b)(2) of this section). Note that applying an otherwise valid emission control information label to the wrong engine is considered to be applying a false label.

(c) If you cause someone to commit a prohibited act in paragraph (a) or (b) of this section, you are in violation of that prohibition.

(d) Exemptions from these prohibitions are described in subparts C and D of this part and in the standard-setting part.

(e) The standard-setting parts describe more requirements and prohibitions that apply to manufacturers (including importers) and others under this chapter.

(f) The specification of prohibitions and penalties in this part does not limit the prohibitions and penalties described in the Clean Air Act. Additionally, a single act may trigger multiple violations under this section and the Act. We may pursue all available administrative, civil, or criminal remedies for those violations even if the regulation references only a single prohibited act in this section.

(g) [Reserved]

(h) The maximum penalty values listed in paragraphs (a) and (b) of this section apply as of January 12, 2009. Maximum penalty values for earlier violations are published in 40 CFR part 19. Maximum penalty limits may be adjusted after January 12, 2009 based on the Consumer Price Index. The specific regulatory provisions for changing the maximum penalties, published in 40 CFR part 19, reference the applicable U.S. Code citation on which the prohibited action is based. The following table is shown here for informational purposes:

TABLE 1 OF § 1068.101—LEGAL CITATION FOR SPECIFIC PROHIBITIONS FOR DETERMINING MAXIMUM PENALTY AMOUNTS

Part 1068 regulatory citation of prohibited action	General description of prohibition	U.S. Code citation for Clean Air Act authority
§ 1068.101(a)(1)	Introduction into U.S. commerce of an uncertified source.	42 U.S.C. 7522(a)(1) and (a)(4).
§ 1068.101(a)(2)	Failure to provide information	42 U.S.C. 7522(a)(2).
§ 1068.101(a)(3)	Denying access to facilities	42 U.S.C. 7522(a)(2).
§ 1068.101(b)(1)	Tampering with emission controls by a manufacturer or dealer. Tampering with emission controls by someone other than a manufacturer or dealer.	42 U.S.C. 7522(a)(3).
§ 1068.101(b)(2)	Sale or use of a defeat device	42 U.S.C. 7522(a)(3).
§ 1068.101(b)(3)	Mobile use of a stationary engine	42 U.S.C. 7522(a)(1) and (a)(4).
§ 1068.101(b)(4)	Noncompetitive use of uncertified engines/equipment that is exempted for competition.	42 U.S.C. 7522(a)(1) and (a)(4).
§ 1068.101(b)(5)	Importation of an uncertified source	42 U.S.C. 7522(a)(1) and (a)(4).
§ 1068.101(b)(6)	Recall and warranty	42 U.S.C. 7522(a)(4).
§ 1068.101(b)(7)	Removing labels	42 U.S.C. 7522(a)(3).

■ 329. Section 1068.103 is amended by revising paragraph (a) to read as follows:

§ 1068.103 What are the provisions related to the duration and applicability of certificates of conformity?

(a) Engines/equipment covered by a certificate of conformity are limited to those that are produced during the period specified in the certificate and conform to the specifications described in the certificate and the associated application for certification. For the purposes of this paragraph (a), "specifications" includes any conditions or limitations identified by the manufacturer or EPA. For example, if the application for certification specifies certain engine configurations, the certificate does not cover any configurations that are not specified. We may ignore any information provided in the application that we determine is not relevant to a demonstration of compliance with applicable regulations,

such as your projected production volumes in many cases.

* * * * *

■ 330. Section 1068.105 is amended by revising paragraph (a) to read as follows:

§ 1068.105 What other provisions apply to me specifically if I manufacture equipment needing certified engines?

* * * * *

(a) *Transitioning to new engine-based standards.* If new engine-based emission standards apply in a given model year, your equipment in that calendar year must have engines that are certified to the new standards, except that you may continue to use up normal inventories of earlier engines that were built before the date of the new or changed standards. For purposes of this paragraph (a), normal inventory applies for engines you possess and engines from your engine supplier's inventory. (**Note:** this paragraph (a) does not apply in the case of new remanufacturing standards.) For example, if your normal inventory practice is to keep on hand a one-month supply of engines based on your upcoming production schedules, and a new tier of standards starts to apply for the 2015 model year, you may order engines consistent with your normal inventory requirements late in the engine manufacturer's 2014 model year and install those engines in your equipment, regardless of the date of installation. Also, if your model year starts before the end of the calendar year preceding new standards, you may use engines from the previous model year for those units you produce before January 1 of the year that new standards apply. If emission standards for the engine do not change in a given model year, you may continue to install engines from the previous model year without restriction (or any earlier model year for which the same standards apply). You may not circumvent the provisions of § 1068.101(a)(1) by stockpiling engines that were built before new or changed standards take effect. Similarly, you may not circumvent the provisions of § 1068.101(a)(1) by knowingly installing engines that were stockpiled by engine suppliers in violation of § 1068.103(f). Note that this allowance does not apply for equipment subject to equipment-based standards. *See* 40 CFR 1060.601 for similar provisions that apply for equipment subject to evaporative emission standards.

* * * * *

■ 331. Section 1068.120 is amended by revising paragraph (e) to read as follows:

§ 1068.120 What requirements must I follow to rebuild engines?

* * * * *

(e) If the rebuilt engine remains installed or is reinstalled in the same piece of equipment, you must rebuild it to the original configuration, except as allowed by this paragraph (e). You may rebuild it to a different certified configuration of the same or later model year. You may also rebuild it to a certified configuration from an earlier model year as long as the earlier configuration is as clean or cleaner than the original configuration. For purposes of this paragraph (e), "as clean or cleaner" means one of the following:

(1) For engines not certified with a Family Emission Limit for calculating credits for a particular pollutant, this means that the same emission standard applied for both model years. This includes supplemental standards such as Not-to-Exceed standards.

(2) For engines certified with a Family Emission Limit for a particular pollutant, this means that the configuration to which the engine is being rebuilt has a Family Emission Limit for that pollutant that is at or below the standard that applied to the engine originally, and is at or below the original Family Emission Limit.

* * * * *

■ 332. Section 1068.125 is amended by revising paragraph (b) introductory text to read as follows:

§ 1068.125 What happens if I violate the regulations?

* * * * *

(b) *Administrative penalties.* Instead of bringing a civil action, we may assess administrative penalties if the total is less than $295,000 against you individually. This maximum penalty may be greater if the Administrator and the Attorney General jointly determine that a greater administrative penalty assessment is appropriate, or if the limit is adjusted under 40 CFR part 19. No court may review this determination. Before we assess an administrative penalty, you may ask for a hearing (subject to 40 CFR part 22). The Administrator may compromise or remit, with or without conditions, any administrative penalty that may be imposed under this section.

* * * * *

Subpart C—[Amended]

■ 333. Section 1068.215 is amended by revising paragraphs (a) and (b) to read as follows:

§ 1068.215 What are the provisions for exempting manufacturer-owned engines/equipment?

(a) You are eligible for the exemption for manufacturer-owned engines/equipment only if you are a certificate holder. Any engine for which you meet all applicable requirements under this section is exempt without request.

(b) Engines/equipment may be exempt without a request if they are nonconforming engines/equipment under your ownership, possession, and control and you do not operate them for purposes other than to develop products, assess production methods, or promote your engines/equipment in the marketplace, or other purposes we approve. You may not loan, lease, sell, or use the engine/equipment to generate revenue, either by itself or for an engine installed in a piece of equipment, except as allowed by § 1068.201(i). Note that this paragraph (b) does not prevent the sale or shipment of a partially complete engine to a secondary engine manufacturer that will meet the requirements of this paragraph (b). *See* § 1068.262 for provisions related to shipping partially complete engines to secondary engine manufacturers.

* * * * *

■ 334. Section 1068.225 is amended by revising paragraph (b) to read as follows:

§ 1068.225 What are the provisions for exempting engines/equipment for national security?

* * * * *

(b) Manufacturers may request a national security exemption for engines/equipment not meeting the conditions of paragraph (a) of this section as long as the request is endorsed by an agency of the Federal government responsible for national defense. In your request, explain why you need the exemption.

* * * * *

■ 335. Section 1068.240 is amended as follows:

■ a. By revising paragraphs (a) and (b)(6).

■ b. By adding paragraph (b)(7).

■ c. By revising paragraphs (c) introductory text, (c)(2)(ii), and (c)(4).

■ d. By revising paragraphs (d), (e), and (g)(2).

§ 1068.240 What are the provisions for exempting new replacement engines?

* * * * *

(a) *General provisions.* You are eligible for the exemption for new replacement engines only if you are a certificate holder. Note that this exemption does not apply for locomotives (40 CFR 1033.601) and that unique provisions apply to marine compression-ignition engines (40 CFR

1042.615). Paragraphs (b), (c), and (d) of this section describe different approaches for exempting new replacement engines where the engines are specially built to correspond to an earlier model year that was subject to less stringent standards than those that apply for current production (or is no longer covered by a certificate of conformity). Paragraph (e) of this section describes a simpler approach for exempting partially complete new replacement engines that are built under a certificate of conformity that is valid for producing engines for the current model year.

(b) * * *

(6) You add a permanent label, consistent with § 1068.45, with your corporate name and trademark and the following additional information:

(i) Add the following statement if the engine being replaced was not subject to any emission standards under this chapter:

THIS ENGINE DOES NOT COMPLY WITH U.S. EPA EMISSION REQUIREMENTS. SELLING OR INSTALLING THIS ENGINE FOR ANY PURPOSE OTHER THAN TO REPLACE AN ENGINE BUILT BEFORE JANUARY 1, [Insert appropriate year reflecting when the earliest tier of standards began to apply to engines of that size and type] MAY BE A VIOLATION OF FEDERAL LAW SUBJECT TO CIVIL PENALTY.

(ii) Add the following statement if the engine being replaced was subject to emission standards:

THIS ENGINE COMPLIES WITH U.S. EPA EMISSION REQUIREMENTS FOR [Identify the appropriate emission standards (by model year, tier, or emission levels) for the replaced engine] ENGINES UNDER 40 CFR 1068.240. SELLING OR INSTALLING THIS ENGINE FOR ANY PURPOSE OTHER THAN TO REPLACE A [Identify the appropriate emission standards for the replaced engine, by model year(s), tier(s), or emission levels)] ENGINE MAY BE A VIOLATION OF FEDERAL LAW SUBJECT TO CIVIL PENALTY.

(7) Engines exempt under this paragraph (b) may not be introduced into commerce before you make the determination under paragraph (b)(3), except as specified in this paragraph (b)(7). We may waive this restriction for engines excluded under paragraph (c)(5) of this section that you ship to a distributor. Where we waive this restriction, you must take steps to ensure that the engine is installed consistent with the requirements of this paragraph (b). For example, at a minimum you must report to us annually whether engines we allowed you to ship to a distributor under this paragraph (b)(7) have been placed into service or remain in inventory. After an engine is placed into service, your report must describe how the engine was installed consistent with the requirements of this paragraph (b). Send these reports to the Designated Compliance Officer by the deadlines we specify.

(c) *Previous-tier replacement engines without tracking.* You may produce a limited number of new replacement engines that are not from a currently certified engine family under the provisions of this paragraph (c). If you produce new engines under this paragraph (c) to replace engines subject to emission standards, the new replacement engine must be in a configuration identical in all material respects to the old engine and meet the requirements of § 1068.265. This would apply, for example, for engine configurations that were certified in an earlier model year but are no longer covered by a certificate of conformity. You must comply with the requirements of paragraph (b) of this section for any number of replacement engines you produce in excess of what we allow under this paragraph (c). Engines produced under this paragraph (c) may be redesignated as engines subject to paragraph (b) of this section, as long as you meet all the requirements and conditions of paragraph (b) of this section before the end of the calendar year in which the engine was produced. The following provisions apply to engines exempted under this paragraph (c):

(2) * * *

(ii) Partially complete engines exempted under paragraph (e) of this section.

* * * * *

(4) Add a permanent label as specified in paragraph (b)(6) of this section. For partially complete engines, you may alternatively add a permanent or removable label as specified in paragraph (d) of this section.

* * * * *

(d) *Partially complete engines.* The following requirements apply if you ship a partially complete replacement engine under paragraph (b) or (c) of this section:

(1) Provide instructions specifying how to complete the engine assembly such that the resulting engine conforms to the applicable certificate of conformity or the specifications of § 1068.265. Where a partially complete engine can be built into multiple different configurations, you must be able to identify all the engine models and model years for which the partially complete engine may properly be used for replacement purposes. Your instructions must make clear how the final assembler can determine which configurations are appropriate for the engine they receive.

(2) You must label the engine as follows:

(i) If you have a reasonable basis to believe that the fully assembled engine will include the original emission control information label, you may add a removable label to the engine with your corporate name and trademark and the statement: "This replacement engine is exempt under 40 CFR 1068.240." This would generally apply if all the engine models that are compatible with the replacement engine were covered by a certificate of conformity and they were labeled in a position on the engine or equipment that is not included as part of the partially complete engine being shipped for replacement purposes. Removable labels must meet the requirements specified in § 1068.45.

(ii) If you do not qualify for using a removable label in paragraph (d)(1) of this section, you must add a permanent label in a readily visible location, though it may be obscured after installation in a piece of equipment. Include on the permanent label your corporate name and trademark, the engine's part number (or other identifying information), and the statement: "This replacement engine is exempt under 40 CFR 1068.240." If there is not enough space for this statement, you may alternatively add: "REPLACEMENT" or "SERVICE ENGINE". For purposes of this paragraph (d)(2), engine part numbers permanently stamped or engraved on the engine are considered to be included on the label.

(e) *Partially complete current-tier replacement engines.* The provisions of paragraph (d) of this section apply for partially complete engines you produce from a current line of certified engines or vehicles. This applies for engine-based and equipment-based standards as follows:

(1) Where engine-based standards apply, you may introduce into U.S. commerce short blocks or other partially complete engines from a currently certified engine family as replacement components for in-use equipment powered by engines you originally produced. You must be able to identify all the engine models and model years for which the partially complete engine may properly be used for replacement purposes.

(2) Where equipment-based standards apply, you may introduce into U.S. commerce engines that are identical to engines covered by a current certificate of conformity by demonstrating compliance with currently applicable standards where the engines will be installed as replacement engines. These engines might be fully assembled, but we would consider them to be partially complete engines because they are not yet installed in the equipment.

* * * * *

(g)* * *

(2) Anyone installing or completing assembly of an exempted new replacement engine is deemed to be a manufacturer of a new engine with respect to the prohibitions of § 1068.101(a)(1). This applies to all engines exempted under this section.

* * * * *

■ 336. Section 1068.260 is amended by revising paragraphs (a), (b), (c), and (e) to read as follows:

§ 1068.260 What general provisions apply for selling or shipping engines that are not yet in their certified configuration?

* * * * *

(a) The provisions of this paragraph (a) apply for emission-related components that cannot practically be assembled before shipment because they depend on equipment design parameters.

(1) You do not need an exemption to ship an engine that does not include installation or assembly of certain emission-related components, if those components are shipped along with the engine. For example, you may generally ship aftertreatment devices along with engines rather than installing them on the engine before shipment. We may require you to describe how you plan to use this provision.

(2) You may ask us at the time of certification for an exemption to allow you to ship your engines without emission-related components. If we allow this, we may specify conditions that we determine are needed to ensure that shipping the engine without such components will not result in the engine being operated outside of its certified configuration. *See* paragraph (d) of this section for additional provisions that apply in certain circumstances.

(b) You do not need an exemption to ship engines without specific components if they are not emission-related components identified in Appendix I of this part. For example, you may generally ship engines without radiators needed to cool the engine.

(c) If you are a certificate holder, partially complete engines shipped between two of your facilities are exempt, subject to the provisions of this paragraph (c), as long as you maintain ownership and control of the engines until they reach their destination. We may also allow this where you do not maintain actual ownership and control of the engines (such as hiring a shipping company to transport the engines) but only if you demonstrate that the engines will be transported only according to your specifications. *See* § 1068.261(b) for the provisions that apply instead of this paragraph (c) for the special case of integrated manufacturers using the delegated-assembly exemption. Notify us of your intent to use this exemption in your application for certification, if applicable. Your exemption is effective when we grant your certificate. You may alternatively request an exemption in a separate submission; for example, this would be necessary if you will not be the certificate holder for the engines in question. We may require you to take specific steps to ensure that such engines are in a certified configuration before reaching the ultimate purchaser. Note that since this is a temporary exemption, it does not allow you to sell or otherwise distribute to ultimate purchasers an engine in an uncertified configuration. Note also that the exempted engine remains new and subject to emission standards (*see* definition of "exempted" in § 1068.30) until its title is transferred to the ultimate purchaser or it otherwise ceases to be new.

* * * * *

(e) Engines used in hobby vehicles are not presumed to be engines subject to the prohibitions of § 1068.101. Hobby vehicles are reduced-scale models of vehicles that are not capable of transporting a person. Some gas turbine engines are subject to the prohibitions of § 1068.101, but we do not presume that all gas turbine engines are subject to these prohibitions. Other engines that do not have a valid certificate of conformity or exemption when introduced into U.S. commerce are presumed to be engines subject to the prohibitions of § 1068.101 unless we determine that such engines are excluded from the prohibitions of § 1068.101.

* * * * *

§ 1068.261 [Amended]

■ 337. Section 1068.261 is amended by removing and reserving paragraph (c)(5).

Subpart D—[Amended]

■ 338. Section 1068.325 is amended by revising paragraph (g) to read as follows:

§ 1068.325 What are the temporary exemptions for imported engines/equipment?

* * * * *

(g) *Exemption for partially complete engines.* You may import an engine if another company already has a certificate of conformity and will be modifying the engine to be in its final certified configuration or a final exempt configuration under the provisions of § 1068.262. You may also import a partially complete engine by shipping it from one of your facilities to another under the provisions of § 1068.260(c). If you are importing a used engine that becomes new as a result of importation, you must meet all the requirements that apply to original engine manufacturers under § 1068.262.

* * * * *

Subpart E—[Amended]

§ 1068.410 [Amended]

■ 339. Section 1068.410 is amended by removing and reserving paragraph (e)(1).

■ 340. Section 1068.440 is amended by revising paragraph (b) to read as follows:

§ 1068.440 How do I ask EPA to reinstate my suspended certificate?

* * * * *

(b) Give us test data from production engines/equipment showing that engines/equipment in the remedied family comply with all the emission standards that apply.

Subpart F—[Amended]

■ 341. Section 1068.501 is amended by revising paragraphs (a)(5), (e), and (f) to read as follows:

§ 1068.501 How do I report emission-related defects?

* * * * *

(a)* * *

(5) You must track the information specified in paragraph (b)(1) of this section. You must assess this data at least every three months to evaluate whether you exceed the thresholds specified in paragraphs (e) and (f) of this section. Where thresholds are based on a percentage of engines/equipment in the family, use actual U.S.-directed production volumes for the whole model year when they become available. Use projected production figures until the actual production figures become available. You are not required to collect additional information other than that specified in paragraph (b)(1) of this section before reaching a threshold for an investigation specified in paragraph (e) of this section.

* * * * *

(e) *Thresholds for conducting a defect investigation.* You must begin a defect investigation based on the following number of engines/equipment that may have the defect:

(1) For engines/equipment with maximum engine power at or below 560 kW:

(i) For families with annual production below 500 units: 50 or more engines/equipment.

(ii) For families with annual production from 500 to 50,000 units: more than 10.0 percent of the total number of engines/equipment in the family.

(iii) For families with annual production from 50,000 to 550,000 units: more than the total number of engines/equipment represented by the following equation:

Investigation threshold = 5,000 + (Production units—50,000) × 0.04

(iv) For families with annual production above 550,000 units: 25,000 or more engines/equipment.

(2) For engines/equipment with maximum engine power greater than 560 kW:

(i) For families with annual production below 250 units: 25 or more engines/equipment.

(ii) For families with annual production at or above 250 units: more than 10.0 percent of the total number of engines/equipment in the family.

(f) *Thresholds for filing a defect report.* You must send a defect report based on the following number of engines/equipment that have the defect:

(1) For engines/equipment with maximum engine power at or below 560 kW:

(i) For families with annual production below 1,000 units: 20 or more engines/equipment.

(ii) For families with annual production from 1,000 to 50,000 units: more than 2.0 percent of the total number of engines/equipment in the family.

(iii) For families with annual production from 50,000 to 550,000 units: more than the total number of engines/equipment represented by the following equation:

Reporting threshold = 1,000 + (Production units—50,000) × 0.01

(iv) For families with annual production above 550,000 units: 6,000 or more engines/equipment.

(2) For engines/equipment with maximum engine power greater than 560 kW:

(i) For families with annual production below 150 units: 10 or more engines/equipment.

(ii) For families with annual production from 150 to 750 units: 15 or more engines/equipment.

(iii) For families with annual production above 750 units: more than 2.0 percent of the total number of engines/equipment in the family.

* * * * *

[FR Doc. 2010–2534 Filed 4–29–10; 8:45 am]

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Federal Register

Friday,
April 30, 2010

Part III

Department of Health and Human Services

Centers for Medicare & Medicaid Services

42 CFR Part 440

Medicaid Program; State Flexibility for Medicaid Benefit Packages; Final Rule

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

42 CFR Part 440

[CMS–2232–F4]

RIN 0938–AP72

Medicaid Program; State Flexibility for Medicaid Benefit Packages

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

ACTION: Final rule.

SUMMARY: This rule revises the final rule published on December 3, 2008 to implement provisions of section 6044 of the Deficit Reduction Act of 2005, which amends the Social Security Act by adding a new section 1937 related to the coverage of medical assistance under approved State plans. That rule provides States increased flexibility under an approved State plan to define the scope of covered medical assistance by offering coverage of benchmark or benchmark-equivalent benefit packages to certain Medicaid-eligible individuals. In addition, this final rule responds to public comments on the February 22, 2008 proposed rule and comments received in response to rules published subsequently that delayed the effective date of the December 3, 2008 final rule until July 1, 2010.

DATES: *Effective Date:* These regulations are effective on July 1, 2010.

FOR FURTHER INFORMATION CONTACT: Fran Crystal, (410) 786–1195.

SUPPLEMENTARY INFORMATION:

I. Background

A. Regulatory History

On December 3, 2008, we published a final rule in the **Federal Register** entitled "Medicaid Program; State Flexibility for Medicaid Benefit Packages" (73 FR 73694), hereafter referred to as the December 3, 2008 rule. The December 2008 rule was to implement provisions of section 6044 of the Deficit Reduction Act (DRA) of 2005, (Pub. L. 109–171), enacted on February 8, 2006, which amends the Social Security Act (the Act) by adding a new section 1937 related to the coverage of medical assistance under approved State plans.

Subsequent to the publication of the December 3, 2008 rule, and in accordance with the memorandum of January 20, 2009 from the Assistant to the President and the Chief of Staff, entitled "Regulatory Review," we published an interim final rule with comment period (74 FR 5808) on February 2, 2009 in the **Federal Register** to temporarily delay for 60 days the effective date of the December 3, 2008 rule entitled, "Medicaid Program; State Flexibility for Medicaid Benefit Packages." The February 2, 2009 interim final rule also reopened the comment period on the policies set out in the December 3, 2008 rule. We received nine timely items of correspondence in response to the February 2, 2009 interim final rule.

On April 3, 2009, we published a second interim final rule (74 FR 15221) in the **Federal Register** effectively delaying implementation of the December 3, 2008 rule until December 31, 2009. The second interim final rule was published in order to allow time to incorporate provisions of the Children's Health Insurance Program Reauthorization Act (CHIPRA) of 2009 (Pub. L. 111–3) enacted on February 4, 2009, which corrected language in the DRA as if these amendments were included in the DRA, and subsequently amended section 1937 of the Act "State Flexibility for Medicaid Benefit Packages". This delay also allowed for sufficient time to fully consider all of the public comments received on this regulation. In response to the April 3, 2009 interim final rule with a 30-day comment period, we received seven timely items of correspondence.

Upon further review and consideration of the new provisions of the American Recovery and Reinvestment Act (ARRA) of 2009 (Pub. L. 111–5), enacted on February 17, 2009), CHIPRA, and the public comments received during the reopened comment period, we believed it necessary to revise a substantial portion of the December 3, 2008 rule. Therefore, on October 30, 2009, we published a proposed rule in the **Federal Register** (74 FR 56151) to solicit public comments on further delaying the effective date of the December 3, 2008 rule until July 1, 2010. We proposed to further delay the effective date of the December 3, 2008 rule from December 31, 2009 to July 1, 2010 to allow us sufficient time to revise a substantial portion of the final rule based on our review and consideration of the new provisions of CHIPRA, ARRA, and the public comments received during the reopened comment periods. To allow time to make these revisions, the Department determined that several more months were needed to fully consider necessary changes to the rule.

In the proposed rule, we noted that the comments received during the reopened comment periods were complex and presented numerous policy issues which require extensive consultation, review and analysis. Additionally, because both CHIPRA and ARRA contain provisions that impact the American Indian and Alaska Native community, we stated that the development of the final rule required collaboration with other HHS agencies and the Tribal governments. We believed that this time period would allow sufficient time to further consider public comments, analyze the impact of the revisions on affected stakeholders, and develop appropriate revisions to the regulation.

We received one timely item of correspondence in response to the October 30, 2009 proposed rule. The comment did not directly address our proposal to delay the effective date of the December 3, 2008 rule until July 1, 2010. The comment was limited to the exemption of the benchmark and benchmark equivalent packages from the assurance of transportation requirements. Because the comment was outside the scope of the proposed rule on the delay of the effective date of the December 3, 2008 rule, but instead addresses the issue of revisions that are needed to comply with statutory changes, we have addressed the comment in the revisions to the final rule.

On November 30, 2009, we published a final rule in the **Federal Register** (74 FR 62501) delaying the effective date of the December 3, 2008 final rule until July 1, 2010.

B. General Provisions

Under title XIX of the Act, the Secretary is authorized to provide funds to assist States in furnishing medical assistance to needy individuals, whose income and resources are insufficient to meet the costs of necessary medical services, including families with dependent children and individuals who are aged, blind, or disabled. To be eligible for funds under this program, States must submit a State plan, which must be approved by the Secretary. Programs under title XIX are jointly financed by Federal and State governments. Within broad Federal guidelines, each State determines the design of its program, eligible groups, benefit packages, payment levels for coverage and administrative and operating procedures.

Before the passage of the DRA, States were required to offer at minimum a standard benefit package to eligible populations identified in section 1902(a)(10)(A) of the Act (with some specific exceptions, for example, for certain pregnant women, who could be

limited to pregnancy-related services). Under section 1902(a)(10)(A) of the Act, this standard benefit package had to include certain specific benefits identified in the definition of "medical assistance" at section 1905(a) of the Act. These identified benefits include inpatient and outpatient hospital services, physician services, medical and surgical services furnished by a dentist, rural health clinic services, federally qualified health center services, laboratory and X-ray services, nursing facility services, early and periodic screening, diagnostic and treatment (EPSDT)services for individuals under age 21, family planning services and supplies to individuals of child-bearing age, nurse-midwife services, certified pediatric nurse practitioner, and certified family nurse practitioner services. Under section 1902(a)(10)(D) of the Act, the standard benefit package is also required to include home health services.

Section 6044 of the DRA amended the Act by adding a new section 1937 that allows States to amend their Medicaid State plans to provide for the use of benefit packages other than the standard benefit package, namely benchmark benefit packages or benchmark-equivalent packages, for certain populations. The statute delineates what benefit packages qualify as benchmark packages and what would constitute a benchmark-equivalent package. The statute also specifies those exempt populations that may not be required to enroll in a benchmark coverage plan. To be eligible for funds under this new provision, States must submit a State plan amendment, which must be approved by the Secretary. On March 31, 2006, we issued a State Medicaid Director letter providing guidance on the implementation of section 6044 of the DRA.

C. CHIPRA Technical Corrections

On February 4, 2009, CHIPRA was enacted. Section 611 of CHIPRA made technical corrections to the Benchmark Benefit provisions in section 1937 of the Act, which were originally established under the DRA. The CHIPRA technical correction changes take effect as if included in the DRA.

Section 611(a)(1)(C) and section 611(a)(3) of CHIPRA require States to assure that children under the age of 21, rather than those under 19 as originally specified in the DRA, who are included in benchmark or benchmark-equivalent plans, have access to full EPSDT services (that is, those found in sections 1905(a)(4)(B), 1905(r), and 1902(a)(43) of the Act). These EPSDT services may be provided through a benchmark or benchmark-equivalent plan and/or as an additional benefit to those plans under section 1937 of the Act.

Section 611(a)(1)(A)(i) of CHIPRA changed the "Notwithstanding any other provision of this title * * *" language in section 1937(a)(1)(A) of the Act to "Notwithstanding section 1902(a)(1) (relating to statewideness), section 1902(a)(10)(B) (relating to comparability) and any other provision of this title which would be directly contrary to the authority under this section and subject to [subparagraph] (E)". One effect of this CHIPRA change is to clarify the requirement, under 42 CFR 431.53 and section 1902(a)(4) of the Act, to assure transportation for Medicaid beneficiaries in order for them to have access to covered State plan services is applicable, regardless of whether beneficiaries are or are not enrolled in benchmark or benchmark-equivalent plans.

These two sections in CHIPRA affect the implementation of benchmark and benchmark-equivalent plans and thus the "Analysis of and Responses to Public Comments" in section III of this final rule, as well as the regulation, reflect these changes.

Section 611(a)(2) of CHIPRA changed the heading of section 1937(a)(1)(C) of the Act to replace the term "Wrap-Around" with "Additional" and to accordingly strike the term "wrap-around" in the text of section 1937(a)(1)(C) of the Act.

Section 611(b) of CHIPRA clarifies the reference to children receiving foster care under section 1937(a)(2)(B)(viii) to apply to individuals receiving "child welfare services," not "aid" or "assistance".

Section 611(c) of CHIPRA requires the Secretary to post on the CMS Web site and publish in the **Federal Register,** with respect to benchmark and benchmark-equivalent plans approved by the Secretary, those provisions of title XIX of the Act which were determined by the Secretary as not applicable to the State's benchmark and/or benchmark-equivalent plan, as well as the reason for such determinations.

II. Provisions of the Proposed Regulations

We published a proposed rule in the **Federal Register** on February 22, 2008 (73 FR 9714) that implemented the provisions of the DRA of 2005, which amends the Act by adding a new section 1937 related to the coverage of medical assistance under approved State plans. Under this new provision, States have increased flexibility under an approved State plan to define the scope of covered medical assistance by offering coverage of benchmark or benchmark-equivalent benefit packages to certain Medicaid-eligible individuals. For a complete and full description of the States' Medicaid Benefit Packages provisions as required by the DRA, see the February 2008 State Flexibility for Medicaid Benefit Packages proposed rule. In the February 2008 proposed rule, we proposed to add a new subpart C beginning with § 440.300 as follows:

A. Subpart C—Benchmark Packages: General Provisions § 440.300, § 440.305, and § 440.310 Basis, Scope, and Applicability

At proposed § 440.300 (Basis), § 440.305 (Scope), and § 440.310 (Applicability), the regulations would reflect the statutory authority for States to provide medical assistance to individuals, within one or more groups of Medicaid eligible individuals specified by the State, through enrollment in benchmark coverage or benchmark-equivalent coverage. A State may only require that individuals obtain benefits by enrolling in that coverage if they are a "full benefit eligible" whose eligibility is based on an eligibility category under section 1905(a) of the Act that would have been covered under the State's plan on or before February 8, 2006, and are not within exempted categories under the statute. The proposed regulatory definition of full benefit eligible individuals would include individuals who would otherwise be eligible to receive the standard full Medicaid benefit package under the approved Medicaid State plan, but would not include individuals who are within the statutory exemptions, who are determined eligible by the State for medical assistance under section 1902(a)(10)(C) of the Act or by reason of section 1902(f) of the Act, or who are otherwise eligible based on a reduction of income due to costs incurred for medical or other remedial care (other medically needy and spend-down populations).

B. Section 440.315 Exempt Individuals

Proposed § 440.315 would reflect statutory limitations on mandatory enrollment of specified categories of individuals. A State may not require enrollment in a benchmark or benchmark-equivalent benefit plan by the following individuals:

- An individual who is a pregnant woman who is required to be covered under the State plan under section 1902(a)(10)(A)(i) of the Act.
- An individual who qualifies for medical assistance under the State plan

on the basis of being blind or disabled (or being treated as being blind or disabled) without regard to whether the individual is eligible for SSI benefits under title XVI on the basis of being blind or disabled and including an individual who is eligible for medical assistance on the basis of section 1902(e)(3) of the Act.

- An individual who is entitled to benefits under any part of Medicare.
- An individual who is terminally ill and is receiving benefits for hospice care under title XIX.
- An individual who is an inpatient in a hospital, nursing facility, intermediate care facility for the mentally retarded, or other medical institution, and is required, as a condition of receiving services in such institution under the State plan, to spend for costs of medical care all but a minimal amount of the individual's income required for personal needs.
- An individual who is medically frail or otherwise an individual with special medical needs (as described by the Secretary in section 440.315(f)). For purposes of this section, we proposed that individuals with special needs includes those groups defined by Federal regulations at § 438.50(d)(1) and § 438.50(d)(3) of the managed care regulations (that is, dual eligibles and certain children under age 19 who are eligible for SSI; eligible under section 1902(e)(3) of the Act, TEFRA children; children in foster care or other out of home placement; or children receiving foster care or adoption assistance). We did not propose a definition for medically frail populations but we invited public comments to assist us in defining this term in the final regulation.
- An individual who qualifies for Medicaid based on medical condition for medical assistance for long-term care services described in section 1917(c)(1)(C) of the Act.
- An individual who receives aid or assistance under part B of title IV for children in foster care or an individual with respect to whom adoption or foster care assistance is made available under part E of title IV, without regard to age.
- An individual who qualifies for medical assistance on the basis of eligibility to receive assistance under a State plan funded under part A of title IV (as in effect on or after the welfare reform effective date defined in section 1931(i) of the Act). This provision includes those individuals who qualify for Medicaid solely on the basis of qualification under the Temporary Assistance for Needy Families (TANF) rules (that is, the State links Medicaid eligibility to TANF eligibility).
- An individual who is a woman receiving medical assistance by virtue of the application of sections 1902(a)(10)(ii)(XVIII) and 1902(a) of the Act. This provision relates to those individuals who are eligible for Medicaid based on the breast or cervical cancer eligibility provisions.
- An individual who qualifies for medical assistance as a TB-infected individual on the basis of section 1902(a)(10)(A)(ii)(XII) of the Act.
- Individuals who are only eligible for Medicaid coverage of the care and services necessary for the treatment of an emergency medical condition in accordance with section 1903(v) of the Act.

C. Section 440.320 State Plan Requirements: Optional Enrollment for Exempt Individuals

At proposed § 440.320, we would allow States to offer exempt individuals specified in § 440.315 the option to enroll into a benchmark or benchmark-equivalent benefit plan. The State would identify in its State plan the exempt groups for which this coverage is available. There may be instances in which an exempt individual may benefit from enrolling in a benchmark or benchmark-equivalent benefit package. States would be permitted to elect in the State plan to offer exempt individuals a benchmark or benchmark-equivalent package, but States may not require them to enroll in one. For example, in some States the State employee benchmark coverage may be more generous than the State Medicaid plan. Secretary-approved coverage may offer the opportunity for disabled individuals to obtain integrated coverage for acute care and community-based long-term care services. Additionally, States may be able to improve the integration of disease management programs to provide better coordinated care that targets the specific needs of individuals with special health needs.

D. Section 440.325 State Plan Requirements: Coverage and Benefits

At proposed § 440.325, we set forth the conditions under which a State may offer enrollment to exempt individuals specified in § 440.315. When a State offers exempt individuals the option to enroll in a benchmark or benchmark-equivalent benefit package, the State would inform the individuals that enrollment is voluntary and that the individual may disenroll from the benchmark or benchmark-equivalent benefit package at any time and regain immediate eligibility for the standard full Medicaid program under the State plan. The State would inform the individual of the benefits available under the benchmark or benchmark-equivalent benefit package and provide a comparison of how they differ from the benefits available under the standard full Medicaid program. The State would document in the individual's eligibility file that the individual was informed in accordance with this paragraph and voluntarily chose to enroll in the benchmark or benchmark-equivalent benefit package.

At proposed § 440.325, a State would have the option to choose the benchmark or benchmark-equivalent coverage packages offered under the State's Medicaid plan. A State may select one or all of the benchmark plans described in § 440.330 or establish benchmark-equivalent plans described in § 440.335, respectively.

E. Section 440.330 Benchmark Health Benefits Coverage

At proposed § 440.330, benchmark coverage is described as any one of the following:

- Federal Employees Health Benefit Plan Equivalent Coverage (FEHBP—Equivalent Health Insurance Coverage). A benefit plan equivalent to the standard Blue Cross/Blue Shield preferred provider option service benefit plan that is described in and offered to Federal employees under 5 U.S.C. 8903(1).
- State employee coverage. A health benefits plan that is offered and generally available to State employees in the State involved.
- Health Maintenance Organization (HMO) plan. A health insurance plan that is offered through an HMO (as defined in section 2791(b)(3) of the Public Health Service Act) that has the largest insured commercial, non-Medicaid enrollment in the State.
- Secretary-approved coverage. Any other health benefits coverage that the Secretary determines, upon application by a State, provides appropriate coverage for the population proposed to be provided that coverage. As proposed, States wishing to opt for Secretarial-approved coverage should submit a full description of the proposed coverage and include a benefit-by-benefit comparison of the proposed plan to one or more of the three benchmark plans specified above or to the State's standard full Medicaid coverage package under section 1905(a) of the Act, as well as a full description of the population that would be receiving the coverage. In addition, the State should submit any other information that would be relevant to a determination that the proposed health benefits coverage would be appropriate for the

proposed population. The scope of a Secretary approved health benefits package will be limited to benefits within the scope of the categories available under a benchmark coverage package or the standard full Medicaid coverage package under section 1905(a) of the Act.

A State may select one or more benchmark coverage plan options. The State may also specify the benchmark plan for any specific individual. For example, one individual may be enrolled in the FEHBP-equivalent and another may be enrolled into State Employee Coverage at the option of the State.

F. Section 440.335 Benchmark-Equivalent Health Benefits Coverage

At proposed § 440.335, we proposed to provide that if a State designs or selects a benchmark plan other than those specified in § 440.330, the State must provide coverage that is equivalent to benchmark coverage. Coverage that meets the following requirements will be considered to be benchmark-equivalent coverage:

• Required Coverage. Benchmark-equivalent coverage includes benefits for items and services within each of the following categories of basic services and must include coverage for the following categories of basic services:

+ Inpatient and outpatient hospital services.

+ Physicians' surgical and medical services.

+ Laboratory and x-ray services.

+ "Well-baby" and "well-child" care, including age-appropriate immunizations.

+ Other appropriate preventive services, as designated by the Secretary.

• Aggregate actuarial value equivalent to benchmark coverage. Benchmark-equivalent coverage must have an aggregate actuarial value, determined in accordance with proposed § 440.340, that is at least equivalent to coverage under one of the benchmark packages outlined in § 440.330.

• Additional coverage. In addition to the categories of services set forth above, benchmark-equivalent coverage may include coverage for any additional services included in the benchmark plan or described in section 1905(a) of the Act.

• Application of actuarial value for benchmark-equivalent coverage that includes prescription drugs, mental health, vision, and hearing services. Where the benchmark coverage package used by the State as a basis for comparison in establishing the aggregate actuarial value of the benchmark-equivalent package includes any or all of the following four categories of services: Prescription drugs; mental health services; vision services; and hearing services; then the actuarial value of the coverage for each of these categories of service in the benchmark-equivalent coverage package must be at least 75 percent of the actuarial value of the coverage for that category of service in the benchmark plan used for comparison by the State.

If the benchmark coverage package does not cover one of the four categories of services mentioned above, then the benchmark-equivalent coverage package may, but is not required to, include coverage for that category of service.

G. Section 440.340 Actuarial Report for Benchmark-Equivalent Health Benefit Coverage

In accordance with 1937(a)(3) of the Act, at § 440.340, we proposed to require a State, as a condition of approval of benchmark-equivalent coverage, to provide an actuarial report, with an actuarial opinion that the benchmark-equivalent coverage meets the actuarial requirements of § 440.335.

At § 440.340, we proposed to require the actuarial report to obtain approval for benchmark-equivalent health benefit coverage and to meet all the provisions of the statute. The actuarial report must state the following:

• The actuary issuing the opinion is a member of the American Academy of Actuaries (AAA) (and meets Academy standards for issuing an opinion).

• The actuary used generally accepted actuarial principles and methodologies of the AAA, standard utilization and price factors and a standardized population representative of the population involved.

• The same principles and factors were used in analyzing the value of different coverage (or categories of services) without taking into account differences in coverage based on the method of delivery or means of cost control or utilization used.

• The report should also state if the analysis took into account the State's ability to reduce benefits because of the increase in actuarial value of health benefits coverage offered under the State plan that results from the limitations on cost sharing (with the exception of premiums) under that coverage.

• The actuary preparing the opinion must select and specify the standardized set of utilization and pricing factors as well as the standardized population.

• The actuary preparing the opinion must provide sufficient detail to explain the basis of the methodologies used to estimate the actuarial value or, if requested by CMS, to replicate the State's result.

H. Section 440.345 EPSDT Services Requirement

At § 440.345, we proposed to require States to make available EPSDT services as defined in section 1905(r) of the Act that are medically necessary for those individuals under age 19 who are covered under the State plan. We expected that most benchmark or benchmark-equivalent plans will offer the majority of EPSDT services. To the extent that any medically necessary EPSDT services are not covered through the benchmark or benchmark-equivalent plan, States are required to supplement the benchmark or benchmark-equivalent plan in order to ensure access to these services. As proposed, individuals mandated into a benchmark or benchmark-equivalent plan and entitled to have access to EPSDT services cannot disenroll from the benchmark or benchmark-equivalent plan just to receive these services. While, as proposed, individuals are required to have access to such medically necessary services first under the benchmark or benchmark-equivalent plan, the State may provide wrap-around or additional coverage for medically necessary services not covered under such plan. Any wrap-around benefits must be sufficient so that, in combination with the benchmark or benchmark-equivalent benefits package, an individual would have coverage for his or her medically necessary services consistent with the requirements under section 1905(r) of the Act. The State plan would include a description of how wrap-around benefits or additional services will be provided to ensure that these individuals have access to full EPSDT services under section 1905(r) of the Act.

In addition, as proposed, individuals would need to first seek coverage of EPSDT services through the benchmark or benchmark-equivalent plan before seeking coverage of such services through other options established by the State for receiving wrap-around benefits under section 1937 of the Act.

I. Section 440.350 Employer Sponsored Insurance Health Plans

At § 440.350, we proposed that the use of benchmark or benchmark-equivalent benefit coverage would be at the discretion of the State and may be used in conjunction with employer sponsored health plans as a coverage option for individuals with access to private health insurance. Additionally, the use of benchmark or benchmark-equivalent coverage may be used for

individuals with access to private health insurance coverage. For example, if an individual has access to employer sponsored coverage and that coverage is determined by the State to be benchmark or benchmark-equivalent, a State may, at its option, provide premium payments on behalf of the individual to purchase the employer coverage. Additionally, a State could create a benchmark or benchmark-equivalent plan combining employer sponsored insurance and wrap-around benefits to that employer sponsored insurance benefit package. The premium payments would be considered medical assistance and the State could require the non-exempt individual to enroll in the group health plan.

J. Section 440.355 Payment of Premiums

At § 440.355, we proposed that payment of premiums by the State, net of beneficiary contributions, to obtain benchmark or benchmark-equivalent benefit coverage on behalf of beneficiaries under this section will be treated as medical assistance under section 1905(a) of the Act.

K. Section 440.360 State Plan Requirement for Providing Additional Wrap-Around Services

At § 440.360, we proposed that a State may at its option provide additional wrap-around services to the benchmark or benchmark-equivalent plans. The wrap-around services do not need to include all State plan services. However, the State plan would be required to describe the populations covered and the payment methodology for assuring those services. Such additional or wrap-around services must be within the scope of categories of services covered under the benchmark plan, or described in section 1905(a) of the Act.

L. Section 440.365 Coverage of Rural Health Clinic and Federally Qualified Health Center (FQHC) Services

At § 440.365, we proposed that a State that provides benchmark or benchmark-equivalent coverage to individuals must assure that the individual has access, through that coverage or otherwise, to rural health clinic services and FQHC services as defined in subparagraphs (B) and (C) of section 1905(a)(2) of the Act. Payment for these services must be made in accordance with the payment provisions of section 1902(bb) of the Act.

M. Section 440.370 Cost Effectiveness

At § 440.370, we proposed that benchmark or benchmark-equivalent coverage and any additional benefits must be provided in accordance with Federal upper payment limits, procurement requirements and other economy and efficiency principles that would otherwise be applicable to the services or delivery system through which the coverage and benefits are obtained.

N. Section 440.375 Comparability

At § 440.375, we proposed that a State may at its option amend its State plan to provide benchmark or benchmark-equivalent coverage to individuals without regard to comparability.

O. Section 440.380 Statewideness

At § 440.380, we proposed that a State may at its option amend its State plan to provide benchmark or benchmark-equivalent coverage to individuals without regard to statewideness.

P. Section 440.385 Freedom of Choice

At § 440.385, we proposed that a State may at its option amend its State plan to provide benchmark or benchmark-equivalent coverage to individuals without regard to freedom of choice. States may restrict individuals to obtaining services from (or through) selectively procured provider plans or practitioners that meet, accept, and comply with reimbursement, quality and utilization standards under the State Plan, to the extent that the restrictions imposed meet the following requirements:

(+) Do not discriminate among classes of providers on grounds unrelated to their demonstrated effectiveness and efficiency in providing the benchmark benefit package.

(+) Do not apply in emergency circumstances.

(+) Require that all provider plans are paid on a timely basis in the same manner as health care practitioners must be paid under § 447.45 of the chapter.

Q. Section 440.390 Assurance of Transportation

At § 440.390, we proposed that a State may at its option amend its State plan to provide benchmark or benchmark-equivalent coverage to individuals without regard to the assurance of transportation to medically necessary services requirement specified in § 431.53.

III. Analysis of and Responses to Public Comments

In response to the February 2008 proposed rule, we received over 1,100 timely items of correspondence. In response to the February 2, 2009 interim final rule with a 30-day comment period (the first temporary delay of the December 3, 2008 final rule), we received nine timely items of correspondence. In response to the April 3, 2009 interim final rule with a 30-day comment period (the second temporary delay of the December 3, 2008 final rule), we received seven timely items of correspondence. In response to the October 30, 2009 proposed rule on delaying the effective date of the final rule to July 1, 2010, we received one timely item of correspondence.

The majority of the comments received on the proposed rule represented transportation providers, medical providers, and Medicaid beneficiaries, particularly Medicaid beneficiaries who rely on dialysis treatments. Other comments represented State and local advocacy groups, national associations that represent various beneficiary sub-groups, State Medicaid agency senior officials, and human services agencies. In this section, we provide a discussion of the public comments we received on the February 22, 2008 proposed rule, the February 2, 2009 interim final rule with a 30-day comment period (the first temporary delay of the December 3, 2008 final rule) and the April 2, 2009 final rule with a 30-day comment period (the second temporary delay of the December 3, 2009 final rule), as well as the one comment that we received in response to our October 30, 2009 proposed rule delaying the effective date of the December 3, 2008 final rule, which addressed the issue of revisions required to comply with statutory changes. Comments related to the impact of this rule are addressed in the "Collection of Information Requirements" section of this regulation.

Additionally, we published a proposed rule in the **Federal Register** on February 22, 2008 (73 FR 9727) titled, "Medicaid Program: Premiums and Cost Sharing" (CMS–2244–P). Comments on CMS–2244–P were also due March 24, 2008 similar to this rule. Some comments for CMS–2244–P were forwarded as comments to this rule (CMS–2232–P). Consistent with the Administrative Procedures Act, CMS is not responding to those comments in this regulation, but we addressed the issues raised by otherwise timely

comments in our publication of CMS–2244–F.

A. General Comments

Comments: A few commenters supported the proposed rule and a few commenters strongly supported certain provisions of the December 3, 2008 rule. However, most commenters oppose either the February 22, 2008 proposed rule or certain sections of the December 3, 2008 rule. Many commenters are concerned that the benchmark or benchmark-equivalent benefit packages are inadequate benefit packages for, among others, individuals with mental illness, children with serious emotional disturbance, the disabled and elderly, individuals with end stage renal disease, and American Indians. Many of the commenters believe that to enroll Medicaid beneficiaries in benchmark or benchmark-equivalent benefit packages without the assurance of transportation could lead to poorer health outcomes, costlier care because individuals will be forced into hospital emergency rooms, and shifts in costs to the Emergency Medical Services.

Response: We acknowledge and appreciate the views of the commenters who both supported and opposed the February 22, 2008 proposed rule and the December 3, 2008 rule. Those who opposed the rule generally raised concerns about the underlying wisdom of the statutory provision at section 1937 of the Act, which this final rule implements. CMS is charged with implementing the statute. We address comments relating to restrictive interpretations below in the discussion of specific proposed provisions that arguably were not required by the statutory provision.

Comment: Several commenters believe that the accelerated pace of the short comment period for the proposed rule, given the broad implications, will lead to a short-sighted, onerous rule that has dangerous health impacts for the poor. The proposed rule was issued in the **Federal Register** on February 22, 2008. The deadline for submission of comments was March 24, 2008. The commenters stated that other rulemaking has taken a longer period and that given the impact of the provisions, a longer time period is warranted.

Some commenters stated that the 30-day comment period in the proposed rule was not sufficient for Tribes to comment on a regulation that could potentially have a significant impact on Tribal communities.

Other commenters noted that while the Department views the proposed rule as merely formalizing its earlier policy statements delivered only to State Medicaid Directors, a 30-day public comment period is too short for meaningful public review, analysis, and comment. Some commenters believe that the 30-day comment period is discouraging of full review and consideration by States.

One commenter requests that the public comment period be extended by 60 days for a total of a 90-day comment period. Additional time is needed to provide sufficient time for stakeholders to be able to adequately assess the potential effects of the proposed rule.

Response: As described in the "Background" in section I of this regulation under "Regulatory History," in section I.A. of this regulation a 30-day public comment period on the February 22, 2008 proposed rule was provided and two additional 30-day public comment periods were provided on the December 3, 2008 rule. We believe that these comment periods allowed sufficient time for public comment.

B. Section 440.300 Basis

Comment: One commenter believed that the proposed limitations on eligibility groups who can be provided alternative benefit packages are overly restrictive. The commenter suggested that the rule should allow application to any eligibility category the State had the option to implement on or before the date of enactment of section 1937 (February 8, 2006). The commenter reasoned that States are continually adding and changing eligibility requirements and these program changes are inherent in Medicaid programs. The commenter asserted that, if the rule is considered beneficial for individuals in eligibility categories that existed before February 8, 2006, it is logical to suppose it would also be beneficial for those created after that date.

Response: The language in section 1937(a)(1)(B) of the Act specifies that the State may only exercise the option to offer benchmark or benchmark-equivalent coverage for an individual eligible under an eligibility category that had been established under the State plan on or before February 8, 2006. We have interpreted this statutory term to mean any eligibility category listed under section 1905(a) of the Act. Thus, all individuals within a category covered or potentially covered under the State's Medicaid plan could be eligible to participate in a benchmark or benchmark-equivalent plan at the State's option, unless specifically excluded by statute, even when the State makes modifications to the income and resource eligibility levels or methodologies, ages covered, etc. for a group or category after February 8, 2006.

C. Section 440.305 Scope

Comment: Numerous commenters believed that offering benchmark and benchmark-equivalent benefit packages to certain Medicaid individuals will deter those individuals, including children, from receiving appropriate care. Commenters indicated that individuals with low incomes are likely to forego needed treatment if all medically necessary services and transportation are not included in the benchmark program. Most commenters believed that our most vulnerable populations, those with chronic medical needs, will be required to choose to provide for their basic needs like food and shelter rather than obtain necessary medical health care because of the rigor created by following a private health insurance model of benefits and the need to provide their own method of transportation.

Response: The benchmark and benchmark-equivalent coverage was authorized by the statute. Under the statute, the benchmark flexibility is an option that States can choose to use in redesigning their current Medicaid benefit program. It should be noted that as a result of the CHIPRA changes to the DRA, this option is not as broad as it had been and we have revised the regulations to comply with CHIPRA by stating that States must comply with all requirements of title XIX other than sections 1902(a)(1) and 1902(a)(10(B) of the Act, unless such requirement can be shown to be directly contrary to the authority under section 1937 of the Act. For example, under the CHIPRA changes transportation is a required service and benchmark plans utilizing managed care delivery systems must meet managed care rules.

Comment: Other commenters indicated that the DRA does not require that States offer the same Medicaid benefits statewide, meaning States could design different benefit packages for rural and urban areas. States may also "tailor" packages for different populations, although the commenter acknowledges, certain groups are exempt from mandatory changes to their Medicaid benefits package. In States where this has already been done, there have been some reports that the changes have been unsatisfactory. Several commenters believed that allowing States to "tailor" benefit packages would mean that individuals may not have access to the services they need. Benefit packages designed outside the important consumer protections in

traditional Medicaid may fail to meet beneficiaries' needs, and will not save money if these individuals experience significant unmet needs that escalate into problems that require treatment in emergency rooms.

One commenter mentioned that private health plans, such as those listed as benchmarks under the law, frequently have limited coverage of mental health services. The commenter asserted that few cover any of the intensive community services that are covered by Medicaid under the rehabilitation category or the home and community-based services option. The commenter noted that, under the DRA, these limited mental health benefits can be further reduced by 25 percent of their actuarial value. Other commenters expressed concern that the reliance on commercial benefit plans is inappropriate for Medicaid individuals. Those commenters are concerned that many private insurance plans do not provide adequate mental health services. Other commenters noted that benchmark coverage is likely to prove entirely inadequate for individuals who need mental health services. The commenters noted that children with serious mental and/or physical disorders often qualify for Medicaid on a basis of family income and are not, for various reasons, receiving Supplemental Security Income (SSI) benefits or otherwise recognized as children with disabilities and would not be exempt from mandatory enrollment. In addition, the commenters noted that many low-income parents on Medicaid have been found to have serious depression, which could not be adequately treated with a very limited mental health benefit.

Similarly, many commenters believed that the proposed rule has the potential to become the behavioral healthcare Medicaid "Trojan horse": It appears harmless but it will reverse hard fought progress won over years of struggle that brought about equitable, decent care for Medicaid-eligible individuals experiencing mental illness or who have a developmental disability. The commenters asserted that, in the end, these rules will have costlier results and not the desired economizing while also negatively impacting peoples' lives, their well-being and care, and our society.

Another commenter believed that it is critical for beneficiaries with life-threatening conditions such as HIV/AIDS to maintain access to the comprehensive range of medical and support services required to effectively manage HIV disease. The commenter stated that allowing States to "tailor" benefit packages in ways that essentially eliminate coverage for critical health services places the health of Medicaid beneficiaries with HIV/AIDS in serious jeopardy.

Response: The DRA created section 1937 in response to States' desire for more flexibility in designing their Medicaid programs and adopting benefit programs tailored to the needs of the varied populations they serve. The DRA provides that States can provide alternative benchmark or benchmark-equivalent benefit packages at their option; that is, States are not required to implement these provisions. We have incorporated elements in this regulation that are designed to protect vulnerable populations and to help assure that individuals enrolled in a benchmark benefit plan will have access to services that are appropriate to their individual needs to the extent permitted by the statute.

To protect individuals with disabilities we have included in this rule a basic minimum definition of medically frail and special medical needs to insure that people with disabilities and special health care needs are not mandatorily enrolled in benchmark benefit plans. Rather, they can only be voluntarily enrolled after being fully informed of the differences between the benchmark benefit plan and the traditional State plan. We have added language at § 440.305(b)(2) that requires States electing to offer benchmark benefit plans or wishing to substantively change an approved benchmark benefit plan to provide advance public notice with an opportunity to comment. Before submitting to CMS a State plan amendment to implement a benchmark benefit plan or an amendment to substantially modify the benefits or eligibility provisions of an approved benchmark benefit plan, the State must first provide the public the opportunity to review the proposed change and comment on it.

We acknowledge and agree with the commenters on the importance of providing adequate mental health benefits and will be separately addressing how post DRA-enactments, specifically the Paul Wellstone and Pete Domenici Mental Health Parity and Addiction Equity Act of 2008 relate to benchmark benefits.

The new benefit option provides States with additional tools to provide care to maximize health outcomes for certain individuals. These tools may be used in conjunction with other Medicaid and Children's Health Insurance Program (CHIP) authorities to strategically align the Medicaid program with the current health care environment and expand access to care by leveraging existing benefit and coverage options to improve quality and coordination of care.

States seeking to use benchmark and benchmark-equivalent plans to provide coverage for children and adults with special medical needs, individuals with HIV/AIDS, and long-term care and community-based service options, must design a benchmark benefit package that is appropriate to meet the health care needs of the population being served, including coverage that may be more generous than a State's Medicaid plan.

We think it is important to note that States are required to provide children under the age of 21 with EPSDT services either as an additional service and or as part of the benchmark or benchmark-equivalent benefit plan. States are required to inform families about how and where to access these services particularly if the benchmark or benchmark-equivalent benefit does not identify the full range of EPSDT services needed by the beneficiary as being covered. States must assure that these services are provided in the most seamless way possible and the families understand how to access such services through the Medicaid State plan.

Moreover, certain groups cannot be included in a mandatory enrollment for an alternative benefit package—among others, pregnant women, dual eligibles, terminally ill individuals receiving hospice, inpatients in institutional settings, and individuals who are medically frail or have special medical needs. These individuals may be offered a choice to enroll and, in considering the choice, must be provided a comparison of benchmark benefits versus the traditional Medicaid State plan benefit. Their decision to enroll is voluntary and individuals must be provided the opportunity to revert back to traditional Medicaid at any time.

Comment: One commenter noted that the preamble language refers to meeting the "* * * needs of today's Medicaid populations and the health care environment." The commenter believed the preamble should describe these needs in some detail so that there is a shared understanding of the types of needs this new flexibility is intended to address.

Response: We agree that it is important to understand the needs of today's Medicaid populations and the health care environment. Congress has provided States with the flexibility to align Medicaid benefit packages for certain populations with commercial insurance plans. States now have the ability to provide additional services that are uniquely designed to meet the

needs of targeted populations. For example, individuals with asthma and chronic obstructive pulmonary disease who reside in a certain area of the State may be offered disease management services which are not otherwise available under the traditional State plan to all individuals with asthma and chronic obstructive pulmonary disease. A State may elect to provide beneficiaries with incentives for healthy behavior by offering additional services. For example, a State could offer certain (enhanced) preventive services not available under the regular State plan, such as smoking cessation counseling or nutritional/dietary management, to beneficiaries with certain medical conditions and/or in certain parts of the State. Prior to the enactment of the DRA, a State that wanted to tailor its Medicaid program to meet the unique needs of its beneficiaries would have to utilize a demonstration or waiver program.

Comment: One commenter stated that the proposed rule, read together with other CMS rules like the citizenship documentation requirement and CMS's Children's Health Insurance Program (CHIP) crowd-out directive of August 17, 2007, create major barriers to access to appropriate health care, and that the proposed rule has a devastating impact on the low income populations. In particular, some commenters raised concerns about requirements for American Indians and Alaska Natives to prove both citizenship and identity in order to obtain Medicaid services. Commenters also raised concerns about the CHIP review strategy outlined in an August 17, 2007 letter sent to State Health Officials. Commenters also asserted that other proposed rules released by CMS like the Rehabilitation Rule and the Targeted Case Management Rule coupled with this rule will have a devastating effect on individuals in need of transportation since these rules also eliminate non-emergency medical transportation services.

Response: We agree that the DRA benchmark rules can create some risk that beneficiaries may not be able to access needed care, and we will implement the rules mindful of this possibility and consistent with the Federal law. Additionally, CHIPRA included two significant technical changes to the DRA that amended section 1937 of the Act. In order to reflect these changes, we modified the regulation at § 440.390 to clarify that States must assure necessary transportation to and from providers and at § 440.345 to clarify that States must assure that children under the age of 21 who are enrolled in alternative benefit plans must have full access to EPSDT services. Additionally, we expanded paragraph (b)(5) in § 440.335, which lists the mandatory services that benchmark-equivalent plans must provide, to include family planning services and supplies as a required preventive service.

Citizenship documentation requirements and the rehabilitation and case management requirements are not part of this rule and we do not address them here. This regulation implements the statutory provisions of section 1937 of the Act. However, it should be noted that the August 17, 2007 State Health Officials letter on CHIP eligibility levels and crowd out was withdrawn on February 4, 2009, at the direction of President Obama. The CHIPRA, signed into law on that same day, provides new flexibility to States for streamlining citizenship documentation. CHIPRA also includes technical amendments to the DRA which clarify documentation requirements, provide for a reasonable opportunity period for individuals to submit such documentation, and expand the list of documents that are acceptable for verifying citizenship.

Comment: Several comments were provided by organizations that have an interest in how the benchmark and benchmark-equivalent benefit packages impact American Indians/Alaska Natives. The commenters believed that alternative benefit packages serve as a substantial barrier to American Indians/Alaska Natives enrollment in the Medicaid program. They noted that, because of the Federal government's trust responsibility to provide health care to American Indians/Alaska Natives, implementing benchmark and benchmark-equivalent benefit packages have specific tribal implications that were not addressed in the proposed rule. Several commenters believed that American Indians/Alaska Natives should be exempt from mandatory enrollment in benchmark and benchmark-equivalent benefit programs entirely.

Response: In Medicaid, there is no statutory basis to exempt American Indians/Alaska Natives from Medicaid alternative benefit provisions. Section 1937 of the Act does not provide for such an exemption. Section 1937 does provide some specific exemptions from mandatory enrollment in benchmark or benchmark-equivalent benefit packages and it is possible that some American Indians/Alaska Natives would fit into one of these exempt groups. Section 1937 does not however give CMS authority to identify additional exempt groups.

To address the unique needs of the American Indians/Alaska Natives population, we expect States to ensure that alternative benefit packages recognize the unique services offered by IHS and tribal providers, and the unique health needs of the American Indians/Alaska Natives population. To ensure this, section 5006 of ARRA requires States to consult with Indian Health Programs or Urban Indian Organizations that furnish health care services on matters that are likely to have a direct effect on these health programs. It also requires that services provided to Indians through managed care organizations provide access to IHS providers.

Comment: One commenter contended that there are no provisions to require States to ensure that American Indians/Alaska Natives continue to have access to culturally competent health services through the Indian Health Service (IHS) or tribally operated health programs. The commenter stated that the proposed rules allow States to offer coverage without regard to comparability, statewideness, freedom of choice, the assurance of transportation to medically necessary services, and other requirements. There are large disparities between American Indians/Alaska Natives' health care status and the health care status of the rest of the country. The commenter added that for American Indians/Alaska Natives, the patient should always have the option of the provider being an Indian Health Service or tribal health program.

Response: State Medicaid programs provide health care services to many diverse populations including American Indians/Alaska Natives individuals. We believe that culturally competent services are important for all Medicaid beneficiaries and access to care and facilities in remote parts of the country, where it is especially difficult to find providers who will agree to participate in the Medicaid program, is paramount. Section 1937 of the Act does not provide any special protections for benefit packages applicable to American Indians/Alaska Natives individuals, but this does not mean that benefit packages will be deficient.

Section 5006(e) of the ARRA, which was signed on February 17, 2009 and became effective July 1, 2009, requires that in the case of any State in which one or more Indian Health Program or Urban Indian Organization furnishes health care services, the Medicaid State plan specify a process under which the State seeks advice from designees of such programs or organizations on matters that are likely to have a direct effect on these health programs.

As noted previously, to address the unique needs of the American Indians/

Alaska Natives population, we expect States to work with Indian Health Programs or Urban Indian Organizations that furnish health care services to ensure that alternative benefit packages recognize the unique services offered by IHS and tribal providers, and the unique health needs of the American Indians/Alaska Natives population.

With regard to the assurance of transportation and freedom of choice of providers, CHIPRA amended the "notwithstanding any other provisions of this title" language. This change in the law clarifies that the authority under section 1937 of the Act to deviate from otherwise applicable Medicaid requirements is limited. Therefore, we revised the regulation at § 440.390 to require States to assure necessary transportation to and from providers for individuals enrolled in benchmark and benchmark-equivalent plans and at § 440.385 by removing the option to provide benchmark and benchmark-equivalent coverage without regard to freedom of choice of providers. While we do not anticipate that there will be many requirements of title XIX that would be contrary to implementing a benchmark benefit plan, States may request an exemption from a provision of title XIX if they can demonstrate how the provision would be directly contrary to section 1937 of the Act.

Comment: Another commenter stated on behalf of American Indians/Alaska Natives, the Indian and tribal health care system is woefully under-funded and tribal providers rely on Medicaid revenues to supplement that meager funding. Forcing American Indians/Alaska Natives into benchmark plans, which may have dramatically reduced coverage or payments, would thus jeopardize Indian health, injure tribal health systems, and thereby violate the Federal trust obligation to care for the health needs of Indian people.

Response: We acknowledge that benchmark plans could reduce covered benefits. To date, however, CMS has approved ten benchmark benefit programs, and most offer State plan services plus additional services like preventive care, personal assistance services, or disease management services. For individuals under the age of 21, section 1937 of the Act ensures that all needed services will be available through the requirement that EPSDT services must be provided either in addition to, or as part of, the benchmark or benchmark-equivalent plan.

Section 1937 of the Act does not provide a basis to exclude IHS or tribal health providers from participation in the delivery system for alternative benefits. Futhermore, CMS does not determine IHS funding levels.

In an effort to reach out to Tribes we held several discussions with Tribes about the changes made to the DRA and section 1937 of the Act by section 611 of CHIPRA. These discussions took place during the All Tribes call on July 2, 2009, and during two face to face open consultation meetings held with Tribes on July 8th and July 10th, 2009. We covered all CHIPRA related issues, including the changes made to section 1937 of the Act during all of these meetings. Also, on June 29, 2009 we covered section 611 of CHIPRA during the Tribal Technical Advisory Group (T–TAG) meeting CMSO had with the T–TAG policy advisors. CMS is committed to enhancing communication with Tribes and to assuring that the obligation of States to consult with American Indians/Alaska Natives on all issues affecting Indian health services are followed by State Medicaid agencies.

Comment: Some commenters believed that the proposed rule did not comply with the Department of Health and Human Services' Tribal Consultation policy, since CMS did not consult with Tribes in the development of these regulations before they were promulgated.

These commenters noted that CMS did not obtain advice and input from the CMS Tribal Technical Advisory Group (TTAG), even though the TTAG meets on a monthly basis through conference calls and holds quarterly face to face meetings in Washington, DC. They also noted that CMS did not utilize the CMS TTAG Policy Subcommittee, which was specifically established by CMS for the purpose of obtaining advice and input in the development of policy guidance and regulations.

These commenters also noted that the proposed rule does not contain a Tribal summary impact statement describing the extent of the tribal consultation or lack thereof, nor an explanation of how the concerns of Tribal officials have been met. Several commenters request that these regulations not be made applicable to American Indians/Alaska Natives Medicaid beneficiaries until Tribal consultation is conducted, or be modified to specifically require State Medicaid programs to consult with Indian Tribes before the development of any policy which would require mandatory enrollment of American Indians/Alaska Natives in benchmark or benchmark-equivalent plans. One commenter suggested that this consultation should be similar to the way in which consultation takes place with Indian Tribes in the development of waiver proposals. And, a commenter urged that, after appropriate tribal consultation and revision reflecting these and other comments, the rule be republished with a longer public comment period.

One Tribe commented that the proposed rule does not honor treaty obligations for health services that are required by the Federal government's unique legal relationship with Tribal governments.

Response: CMS currently operates under the Department of Health and Human Services' Tribal Consultation Policy. The Departmental guidelines provide information as to the regulatory activities that rise to the level that require consultation (include prior notification of rulemaking). We have considered the Departmental guidelines. Though the effect on American Indians/Alaska Natives individuals results from the statute itself, and not this rule, CMS did consult with the Tribes about the changes made to the DRA and section 1937 of the Act by section 611 of CHIPRA as described in the previous response.

Section 5006(e) of ARRA, which was signed on February 17, 2009 and became effective July 1, 2009, provides American Indians/Alaska Natives individuals with new protections because it requires that Medicaid State plans specify a process under which the State seeks advice from designees of Indian Health Programs or Urban Indian Organizations that furnish health care services on matters that are likely to have a direct effect on these health programs. States that elect to implement alternative benefit packages must consult with Tribes and notify them about State plan amendments that will directly affect the Tribes. These regulations implement section 1937 of the Act, as enacted by Congress, and do not address treaty rights of American Indians. These regulations neither diminish nor increase such treaty rights. Questions about the Indian Health Services budget should be directed to Indian Health Services.

Comment: Several commenters believed that States should not have the ability to create benchmarks that allow for increases in cost sharing. Specifically, States can establish a benchmark coverage package that requires co-pays for health care access, whereby the cost sharing will actually be a limitation on coverage. However, if the selected benchmark plan indicates that it provides coverage for only half of the cost of mental health services, CMS views that as a coinsurance requirement rather than as a limitation on coverage.

Premiums and cost sharing act as a deterrent to those receiving health care and may cause low income populations to choose between healthcare and basic needs such as food. The commenter indicated that American Indians/Alaska Natives and other low-income groups should be exempt from premiums and cost-sharing requirements.

Response: States have the option to impose cost sharing in Medicaid but are limited by the requirements of sections 1916 and 1916A of the Act. To the extent that these benchmark packages impose premiums or cost sharing, this final regulation stipulates that any cost sharing and premiums for individuals may not exceed cost sharing limits applicable under sections 1916 and 1916A of the Act. In a State that imposes cost sharing under either 1916 or 1916A the State would be permitted to apply different cost sharing requirements for individuals enrolled in the benchmark or benchmark-equivalent plan than it imposes for those not enrolled in such plans. In some cases individuals enrolled in benchmark or benchmark-equivalent plans may actually have lower cost sharing than is required of individuals enrolled in the traditional State plan benefit package. Under section 1916A of the Act, there are tiered individual service limits based on family income, and an aggregate cap of five percent of family income. These limits apply to all individuals enrolled in benchmark plans.

Section 5006 of ARRA added new protections for American Indians/Alaska Native related to: premiums and cost sharing; exclusion of certain American Indians/Alaska Natives specific property from estate recovery in Medicaid; new rules regarding American Indians/Alaska Natives, Indian Health Providers and Indian Managed Care entities in Medicaid; and new consultation requirements for Medicaid, CHIP and other health care programs funded under the Act involving Indian Health programs and Urban Indian organizations.

It is important to note that alternative benefit package programs are provided at the State's option. However, we recognize the concerns raised by these commenters.

Numerous Medicaid eligibility categories are exempt from mandatory enrollment in alternative benefit packages and can only select the alternative benefit package voluntarily. Such individuals must be provided a comparison of the benchmark option versus the State plan option before they choose to enroll. That comparison must include information on the cost-sharing obligations of beneficiaries. In choosing the benchmark option over the State plan option, these individuals would thus have actively made an informed choice. Finally, exempt individuals must be able to revert back to traditional Medicaid at any time. States electing to offer an alternative benefit package and choosing to allow voluntary enrollment for exempt populations must demonstrate how the State will operationalize the disenrollment provisions as well as provide detailed information on how informed choice will occur.

Comment: One commenter urged CMS to add provisions to provide special protections for individuals with disabilities, dual eligibles, and persons with other chronic medical conditions to ensure access to benchmark packages that are uniquely designed to address physical impairments and rehabilitation needs.

Another commenter believed CMS should require State Medicaid agencies to provide access to care management and care coordination services to Medicaid individuals who are incapable of managing their benchmark plan services. The commenter further believed that home health services should be included in all benchmark plan packages.

Several commenters recommended that all State programs include prevention services and promote health, wellness, and fitness. Physical therapists are involved in prevention by promoting health, wellness and fitness, and in performing screening activities.

One commenter is concerned that the managed care model is better suited for a "well" population as opposed to children with chronic special health care needs and adults with disabilities.

Response: To the extent that the commenter is concerned that alternative benefit packages will result in a reduction in services, we acknowledge that this is a possibility. However, for the benchmark State plan amendments implemented to date, most offer traditional State plan services as well as additional services like prevention and disease management.

States can consider benchmark-equivalent coverage as long as the coverage includes mandatory services such as inpatient and outpatient hospital services, physicians' surgical and medical services, laboratory and x-ray services, emergency services, well-baby and well-child care including age-appropriate immunizations, and other appropriate preventive services. We have determined that other appropriate preventive services must include family planning services and supplies.

Benchmark-equivalent plans may also include care management, care coordination, and/or home health services, but it is possible that some plans will not include these services. We do not agree that a requirement that States include these specific services would be consistent with the statute.

An important protection for children enrolled in alternative benefit packages is the requirement to ensure full access to the EPSDT benefit for children under the age of 21. If services are not provided as part of the benchmark or benchmark-equivalent plan, these services must be provided by the State as additional benefits. States electing the benchmark benefit option must provide CMS with information describing how it will inform families of the availability of such services and how the State will coordinate access to those services when they must be provided outside of the benchmark plan. Furthermore, States, at their option, can provide for additional services to benchmark or benchmark-equivalent programs.

Additionally, exempt individuals must make an informed choice before they elect to voluntarily enroll in benchmark or benchmark-equivalent plans. This includes the requirement that States must provide exempt individuals with a comparison of the benefits included in the benchmark or benchmark-equivalent plan versus the benefits included in traditional State plan coverage. The exempt individual has the right to return to State plan coverage at any time. For example, if the exempt individual is in need of services not offered in the benchmark plan, the individual can return to the regular Medicaid benefit package immediately. In order to assure that exempt individuals voluntarily choose to enroll in a benchmark benefit plan, we revised § 440.320 to require States to track the number of voluntary enrollments and disenrollments in benchmark benefit plans by exempt individuals. Section 440.320 also requires States to act promptly on requests from exempt individuals for disenrollment and to ensure that these individuals have full access to standard State plan services while disenrollment requests are being processed.

Comment: One commenter said the provisions of the regulation on exempting populations and covering benefits should be consistent with the Americans with Disabilities Act (ADA).

Response: While exempt populations under this regulation are specified in section 1937 of the Act and CMS does not have authority under the statute to expand the definition of exempt

populations through the regulatory process, we would consider any implications of the ADA when reviewing a benchmark plan amendment and in monitoring implementation of the option by a State.

Comment: One commenter believed current regulations governing managed care in Medicaid that describe the information States must provide and how that information should be provided should be incorporated in the rule governing benchmark benefit plans. The information should include a comparison of features between Medicaid and the benchmark plan, whenever they differ.

Other commenters urged CMS to allow States to deviate from the lock-in provisions of Medicaid managed care regulations at 42 CFR part 438. They assert that, if beneficiaries covered by an alternative benefit package, rather than full Medicaid benefits, can pick and choose benefits during an enrollment period by plan-hopping, plans will have no way to establish cost-effective premiums tied to the limited benefit package. The commenters requested that CMS allow States providing alternate benefit packages to offer as little as a 30-day change period after initial assignment, and differences in covered benefits be excluded as a justifiable cause for beneficiaries to switch health plans after the change period.

Response: In light of the statutory changes made by CHIPRA, we revised the regulation at § 440.305 to incorporate compliance with Medicaid managed care requirements at section 1932 of the Act and at 42 CFR part 438 of Federal regulations. Thus, in providing information to beneficiaries who are offered managed care plans to obtain alternate benefit coverage, States are required to comply with the requirements at 42 CFR 438.10, and therefore must provide all enrollment notices, informational materials, and instructional materials relating to the enrollees and potential enrollees in a manner and format that may be easily understood. This informational material must include, among other things, information concerning enrollment rights and protections; any restrictions on freedom of choice among providers; procedures for obtaining benefits including prior authorization requirements; information on grievances and fair hearings procedures; information on physicians, the amount, duration, and scope of benefits; cost sharing, if any, and the process and procedures for obtaining emergency services.

With regard to deviating from the lock-in provisions of Medicaid managed care regulations at 42 CFR part 438, we believe that the disenrollment provisions of § 438.56, which provide for a 90-day period after initial enrollment in which a managed care enrollee may change plans is consistent with the requirements of section 1932(a)(4) of the Act and represents a reasonable time period for enrollees to decide whether the plan in which they are enrolled will best meet their needs. This trial period of enrollment is even more critical when the plan is offering a benchmark or benchmark-equivalent benefit package. We are not convinced that this limited period of time provides an incentive for enrollees to plan-hop in order to access specific benchmark benefits.

Further, CMS has specified three circumstances where cause for disenrollment exists and permitted States to develop other reasons, including but not limited to, the examples in § 438.56(d)(iv). Beyond these requirements, States have the flexibility to create additional causes for disenrollment as best serves their beneficiaries and the Medicaid Program.

Comment: Some commenters believed that CMS should require that all non-managed care plans ensure adequate access to providers that accept assignment of benefits and bill benchmark plans directly.

Response: Access standards apply to all aspects of the Medicaid program, including benchmark and benchmark-equivalent plans. If States choose to offer benchmark or benchmark-equivalent plans to Medicaid beneficiaries, States must assure that access to providers and claims payment are in compliance with current Federal regulations.

Comment: One commenter raised the potential problems of billing alternate benefit insurers. The commenter believed CMS should ensure that benchmark plan options should impose no additional administrative burdens on participating Medicaid providers. Providers should not be depended upon to refund payments and re-bill plans in the event that a plan is billed for a Medicaid individual who is retroactively enrolled into a different plan. Individual plan requirements should be streamlined into the existing system to minimize complexity to the already complex billing requirements.

Response: Provider billing procedures will vary among the States based on the particular health care delivery system in the State at issue. We do not anticipate that provider billing under an alternative benefit program will necessarily differ from the way in which providers currently bill for Medicaid services, or that providers will have to establish new processes and systems to calculate, track, bill, and report benchmark services. Moreover, because most States already offer managed care enrollment, they already have experience ensuring coordination of provider claims among different managed care entities. Thus, we do not believe that the offering of alternate benefit packages will impose significant administrative burdens on providers.

Comment: One commenter stated the regulation should require plan to plan reconciliations of payment in instances where beneficiaries have switched from one benefit plan to another, and in order to minimize confusion about plan enrollment and benefits, benchmark plans should be required to coordinate the receipt of beneficiary ID cards with the beneficiary's effective date of enrollment.

Response: We acknowledge the commenter's concern regarding coordination of beneficiary enrollment in a plan and reconciliation of payment to providers. These are implementation and administrative issues that are, at least initially, best addressed by the State. We expect the State to appropriately coordinate enrollment and payment processes in a fashion that minimizes confusion and we expect the State to ameliorate coordination of payment issues so that providers are paid appropriately and in a timely fashion. However, we believe that these issues need not be addressed in regulation at this time, and that most States already have systems in place to coordinate enrollment and provider payments between managed care plans. Should there be evidence of problems CMS will revisit this issue.

Comment: One commenter asserted that the final rule should require States to provide an exceptions process in which beneficiaries can obtain services not covered by a benchmark plan when they are medically necessary, and to educate beneficiaries about how to pursue this essential safeguard.

Similarly, States should also be required to provide hardship exemptions if beneficiaries are unable to meet cost sharing requirements in benchmark plans and should review each beneficiary's eligibility category to ensure they meet statutory requirements for assignment to benchmark plans.

Response: CMS agrees with the commenter that States should review each beneficiary's eligibility category to ensure they meet statutory requirements for assignment to benchmark plans. The requirements for when mandatory enrollment can occur are outlined in § 440.431 and specify that only certain

groups of full benefit eligibles can be mandatorily enrolled in benchmark benefit packages. We are requiring in § 440.320 that exempt individuals be fully informed regarding the choice for enrollment in benchmark or benchmark-equivalent plans and that they affirmatively enroll in benchmark and benchmark-equivalent plans. We are also requiring that States comply with the Medicaid managed care regulations including the information requirements for enrollees and potential enrollees.

We are not requiring that States provide a process for beneficiaries to obtain services not covered by a benchmark plan when they are medically necessary, except with respect to children, because such a process is not authorized by section 1937 of the Act. Benchmark or benchmark-equivalent plans offered to beneficiaries constitute the individual's medical assistance health care coverage. Children must be provided access to the full range of EPSDT services, as defined in section 1905(r). While section 1905(r) of the Act specifically requires that States provide children necessary health care, diagnostic services, treatment and other measures described in section 1905(a) related to conditions discovered by a screening service, we believe that any encounter with a health professional practicing within the scope of his or her practice should be considered to be a screening service for the purpose of the EPSDT requirement.

It is important to note that for those who voluntarily enroll in benchmark or benchmark-equivalent plans, such individuals must be permitted to revert to traditional Medicaid coverage at any time. Requests by individuals to disenroll must be acted upon promptly. Furthermore, we included at § 440.320 a requirement for States to have a process in place to ensure that any disenrollment request is processed promptly and the individual is immediately able to access services described in the standard Medicaid State plan while the State is processing the individual's disenrollment request.

In terms of cost sharing, States are required to ensure that benchmark or benchmark-equivalent plans comply with the cost-sharing requirements at sections 1916 and 1916A of the Act, which includes the provision that premiums and/or cost sharing not exceed 5 percent of the family's income. Consistent with section 5006 of the ARRA, States are required to ensure that eligible Indians are neither charged premiums nor required to participate in cost sharing for services provided by IHS providers or through contract health services through IHS providers. The Act also provides that States may implement undue hardship provisions for premiums and may permit providers to waive cost sharing on a case-by-case basis.

Comment: One commenter believed alternative plans should include a provision for mandatory cost sharing, where applicable, in return for treatment or services. Uncollected cost-sharing places an unfair financial burden on providers.

Response: States are required to ensure that benchmark or benchmark-equivalent plans comply with the cost-sharing requirements at sections 1916 and 1916A of the Act. These sections provide that States can impose premiums and cost sharing on certain Medicaid beneficiaries, and Section 1916A provides for enforcement of such premiums and cost sharing on certain Medicaid beneficiaries (certain limitations do apply). The enforcement of premiums and cost sharing through the denial of medically necessary services is at a State's option. CMS is not requiring that cost sharing be mandated in return for treatment or services, since this would be inconsistent with the statutory language provided by Congress in the DRA and could impose considerable hardship and result in the denial of necessary health service for beneficiaries.

Comment: One commenter mentioned that because of the potential for harm to beneficiaries, this rule should mandate strong requirements for meaningful public input at both the Federal and State level when States propose use of alternative benefit packages. Only a full open process in which all stakeholders can participate will provide the thorough, thoughtful analysis needed to determine whether specific changes will foster genuine efficiency or threaten beneficiaries' access to appropriate care.

These commenters noted that the State plan amendment process provides almost no meaningful opportunity for public input. They noted that States can implement changes the day after publishing a notice, with no requirement to acknowledge or address comments.

The commenter suggested that meaningful opportunities for public comment could include well-publicized and easily accessible public hearings, ample opportunity for stakeholders to provide written comments, and a requirement that State and Federal officials provide written responses to comments.

Response: We agree that States must seek public input concerning plans to offer alternative benefit packages. Thus, we are requiring in § 440.305 "Scope" that States secure public input prior to any submission to CMS of a proposed State plan amendment that would provide for an alternative benefit package. We are not requiring any specific process to secure public input, in order to permit States flexibility to design and use a public input process that meets State needs, but we intend these processes to be meaningful and will be reviewing how they are conducted to assure compliance with the law.

Comment: One commenter suggested that CMS require States to include in Medicaid contracts with alternative benefit packages provisions that require fair reimbursement for providers at rates no less than rates paid under the traditional Medicaid program, including a reasonable dispensing fee for pharmacy providers.

Further, the commenter believed that CMS should prohibit States from procuring contracts that contain mail order prescription requirements for Medicaid-eligible individuals. The commenter asserts that Medicaid-eligible individuals who are required to enroll in benchmark plans should have the option of receiving pharmacy services in a retail pharmacy setting. CMS should also require that contracts contain an assurance that allows extended quantities of medications from retail pharmacies for Medicaid-eligible individuals receiving treatment for chronic illnesses.

Response: States are required to submit State plan amendments to establish rates and rate methodologies for all fee-for-service institutional and non-institutional services as part of their approved Medicaid State plan. Benchmark plans that utilize fee-for-service delivery systems must follow the State plan reimbursement process. This process is detailed at § 447.200 and § 447.201 and includes a public notice requirement detailed at § 447.205. We published general rate setting regulations for drugs at 42 CFR part 447 subpart I and for managed care entities at § 438.6(c), and we expect States to follow these rules when setting rates for benchmark and benchmark-equivalent plans.

With regard to benchmark benefit plans that use managed care as the delivery system, the requirements for actuarial soundness at part 438 apply in the same way they apply to any Medicaid managed care entity, but we do not have statutory authority to review or approve reimbursement rates to contracted providers under managed care arrangements once the premium has been certified as actuarially appropriate for the populations and

services in the contract. We do however, have the authority and responsibility to review the provider network to determine that individuals have adequate access to all medically necessary services.

With regard to mail order prescriptions, section 1937 did not address or limit the use of mail order prescription requirements, or otherwise address or limit the coverage of, or payment for, prescription drugs.

Comment: One commenter recommended that CMS include in its rule an evaluation of the impact on beneficiaries of the benchmark benefit packages.

Response: CMS points the commenter to the "Regulatory Impact Analysis" in section VI.B "Anticipated Effects" of this regulation.

D. 440.310 Applicability

Comment: One commenter disagreed that the medically needy population should be exempt from participating in benchmark plans. The commenter believed the rule should permit voluntary enrollment of medically needy into benchmark plans in States such as Minnesota which provide full benefits across the board to both categorically and medically needy. Section 1937 of the Act only expressly prohibits required participation by the medically needy but is silent as to whether they can be voluntarily enrolled. It is illogical for CMS to interpret Congressional intent to permit scaled back benefit coverage for the categorically needy, while shielding the medically needy from scaled back benefit packages.

Response: We agree with the commenter's suggestion that medically needy populations may be offered voluntary enrollment in an alternative benefit package. Thus, we revised the rule at § 440.315 "Exempt Individuals" to indicate that benchmark and benchmark-equivalent benefits can be offered as a voluntary option to medically needy or those eligible as a result of a reduction of countable income based on costs incurred for medical care. We recognize that applying benchmark benefit plans to medically needy individuals can be cumbersome depending on the arrangements for benchmark coverage. If the State administers its own benchmark benefit plan, enrolling and disenrolling these individuals would be no more problematic than standard Medicaid enrollment.

E. Section 440.315 Exempt Individuals

Comment: One commenter believed that these alternative benefit packages should provide exemptions to additional Medicaid coverage groups. Other commenters suggested that CMS use its discretion to expand the categories of exempt individuals to include adults with serious mental illness and children with serious emotional disturbances.

Some commenters believed that all people with mental illness should be exempt.

Response: The statute does not authorize CMS to exempt additional categories of individuals from mandatory enrollment in alternate benefit package. We have included the medically needy with the list of exempt populations because the medically needy population is effectively exempted from mandatory enrollment by exclusion from the definition of "full benefit eligible".

We have defined "medically frail" and "special medical needs" individuals who are exempt from mandatory enrollment. At a minimum, States must include children with serious emotional disturbances, individuals with disabling mental disorders, individuals with serious and complex medical conditions, and individuals with physical and or mental disabilities that significantly prevent them from performing one or more activities of daily living. Accordingly, we revised the regulation at § 440.315(f) to reflect this change. These are minimum standards and States have the flexibility to expand this definition.

Comment: One commenter requested a definition for exempt individuals "who qualify for Medicaid solely on the basis of qualification under the State's TANF rules." The commenter noted that no individual can qualify to receive Medicaid benefits solely on the basis of their TANF eligibility, since TANF is not linked to Medicaid.

Response: In the proposed rule we published on February 22, 2008, we stated that we interpreted the exemption from mandatory enrollment in section 1937(a)(2)(B)(ix) of the Act to apply only to those individuals who qualify for Medicaid because the State has elected to link Medicaid eligibility to TANF eligibility. Under the law, since passage of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (PRWORA), Medicaid eligibility is not tied to TANF eligibility. While many States automatically enroll people receiving TANF in Medicaid they do so because the design of the TANF and Medicaid rules means that, in fact, all TANF individuals qualify under the Medicaid rules. There is no direct eligibility link under law, however, between TANF and Medicaid.

We have determined that our proposed regulation did not adequately take into account the references in section 1937 to title IV–A, and section 1931 of the Act. Section 1902(a)(10)(A)(i)(I) of the Act still requires States to cover, in their Medicaid programs, individuals receiving cash assistance under part A of title IV. However, section 1931 of the Act provides the rules for determining whether an individual is treated as a recipient of title IV–A assistance for purposes of Medicaid eligibility. Under section 1931 of the Act, references to title IV–A must be considered to be references to the IV–A State plan that was in effect prior to the date that title I of PRWORA took effect. In other words, the AFDC cash assistance rules are carried over to Medicaid eligibility under section 1931, (States may adopt less restrictive rules under section 1931(b)(2) of the Act), but actual eligibility for or receipt of cash assistance is not a requirement under section 1931. Accordingly, we are revising our regulation at § 440.315(i) to provide that parents or caretakers who qualify for medical assistance on the basis of eligibility to receive assistance under a State plan funded under part A of title IV, as determined under section 1931 of the Act, are exempt from the requirement to enroll in benchmark or benchmark-equivalent coverage. These are the parents who, at a minimum, States must cover under section 1931. We are also clarifying that we interpret the reference to "parents" in section 1937(a)(2)(B)(ix) to include caretakers, as defined in section 1931. We are not requiring that parents or caregivers who qualify for Medicaid on the basis of more liberal income or resource methodologies which a State uses pursuant to the option available under section 1931(b)(2)(C) be exempt from mandatory enrollment in benchmark or benchmark-benefit plans, although States may, at their option, exempt some or all such individuals.

Comment: A commenter stated the proposed rule defines the exempt "special medical needs" group to include two of the three groups that are also exempt from mandatory enrollment in managed care plans under section 1932(a)(2) of the Act: "Dual eligibles" and certain children. However, the proposed rule does not exempt the third group that is exempt from mandatory enrollment in managed care plans, American Indians/Alaska Natives. Several commenters believed that the same compelling policy reasons for excluding American Indians/Alaska Natives from mandatory managed care

support excluding them from mandatory enrollment in benchmark plans, and requested that we revise the rule to be consistent with current policy described in the Medicaid managed care rule of 2002.

Response: In the proposed rule we mistakenly confused two distinct groups in our definition of "individuals with special needs" and included individuals eligible for Medicare as a special needs population when it is identified in section 1937 as a separate exempt population. We have therefore deleted that reference. Section 1937(a)(2)(iii) of the Act exempts individuals entitled to Medicare benefits (dual eligibles), regardless of medical need, from mandatory enrollment in an alternative benefit package. There is a separate statutorily exempt category at section 1937(a)(2)(vi) of the Act for individuals who are medically frail or have special medical needs. This final regulation includes both of these groups separately.

Specifically, in the proposed rule, we specified that "individuals with special needs" means the populations identified in § 438.50(d)(1) and § 438.50(d)(3). The reference to § 438.50(d)(1) was an erroneous reference to the dual eligible population discussed above. The reference to § 438.50(d)(3) was made because that population was a pre-existing definition of the statutory term "children with special medical needs" contained at section 1932(a)(2)(A) of the Act. We did not include a separate definition of adults with special medical needs in the proposed rule.

After reviewing public comment, we have determined that States should be allowed flexibility to adopt reasonable definitions of "individuals with special medical needs" as long as that definition includes, at a minimum, the children specified in § 438.50(d)(3), children with serious emotional disturbances, individuals with disabling mental disorders, individuals with serious and complex medical conditions and individuals with physical, and/or mental disabilities that significantly impair their ability to perform one or more activities of daily living.

We recognize that Congress included special protections for American Indians under the managed care provisions at section 1932(a)(2)(C) of the Act, but those special protections were not included under section 1937 of the Act. It is possible that the managed care protections were based on the fact that American Indians have access to the IHS and tribal health care delivery system, and there was concern about mandating enrollment in a managed care plan that would not be consistent with that health care delivery system.

While American Indians/Alaska Natives are not a statutory group that is exempt from enrollment in an alternative benefit package, they remain exempt from mandatory enrollment in managed care when such an option is utilized under section 1932 of the Act. As a result, a State that operates an alternative benefit package through managed care providers must provide American Indians/Alaska Natives with a health care delivery system that is consistent with the special protections related to managed care enrollment contained in section 1932(a)(2)(C) of the Act as well as section 1932(h) of the Act, added by ARRA, that addresses the requirement that American Indians/Alaska Natives enrolled in managed care have access to IHS providers.

Comment: One commenter believed that States may be discouraged from pursuing the benchmark option because of the extra work required for determining eligibility, along with the fact that potential savings may be limited. The commenter asked that CMS not impose any additional definition of sub-groups that must be identified and carved out of benchmark plans.

Response: The benchmark benefit is an option that States may elect to utilize within their Medicaid State plan when the State determines its value for a defined population. The additional steps needed in determining eligibility are necessary to assure that the benefit plan is targeted appropriately. The ultimate value of a benchmark benefit plan to both the State and beneficiaries is dependent upon the clear definition of eligibility for the defined benefit package. The exempt categories were established by statute and must be evaluated as a condition of providing a benchmark or benchmark-equivalent benefit.

Comment: One commenter asked for additional clarification of the phrase "or being treated as being blind or disabled" in § 440.315 of this regulation.

Response: This phrase needs to be interpreted in light of the particular eligibility conditions in that State. For example, the phrase could refer to States that qualify under section 209(b) of the Act, since States with this classification can have a more restrictive definition of blindness or disability. The term could also refer to one of the working disabled groups, since one group has a categorical requirement that the person have a medically determinable severe impairment, which does not exactly match the criteria for a determination of "disabled." Additionally, Territories operate on a different definition of blindness and disability than the 50 States.

Comment: Some commenters stated that the proposed rule exempts from mandatory enrollment the "medically frail." Several commenters suggested this term be given specific meaning in the rule. They suggested it include anyone who is eligible for or is receiving Medicare or Medicaid services for home health, hospice, personal care, rehabilitation or home and community-based waivers, or who is at imminent risk of need for these types of services.

Another commenter suggested this group be defined as individuals with multiple medical conditions and/or a chronic illness.

Response: After considering public comment on the issue, we have included in the text at § 440.315(f) guidance on how States must, at a minimum, define "medically frail." Additionally, we will require that States offering alternative benefit packages inform CMS as to their definition of "medically frail." States will be required to include information regarding which population groups will be mandatorily enrolled in the benchmark program and will need to ensure that enrollment is optional for exempt populations, including individuals defined by the State as "medically frail." Additionally, the required public input process should include informing interested parties of the State's proposed definition of "medically frail."

Comment: Another commenter suggested CMS use the existing definition of children with special health care needs which is defined by the Department of Health and Human Services, Health Resources and Services Administration, Maternal and Child Health Bureau (MCHB) as: "Children with special health care needs:" "Children who have or are at increased risk for a chronic physical, developmental, behavioral, or emotional condition and who also require health and related services of a type or amount beyond that required by children generally."

Other commenters believed the definition of "special medical needs individuals" should include adults who meet the Federal definition of an individual with serious mental illness and children who meet the Federal definition of children with serious emotional disturbance, as promulgated by the Substance Abuse and Mental Health Services Administration (SAMHSA). The SAMHSA definition would include some individuals who, for one reason or another, are not eligible as persons with a disability, but

nevertheless are significantly impaired by their mental disorder.

Response: In the February 22, 2008 proposed rule, we defined "individuals with special medical needs" to be consistent with § 438.50(d)(3), which implements and interprets the term "children with special medical needs" used in section 1932(a)(2)(A) of the Act. This definition refers to children under age 19 who are eligible for SSI, section 1902(e)(3) of the Act, TEFRA children, children in foster care or receiving other out of home placement, children receiving foster care or adoption assistance services or who are receiving services through a community based coordinated care system.

We appreciate commenters' suggestions of additional populations of children and adults for inclusion in the definition of special medical needs. In this final rule, we are allowing States the flexibility to adopt a reasonable definition of the term "special medical needs" and we expect States to consider, at a minimum, all of these individuals for inclusion in the definition of "individuals with special medical needs."

To maintain State flexibility, we have provided guidance to States in our discussion of these terms and in the regulation at § 440.315(f) and we are requiring that the exempt population include, at a minimum, those children identified in § 438.50(d)(3), children with serious emotional disturbances, individuals with disabling mental disorders, individuals with serious and complex medical conditions and individuals with physical and or mental disabilities that significantly impair their ability to perform one or more activities of daily living.

Also, as stated previously, CMS will require that States offering alternative benefit packages inform CMS as to their definition of "medically frail" and "special medical needs." States will be required to ensure that exempt populations, including individuals with "special medical needs" or who are "medically frail" are not mandatorily enrolled in alternative benefit packages, but are instead offered an informed choice. Additionally, CMS will interpret the required public input process to include informing interested parties as to the proposed definition of "special medical needs."

F. Section 440.320 State Plan Requirements—Optional Enrollment for Exempt Individuals

Comment: One commenter supported our regulation at § 440.320 and appreciated the willingness of CMS to provide for optional enrollment of otherwise exempt individuals. Several other commenters urged CMS to require States to provide more information and assistance to exempt individuals who are given the option to enroll in alternative coverage.

Response: We agree with the commenter that if States plan to offer enrollment in a benchmark plan to exempt individuals, the State must provide information and assistance to exempt individuals or their legal guardians/caregivers who are given the option to enroll in alternative coverage plans so they can make an informed choice. We proposed in § 440.320 that States must inform the individuals that enrollment is voluntary and that the individual may disenroll from the benchmark or benchmark-equivalent benefit package at any time and regain immediate access to the standard full Medicaid program under the State plan while the State processes their disenrollment request. We also proposed that States must inform the individual of the benefits available under the benchmark or benchmark-equivalent benefit package and provide a comparison of how the benefits, and if relevant, the cost share differ from the benefits and cost share available under the standard full Medicaid program. We also required that the State document in the individual's eligibility file that the individual was informed and voluntarily chose to enroll in the benchmark or benchmark-equivalent benefit package.

After considering public concerns as to the importance of the informed choice process, we revised the regulation at § 440.320(a) to require the State to effectively inform exempt individuals about the voluntary nature of their enrollment, and that they may choose to disenroll at any time from the benchmark or benchmark-equivalent plan in order to have immediate and full access to the standard Medicaid benefits, the benefits available under the benchmark benefit plan, the cost associated with the benchmark benefit plan, and to provide a comparison between the benefits available under the benchmark benefit plan and cost share, to the benefits and cost share provided by the standard, full Medicaid program. To support these requirements we have also included the requirement that the State document in the individual's eligibility file that the individual elected to enroll in the benchmark plan after receiving such information regarding benefits and disenrollment rights.

As part of the State Plan Amendment (SPA) approval process whereby States receive approval from CMS to implement new benefits under their State plan, States must define their disenrollment process and include a specific time period for disenrolling a beneficiary and assuring full access to standard Medicaid coverage. To the extent that the informed choice process continues to raise concerns, we will consider the development of additional guidance as to what processes are necessary to insure that the informed choice process is effective.

Comment: One commenter said that "exempt" populations should not be allowed to enroll in an alternative benefit plan at all.

Response: The statute states that exempt individuals may not be required to enroll in an alternative benefit plan, and with the protections noted, it is reasonable to give such individuals the opportunity to enroll in such plans. Alternative benefit plans may in fact have richer benefits than traditional State plan services and be targeted to the specific needs of exempt individuals. We are aware, however, that the benchmark plan may not provide all the services as the traditional plan and that exempt groups should not in any way be enrolled in such plans involuntarily, or without full knowledge of the consequences. Accordingly, this regulation provides new protections to assure that exempted individuals are fully informed about their options for enrolling and disenrolling from an alternative benefit plan.

Comment: One commenter believed the proposed rule was silent on the requirement that the State provide information in plain language that is understood by the individual, parent, or guardian including clear instructions on how to access EPSDT services not provided by the benchmark plan and how to disenroll from the benchmark plan. One commenter suggested that CMS establish literacy and translation standards for benefit information sheets and another commenter requested that at a minimum, information should be provided in the beneficiary's spoken language and at an appropriate reading level.

Response: We agree that it is important to provide information in plain language and individuals should be provided clear instructions on how to access EPSDT services not provided by benchmark plans. Furthermore, individuals should also receive information on how to disenroll from benchmark plans. We are requiring in § 440.320 that States effectively inform exempt individuals of the choice, and provide sufficient information in order to make an informed choice, including a comparison of benefits and any cost

sharing. Exempt individuals must be afforded the opportunity to disenroll from benchmark or benchmark-equivalent coverage promptly and without any loss of access to the full standard Medicaid benefits, if they determine that the coverage is not meeting their health care needs.

Comment: Some commenters stated that the rules should provide for immediate revocation of any voluntary election at the discretion of those exempt individuals who elect an alternative plan. These commenters urged that revocation be permitted through telephone, in writing, in person, by electronic communication, or by a designee, so as to make revocation as simple as possible and as quick as possible for beneficiaries. The commenters also asserted that the State should be required to provide immediate notification to such individuals of the right to revoke their election if they fall into an excluded category. The commenters urged that coverage and payment should not be interrupted during changes in election and marketing should not be permitted by alternate plans to excluded groups.

These commenters asked that the disenrollment process from benchmark plans allow a seamless transition to and from the selected program and minimize the administrative burden on the provider while ensuring care delivery is not interrupted.

Response: We agree that coverage and payment should not be interrupted during changes in election. It is important that coordination of care continue during any time of transition either from one Medicaid eligibility group to another or from one benefit program to another. Thus, in considering the commenters' suggestions, we have provided in § 440.320 that, for individuals who voluntarily enroll and later determine they want to return to traditional Medicaid and/or for individuals who are later determined eligible for an exempted group, disenrollment requests must be acted upon promptly and States must have a process in place to ensure full access to standard Medicaid State plan services while disenrollment requests are being processed. Furthermore, we expect that for individuals who voluntarily enroll and later decide to return to traditional Medicaid and/or for individuals who are later determined eligible for an exempted group, the State will process disenrollment requests consistent with the managed care regulations at § 438.56(e), and the effective date of disenrollment must be no later than the first day of the second month following the month in which the enrollee files the request.

Comment: Some commenters recommended that CMS enhance the proposed rule to include a section on CMS oversight containing a requirement that CMS approve State informational materials that provide comparative information and information on choice. Other commenters were concerned that inappropriate marketing activities such as those they believe are being used by some Medicare Advantage plans, may be adopted by benchmark plans. These commenters urged CMS to be aware of the potential for inappropriate marketing tactics, require States to oversee marketing activities, and impose limits on marketing to ensure individuals are not enrolled under false pretenses.

Response: To the extent that benchmark and benchmark-equivalent benefit packages are provided through managed care plans, States must comply with the Medicaid managed care rules at 42 CFR part 438. Marketing requirements for managed care plans are described in § 438.104. States must consider these requirements in contracting with these entities.

We will monitor implementation to determine if additional measures are needed.

Comment: Other commenters indicated that CMS should require strong beneficiary protections for people, including frail older and disabled beneficiaries, who have the opportunity to voluntarily enroll in benchmark plans. The commenters indicated that these protections should include objective counseling to make sure they understand the potential for higher costs and make truly informed decisions, a ban on aggressive and coercive marketing such as door-to-door sales, a requirement to document network adequacy for additional populations, and ongoing monitoring to ensure that these beneficiaries are getting the care they need. Some commenters indicated that, even with full information, individuals who voluntarily enroll may be likely to make an inappropriate election. They suggested a professional counselor independent of the plan be available to review their plan selection.

Response: We believe a professional counselor or enrollment broker would be a reasonable administrative protection that could be adopted by a State, but we are not requiring it. This is an operational issue that may depend on the circumstances of a particular State's program. States who contract with an enrollment broker can receive administrative match from CMS at the 50 percent match rate. To the extent that the State offers alternative benefits through managed care plans, enrollment brokers must operate consistently with the requirements at § 438.810. Consistent with the managed care rules at § 438.10, States are encouraged to provide information at least annually as to an individual's enrollment choice under the benchmark option or the traditional State plan option. This could be accomplished at the point of re-determining eligibility for enrollees.

Additionally, if a change in eligibility status has occurred (for example, non-pregnant female mandatorily enrolled in the benchmark plan becomes pregnant and is no longer eligible for mandatory enrollment), the State will have to provide such individuals with information about their benefit options as soon as the State becomes aware of the change in eligibility. If the individual chooses to disenroll, the individual must have full access to standard Medicaid State plan services that may not be available in the benchmark plan while the State implements the disenrollment process.

Comment: Several commenters believed exempt individuals will be automatically enrolled without their expressed consent and wanted an assurance that this will not occur. These commenters urged CMS to safeguard exempt individuals from being enrolled in benchmark or benchmark-equivalent plans without their prior informed consent by more expressly prohibiting States from taking an automatic enrollment or default enrollment approach to their enrollment. They suggested that the proposed language could allow or even encourage States to adopt an automatic or default enrollment approach without further clarification because the language could be read to allow States to initially enroll all exempt persons who do not affirmatively choose not to enroll. These commenters indicated that failure to clarify this point would be construed as approval of opt-out practices and would not protect against any form of automatic or "presumed voluntary" enrollment.

Response: Section 1937 of the Act provides that exempt individuals cannot be mandatorily enrolled in benchmark or benchmark-equivalent plans. We proposed to permit States to offer exempt individuals a voluntary option to enroll, based on informed choice. In order for exempt individuals not to be mandatorily enrolled and to have made an "informed choice" about enrollment, the choice must take place before enrollment in the benchmark or benchmark-equivalent plan. We have

amended the final rule to make this clear and to require the State to inform the exempt individual of the benefits available under the benchmark or benchmark-equivalent package and the cost of such a package. Furthermore, these actions should occur before the receipt of services in a benchmark or benchmark-equivalent plan. We mentioned earlier that we require that the individual's file be documented to reflect that an exempt individual is fully informed and has chosen to be enrolled in a benchmark or benchmark-equivalent plan. CMS, in response to these comments, has made it clear that individuals cannot be enrolled until an informed election is made.

In terms of CMS monitoring, we provide in Federal regulations at § 430.32 for program reviews of State and local administration of the Medicaid program. In order to determine whether the State is complying with the Federal requirements and the provisions of its Medicaid plan, we may conduct reviews that include analysis of the State's policies and procedures, on-site review of selected aspects of agency operation, and examination of individual case records. We also require in § 440.320 that the State track and maintain the total number of individuals that have voluntarily enrolled in a benchmark benefit plan and the total number of individuals that have elected to disenroll from the benchmark benefit plan.

Comment: One commenter believed that the rule should describe the level of detail required in the State's description of the difference between State Plan benefits and benchmark-equivalent plan benefits because the commenter believed it is important that there be a detailed, written comparison.

Response: We agree with the commenter on the importance of the benefit comparison. We have required that if the State chooses to offer benchmark or benchmark-equivalent benefit options to individuals exempt from mandatory enrollment such individuals must be given, prior to benchmark enrollment, a comparison of traditional State plan benefits and the benefits offered in the benchmark or benchmark-equivalent benefit package, as well as any differences in cost sharing. In order for exempt individuals to make an informed choice, the information must be fully detailed by the State in a format that is understandable by the beneficiary.

Comment: A commenter believed CMS should prohibit States from implementing procedures that make it more difficult for beneficiaries to stay in the regular Medicaid program than to enroll in benchmark benefit plans. Beneficiaries should not be asked to make a choice without being afforded a reasonable time to evaluate the options. Another commenter was concerned that a State could reduce its standard Medicaid State plan services in order to force exempt beneficiaries to enroll in a benchmark or benchmark-equivalent plan.

Response: We agree that individuals should be given a reasonable time to evaluate the options in considering traditional Medicaid benefits versus benchmark or benchmark-equivalent options. In order for individuals to make an informed choice, individuals must have ample time to consider the options available. Therefore, we have revised the regulatory provision at § 440.320(a)(3) to require that the State document that the individual had ample time for an informed choice. We are not prescribing standards for what constitutes "ample time" because we believe this may vary based on the circumstances and/or individual involved. With regard to States reducing their standard Medicaid State plan services, section 1937 of the Act does not change State flexibility to reduce or add optional 1905(a) medical services. However, if such changes are done for the purpose of coercing exempt individuals to enroll in benchmark plans, such action may not be consistent with the requirement that exempt individuals must be permitted to make a fully voluntary decision to enroll in a benchmark plan.

Comment: Another commenter believed CMS should require States to institute expedited processes to transition out of benchmark plans those individuals who become eligible for exempted categories.

Response: We agree with the commenter that States should provide for timely transition of individuals if they become eligible for exempt categories and thus are not required to be mandatorily enrolled in a benchmark plan. Congress clearly identified individuals who are exempt from mandatory enrollment in benchmark or benchmark-equivalent plans.

As mentioned previously, we have revised the final rule at § 440.320 to require that States inform exempt individuals that they may disenroll at any time and provide them with information about the disenrollment process. We have also revised § 440.320 to require that disenrollment requests be acted upon promptly and that States have a process in place to ensure full access to standard Medicaid State plan services while any disenrollment requests are being processed. We further revised § 440.320 to include a requirement for States to maintain data that tracks the number of voluntary enrollments in benchmark and benchmark-equivalent benefit plans and the number of disenrollments from these plans.

These requirements also apply to individuals who become part of an exempt population for which no mandatory enrollment can occur. It is incumbent upon the State to ensure that procedures are in place to notify these individuals of their change in status and to provide them with information explaining their right to disenroll from the benchmark or benchmark-equivalent benefit plan and return to the traditional Medicaid State plan. We believe that States should not rely on the individual's ability to recognize that their change in status permits them to revert back to traditional Medicaid and that they are entitled to the full range of Medicaid benefits. It is therefore the responsibility of the State to assure that these individuals have the choice to receive benchmark plan benefits, or the benefits available under the traditional Medicaid State plan.

Comment: One commenter asked for clarification on whether the benchmark or benchmark-equivalent benefit packages would apply to "unqualified individuals" who fall under the "exempt category" and who could be offered optional enrollment in a benchmark benefit package.

Response: We wish to clarify that unqualified individuals (aliens who are not lawfully admitted for permanent residence in the United States or otherwise do not meet the Medicaid eligibility requirements for aliens) for example, aliens who are residing in the U.S. illegally, are exempt individuals who cannot be mandatorily enrolled in benchmark plans because in most cases they are only eligible for emergency services under Medicaid.

Unqualified or undocumented individuals who are otherwise eligible for Medicaid (for example, meet income or residency requirements) are only covered for emergency medical services under section 1903(v) of the Act. Generally, the determination that such an individual has received an emergency medical service is made retrospectively by the State. Therefore, it is unlikely that a State would decide to offer the benchmark or benchmark-equivalent benefit option for these individuals, even if enrollment were voluntary.

G. Section 440.330 Benchmark Health Benefits Coverage

Comment: A few commenters questioned the coverage standards of a Secretary approved benefit package. They contended that under this option, CMS could approve coverage of any kind, one that may include or exclude any benefits the State chooses. They asserted that this failure to recognize any minimum set of required benefits in Medicaid could limit access to critical health care services. They argued that allowing States even greater flexibility, by not requiring that coverage meet benchmark levels, is inappropriate and is likely to result in more beneficiaries going without health care services until they become sick and require emergency treatment.

Another commenter agreed and stated that the proposed rule says, "Secretary-approved coverage is any other health benefits coverage that the Secretary determines * * * provides appropriate coverage for the population proposed to be provided this coverage." The commenter finds this statement troublesome. This provision gives the Secretary the wide discretion to approve a number of plans that are more flexible than the benchmark plan requirements as articulated in this rule. This provision would give States the option to craft qualifying plans that include or exclude any benefits that the State chooses.

The commenters urged CMS to remove this fourth option for Secretary-approved benchmark packages from the proposed rule.

Response: The statute provides States with the option of Secretary-approved coverage, and we believe we have provided for sufficient protections to ensure that this option will be consistent with the statutory purpose of meaningful health benefits coverage while also allowing State flexibility. In this final rule, we have articulated the general standard that Secretary-approved coverage must be appropriate coverage to meet the needs of the population provided that coverage. The regulations also provide a number of documentation requirements so that CMS can determine that this standard has been met. States are required to submit a full description of the proposed coverage. The State must include a benefit-by-benefit comparison of the proposed plan to one or more of the three benchmark plans specified in § 440.330 or to the State's standard full Medicaid coverage package under section 1905(a) of the Act, as well as a full description of the population that would receive the coverage. Additionally, States will be providing to CMS any other information that would be relevant in making a determination that the proposed coverage would be appropriate for the proposed population. In considering Secretary-approved coverage, we will review individual State designs on a case-by-case basis. To the extent that State designs deviate from the other options for benchmark coverage (for example, State employees coverage, etc.) or traditional Medicaid State plan coverage, we will consider the information provided as a result of the public input process and any other information States submit that would be relevant to a determination that the proposed coverage would be appropriate for the proposed population.

We believe that Secretary-approved coverage can be appropriate to meet the needs of the targeted population provided that coverage. To date, the majority of the approved benchmark plans are Secretary-approved benchmark plans and most of these include not only all regular Medicaid State plan services but provide for additional services like disease management and/or preventive services.

Comment: Some commenters believed that to allow States to establish alternative health benefit programs that do not include family planning services is counter-productive to ensuring the health of Americans and maintaining the sustainability of the Medicaid program. Also, a benchmark or benchmark-equivalent plan would not be appropriate for individuals of childbearing age if it did not include access to family planning services. The commenter believed that no health benefits package would be "appropriate" for individuals of childbearing age if it did not include access to family planning services and supplies, and asked CMS to revise the proposed rule to clarify that, in order to be considered "appropriate," a benchmark or benchmark-equivalent plan must include coverage of family planning services and supplies.

The commenter also urged CMS to amend the rule to allow beneficiaries to disenroll from any such alternative benefit plan and reenroll in traditional Medicaid if the plan does not cover family planning services and supplies.

Several commenters noted that family planning is basic preventive health care for women and that ensuring a woman's freedom of choice is critical in the delivery of these services. The commenters stated that birth control, the main component of family planning coverage, is the most effective way to: (1) Prevent unwanted pregnancies, (2) safely space pregnancies in the interest of the mother and child's health, and (3) keep women in the workforce. Furthermore, the commenters believed that birth control enables preventive behaviors and allows for the early detection of disease by getting women into doctor's offices for regular health screenings.

One commenter believed that the legislation authorizes the Secretary to approve benchmark plans that provide "appropriate coverage for the population proposed to be provided that coverage." Similarly, the legislation requires benchmark-equivalent coverage to include "other appropriate preventive services, as designated by the Secretary." Coverage offered to women of reproductive age cannot be considered "appropriate" if it excludes coverage of family planning services and supplies.

Some commenters asserted that permitting some plans to exclude coverage of family planning runs directly counter to three of the major goals articulated by the legislation's supporters: reducing Medicaid costs, promoting personal responsibility and improving enrollees' health.

Other commenters believed that approximately half of all pregnancies in the United States are unplanned and there is a strong correlation between unintended pregnancies and failure to obtain timely prenatal care. They stated that guaranteeing coverage of family planning services for women enrolled in Medicaid benchmark plans increases the likelihood that these women will be under the care of a health professional before pregnancy, and that when they do become pregnant they will obtain timely prenatal care as recommended by the American College of Obstetricians and Gynecologists.

The commenters urged the Department to revise § 440.330 to clarify that in order for Secretary-approved coverage to be considered appropriate coverage for women of reproductive age, it must include family planning services and supplies. In addition, the commenters urged the Department to modify § 440.335 to designate family planning services and supplies as a required preventive service that must be included in all benchmark-equivalent plans offered to women of reproductive age.

Response: If one of the statutorily-specified benchmark packages (that is, FEHB, State Employees plan, and commercial HMO plan) did not contain family planning services and supplies, the statute permitted States to base an alternative benefit package on that

specific benchmark plan. CMS had no authority to disapprove the use of a statutorily-specified benchmark plan as the basis for an alternative benefit package. However, at the time that this regulation was being revised the Patient Protection and Affordable Care Act (PPACA), (Pub. L. 111–148), had not yet been enacted. That law has now amended section 1937(b) of the Act to add additional requirements affecting benchmark and benchmark-equivalent coverage, including the requirements for coverage of family planning services and supplies. We intend to issue a second final rule implementing the changes made by PPACA with a shortened effective date to bring the provisions of this regulation into conformity with the statute.

Consequently, we are revising § 440.375 to update the title and revise the regulation at this section to indicate that States can provide benchmark or benchmark-equivalent coverage to individuals without regard to the requirements relating to the scope of coverage that would otherwise apply under traditional Medicaid benefit packages. The scope of coverage would still need to be consistent with the requirements for the scope of coverage contained in this subpart, which are based on the statutory benchmark or benchmark-equivalent coverage provisions.

With respect to Secretary-approved coverage, we agree with the commenters that if such a benchmark benefit plan is provided to individuals of child bearing age that does not include family planning services and supplies, it would not be appropriate to meet the needs of the population it serves and would have to therefore include these services. Additionally, if a non-Secretary approved benchmark plan such as a commercial HMO plan does not include family planning services and supplies, States have the option of adding family planning services to the benchmark, at the enhanced FMAP rate established for these services.

With respect to benchmark-equivalent coverage in § 440.335, we have added family planning services and supplies as required services. In addition we have added emergency services as other required appropriate preventive services designated by the Secretary, consistent with the strong emphases the Medicaid statute places on these preventive services.

Comment: Other commenters believed that one reason States may wish to design a plan under the option for benchmark-equivalent or Secretary-approved plans is to offer beneficiaries important services that are not otherwise covered by Medicaid or a standard benchmark plan. The commenters stated that this rule does not permit this. CMS should allow States to submit proposals that include other services and judge the overall plan proposed by the State to assess its efficiency.

Response: Section 1937 provides that benchmark-equivalent or Secretary-approved plans can be offered as benchmark plans, so long as the identified basic services are provided as part of the benchmark-equivalent benefits and the benefit package is appropriate to meet the needs of the population it serves for Secretary-approved coverage. The rule is consistent with the statute. The rule provides that the scope of a Secretary approved health benefits package or any additional benefits will be limited to benefits within the scope of the categories available under a benchmark coverage package or the standard full Medicaid coverage under section 1905(a) of the Act. This provision allows States flexibility to offer additional health care services that would not otherwise be offered. Additional services are limited to those in categories offered under a benchmark plan or section 1905(a) of the Act because section 1937 of the Act did not expressly authorize coverage beyond the defined scope of medical assistance, and these limits ensure that additional services will be of the type generally considered as health care services.

H. Section 440.335 Benchmark-Equivalent Health Benefits Coverage

Comment: One commenter urged CMS to clarify that plans cannot use actuarial methods that further reduce benefits because of cost-sharing limits.

Another commenter noted that the preamble of the proposed rule indicates that even if the benchmark plan has 50 percent coinsurance, the State would have to ensure that cost sharing does not exceed the applicable limits in Medicaid, which are substantially lower.

However, § 440.340 specifies that the actuarial report "should also state if the analysis took into account the state's ability to reduce benefits because of the increase in actuarial value of health benefits coverage offered under the State plan that results from the limitations on cost sharing * * * under that coverage." The commenter strongly urged CMS to clarify that this language does not allow States to reduce mental health benefits below 75 percent of the value of the benchmark benefits because there are lower co-payments in the benchmark-equivalent plan. Congress intended that individuals would get 75 percent of the value of the benefit; they did not intend to reduce the value of this benefit through cost-sharing limitations.

Response: We agree that clarification is needed in terms of using actuarial methods to further reduce benefits because of cost-sharing limits. We have specified in § 440.340 that, as a condition of approval of benchmark-equivalent coverage, States must provide an actuarial report with an actuarial opinion that the benchmark-equivalent coverage meets the actuarial requirements for coverage specified in § 440.335. We have also specified in § 440.340 that the actuarial report must—

- Be prepared by a member of the American Academy of Actuaries and must meet the standards of this Academy;
- Use generally accepted actuarial principles and methodologies of the Academy, standard utilization and price factors, and a standardized population representative of the population involved;
- Use the same principles and factors in analyzing the value of different coverage (or categories of services) without taking into account differences in coverage based on the method of delivery or means of cost control or utilization use;
- Indicate if the analysis took into account the state's ability to reduce benefits because of the increase in actuarial value of health benefits coverage offered under the State plan that results from the limitations on cost sharing under that coverage;
- Select and specify the standardized set of utilization and pricing factors as well as the standardized population; and
- Provide sufficient detail to explain the basis of the methodologies used to estimate the actuarial value.

In considering the actuarial value, we expect that the States and the actuaries making the determination of actuarial equivalence will account for changes in cost sharing between the benchmark-equivalent plan and the benchmark plan as well as account for any differences in income and assets between Medicaid beneficiaries and the enrollees in the benchmark plan. Cost sharing for the Medicaid benchmark-equivalent plan is still subject to the limitations set forth in this rule and in sections 1916 and 1916A of the Act. The determination of actuarial equivalence should provide an aggregate actuarial value that is at least equal to the value of one of the benchmark benefit packages, or if prescription drugs, mental health services, vision and/or hearing services

are included in the benchmark plan, an aggregate actuarial value that is at least 75 percent of the actuarial value of prescription drugs, mental health services, vision and/or hearing services of one of the benchmark benefit packages. Changes to the benchmark-equivalent plans, including changes in the cost-sharing structure that would result in expected benefit amounts less than under the benchmark plan or less than 75 percent of the actuarial value of prescription drugs, mental health services, vision and/or hearing services, would not be allowed under this rule.

Comment: Several commenters note that the standard for adopting a benchmark-equivalent coverage package is set at 75 percent of the actuarial value of that category of services in the benchmark plan and wants to understand if the percentage is set in statute. The commenters believe that if this percentage is not a statutory provision, it would be important to describe the basis for this standard.

Response: The DRA provides for this standard. Section 1937(b)(2)(C) of the Act specifies that the benchmark-equivalent coverage with respect to prescription drugs, mental health services, vision services, and/or hearing services must have an actuarial value equal to at least 75 percent of the actuarial value of the coverage of that category of services in the benchmark plan. We have maintained this standard in the rule consistent with the statutory provision.

Comment: One commenter requested that benchmark-equivalent plans be required to provide the full continuum of care including the care required by individuals with cancer.

Another commenter pointed out that the benchmark-equivalent plans are allowed to provide 75 percent of the actuarial value of mental health and prescription drugs. The commenter is concerned that if the plan used as a benchmark does not cover mental health treatment or prescription drugs, the new Medicaid benefit package does not have to provide this coverage.

Other commenters are concerned about language indicating that a benchmark-equivalent coverage package is not required to include coverage for prescription drugs, mental health services, vision services, or hearing services. The commenter believed all of these services are necessary medical services.

Response: Section 1937 of the Act does not specifically require that benchmark or benchmark-equivalent plans provide a full continuum of care, nor does it guarantee all services that might be considered medically necessary.

Furthermore, while all services described under section 1905(a) of the Act are provided based on medical necessity, not all of those services are considered mandatory Medicaid services that States must include in the standard Medicaid plan. Prescription drugs, certain mental health services, vision services, and hearing services are not mandatory services under the State plan for adults. The DRA specifies that if coverage for prescription drugs, mental health, vision and/or hearing is provided in the benchmark plan, the benchmark-equivalent plan must provide at least 75 percent of the actuarial value of the coverage. If coverage is not provided under the benchmark plan, the benchmark-equivalent plan is also not required to provide the coverage. In calculating the actuarial value of the benchmark-equivalent, the actuarial value would be calculated based only on the services included in the specified benchmark plan and not calculated based on services that are not included in that plan. This rule is consistent with the statutory provision.

Comment: Some commenters questioned how the State will assure the aggregate actuarial value is equivalent if there is lesser coverage in prescription drugs, mental health, vision, and/or hearing services.

Response: Section 1937(b)(2)(C) of the Act specifies that, in considering a benchmark-equivalent benefit, if prescription drugs, mental health, vision, and/or hearing are provided in the benchmark plan, the benchmark-equivalent must provide at least 75 percent of the actuarial value of that coverage. This section specifies the minimum coverage levels but does not specify the maximum level. Thus, States have the option to cover these services at higher than 75 percent of the actuarial value. To assure that the aggregate actuarial value is equivalent, we required in § 440.340 that, as a condition of approval of benchmark-equivalent coverage, States must provide an actuarial report that provides, among other things, sufficient detail as to the basis of the methodologies used to estimate the actuarial value of the benchmark-equivalent coverage.

Comment: Another commenter suggested that rehabilitation services should be added to the list of services included at § 440.335.

Response: The DRA specifies that benchmark-equivalent coverage must include certain basic services; that is, inpatient and outpatient hospital services; physicians' surgical and medical services; laboratory and x-ray services; well-baby and well-child care including age-appropriate immunizations; and other appropriate preventive services. We have also specified the inclusion of emergency services, and within the context of preventive services, family planning services and supplies, but have left States with the flexibility to define other appropriate preventive services.

It is important to note, however, that States, at their option, can provide additional services to benchmark or benchmark-equivalent plans. The inclusion of rehabilitation services may be appropriate for some populations as determined by the State based on the requirements of the population utilizing the benchmark plan. Additional services are discussed in § 440.360 of this rule.

We did not receive any additional comments to § 440.340, Actuarial report. Therefore, in this final rule, § 440.340 will be adopted as written in the proposed rule of February 22, 2008.

I. Section 440.345 EPSDT Services Requirement

Comment: Some commenters supported the proposed regulation that would require individuals to first seek coverage of EPSDT services through the benchmark or benchmark-equivalent plan before seeking coverage of services through wrap-around benefits. Some commenters believed that when individuals need to access additional services as a wrap-around either for children or adults, States should be required to ensure they continue to be able to receive services from the same provider.

Response: It is important for individuals to receive services from the same provider whenever possible and we believe that an individual's physician is in the best position to "manage" an individual's care. If an individual is entitled to additional services, the treating physician should be responsible for providing and/or coordinating the individual's care and should be aware of any additional services the individual needs. To ensure that individuals under the age of 21 receive full EPSDT services we revised § 440.345 to require States to not only include a description of how additional benefits will be provided, but also how access to additional benefits will be coordinated and how beneficiaries and providers will be informed of these processes.

Comment: Some commenters objected to the provision in the proposed rule that stipulates that individuals must first seek coverage of EPSDT services

through the benchmark plan before seeking coverage of these services through wrap-around benefits. These commenters asserted that Congress intended to allow States the option of providing these benefits directly to Medicaid beneficiaries or to provide benefits in whole or in part by the benchmark provider. They indicated that CMS provides no justification as to why children must first wrestle with the administrators of the benchmark benefit package before accessing EPSDT services. One commenter asked that the rule be amended to eliminate the requirement that a family first seek coverage of EPSDT services through the benchmark plans.

Response: We believe that children enrolled in a benchmark benefit plan should have a medical provider that serves as the "medical home" for the child and that this medical provider will coordinate the child's care and facilitate access to specialists and necessary support services.

It is the responsibility of the State Medicaid program to assure that individuals enrolled in benchmark and benchmark-equivalent benefit plans receive EPSDT services that can be accessed in the most beneficial and seamless manner possible, and that individuals under 21 and their parent, guardian or care giver are informed and understand how and where to gain access to these services. We therefore revised § 440.345 by removing the requirement that individuals must first seek coverage of EPSDT services through the benchmark plan before seeking coverage of these services through additional benefits. Additionally, to further ensure that these individuals have access to the full EPSDT benefit, we revised the requirement to include a description of how the additional benefits will be provided, how access to additional benefits will be coordinated and how beneficiaries and providers will be informed of these processes. States must ensure that information is given to the providers either through the State or through the managed care entity in order to ensure that providers are aware of the child's right to additional services, as necessary, through the EPSDT benefit so that they can assist individuals with accessing necessary care.

Comment: One commenter believed that families are unlikely to realize that their children have access to more coverage than that provided through the benchmark. Even if they understood, they may not know how to request such a service. The commenter suggested that this section be strengthened by requiring States to explain, in detail, how a family will be informed of their rights under EPSDT once they are enrolled in a benchmark plan and to explain the specific process the State will then go through to approve or disapprove these services. States should also explain timelines for consideration of EPSDT requests in emergency, urgent and routine cases.

The commenter goes on further to say the preamble to the proposed rule stated, "the State may provide wrap-around * * * under such plan." The commenter urged that CMS clarify that the word "may" should be replaced with "must" because the word "may" inaccurately suggested that States are not required to provide these services. The commenter noted that, in other areas of the proposed rule, CMS correctly stated that EPSDT services must wrap-around benchmark plans.

Response: We agree that States should be required to inform families of their rights under EPSDT. The commenter is correct that children enrolled in benchmark or benchmark-equivalent plans may be entitled to additional services. It should be noted that CHIPRA underscored that full EPSDT services must be provided. Therefore, we are clarifying that States must ensure that information is provided to all EPSDT eligibles and/or their families about the benefits of preventive health care, what services are available under the EPSDT benefit, where and how to access those services, that transportation and scheduling assistance are available, and that services are available at no cost. This is consistent with the requirements of section 1902(a)(43)(A) of the Act and current policy outlined in Section 5121 of the State Medicaid Manual. Information must be given to individuals no later than within 60 days of the individual's initial Medicaid eligibility determination, and annually thereafter if they have not utilized EPSDT services. We believe most States have booklets to inform individuals of their benefits, rights, responsibilities, etc. This information is typically presented to families by the eligibility worker at the time of application and/or sent to individuals as part of an enrollment packet from the managed care plan. These types of documents must clearly explain the benchmark and additional benefits available to EPSDT eligibles under the age of 21.

Additionally, we agree with the commenter that the word "may" was inaccurate in the preamble to the proposed rule. The law specifically requires States to provide additional services (if the full range of EPSDT services is not provided as part of the benchmark or benchmark-equivalent plan) to assure that all EPSDT services are available to eligible individuals. We are providing clarification here in response to the comment; however, we are not revising the regulation text, since the language in § 440.345 clearly indicates that this is a requirement rather than a choice.

Comment: One commenter stated that the rule was silent on the requirement that the state provide information in plain language that is understood by the individual, parent or guardian including clear instructions on how to access EPSDT services not provided by the benchmark plan and how to disenroll.

Response: We agree that it is important that individuals be provided with clear instructions in plain language on how to access EPSDT services not provided by the benchmark plan and how to disenroll. This is already required by the EPSDT outreach provisions of section 1902(a)(43) of the Act, which are applicable to alternative benefit packages. To the extent that alternative benefit packages are delivered through managed care plans, States must also comply with managed care rules at 42 CFR part 438. According to § 438.10, information provided must be in an easily understood language and format.

Comment: One commenter noted that proposed § 440.350 failed to specify that under the employer-sponsored insurance plan option States must still ensure that children have access to the wrap-around EPSDT benefit. This section should be amended to note this requirement.

Response: The requirement to provide EPSDT benefits to children under the age of 21 applies to benchmark and benchmark-equivalent coverage. We have provided that States can offer premium assistance for employer sponsored insurance if the insurance is considered a benchmark or benchmark-equivalent plan. Additionally, we have indicated in § 440.350(b) that the State must assure that employer sponsored plans meet the requirements of benchmark or benchmark-equivalent coverage, including the economy and efficiency requirements at § 440.370. By requiring that employer sponsored plans meet the requirements of benchmark or benchmark-equivalent coverage, and given that benchmark or benchmark-equivalent coverage must provide EPSDT to children under the age of 21 either as part of or in addition to the benchmark or benchmark-equivalent plan, we are requiring that any employer sponsored insurance coverage provide EPSDT services to children under the age of 21. We believe this is

clear in the regulation, so we have not revised the regulation text in this regard.

Comment: Another commenter believed that limiting the mandatory EPSDT benefit to children under age 19 rather than under age 21 denies 19 and 20 years olds access to critical health care services. The commenter stated that this provision is inconsistent with the title XIX definition of EPSDT. Removing EPSDT for 19 and 20 years olds may exacerbate existing health disparities for minority adolescents, compromise 19 and 20 years olds' ability to transition successfully into adulthood, and impede identification of physical and mental conditions.

Response: Section 611 of CHIPRA raised the age for mandatory EPSDT coverage from 19 to 21 years of age. We have changed the regulation text accordingly.

Comment: One State Medicaid official suggested, instead of the current language in the published proposed rule on (73 FR 9727) of the **Federal Register** regarding EPSDT, the following amendment be made to be consistent with Federal laws: "(a) The State must ensure access to EPSDT services, through benchmark * * * for any child under 19 years of age eligible under the State plan in a category under section 1902(a)(10)(A) of the Act."

Response: We have revised the rule to effectuate the clarification provided by section 611(a)(1)(C) and 611(a)(3) of CHIPRA which requires States to assure that children under the age of 21, rather than those under 19 as originally specified in the DRA, have access to the full range of EPSDT services.

I. Section 440.350 Employer-Sponsored Insurance Health Plans

Comment: One commenter requested information about enrollment in commercial plans and suggested a discussion of how such arrangements might actually be operationalized; that is, how premiums would be paid and tracked, and the level of Medicaid contribution to such plans.

Response: Benchmark or benchmark-equivalent benefit coverage may be offered through employer sponsored insurance health plans for individuals with access to private health insurance. If an individual has access to employer sponsored coverage and that coverage is determined by the State to offer a benchmark or benchmark-equivalent benefit package (either alone or in addition to services covered separately under Medicaid), a State may elect to provide premium payments on behalf of the individual to purchase the employer coverage. Non-exempt individuals can be required to enroll in employer sponsored insurance, and the premium payments would be considered medical assistance. The requirement for children under the age of 21 to receive EPSDT either as an additional service or as part of the benchmark coverage would still be applicable. The premium payments and any other cost-sharing obligations by beneficiaries would be subject to the premium and cost-sharing requirements outlined in sections 1916 and 1916A of the Act, including the requirement that cost sharing not exceed the aggregate limit of 5 percent of the family's income, as applied on a monthly or quarterly basis specified by the state.

If the employer plan is economical and efficient, States have the flexibility to take advantage of the coverage, without requiring a uniform employer contribution. It is likely that a substantial employer contribution would be necessary in order to meet the economy and efficiency requirement. States must identify the specific minimum contribution level that they are requiring of participating employers.

We have not approved any Medicaid benchmark programs at this time that provide for employer sponsored coverage; however, we have approved section 1115 demonstrations in which States have provided premium assistance payments and employer sponsored insurance coverage to Medicaid beneficiaries. For these section 1115 demonstration programs, some States have required beneficiaries to provide proof of premium assistance payments. Then, after such proof is received, the state reimburses the beneficiary directly. Some States use a voucher system in which they provide a monthly voucher directly to the beneficiary for the premium payment in purchasing the employer sponsored insurance. We are not specifying the way in which States operationalize employer sponsored insurance benchmark plans; however, we provide this information for consideration.

Comment: One commenter supported the inclusion of wrap-around services in general and wrap-around services for employer sponsored insurance plans as an option available to States, but did not support a requirement for additional wrap-around services. The commenter requested that language be added to describe the permissibility of various types of market innovations in coverage such as high deductible plans, health savings accounts, consumer-directed plans and wellness plans or that there be language added indicating such market innovations are acceptable as "Secretary-approved coverage" through a State plan amendment.

Response: Section 1937(a)(1)(C) of the Act provides that additional benefits are options that can be added by the State to benchmark or benchmark-equivalent coverage. Any services that are added do not need to include all State plan services; however, these additional services must be coverable under the benefit categories under the benchmark plan or under section 1905(a) of the Act.

The only requirement for additional services is at section 1937(a)(1)(A)(ii) of the Act, which provides that if children under the age of 21 are receiving services in a benchmark or benchmark-equivalent benefit plan, they are entitled to EPSDT services as defined in section 1905(r) of the Act and so must receive medically necessary services consistent with EPSDT either as services provided in the benchmark or as additional services to the benchmark plan.

We have further provided in § 440.330 that Secretary-approved coverage can be offered as benchmark coverage, consistent with the DRA. This coverage must be appropriate to meet the needs of the targeted population. We have required that States wishing to opt for Secretary-approved coverage should submit a full description of the proposed coverage and include a benefit-by-benefit comparison of the proposed plan to one or more of the other benchmark options listed in this section or to the State's standard full Medicaid coverage package under section 1905(a) of the Act, as well as a full description of the population that would be receiving the coverage. In addition, the State should submit any other information that would be relevant to a determination that the proposed health benefits coverage would be appropriate for the proposed population. The scope of the Secretary-approved health benefits package will be limited to benefits within the benefit categories available under a benchmark coverage package or under the standard full Medicaid coverage package under section 1905(a) of the Act.

To the extent that a benchmark coverage plan that is used as the comparison for the Secretary-approved benchmark plan provides for market innovations such as high deductible health plans, health savings accounts, consumer-directed plans, and/or wellness plans, we would consider these on a case by case basis as components included in a Secretary-approved benchmark option. It should be noted that CMS has approved ten State benchmark programs. Of these ten, eight have been approved as Secretary-approved programs. We did not receive any additional comments related to § 440.355 "Payment of premiums."

Therefore, in this final rule, § 440.355 will be adopted as written in the proposed rule of February 22, 2008.

J. Section 440.360 State Plan Requirement for Providing Additional Services

Comment: A dental provider indicated that the proposed rules give States the ability to create new benefit packages tailored to different populations and that States have the flexibility to provide "wrap-around" and "additional benefits." The commenter noted that CMS cited in a press release "dental coverage" as an example of "additional benefits" but, in the actual language of the proposed rule there are no examples or reference to "dental coverage." Further, the commenter noted that the conference report to the DRA includes guidance to States by explaining that both benchmark and benchmark-equivalent coverage would include "qualifying child benchmark dental coverage." The commenter also noted that in the context of employer group health plans, stand-alone dental arrangements are very often offered as a supplemental coverage that is separate from medical care coverage. The commenter indicated that this option would align Medicaid more closely with private market insurance options and give States more control over their Medicaid benefit packages.

The commenter requested that CMS provide guidance to the States with respect to "additional benefits" such as "dental coverage." The commenter recommended the rule be amended to include an additional paragraph that would provide that States have the option to provide additional benefits that specifically include dental benefits that may be offered as a supplement to medical care coverage.

Response: The DRA House Conference Report 109–362 provided for the language that benchmark or benchmark-equivalent coverage would include "qualifying child benchmark dental coverage." The conference agreement removed this reference. Thus, the final provisions of section 1937 of the Act include no such requirement for the inclusion of dental coverage as additional services nor does section 1937 of the Act provide examples of additional coverage. The rule provides that additional services do not need to include all State plan services but would be health benefits that are of the same type as those covered under the benchmark plan or considered to be health benefits under section 1905(a) of the Medicaid statute.

We do agree that dental coverage could be added to benchmark or benchmark-equivalent benefit plans. Further, it is possible that, because of the plan options that have been identified by Congress as benchmark coverage, dental services may already be covered services in these plans.

If the commenter is concerned that children will not receive dental coverage, we wish to point out that children under the age of 21 must receive EPSDT services, including all medically necessary dental services, consistent with section 1905(r) of the Act either as part of, or as additional services to, the benchmark or benchmark-equivalent plan. Therefore, medically necessary dental coverage must be provided to children under the age of 21 enrolled in benchmark plans regardless of whether or not the actual benchmark plan includes such coverage.

K. Section 440.365 Coverage of Rural Health Clinic and Federally Qualified Health Center (FQHC) Services

Comment: One commenter was concerned that the proposed rule stipulated that States with benchmark plans need only assure that these individuals have access through such coverage and that FQHCs are to be reimbursed for such services as provided under the FQHC reimbursement requirements found in section 1902(bb) of the Act. The commenter indicated further concern that CMS did not elaborate further on these requirements, and particularly, that it did not lay out minimum steps a State must take to assure that these patient and health center protections are effectively implemented. The commenter believed it is important that the final rule and preamble make clear that there are minimum steps a State must take to be in compliance with these FQHC statutory requirements.

Specifically, the commenter asked that it should be clear that individuals who are mandatorily or voluntarily enrolled in a benchmark plan: (1) Remain eligible to receive from an FQHC all of the services included in the definition of the services of an FQHC, as provided in section 1902(a)(2)(C); and (2) must be informed that one or several of the providers by whom they may choose to be treated under this coverage is (or are) an FQHC. The commenter asserted that, to the extent these same individuals receive benchmark coverage, both the State and the benchmark plans must be encouraged to contract with FQHCs as providers of services to these enrolled Medicaid populations. These FQHC(s) must be identified by name. The commenter further stated that, in the event the benchmark plans identified do not contract with an FQHC, enrollees must be informed that they still may receive Medicaid covered services from FQHCs. In the preamble and final rule, the commenter provided that CMS should underline to the States the importance of full compliance with the FQHC reimbursement requirements of section 1937(b)(4) of the Act and § 440.365. The commenter added that adoption of these recommendations is important to assure that the requirements of section 1937(b)(4) of the Act are met.

Response: We agree with the commenters and we have required in § 447.365 that if a State provides benchmark or benchmark-equivalent coverage to individuals, it must assure that the individual has access, through that coverage or otherwise, to rural health clinic services and FQHC services and that payment for these services must be made in accordance with the payment provisions of section 1902(bb) of the Act. We also agree that individuals always have access to FQHC services, even if the State does not contract with an FQHC to provide such services, and we encourage States to contract with FQHCs as providers.

We did not receive any comments to § 440.370. Therefore, we will adopt § 440.370 as written in the proposed rule of February 22, 2008 with the change of the title to "Economy and Efficiency" which more appropriately reflects Medicaid payment principles.

L. Section 440.375 Comparability

Comment: One commenter encouraged CMS to require comparability across traditional Medicaid and Medicaid benchmark alternatives.

Response: The language included in the rule allowing States to offer benchmark or benchmark-equivalent health care coverage without regard to comparability is based on the DRA language providing that "notwithstanding any other provision of Title XIX" States can offer medical assistance to certain Medicaid beneficiaries through benchmark or benchmark-equivalent benefit packages. Section 611 of CHIPRA clarified and narrowed the "notwithstanding" provision but did specifically mention comparability." Therefore, it is clear that States may offer benchmark or benchmark-equivalent coverage to certain specified Medicaid populations. This regulation provision gives meaning to the statutory language permitting States to offer benchmark or benchmark-equivalent coverage to certain, but not all, Medicaid populations.

We would note that States can design disease management services without

relying on DRA benchmark or benchmark-equivalent plans, as outlined in the March 31, 2006 State Medicaid Director letter, which provided guidance on the implementation of section 6044 of the DRA but this benchmark option offers another way for States to meet the needs of their Medicaid populations.

M. Section 440.380 Statewideness

Comment: One commenter is concerned that States are given the option to amend their State plan to provide benchmark plan coverage to Medicaid individuals without regard to statewideness. This proposed regulation would likely result in health care disparities among individuals living in different parts of the State, has no basis in the statute, and should therefore be excluded from the final regulations. The commenter stated that the proposed § 440.380 should be revised to ensure that beneficiaries across the State are not subject to disparities in health care services.

Response: The language included in the rule allowing for States to offer benchmark or benchmark-equivalent health care coverage without regard to statewideness is based on the DRA language providing that "notwithstanding any other provision of title XIX" and the more narrow and explicit language in CHIPRA which specifically states "Notwithstanding statewideness * * *". It is therefore clear that States could offer different benchmark or benchmark-equivalent coverage to Medicaid individuals in different regions within the State. This provision also gives meaning to the language permitting States to offer benchmark or benchmark-equivalent coverage to certain, but not all, Medicaid populations.

For example, States can test new benefit concepts in pilot areas before expanding the benchmark program to the entire State. We believe that this is consistent with Congressional intent in allowing flexibility regarding statewideness for benchmark benefit options.

N. Section 440.385 Freedom of Choice

Comment: One commenter noted that CMS protects the free choice of emergency services providers but failed to do so for family planning services providers. The commenter urged CMS to preserve the free choice of family planning services providers by amending the rule to include a provision preserving the free choice of family planning providers. The commenter believes that this has been a long-standing policy of the Congress and the Medicaid program.

The commenter added that the proposed rules would permit States to deny freedom of choice of a provider for managed care enrollees seeking family planning services and supplies. The commenter argued that this provision lacks any basis in the statute and is contrary to the clear, repeated articulated intent of Congress.

The commenter asserted that provider freedom of choice is critical because of the potentially sensitive nature of the service. The commenter argued that, if unable to obtain confidential services from the provider of their choice, some managed care enrollees may forgo obtaining family planning services entirely. This would threaten beneficiaries' access to high quality, confidential reproductive health care and set a precedent of inequity between beneficiaries in fee-for-service programs and beneficiaries in managed care plans.

The commenter noted that Congress has clearly indicated that while States may require Medicaid beneficiaries to enroll in managed care plans and obtain care from providers affiliated with those plans, an exception should be made for individuals seeking family planning. The commenter also noted that Federal regulations at § 431.51 state, "A recipient enrolled in a primary care case management system, a Medicaid MCO, or other similar entity will not be restricted in freedom of choice of providers of family planning services." The commenters urged the Department to revise § 440.385 to reflect that provider freedom of choice for family planning should be retained.

Response: Section 1937(a)(1) of the Act, as amended by section 611 of CHIPRA, narrowed the flexibility States have and we amended § 440.385 by removing the option to provide benchmark benefit plans without regard to the requirements for free choice of providers at § 431.51 of this chapter.

CHIPRA also made it clear that benchmark benefit programs may vary only from the requirements for statewideness, comparability, and "any other provision of this title which would be directly contrary to the authority under this section and subject to subsection (E)." Title XIX permits States the option to offer Medicaid through managed care entities. Thus, requiring States to comply with Medicaid managed care statutes and regulations would not be directly contrary to the authority of section 1937 of the Act. We have therefore revised the regulation at § 440.385 to clarify that States wishing to deliver benchmark and benchmark-equivalent packages through a managed care entity may do so but must comply with the requirements of section 1932 of the Act, 42 CFR part 438, and any other provisions of title XIX or the regulations pertaining to managed care.

Comment: One commenter requested that CMS explain the concept of "selective contracting" and provide more detail as to how this would be operationalized under benchmark plans.

Response: Selective contracting is a term usually referred to in the context of section 1915(b)(4) waiver programs or 1932(a) under the State plan. Selective contracting provides States with the opportunity to contract with certain providers, practitioners or managed care entities so long as certain other criteria are maintained. Specifically, the State must ensure that in order to selectively contract with providers, practitioners or managed care entities the selective process does not restrict providers in emergency situations or providers of family planning services and supplies; is based on reimbursement, quality and utilization standards under the State plan; and does not discriminate among classes of providers on grounds unrelated to their demonstrated effectiveness and efficiency in providing benchmark benefit packages.

Section 1937(a)(1) of the Act as amended by section 611 of CHIPRA allows selective contracting through benchmark or benchmark-equivalent plans when provision of free choice of providers would be directly contrary to efficient and effective operation of the proposed benchmark benefit program.

Comment: One commenter noted that CMS should include an "any willing provider" provision in Medicaid contracts for alternate plans that allow Medicaid participating providers the opportunity to continue serving those who are required by the State to enroll in a benchmark plan.

Response: Based on changes made by CHIPRA to section 1937 of the Act States must comply with all freedom of choice requirements under title XIX except to the extent the State can demonstrate that freedom of choice would be contrary to the effective and efficient implementation of a benchmark or benchmark-equivalent plan. We therefore revised § 440.385 by striking the option for States to provide benchmark benefit plans without regard to the requirements for freedom of choice. This revision eliminates the need to include an "any willing provider" provision.

O. Section 440.390 Assurance of Transportation

In responding in this final rule to all of the comments received we took into consideration the numerous remarks on the subject of transportation which generally disagreed with the provision in the proposed rule and the rule published December 3, 2008 that would allow States the option to exclude non-emergency medical transportation (NEMT) as a benefit under benchmark and benchmark-equivalent plans. In addition to considering these comments we now must also consider the new CHIPRA legislation which clarifies that the authority under section 1937 to deviate from otherwise applicable Medicaid requirements is limited.

It is true that benchmark benefit packages such as Federal Employees Health Benefit Plan coverage, State Employees Health Benefit coverage, and coverage offered by an HMO in the State with the largest insured commercial non-Medicaid population, generally do not cover non-emergency medical transportation (NEMT) to and from medical providers. However, pursuant to section 1902(a)(4) of the Act and 42 CFR 431.53 there is a general requirement that the State plan assure necessary transportation to and from providers for beneficiaries when needed to access Medicaid covered services. The CHIPRA amendment to the DRA made it clear that Medicaid provisions that are not directly contrary to the provision of services under benchmark or benchmark-equivalent plans continue to apply under the DRA benchmark provisions. Therefore, in accordance with the changes made to the DRA by CHIPRA, and since this assurance of NEMT would not directly conflict with the offering of benchmark or benchmark-equivalent benefit packages as authorized by section 1937 of the Act, the assurance of necessary transportation to and from providers remains applicable when a State elects the 1937 option, and regardless of whether it is or is not a covered benefit under a benchmark or benchmark-equivalent benefit plan.

Thus, we have revised the regulation at § 440.390 to require States to assure necessary transportation to and from providers for beneficiaries enrolled in benchmark and benchmark-equivalent plans, even if the plans themselves do not include transportation.

States have several options when assuring necessary transportation for beneficiaries enrolled in a benchmark or benchmark-equivalent plan. States may provide transportation and transportation-related services under a benchmark plan as provided at § 440.330 (FEHB plan, State Employees plan, Commercial HMO plan or Secretary-approved plan); under a benchmark-equivalent plan as an additional service as provided at § 440.335; or as an additional service as provided at § 440.360, and receive Federal financial participation (FFP) at the Federal matching rate designated for that State for covered Medicaid services (FMAP rate).

If transportation and transportation-related services or some portion of the transportation provided for beneficiaries enrolled in a benchmark or benchmark-equivalent plan is not covered under section 1937 of the Act, then such transportation and transportation-related services must be claimed as an administrative expense at the 50 percent Federal matching rate. If transportation and transportation-related services are claimed as a medical service under section 1937 of the Act, the State must adhere to the general Medicaid requirements which pertain to claiming transportation as a medical service, such as only claiming direct vendor payments.

Our responses to the following comments received on transportation reflect the changes made by section 611 of CHIPRA, which clarifies that the authority under section 1937 to deviate from otherwise applicable Medicaid requirements is limited and therefore the assurance of transportation remains applicable even when the State has elected the section 1937 option.

Comment: One commenter agreed with the interpretation of the "notwithstanding" language to "bypass" the assurance of transportation, including the elimination of non-emergency medical transportation (NEMT). The commenter noted that the ability of States to exclude NEMT services in their benchmark benefits is evident not only from the broad language of the statute but also from Congressional intent. The commenter noted that one of the stated purposes of section 6044 of the DRA is to allow States to offer benefit packages that mirror commercial packages.

Response: The benchmark options that Congress specified, Federal Employees Health Benefit Plan equivalent coverage, State employees coverage, and coverage offered by an HMO in the State with the largest insured commercial non-Medicaid population, generally do not pay for NEMT to and from medical providers in all instances. However, section 611(a)(1)(A)(i) of CHIPRA changed the "notwithstanding any other provision of this title" language and this change in the law clarifies that the authority under section 1937 to deviate from otherwise applicable Medicaid requirements such as those specified in section 1902(a)(4) of the Act and 42 CFR 431.53, which require States to assure that beneficiaries have access to covered medical services, is limited. Accordingly, we have revised the regulation at § 440.390 to require States to assure necessary transportation to and from providers.

Comment: A preponderance of commenters disagreed with the provision in the rule that would allow States the option to exclude NEMT as a benefit under a benchmark and benchmark-equivalent plan. Generally, these comments were submitted by transportation providers, medical providers, and Medicaid beneficiaries, particularly Medicaid beneficiaries who rely on dialysis treatments.

Most of the commenters believed that the goals of the Medicaid program would be undermined if needy individuals were unable to get to and from healthcare services and such an option would create a barrier to care. They asserted that assurance of transportation is a vital component of the Medicaid program and is of particular importance to mentally and physically disabled and elderly patients. They expressed concern that vulnerable populations might not receive medically necessary and often life sustaining services because of the difficulty in accessing needed care and provided examples of the negative impact on the Medicaid program that would be created by not assuring transportation. For example, patients with End-Stage Renal Disease (ESRD), would be unable to access dialysis services.

Many of the commenters focused on the impact that the proposed regulation would have on dialysis patients who require 3 weekly trips to and from dialysis facilities in order to survive. They noted that effective care of ESRD patients requires meticulous coordination of dialysis treatment and drug therapy with frequent and specialized care. Dialysis patients often have multiple co-morbidities and, therefore, require frequent transportation to multiple services. The severity of the complications that develop due to missed treatments is often life threatening. Elimination of transportation services would make it very difficult and often impossible for beneficiaries with ESRD to consistently access the frequent dialysis services that sustain their lives.

Many commenters stated that individuals with physical or mental disabilities have difficulty using public

transportation and require specialized transportation that would otherwise not be available should State Medicaid programs be allowed to stop providing transportation. For many beneficiaries, the cost of frequent trips in specialized vehicles would be unaffordable. Often beneficiaries live in rural areas where the only available transportation to and from medical appointments is provided through the Medicaid program. Without Medicaid transportation services, many beneficiaries would be unable to access needed care and ultimately would require more costly services, costly emergency care, and expensive emergency ambulance services and/or expensive non-medical wheelchair van care.

Other commenters indicated that co-occurring physical health conditions such as diabetes or heart disease, as well as mental health conditions such as depression and anxiety affect an individual's ability to drive.

Several commenters indicated that people suffering with HIV/AIDS, some in wheelchairs, others who are extremely fragile or elderly, have monthly office visits where they are assessed and treated. To remove their only means of free transportation will take away their compliance with medical office treatment.

Response: In light of these comments and because CHIPRA amended section 1937 of the Act by clarifying that the authority to deviate from otherwise applicable Medicaid requirements is limited, we have revised the regulation at § 440.390 to require States to assure necessary transportation to and from providers. Thus, the frail, elderly, disabled and those with ESRD will be entitled to receive transportation to and from medical providers.

Comment: Several commenters noted that elimination of the requirement to provide transportation would actually drive up Medicaid costs because medical visits would become less frequent, resulting in a higher incidence of more serious and costly medical problems, an increase in the use of emergency medical services, and an increase in long term nursing home admissions. A number of these commenters cited a 2006 Cost Benefit Analysis conducted by the Marketing Institute of Florida State University College of Business as proof of the cost effectiveness of providing NEMT to Medicaid beneficiaries. Another commenter cited several studies that compared Medicaid individuals residing in States that do provide access to NEMT. The commenter stated that these studies found that access to non-emergency transportation produces cost savings and increased health care results. For many beneficiaries, the cost of frequent trips in specialized vehicles would be unaffordable. Often beneficiaries live in rural areas where the only available transportation to and from medical appointments is provided through the Medicaid program. Without Medicaid transportation services, many beneficiaries would be unable to access needed care and ultimately would require more costly services, costly emergency care, and expensive emergency ambulance services and/or expensive non-medical wheelchair van care.

One commenter indicated that coordinating transportation would reduce the cost of providing transportation. Another commenter indicated that CMS requires States to comply with economy and efficiency principles in offering benchmark or benchmark-equivalent benefit packages to Medicaid beneficiaries, but does not require non-emergency medical transportation in benchmark or benchmark-equivalent plans, when according to several studies it has been proven that providing this service is cheaper overall and leads to better health outcomes for Medicaid beneficiaries.

Response: CHIPRA amended section 1937 of the Act by clarifying that the authority to deviate from otherwise applicable Medicaid requirements is limited and we have therefore revised the regulation at § 440.390 to require States to assure necessary transportation to and from providers.

Comment: One commenter suggested that this rule sets up a system that would limit mileage payments to drivers for non-emergency doctor visits. The commenter indicated that medical mileage is funded in part to drivers who transport people for medical care on a non-emergency basis.

Response: We do not understand the relevance of this comment to the provision of benchmark and benchmark-equivalent benefit plans and are therefore unable to respond.

Comment: One commenter stated that the number one reason that dentists and doctors do not wish to accept Medicaid patients is that Medicaid beneficiaries do not show-up for appointments or are late for appointments. If CMS does not require transportation benefits, no-shows will increase and the result will be that fewer providers will participate in Medicaid.

Response: As we previously stated, CHIPRA amended section 1937 of the Act by clarifying that the authority to deviate from otherwise applicable Medicaid requirements is limited and we have revised the regulation at § 440.390 to require States to assure necessary transportation to and from providers. Therefore, the commenter's concern about the lack of transportation contributing to missed appointments and late appointments has been addressed.

Comment: Many commenters stated that the possible elimination of transportation will not only decrease access to healthcare but would imperil the financial stability of ambulance services across the Emergency Medical Services (EMS) community. EMS providers depend on reimbursement from non-emergency transports to sustain operational costs and maintain optimal readiness standards for emergency transports. Without adequate reimbursement from Medicaid for non-emergency transports, many ambulance providers, especially those in rural areas, would cease to stay in business, causing a serious reduction in the overall availability of ambulance services. Many commenters stated the provision would likely cause over-utilization of emergency ambulance services, since beneficiaries would need to rely more frequently on more expensive emergency ambulance transport.

One commenter suggested that CMS implement the same "medically necessary transportation" guidelines for the Medicaid program that already exist and govern non-emergency ambulance transportation for Medicare patients, because commercial insurance almost universally uses these guidelines as the benchmark for reimbursement for non-emergency ambulance transportation.

One commenter noted that the GAO has found that the current Medicare rates for ambulance transportation is on average 6 percent below the cost of providing care. Medicaid rates are currently even less. Ambulance transportation is a vital service for Medicaid beneficiaries, and ambulance companies are currently operating under a fee schedule that does not compensate them for the cost of providing that care. To further reduce the overall reimbursement to the ambulance providers while leaving benefits intact for hospitals, physicians, and labs is unfair. Ambulance transport is a vital link between the patient and these other services, and should not be relegated to non-payment.

Response: CHIPRA clarified that the requirement to assure necessary transportation applies to benchmark and benchmark-equivalent benefit plans.

With regard to the comment that CMS require for benchmark and benchmark-equivalent benefit plans the same

ambulance transportation guidelines used by commercial insurance, we disagree with this comment because there is no authority under section 1937 of the Act to do so.

Comment: Many commenters indicated that the proposed rule would shift financial responsibility for Medicaid non-emergency transportation to non-profit and municipal fire service-based emergency medical systems (EMS), ADA paratransit programs, beneficiaries, beneficiaries' families, and other segments of the population who often do not have sufficient funds to pay for trips to and from providers. The commenters believed that the proposed cuts in transportation conflict with the protections afforded to the disabled under the Americans with Disabilities Act. Some commenters stated the shifting of the financial burden for Medicaid non-emergency transportation to ADA paratransit services and local transit programs without any additional funding constitutes an unfunded mandate.

Response: Because CHIPRA clarified that the assurance of necessary transportation is applicable to benchmark and benchmark-equivalent benefit plans, we revised the regulation in § 440.390 to require States to assure necessary transportation. Therefore, we do not believe that the responsibility for Medicaid NEMT will be shifted to municipal EMS systems, ADA paratransit programs, or beneficiaries. Consistent with Federal regulations, States are required to assure non-emergency transportation when the beneficiary has no other means of transportation.

Comment: Several commenters stated that under section 1937 of the Act, a benchmark-equivalent package must offer a specific range of services set forth in § 440.335(b)(1)–(5) of the proposed regulation and that the majority of qualifying benchmark plans cover emergency ambulance services. To ensure that enrollees in benchmark-equivalent plans receive coverage that is qualitatively equivalent to benchmark plans that provide emergency ambulance transportation, CMS should require benchmark-equivalent plans to cover emergency ambulance transportation.

Response: CHIPRA clarified that the assurance of necessary transportation is applicable to benchmark and benchmark-equivalent plans. We therefore revised the regulation at § 440.390 to require States to assure all necessary transportation.

Comment: One commenter noted that instead of saving money by eliminating non-emergency transportation, CMS should do a better job of policing the system to reduce fraud and abuse.

Response: The reduction of fraud and abuse should always be considered by States when designing or implementing their State Medicaid program and we expect States to implement policies that reduce fraud and abuse. CMS will review the provision of these services consistent with our responsibility to work with States to reduce fraud and abuse in the program.

Comment: One commenter believed that during the DRA process CMS attempted to end the Medicaid transportation service. This attempt was turned back by Congress with the clear intention that transportation was essential for adequate access to health services and it is clear that the proposed rule is contrary to the intent of Congress.

Response: CMS did not attempt to end the requirement for States to assure Medicaid non-emergency transportation. On August 23, 2007, CMS published a rule on the "State Option to Establish a Non-Emergency Medical Transportation Program" which intended to enhance the ability of States to provide NEMT by offering an additional option for providing more cost effective non-emergency transportation as a medical service through a brokerage program. Furthermore, we have revised the regulation at § 440.390 to require States to assure necessary transportation for beneficiaries enrolled in benchmark and benchmark-equivalent plans.

Comment: One commenter noted the proposed rule on the "State Option to Establish a Non-Emergency Medical Transportation Program" providing guidance on section 6083 of the DRA and wonders how CMS on one hand is providing guidance regarding non-emergency medical transportation and encouraging use of a brokerage program, while on the other hand proposing elimination of non-emergency medical transportation in benchmark or benchmark-equivalent plans.

Additionally, the commenter believed that the transportation benefit currently operates in a fiscally sound manner. As currently structured, the commenter asserted that the transportation benefit is cost effective in most States. The commenter noted that States generally limit reimbursement for transportation to the least costly form of transport that is medically appropriate based on the beneficiary's condition. Moreover, Medicaid beneficiaries are generally required to use free transportation resources before the program will provide reimbursement for transportation. The commenter stated that, consequently, patients who receive transportation under state Medicaid programs are required, as a condition of coverage, to have no other means of getting to or from providers of medical care.

Response: Because CHIPRA clarified that the requirement for States to assure necessary transportation is applicable to section 1937 of the Act, we revised the regulation in § 440.390 to require States to assure necessary transportation for beneficiaries enrolled in alternative benefit plans. Therefore, the brokerage program option for delivering non-emergency medical transportation and the benchmark or benchmark-equivalent benefits option do not contravene each other as the commenter suggests.

Comment: A few commenters stated that in the proposed rule CMS proposed to create more "flexibility" for States by allowing them to craft more mainstream packages like those found in the private health insurance market, and private health plans do not offer transportation as a covered benefit for enrollees. These commenters disagreed with this assumption because it presumes that Medicaid patients are of equal financial standing with enrollees of private health care plans in their ability to assume the cost of transportation to and from health care services and that private health plans do not provide non-emergency ambulance transportation, when in fact they do.

Response: The changes made to section 1937 of the Act by the CHIPRA legislation make it clear that regardless of whether NEMT and emergency ambulance services are included in the benchmark or benchmark-equivalent plan the State has chosen to offer Medicaid beneficiaries, the requirement to assure necessary transportation for eligible Medicaid beneficiaries remains applicable.

Comment: One commenter stated that CMS did not conduct an analysis of the impact that excluding the transportation benefit would have on the populations affected or on the States. The commenter also noted that in the "Regulatory Impact Analysis," CMS states that they are under no obligation to assess anticipated costs and benefits of this rule, even if the rule may result in expenditures by the State, local, or tribal governments of the private sector, because States are not mandated to participate in the benchmark plans. This precludes any discussion of the shift in costs to other agencies that may result from the exclusion of transportation benefits. The commenter stated that in the proposed rule CMS says that shifting the financial burden to the vulnerable Medicaid populations is simply a matter

of personal responsibility. The commenter believed that the elimination of transportation is a scenario for less effective, more expensive health care because fewer people will seek preventive care since they won't have transportation and will therefore end up needing more expensive medical services.

Response: We revised the regulation in § 440.390 to require States to assure necessary transportation for beneficiaries enrolled in benchmark and benchmark-equivalent benefit plans and have therefore revised the "Regulatory Impact Analysis," to account for the impact of providing transportation.

Comment: Several commenters noted the lack of definition addressing the difference between emergency and non-emergency transportation. Several other commenters requested that CMS provide a universal definition of non-emergency transportation, because without this guidance there would be chaos and an inability to adjudicate issues and disputes over what is and is not non-emergency transportation.

One commenter urged CMS to require that benchmark and benchmark-equivalent plans cover emergency ambulance transportation and do so by clarifying that the reference to "emergency services" in proposed § 440.335 include emergency ambulance services. Several commenters stated the regulation fails to make a distinction between emergency and non-emergency transport and CMS assumes that "to and from providers" means non-emergency medical transportation however this may not always be the case. According to the commenter, transport is often required for Medicaid patients who develop critical conditions that require immediate care beyond the scope of the initial facility, resulting in the patient being transported to another facility for care. If States are no longer required to ensure necessary transportation for individuals to and from providers, the State will likely not cover this type of transport under a benchmark or benchmark-equivalent plan. This type of transport fits the parameters of the regulation because it is from one provider to another, but the regulation does not make the distinction that it must be a non-emergency transport.

Other commenters believed ambulance service, whether considered non-emergency or emergency transportation should be required in all benchmark or benchmark-equivalent plans.

Response: Since CHIPRA clarified that the assurance of necessary transportation is a mandatory State plan requirement that applies to section 1937 of the Act, we have revised the regulation at § 440.390 to require States to assure necessary transportation. Therefore, the commenter's concerns regarding the provision of emergency transportation services and the need for States to properly distinguish between emergency and non-emergency transportation services have been addressed.

Comment: A number of commenters disagreed with the assumption that non-emergency transportation is not covered by private health insurance. They stated that many private health insurance plans do provide coverage for non-emergency ambulance transportation when medically necessary. One commenter stated that CMS is ignoring the fact that many commercial plans have provided services to Medicaid beneficiaries and are thus equipped to provide the transportation benefit. The same commenter requested that if the provision on non-emergency transportation remains in the final regulation, CMS should require that no benchmark or benchmark-equivalent plan be allowed to require emergency ambulance services to join a network as a condition of obtaining necessary information for billing or as a condition of prompt payment, and that benchmark and benchmark-equivalent plans be required to pay for emergency ambulance transportation at a rate not less than the State Medicaid approved rate. One commenter noted that if CMS intends to make this a rationale for the elimination of Medicaid benefits, it should first study this issue and release its findings.

Response: In accordance with changes made by CHIPRA to section 1937 of the Act and the clarification these changes provided we revised the regulation at § 440.390 to require States to assure necessary transportation.

Comment: Many of the commenters voiced concerns that CMS has overreached in its rationale for allowing States to opt-out of the transportation requirements, and that CMS did not support its rationale. Several commenters stated that CMS did not have the legal authority to allow States to choose not to provide non-emergency transportation. One commenter stated that § 440.390 exceeds the Department's administrative authority, results in an impermissible legislative action by the agency, and violates the separation of powers doctrine of the Constitution. Generally, an executive agency's authority is limited to implementing laws and to clarifying ambiguities in statutes passed by Congress. The commenter cites *Chevron U.S.A.* v. *Natural Resources Defense Council,* 467 U.S. 837 (1984).

A number of commenters noted that CMS's interpretation of the language in section 1937 of the Act is "overbroad" because it permits CMS too much discretion. Several commenters also stated that in believing that it could change a long standing Medicaid policy on the assurance of transportation, CMS wrongly interpreted the statute and had not supported its rationale for allowing States to waive the provider-to-provider transportation requirement. A number of commenters believed that allowing States to choose not to provide transportation was inconsistent with Medicaid's mission of increasing access to healthcare. Many commenters indicated that exempting States from the transportation requirement set forth in § 431.53 "renders those provisions to mere surplusage" and that CMS's interpretation affords CMS the unfettered ability to make ad hoc determinations about what laws and regulations will apply to benchmark and benchmark-equivalent plans. Many commenters stated that the requirements in § 431.53 exist to protect beneficiaries and to ensure that they receive access to healthcare. Also, CMS should not be permitted to allow States to deprive Medicaid individuals of necessary transportation based upon an illogical interpretation of a provision of the Act.

Several commenters stated that CMS is providing sufficient flexibility to States through the option to provide benchmark or benchmark-equivalent coverage without regard to comparability, statewideness, and freedom of choice. The commenter did not see how relieving the State of the requirement to assure transportation to and from providers offers any additional flexibility.

Response: Section 611(a)(1)(C) of CHIPRA amended the "notwithstanding any other provision of this title * * *" language. This change in the law clarifies that the authority under section 1937 to deviate from otherwise applicable Medicaid requirements is limited. Therefore, we have revised the regulation at § 440.390 to require States to assure necessary transportation to and from providers.

Comment: Several commenters mentioned earlier that CMS offered a definition of "special medical needs" but pointed out that CMS did not offer a definition of "medically frail." The commenters urged CMS, in considering transportation, to include in any definition of "medically frail" an individual who might require medically necessary ambulance transportation due

to their physical or mental condition, illness, injury, disability, in a bed confined or wheelchair confined state, such that transportation by any means other than ambulance would likely jeopardize the patient's health or safety.

Response: As stated earlier, while CMS wishes to maintain some State flexibility in defining the term medically frail we have provided further guidance on the characteristics of medically frail and special needs individuals. We expect States to take this guidance into consideration when determining what type of transportation is needed by these individuals.

Comment: Several commenters stated the proposed elimination of transportation was discriminatory because individuals with special needs are not able to access transportation services and will be de facto denied the medical services that other Medicaid individuals receive. Also, the commenters asserted that the statutory provision authorizing use of benchmark and benchmark-equivalent plans, "notwithstanding any other provision of this title" will not pass a challenge in the court system because it discriminates against disabled individuals.

Response: Section 611(a)(1)(C) of CHIPRA amended the "notwithstanding any other provision of this title" language. This change in the law clarifies that the authority under section 1937 to deviate from otherwise applicable Medicaid requirements is limited. Accordingly, we revised the regulation at § 440.390 to require States to assure necessary transportation to and from providers for individuals, including those with special needs, who are enrolled in benchmark and benchmark-equivalent benefit plans.

Comment: Several commenters noted that Executive Order 13330 requires coordination for elderly and handicapped transportation programs among Federal agencies. Creating Federal DHHS standards for appropriate service levels would promote this coordination effort and in the interests of quality services, lower costs and enhanced coordination, DHHS should develop parallel standards that would drive cost savings derived by competitive procurement instead of denying services to those who need it the most. Removing an essential element such as transportation in order to save money will ultimately result in greater reliance on institutional care at a much higher cost. One commenter believed that CMS should withdraw the regulation and allow the Coordinating Council on Access and Mobility, which was established by Executive Order 13330, to develop the benchmark policy on non-emergency transportation.

Response: Section 611(a)(1)(C) of CHIPRA amended the "notwithstanding any other provision of this title" language. This change in the law clarifies that the authority under section 1937 to deviate from otherwise applicable Medicaid requirements is limited. Accordingly, we revised the regulation at § 440.390 to require States to assure necessary transportation to and from providers. We do not believe that Executive Order 13330, which relates to the coordination of transportation among Federal agencies, is relevant to this rule as this rule pertains to the provision of transportation by States under State Medicaid programs.

Comment: One commenter, submitting on behalf of the Alaska Natives (ANs) Tribal Health Consortium, wrote that in Alaska nearly 40 percent of the Medicaid eligible populations are ANs. The vast majority of AN villages are accessible only by plane, boat, snow-machine, or dog-sled. Due to the extreme poverty found in AN villages, Congress authorized tribal health programs to bill the Medicare and Medicaid programs for covered services. Tribal health services rely heavily on Medicaid and Medicare payments. The commenter is profoundly concerned that the proposed rule would allow States to curtail Medicaid coverage of crucial health services currently provided to ANs and would eliminate coverage of transportation needed by ANs to access medical services.

Response: We recognize the important value of Medicaid transportation services to the AN population. As stated previously CHIPRA amended the "notwithstanding any other provision of this title * * *" language and this change in the law clarifies that the authority under section 1937 to deviate from otherwise applicable Medicaid requirements is limited. Therefore, we have revised the regulation at § 440.390 to require States to assure necessary transportation to and from providers for those enrolled in benchmark and benchmark-equivalent benefit plans.

IV. Provisions of the Final Regulations

In general, this final rule incorporates the provisions of the February 2008 proposed rule and the changes made by CHIPRA. The provisions of this final rule that differ from the February 2008 proposed rule are as follows:

Scope (§ 440.305)

We added a new paragraph (d) at § 440.305 to require public input before States submit a State plan amendment under this section of the law. We removed the exception at § 440.305(e) to the managed care rules that existed in the February 22, 2008 proposed rule because section 611(a) of CHIPRA required adherence to all rules except those directly contrary to the authority under this section. By removing this exception to the managed care rules all benchmark and benchmark-equivalent benefit plans that are delivered through a managed care entity must comply with managed care rules.

Exempt Individuals (§ 440.315)

We revised paragraph (f) at § 440.315 to indicate that States will have flexibility in adopting definitions of individuals who are "medically frail" and/or individuals with special medical needs, but that these definitions must at least include those individuals described in § 438.50(d)(3), children with serious emotional disturbances, individuals with disabling mental disorders, individuals with serious and complex medical conditions, and individuals with physical and or mental disabilities that prevent them from performing one or more activities of daily living. Further, we deleted the reference to § 438.50(d)(1) for individuals entitled to Medicare benefits as these individuals are already exempt individuals who cannot be required to enroll in benchmark or benchmark-equivalent plans because of the requirement in section 1937(a)(2)(iii) of the Act.

We revised paragraph (h) of § 440.315 to clarify that exempt individuals include "an individual with respect to whom child welfare services are made available under part B of title IV to children in foster care and individuals with respect to whom adoption or foster care assistance is made available under part E of title IV, without regard to age."

We have revised paragraph (i) at § 440.315 to state that parents and caretaker relatives whom States are required to cover under section 1931 of the Act, are considered exempt individuals. This provision reverses the prior rule which limited the exemption to individuals who were eligible for Medicaid based on the eligibility for TANF; eligibility for Medicaid is not based, under Federal laws, on eligibility for TANF.

We added a new paragraph (m) in § 440.315 to include medically needy or those eligible as a result of a reduction of countable income based on costs incurred for medical care in the list of populations who are exempt from mandatory enrollment in benchmark or benchmark-equivalent plans.

Section 440.320 State Plan Requirements: Optional Enrollment for Exempt Individuals

We revised paragraphs (a)(1), (a)(2), and (a)(3) at § 440.320 to require that a State that chooses to offer enrollment in a benchmark or benchmark-equivalent plan to exempt individuals must effectively inform such individuals prior to enrollment that the individual is exempt and that enrollment is voluntary. The State must inform the individual of the benefits in the benchmark or benchmark-equivalent plan and provide a comparison of how they differ from traditional Medicaid State plan coverage, and document in the individual's eligibility file that prior to enrollment the beneficiary was provided a comparison of the benchmark or benchmark-equivalent benefit package to the State plan package, was given ample time to make an informed choice as to enrollment and voluntarily choose to enroll in the benchmark or benchmark-equivalent plan.

We added a new paragraph (a)(4) to clarify that States must comply with the requirements of § 440.320(a)(1), (a)(2), and (a)(3) within 30 days after a determination is made that an individual has become part of an exempt group while enrolled in benchmark or benchmark-equivalent coverage.

We added new paragraphs (b)(1) and (b)(2) in § 440.320 to clarify the disenrollment process for exempt individuals and require that States act upon disenrollment requests promptly for those exempt individuals who choose to disenroll from benchmark or benchmark-equivalent coverage and to require that the State have a process in place to ensure continuous access to all standard State plan services while requests to disenroll from benchmark or benchmark-equivalent coverage are being processed. States must also maintain data to track the number of exempt individuals who enroll in, and dissenroll from benchmark or benchmark-equivalent plans.

Benchmark-Equivalent Health Benefits Coverage (§ 440.335)

We revised paragraph (b) in § 440.335, which lists the mandatory services that benchmark-equivalent plans must provide. In the December 3, 2008 final rule, emergency services was included in the description of other appropriate preventive services designated by the Secretary. To clarify that benchmark equivalent coverage must include emergency services we made emergency services a separate and distinct requirement in paragraph (b)(5) and renumbered the paragraph relating to preventive services as (b)(6) in § 440.335. We also added family planning services and supplies to the description of required preventive services.

Actuarial Report for Benchmark-Equivalent Coverage (§ 440.340)

We revised § 440.340(b)(7) to require States to take into account the impact of cost sharing limitations when calculating actuarial equivalency.

EPSDT Services Requirement (§ 440.345)

We revised paragraph (a) in § 440.345 to reflect the new requirements in CHIPRA to cover 19 and 20 year olds for full EPSDT services. This section requires that "The State must assure access to early and periodic screening, diagnostic and treatment (EPSDT) services through benchmark or benchmark-equivalent plan benefits or as additional benefits to those plans for any child under 21 years of age eligible under the State plan in a category under section 1902(a)(10)(A) of the Act."

We removed the term "wrap-around" and replaced it with "additional" in paragraphs (a)(1) and (a)(2) in § 440.345 of this regulation, and the words "through wrap-around," and replaced them with "additional" in § 440.345(b) of this regulation. We have also revised the "sufficiency" provision. Together these modifications are intended to make it clear that EPSDT services must in all circumstances be provided by the State Medicaid program; either through the benchmark or benchmark-equivalent plan or as an "additional" service. We have also added a statutory cite "under section 1937 of the Act" after the word "benefits" in § 440.345(b) of this regulation.

Employer-Sponsored Insurance Health Plans (§ 440.350)

We removed the language "the additional or wrap-around" and replaced it with "additional" in § 440.350(a) of this regulation.

We replaced the term "cost-effectiveness" with "economy and efficiency" in § 440.350(b) of this regulation to be consistent with the new section heading of § 440.370.

State Plan Requirement for Providing Additional Services (§ 440.360)

We removed the term "wrap-around" in the section heading in § 440.360 of this regulation. We also revised § 440.360 by removing the language "or wrap-around".

Economy and Efficiency (§ 440.370)

We removed the section heading "Cost-effectiveness" and replaced it with "Economy and efficiency" in § 440.370 of this regulation.

Comparability (§ 440.375)

We removed the section heading "Comparability and scope of coverage" and replaced it with "Comparability" in § 440.370 of this regulation. We also revised § 440.375 by removing the language "or requirements relating to the scope of coverage other than those contained in this subpart".

Delivery of Benchmark and Benchmark-Equivalent Coverage Through Managed Care Entities (§ 440.385)

We replaced the title "Freedom of choice" with "Delivery of benchmark and benchmark-equivalent coverage through managed care entities." We revised this section by removing the option to provide benchmark or benchmark-equivalent benefit plans without regard to the requirements for freedom of choice in § 431.51 of this chapter. Section 611(a) of CHIPRA clarified that benchmark and benchmark equivalent plans must comply with all requirements of title XIX other than 1902(a)(1) and 1902(a)(10)(B). We therefore revised the title and text of 440.385 to provide that States wishing to deliver benchmark and benchmark-equivalent benefit packages through a managed care entity may do so but must comply with the requirements of section 1932 of the Act and 42 CFR part 438.

Assurance of Transportation (§ 440.390)

We revised § 440.390 to specify that if a benchmark or benchmark-equivalent plan does not include transportation to and from medically necessary covered Medicaid services, the State must nevertheless assure that emergency and non-emergency transportation is covered for beneficiaries enrolled in the benchmark and benchmark-equivalent plan, as required under § 431.53 of this chapter.

V. Collection of Information Requirements

The following requirements are subject to the Paperwork Reduction Act (PRA). While some elements contained in the sections listed below are approved under OMB control number 0938–0993, the current information collection will need to be revised to reflect changes contained in this final rule. CMS is revising this PRA package to make necessary updates and to incorporate any new requirements not currently approved by OMB. The revised package will be published in a

60-day **Federal Register** notice seeking public comment.

Section 440.320 State Plan Requirements: Optional Enrollment for Exempt Individuals

Section 440.320(a) requires a State to: (1) Inform the individuals that the enrollment is voluntary and that the individual may disenroll from the benchmark or benchmark-equivalent coverage at any time and regain immediate access to standard full Medicaid coverage under the State plan; (2) Inform the exempt individual of the benefits available under the benchmark or benchmark-equivalent benefit package and provide a comparison of how they differ from the benefits available under the standard full Medicaid program; and, (3) Document in the exempt individual's eligibility file that the individual was informed in accordance with this section and voluntarily chose to enroll in the benchmark or benchmark-equivalent benefit package.

Section 440.330 Benchmark Health Benefits Coverage

Section 440.330(d) requires States wishing to opt for Secretarial-approved coverage to submit a full description of the proposed coverage and include a benefit-by-benefit comparison of the proposed plan to one or more of the three other benchmark plans specified.

Section 440.340 Actuarial Report for Benchmark-Equivalent Coverage

Section 440.340 requires a State trying to obtain approval for benchmark-equivalent health benefits coverage described in § 440.335 to submit, as part of its State Plan Amendment, an actuarial report. The report must provide sufficient detail to explain the basis of the methodologies used to estimate the actuarial value or, if requested by CMS, to replicate the State's result.

Section 440.345 Requirement To Provide EPSDT Services

Section 440.345(a)(2) requires a State to include a description in their State Plan of how the additional services will be provided to ensure that all individuals under 21 receive full EPSDT services. The description must describe the populations covered and the procedures for assuring those services.

Section 440.350 Employer-Sponsored Insurance Health Plans

Section 440.350(b) requires a State to set forth in the State plan the criteria it will use to identify individuals who would be required to enroll in an available group health plan to receive benchmark or benchmark-equivalent coverage.

Section 440.360 State Plan Requirement for Providing Additional Services

This section requires States opting to provide additional services to the benchmark-equivalent plans, to describe the populations covered and the payment methodology for these services in their State plan.

Section 440.390 Assurance of Transportation

A State must assure medically necessary transportation for beneficiaries enrolled in a benchmark or benchmark-equivalent plan even if transportation is not a service provided in the benchmark or benchmark-equivalent plan.

VI. Regulatory Impact Analysis

A. Overall Impact

We have examined the impacts of this rule as required by Executive Order 12866 on Regulatory Planning and Review (September 30, 1993), the Regulatory Flexibility Act (RFA) (September 19, 1980, Pub. L. 96–354), section 1102(b) of the Act, section 202 of the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4), Executive Order 13132 on Federalism (August 4, 1999), and the Congressional Review Act (5 U.S.C. 804(2)).

Executive Order 12866 directs 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). A regulatory impact analysis (RIA) must be prepared for rules with economically significant effects of $100 million or more in any 1 year. As a result, since there is an economic impact of more than $100 million in any 1 year, this final rule is categorized as economically significant and thus is consequentially a major rule under the Congressional Review Act.

The regulatory impact analysis in this final rule incorporates provisions of the Children's Health Insurance Program Authorization Act (CHIPRA) of 2009, enacted on February 4, 2009, which corrected language in the DRA and subsequently amended section 1937 "State Flexibility for Medicaid Benefit Packages." In addition, this final rule incorporates provisions of the American Recovery and Reinvestment Act (ARRA) of 2009 related to the temporary increase in the Federal matching percentage (FMAP) for Medicaid, enacted on February 17, 2009. The estimated aggregate Federal savings for fiscal years 2006 through 2014, as shown in Table 1, is estimated to be $4.97 billion. Also, the estimated aggregate State savings for fiscal years 2006 through 2014, as shown in Table 2, is $3.36 billion.

In the December 3, 2008 "final rule," we estimated aggregate impacts for fiscal years 2006 through 2010 of $2.28 billion in Federal savings and $1.72 billion in State savings. In this final rule, the updated aggregate impacts, for the same time period of fiscal years 2006 through 2010, are $1.84 billion in Federal savings and $1.05 in State savings. As a result, relative to the December 3, 2008 final rule, this yields a reduction in the aggregate impacts of $440 million in Federal savings and $670 million in State savings, for fiscal years 2006 through 2010. We estimated the impact of this rule by analyzing the potential Federal savings related to lower per capita spending that may be achieved if States choose to enroll beneficiaries in eligible populations in plans that are less costly than projected Medicaid costs. To do this, we developed estimates based on the following assumptions:

- The number of eligible beneficiaries and the Federal Medicaid costs of these beneficiaries are based on 2003 Medicaid Statistical Information System (MSIS) data;
- Projections of the number of eligible beneficiaries and their associated Federal Medicaid costs were made using assumptions from the President's Budget 2007, including enrollment growth rates and per capita spending growth rates;
- The relative costs of the new plans allowed under this rule to current Medicaid spending were estimated based on reviews of Medicaid spending data and the plans described in this rule. Additionally, we have assumed that not all States would immediately use the options made available through this rule; therefore, we assume that State use of these plans will continue to increase through 2011. We assumed that use in 2006 will be about 10 percent of 2011-level of use; 40 percent in 2007; 60 percent in 2008; 80 percent in 2009; and 90 percent in 2010. We do not assume any further expansion beyond 2011.

These estimates assume that there will be a negligible impact on State administration costs. As States already have experience in dealing with alternative plan designs, including through waivers or managed care plans, we assumed States are equipped to

implement these plans and will be part of their normal administrative spending.

Also, these estimates are subject to a substantial amount of uncertainty and actual experience may be significantly different. The range of possible experience is greater than under most other rules for the following two reasons. First, this rule provides the option for States to use alternative plans; to the extent that States participate more or less than assumed here (both the number of States that participate and the extensiveness of States' use of these plans), Federal savings may be greater than or less than estimated. Second, this rule also provides a wide range of options for States in designing these plans; to the extent that States use plans that are relatively more or less costly than assumed here, Federal savings may be less than or greater than estimated.

TABLE 1—ESTIMATED ANNUAL FEDERAL SAVINGS DISCOUNTED AT 0 PERCENT, 3 PERCENT AND 7 PERCENT—FROM FY 2006 TO FY 2014

[In $millions]

Discount rate	2006	2007	2008	2009	2010	2011	2012	2013	2014	Total savings 2006–2014
0%	$50	$210	$340	$570	$670	$710	$740	$810	$870	$4,970
3%	49	198	311	506	578	595	602	639	667	4,145
7%	47	183	278	435	478	473	461	471	473	3,299

We anticipate that States will phase in alternative benefit programs, and changes will not be fully realized until 2010. The majority of savings will be achieved through cost avoidance of future anticipated costs by providing appropriate benefits based on a population's health care needs, appropriate utilization of services, and through gains in efficiencies through contracting. States will be able to take greater advantage of marketplace dynamics within their State. We also anticipate that a number of States will use this flexibility to create programs that are more similar to their CHIP programs. Because States are no longer tied to statewideness and comparability rules for individuals who are not disabled, not aged, or not blind, they will be able to offer individuals and families different types of plans consistent with their needs and available delivery systems.

TABLE 2—ESTIMATED ANNUAL STATE SAVINGS DISCOUNTED AT 0 PERCENT, 3 PERCENT AND 7 PERCENT—FROM FY 2006 TO FY 2014

[In $millions]

Discount rate	2006	2007	2008	2009	2010	2011	2012	2013	2014	Total savings 2006–2014
0%	$40	$160	$250	$280	$320	$480	$560	$610	$660	$3,360
3%	39	151	229	249	276	402	455	482	506	2,788
7%	37	140	204	214	228	320	349	355	359	2,206

The RFA requires agencies to analyze options for regulatory relief of small businesses, if a rule has a significant impact on a substantial number of small entities. For purposes of the RFA, small entities as that term is used in the RFA (include small businesses, nonprofit organizations, and small governmental jurisdictions). The great majority of hospitals and most other health care providers and suppliers are small entities, either by being nonprofit organizations or by meeting the SBA definition of a small business (having revenues of less than $7 million to $34.5 million in any 1 year). (For details, see the Small Business Administration's final rule that set forth size standards for health care industries, at 65 FR 69432, November 17, 2000.) Individuals and States are not included in the definition of a small entity. The Secretary has determined that this provision applies to States only and will not affect small entities.

In addition, section 1102(b) of the Act requires us to prepare a regulatory impact analysis, if a rule may have a significant impact on the operations of a substantial number of small rural hospitals. This analysis must conform to the provisions of section 604 of the RFA. For purposes of section 1102(b) of the Act, we define a small rural hospital as a hospital that is located outside of a metropolitan statistical area and has fewer than 100 beds. The Secretary has determined that this rule would not have a significant impact on the operations of a substantial number of small rural hospitals.

Section 202 of the Unfunded Mandates Reform Act of 1995 (UMRA) (Pub. L. 104–4) also requires that agencies assess anticipated costs and benefits before issuing any rule whose mandates require spending in any 1 year of $100 million in 1995 dollars, updated annually for inflation. In 2010, that threshold is approximately $135 million. Because this rule does not mandate State participation in using these benchmark plans, there is no obligation for the State to make any change to their Medicaid program. As a result, there is no mandate for the State. Therefore, we estimate this final will not mandate expenditures in the threshold amount of $135 million in any 1 year.

Executive Order 13132 establishes certain requirements that an agency must meet when it promulgates a proposed rule (and subsequent final rule) that imposes substantial direct requirement costs on State and local governments, preempts State law, or otherwise has Federalism implications. This final rule will not impose direct cost on States or local governments or preempt State law. The rule will provide States the option to implement alternative Medicaid benefits through a Medicaid State plan amendment.

Comment: One commenter questioned the validity of CMS's Regulatory Impact Analysis, believing that the proposed rule will cause additional administrative effort in order for American Indians/Alaska Natives beneficiaries to participate.

Response: CMS is required by Executive Order 12866 (September 1993, Regulatory Planning and Review), the Regulatory Flexibility Act (RFA) (September 19, 1980, Pub. L. 96–354), section 1102(b) of the Act, the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4), and Executive Order 13132 on Federalism, and the Congressional Review Act (5 U.S.C. 804(2)) to conduct a regulatory analysis of the impact of any regulatory revision to the Medicare, Medicaid, and/or Children's Health Insurance Program before adoption of any rule. A Regulatory Impact Analysis was completed for this rule. We believe there is negligible impact on State administrative costs since States already have experience in dealing with alternative plan designs, including through waivers or managed care plans. Thus, we have assumed States are equipped to implement these plans and that costs will be part of their normal administrative spending. We believe this would be true for any State that chooses to offer benchmark or benchmark-equivalent plans to the Medicaid beneficiaries including American Indians/Alaska Natives Medicaid beneficiaries.

B. Anticipated Effects

Before section 6044 of the DRA became effective on March 31, 2006, State Medicaid programs generally were required to offer at minimum the same standard benefit package to each individual, regardless of income, eligibility category, or geographic location. Some States offered alternative benefit packages to certain individuals under section 1115 demonstration waivers approved by the Centers for Medicare & Medicaid Services. This provision allows for similar program alternatives under the State plan. Without a waiver, States may form larger pools by combining Medicaid individuals with their public employees.

C. Alternatives Considered

This rule finalizes requirements for States to elect alternative Medicaid benefit programs through the adoption of a Medicaid State plan amendment. The final requirements in this rule were designed to permit State flexibility while assuring that beneficiaries will get quality care that meets their needs. Under this rule, we will allow States to define the alternative benefit packages by reference to the benchmark or benchmark-equivalent standard, while making it clear that children under 21 are eligible for the full range of Medicaid benefits under EPSDT. We will also permit States to combine an alternative benefit package with alternative benefit delivery methods, such as through managed care or employer-based coverage, although compliance with all Medicaid rules other than comparability or statewideness is required unless directly contrary to this statute. An alternative might have been to require the State to document any deviation from otherwise applicable State plan requirements, much as is required under section 1115 demonstration waivers, 1915(b) waivers, 1915(c) waivers, or any combination thereof. We have not elected this alternative because it would be cumbersome for States, it will not be consistent with the statutory use of benchmark and benchmark-equivalent coverage as reference points for permissible benefit packages, and it will not improve the clarity of the State plan. Another alternative might have been to limit State flexibility under this provision to variation in the amount, duration and scope of benefits without providing authority for an integrated approach combining alternative benefits with alternative benefit delivery methods. We have not elected this alternative because an integrated approach allows greater State flexibility to tailor both benefits and delivery methods to the eligible groups of individuals being served.

D. Accounting Statement

As required by OMB Circular A–4 (available at *http://www.whitehouse.gov/omb/circulars/a004/a-4.pdf*), in Table 3 below, we have prepared an accounting statement showing the classification of the expenditures associated with the provisions of this rule. This table provides our best estimate of the decrease in Medicaid payments as a result of the changes presented in this rule. All savings are classified as transfers to the Federal Government, as well as to States.

TABLE 3—ACCOUNTING STATEMENT: CLASSIFICATION OF ESTIMATED EXPENDITURES, FROM FY 2006 TO FY 2014

[In $millions]

Category	Transfers				
	Year dollar	Units discount rate			Period covered
		7%	3%	0%	
Annualized Monetized Transfers	2006	−$506.3	−$532.3	−$552.22	FYs 2006–2014
From Whom To Whom?	Federal Government to beneficiaries, providers				
Annualized Monetized Transfers	2006	−338.5	−358.1	−373.33	FYs 2006–2014
From Whom to Whom?	State Governments to beneficiaries, providers				

Column 1: Category—Contains the description of the different impacts of the rule; it could include monetized, quantitative but not monetized, or qualitative but not quantitative or monetized impacts; it also may contain unit of measurement (such as, dollars). In this case, the Federal and State annualized monetized impacts of the rule are presented.

Column 2: Year Dollar—Contains the year to which dollars are normalized; that is, the first year that dollars are discounted in the estimate.

Column 3: Unit Discount Rate—Contains the discount rate or rates used to estimate the annualized monetized impacts. In this case, three rates are used: 7 percent; 3 percent; 0 percent.

Column 4: Primary Estimate—Contains the quantitative or qualitative impact of the rule for the respective category of impact. Monetized amounts are generally shown in real dollar terms. In this case, the federalized annualized monetized primary estimate represents the equivalent amount that, if paid (saved) each year over the period covered, would result in the same net

present value of the stream of costs (savings) estimated over the period covered.

Column 5: Period Covered—Contains the years for which the estimate was made.

Rows: The rows contain the estimates associated with each specific impact and each discount rate used.

Estimated Savings—The following table shows the discounted costs (savings) for each discount rate over the period covered. The monetized figures represent the net present value of the impact in the year the rule takes effect. These numbers represent the anticipated annual reduction in Federal and State Medicaid spending under this rule.

"From Whom to Whom?"—In the case of a transfer (as opposed to a change in aggregate social welfare as described in the OMB Circular), this section describes the parties involved in the transfer of costs. In this case, the expenditures represent a reduction in Federal and State governments spending on behalf of beneficiaries.

E. Conclusion

We estimate that the use of benchmark plans under this rule will result in total Federal savings of $4.97 billion and State savings of $3.36 billion for fiscal years 2006 through 2014. This translates to an annualized Federal savings of $506.3 million and $532.3 million at the 7 percent and 3 percent discount rates. Also, this yields an annualized State savings of $338.5 million and $358.1 million at the 7 percent and 3 percent discount rates over the same time period of fiscal years 2006 through 2014. These savings would arise as States use the plans described by this rule to manage the costs of their Medicaid program by modifying plan benefits for targeted beneficiaries. The actual savings will heavily depend on the number of States that ultimately implement these plans, the number of beneficiaries States cover with these plans, and the specific design and selection of benchmark plans.

For reasons stated above, we are not preparing analyses for either the RFA or section 1102(b) of the Act because we have determined that this rule will not have a significant economic impact on a substantial number of small entities or a significant impact on the operations of a substantial number of small rural hospitals.

In accordance with the provisions of Executive Order 12866, this regulation was reviewed by the Office of Management and Budget.

List of Subjects in 42 CFR Part 440

Grant programs—health, Medicaid.

■ For the reasons set forth in the preamble, the Centers for Medicare & Medicaid Services amends 42 CFR chapter IV as set forth below:

PART 440—SERVICES: GENERAL PROVISIONS

■ 1. The authority citation for part 440 continues to read as follows:

Authority: Sec. 1102 of the Social Security Act (42 U.S.C.1302).

■ 2. Subpart C, consisting of § 440.300 through § 440.390, is revised to read as follows:

Subpart C—Benchmark Benefit and Benchmark-Equivalent Coverage

Sec.

440.300 Basis.
440.305 Scope.
440.310 Applicability.
440.315 Exempt individuals.
440.320 State plan requirements: Optional enrollment for exempt individuals.
440.325 State plan requirements: Coverage and benefits.
440.330 Benchmark health benefits coverage.
440.335 Benchmark-equivalent health benefits coverage.
440.340 Actuarial report for benchmark-equivalent coverage.
440.345 EPSDT services requirement.
440.350 Employer-sponsored insurance health plans.
440.355 Payment of premiums.
440.360 State plan requirement for providing additional services.
440.365 Coverage of rural health clinic and federally qualified health center (FQHC) services.
440.370 Economy and efficiency.
440.375 Comparability.
440.380 Statewideness.
440.385 Delivery of benchmark and benchmark-equivalent coverage through managed care entities.
440.390 Assurance of transportation.

Subpart C—Benchmark Benefit and Benchmark-Equivalent Coverage

§ 440.300 Basis.

This subpart implements section 1937 of the Act, which authorizes States to provide for medical assistance to one or more groups of Medicaid-eligible individuals, specified by the State under an approved State plan amendment, through enrollment in coverage that provides benchmark or benchmark-equivalent health care benefit coverage.

§ 440.305 Scope.

(a) *General.* This subpart sets out requirements for States that elect to provide medical assistance to certain Medicaid eligible individuals within one or more groups of individuals specified by the State, through enrollment of the individuals in coverage, identified as "benchmark" or "benchmark-equivalent."

(b) *Limitations.* A State may only apply the option in paragraph (a) of this section for an individual whose eligibility is based on an eligibility category under section 1905(a) of the Act that could have been covered under the State's plan on or before February 8, 2006.

(c) A State may not require but may offer enrollment in benchmark or benchmark-equivalent coverage to the Medicaid eligible individuals listed in § 440.315. States allowing individuals to voluntarily enroll must be in compliance with the rules specified at § 440.320.

(d) Prior to submitting to the Centers for Medicare and Medicaid Services for approval a State plan amendment to establish a benchmark or benchmark-equivalent benefit plan or an amendment to substantially modify an existing benchmark or benchmark-equivalent benefit plan, a State must have provided the public with advance notice of the amendment and reasonable opportunity to comment with respect to such amendment, and have included in the notice a description of the method for assuring compliance with § 440.345 of this subpart related to full access to EPSDT services, and the method for complying with the provisions of section 5006(e) of the American Recovery and Reinvestment Act of 2009.

§ 440.310 Applicability.

(a) *Enrollment.* The State may require "full benefit eligible" individuals not excluded in § 440.315 to enroll in benchmark or benchmark-equivalent coverage.

(b) *Full benefit eligible.* An individual is a full benefit eligible if determined by the State to be eligible to receive the standard full Medicaid benefit package under the approved State plan if not for the application of the option available under this subpart.

§ 440.315 Exempt individuals.

Individuals within one (or more) of the following categories are exempt from mandatory enrollment in benchmark or benchmark-equivalent coverage.

(a) The individual is a pregnant woman who is required to be covered under the State plan under section 1902(a)(10)(A)(i) of the Act.

(b) The individual qualifies for medical assistance under the State plan on the basis of being blind or disabled (or being treated as being blind or disabled) without regard to whether the

individual is eligible for Supplemental Security Income benefits under title XVI on the basis of being blind or disabled and including an individual who is eligible for medical assistance on the basis of section 1902(e)(3) of the Act.

(c) The individual is entitled to benefits under any part of Medicare.

(d) The individual is terminally ill and is receiving benefits for hospice care under title XIX.

(e) The individual is an inpatient in a hospital, nursing facility, intermediate care facility for the mentally retarded, or other medical institution, and is required, as a condition of receiving services in that institution under the State plan, to spend for costs of medical care all but a minimal amount of the individual's income required for personal needs.

(f) The individual is medically frail or otherwise an individual with special medical needs. For these purposes, the State's definition of individuals who are medically frail or otherwise have special medical needs must at least include those individuals described in § 438.50(d)(3) of this chapter, children with serious emotional disturbances, individuals with disabling mental disorders, individuals with serious and complex medical conditions, and individuals with physical and/or mental disabilities that significantly impair their ability to perform one or more activities of daily living.

(g) The individual qualifies based on medical condition for medical assistance for long-term care services described in section 1917(c)(1)(C) of the Act.

(h) The individual is an individual with respect to whom child welfare services are made available under part B of title IV to children in foster care and individuals with respect to whom adoption or foster care assistance is made available under part E of title IV, without regard to age.

(i) The individual is a parent or caretaker relative whom the State is required to cover under section 1931 of the Act.

(j) The individual is a woman who is receiving medical assistance by virtue of the application of sections 1902(a)(10)(ii)(XVIII) and 1902(aa) of the Act.

(k) The individual qualifies for medical assistance on the basis of section 1902(a)(10)(A)(ii)(XII) of the Act.

(l) The individual is only covered by Medicaid for care and services necessary for the treatment of an emergency medical condition in accordance with section 1903(v) of the Act.

(m) The individual is determined eligible as medically needy or eligible because of a reduction of countable income based on costs incurred for medical or other remedial care under section 1902(f) of the Act or otherwise based on incurred medical costs.

§ 440.320 State plan requirements: Optional enrollment for exempt individuals.

(a) *General rule.* A State plan that offers exempt individuals as defined in § 440.315 the option to enroll in benchmark or benchmark-equivalent coverage must identify in its State plan the exempt groups for which this coverage is available, and must comply with the following provisions:

(1) In any case in which the State offers an exempt individual the option to obtain coverage in a benchmark or benchmark-equivalent benefit package, the State must effectively inform the individual prior to enrollment that the enrollment is voluntary and that the individual may disenroll from the benchmark or benchmark-equivalent coverage at any time and regain immediate access to standard full Medicaid coverage under the State plan.

(2) Prior to any enrollment in benchmark or benchmark-equivalent coverage, the State must inform the exempt individual of the benefits available under the benchmark or benchmark-equivalent benefit package and the costs under such a package and provide a comparison of how they differ from the benefits and costs available under the standard full Medicaid program. The State must also inform exempt individuals that they may disenroll at any time and provide them with information about the process for disenrolling.

(3) The State must document in the exempt individual's eligibility file that the individual was informed in accordance with this section prior to enrollment, was given ample time to arrive at an informed choice, and voluntarily and affirmatively chose to enroll in the benchmark or benchmark-equivalent benefit package.

(4) For individuals who the State determines have become exempt individuals while enrolled in benchmark or benchmark-equivalent coverage, the State must comply with the requirements in paragraphs (a)(1) through (a)(3) of this section above within 30 days after such determination.

(b) *Disenrollment Process.* (1) The State must act upon requests promptly for exempt individuals who choose to disenroll from benchmark or benchmark-equivalent coverage.

(2) The State must have a process in place to ensure that exempt individuals have access to all standard State plan services while disenrollment requests are being processed.

(3) The State must maintain data that tracks the total number of beneficiaries that have voluntarily enrolled in a benchmark plan and the total number of individuals that have disenrolled from the benchmark plan.

§ 440.325 State plan requirements: Coverage and benefits.

Subject to requirements in § 440.345 and § 440.365, States may elect to provide any of the following types of health benefits coverage:

(a) Benchmark coverage in accordance with § 440.330.

(b) Benchmark-equivalent coverage in accordance with § 440.335.

§ 440.330 Benchmark health benefits coverage.

Benchmark coverage is health benefits coverage that is equal to the coverage under one or more of the following benefit plans:

(a) *Federal Employees Health Benefit Plan Equivalent Coverage (FEHBP—Equivalent Health Insurance Coverage).* A benefit plan equivalent to the standard Blue Cross/Blue Shield preferred provider option service benefit plan that is described in and offered to Federal employees under 5 U.S.C. 8903(1).

(b) *State employee coverage.* Health benefits coverage that is offered and generally available to State employees in the State.

(c) *Health maintenance organization (HMO) plan.* A health insurance plan that is offered through an HMO, (as defined in section 2791(b)(3) of the Public Health Service Act) that has the largest insured commercial, non-Medicaid enrollment in the State.

(d) *Secretary-approved coverage.* Any other health benefits coverage that the Secretary determines, upon application by a State, provides appropriate coverage to meet the needs of the population provided that coverage. States wishing to elect Secretarial approved coverage should submit a full description of the proposed coverage, (including a benefit-by-benefit comparison of the proposed plan to one or more of the three other benchmark plans specified above or to the State's standard full Medicaid coverage package under section 1905(a) of the Act), and of the population to which the coverage would be offered. In addition, the State should submit any other information that would be relevant to a determination that the proposed health benefits coverage would be appropriate for the proposed population. The scope

of a Secretary-approved health benefits package will be limited to benefits within the scope of the categories available under a benchmark coverage package or the standard full Medicaid coverage package under section 1905(a) of the Act.

§ 440.335 Benchmark-equivalent health benefits coverage.

(a) *Aggregate actuarial value.* Benchmark-equivalent coverage is health benefits coverage that has an aggregate actuarial value, as determined under § 440.340, that is at least actuarially equivalent to the coverage under one of the benchmark benefit packages described in § 440.330 for the identified Medicaid population to which it will be offered.

(b) *Required coverage.* Benchmark-equivalent health benefits coverage must include coverage for the following categories of services:

(1) Inpatient and outpatient hospital services.

(2) Physicians' surgical and medical services.

(3) Laboratory and x-ray services.

(4) Well-baby and well-child care, including age-appropriate immunizations.

(5) Emergency services.

(6) Family planning services and supplies and other appropriate preventive services, as designated by the Secretary.

(c) *Additional coverage.* (1) In addition to the categories of services of this section, benchmark-equivalent coverage may include coverage for any additional services in a category included in the benchmark plan or described in section 1905(a) of the Act.

(2) If the benchmark coverage package used by the State for purposes of comparison in establishing the aggregate actuarial value of the benchmark-equivalent package includes any of the following four categories of services: Prescription drugs; mental health services; vision services; and hearing services; then the actuarial value of the coverage for each of these categories of service in the benchmark-equivalent coverage package must be at least 75 percent of the actuarial value of the coverage for that category of service in the benchmark plan used for comparison by the State.

(3) If the benchmark coverage package does not cover one of the four categories of services in paragraph (c)(2) of this section, then the benchmark-equivalent coverage package may, but is not required to, include coverage for that category of service.

§ 440.340 Actuarial report for benchmark-equivalent coverage.

(a) A State plan amendment that would provide for benchmark-equivalent health benefits coverage described in § 440.335, must include an actuarial report. The actuarial report must contain an actuarial opinion that the benchmark-equivalent health benefits coverage meets the actuarial requirements set forth in § 440.335. The report must also specify the benchmark coverage used for comparison.

(b) The actuarial report must state that it was prepared according to the following requirements:

(1) By an individual who is a member of the American Academy of Actuaries (AAA).

(2) Using generally accepted actuarial principles and methodologies of the AAA.

(3) Using a standardized set of utilization and price factors.

(4) Using a standardized population that is representative of the population involved.

(5) Applying the same principles and factors in comparing the value of different coverage (or categories of services).

(6) Without taking into account any differences in coverage based on the method of delivery or means of cost control or utilization used.

(7) Taking into account the ability of the State to reduce benefits by considering the increase in actuarial value of health benefits coverage offered under the State plan that results from the limitations on cost sharing (with the exception of premiums) under that coverage.

(c) The actuary preparing the opinion must select and specify the standardized set of factors and the standardized population to be used in paragraphs (b)(3) and (b)(4) of this section.

(d) The State must provide sufficient detail to explain the basis of the methodologies used to estimate the actuarial value or, if requested by CMS, to replicate the State's result.

§ 440.345 EPSDT services requirement.

(a) The State must assure access to early and periodic screening, diagnostic and treatment (EPSDT) services through benchmark or benchmark-equivalent plan benefits or as additional benefits provided by the State for any child under 21 years of age eligible under the State plan in a category under section 1902(a)(10)(A) of the Act.

(1) Sufficiency. Any additional EPSDT benefits not provided by the benchmark or benchmark-equivalent plan must be sufficient so that, in combination with the benchmark or benchmark-equivalent benefits plan, these individuals have access to the full EPSDT benefit.

(2) State Plan requirement. The State must include a description of how the additional benefits will be provided, how access to additional benefits will be coordinated and how beneficiaries and providers will be informed of these processes in order to ensure that these individuals have access to the full EPSDT benefit.

(b) [Reserved]

§ 440.350 Employer-sponsored insurance health plans.

(a) A State may provide benchmark or benchmark-equivalent coverage by obtaining employer sponsored health plans (either alone or with additional services covered separately under Medicaid) for individuals with access to private health insurance.

(b) The State must assure that employer sponsored plans meet the requirements of benchmark or benchmark-equivalent coverage, including the economy and efficiency requirements at § 440.370.

(c) A State may provide benchmark or benchmark-equivalent coverage through a combination of employer sponsored health plans and additional benefit coverage provided by the State that wraps around the employer sponsored health plan which, in the aggregate, results in benchmark or benchmark-equivalent level of coverage for those individuals.

§ 440.355 Payment of premiums.

Payment of premiums by the State, net of beneficiary contributions, to obtain benchmark or benchmark-equivalent benefit coverage on behalf of beneficiaries under this section will be treated as medical assistance under section 1905(a) of the Act.

§ 440.360 State plan requirement for providing additional services.

In addition to the requirements of § 440.345 the State may elect to provide additional coverage to individuals enrolled in benchmark or benchmark-equivalent plans. The State plan must describe the populations covered and the payment methodology for these services. Additional services must be in categories that are within the scope of the benchmark coverage, or are described in section 1905(a) of the Act.

§ 440.365 Coverage of rural health clinic and federally qualified health center (FQHC) services.

If a State provides benchmark or benchmark-equivalent coverage to individuals, it must assure that the individual has access, through that

coverage or otherwise, to rural health clinic services and FQHC services as defined in subparagraphs (B) and (C) of section 1905(a)(2) of the Act. Payment for these services must be made in accordance with the payment provisions of section 1902(bb) of the Act.

§ 440.370 Economy and efficiency.

Benchmark and benchmark-equivalent coverage and any additional benefits must be provided in accordance with Federal upper payment limits, procurement requirements and other economy and efficiency principles that would otherwise be applicable to the services or delivery system through which the coverage and benefits are obtained.

§ 440.375 Comparability.

States have the option to amend their State plan to provide benchmark or benchmark-equivalent coverage to individuals without regard to comparability.

§ 440.380 Statewideness.

States have the option to amend their State plan to provide benchmark or benchmark-equivalent coverage to individuals without regard to statewideness.

§ 440.385 Delivery of benchmark and benchmark-equivalent coverage through managed care entities.

In implementing benchmark or benchmark-equivalent benefit packages, States must comply with the managed care provisions at section 1932 of the Act and part 438 of this chapter, if benchmark and benchmark-equivalent benefits are provided through a managed care entity.

§ 440.390 Assurance of transportation.

If a benchmark or benchmark-equivalent plan does not include transportation to and from medically necessary covered Medicaid services, the State must nevertheless assure that emergency and non-emergency transportation is covered for beneficiaries enrolled in the benchmark or benchmark-equivalent plan, as required under § 431.53 of this chapter.

(Catalog of Federal Domestic Assistance Program No. 93.778, Medical Assistance Program)

Dated: January 21, 2010.

Charlene Frizzera,

Acting Administrator, Centers for Medicare & Medicaid Services.

Approved: March 2, 2010.

Kathleen Sebelius,

Secretary.

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Friday,
April 30, 2010

Part IV

Department of Health and Human Services

Centers for Medicare & Medicaid Services

Medicare Program; Inpatient Psychiatric Facilities Prospective Payment System Payment—Update for Rate Year Beginning July 1, 2010 (RY 2011); Notice

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

[CMS–1424–N]

RIN 0938–AP83

Medicare Program; Inpatient Psychiatric Facilities Prospective Payment System Payment—Update for Rate Year Beginning July 1, 2010 (RY 2011)

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

ACTION: Notice

SUMMARY: This notice updates the payment rates for the Medicare prospective payment system (PPS) for inpatient psychiatric hospital services provided by inpatient psychiatric facilities (IPFs). These changes are applicable to IPF discharges occurring during the rate year beginning July 1, 2010 through June 30, 2011. We are also responding to comments on the IPF PPS teaching adjustment and the market basket, which we received in response to our May 2009 IPF PPS notice with request for comments.

DATES: *Effective Date:* The updated IPF prospective payment rates are effective for discharges occurring on or after July 1, 2010 through June 30, 2011.

FOR FURTHER INFORMATION CONTACT:

Dorothy Myrick or Jana Lindquist, (410) 786–4533 (for general information).

Mary Carol Barron, (410) 786–7943 (for information regarding the market basket and labor-related share).

Theresa Bean, (410) 786–2287 (for information regarding the regulatory impact analysis).

SUPPLEMENTARY INFORMATION:

Table of Contents

To assist readers in referencing sections contained in this document, we are providing the following table of contents.

I. Background
A. Annual Requirements for Updating the IPF PPS
B. Overview of the Legislative Requirements of the IPF PPS
C. IPF PPS—General Overview
II. Transition Period for Implementation of the IPF PPS
III. Updates to the IPF PPS for RY Beginning July 1, 2010
A. Determining the Standardized Budget-Neutral Federal *Per Diem* Base Rate
1. Standardization of the Federal *Per Diem* Base Rate and Electroconvulsive Therapy (ECT) Rate
2. Calculation of the Budget Neutrality Adjustment
a. Outlier Adjustment
b. Stop-Loss Provision Adjustment
c. Behavioral Offset
B. Update of the Federal *Per Diem* Base Rate and Electroconvulsive Therapy Rate
1. Market Basket for IPFs Reimbursed under the IPF PPS
a. Market Basket Index for the IPF PPS
b. Overview of the RPL Market Basket
2. Labor-Related Share
3. Comments on Creating a Stand-Alone IPF Market Basket
IV. Update of the IPF PPS Adjustment Factors
A. Overview of the IPF PPS Adjustment Factors
B. Patient-Level Adjustments
1. Adjustment for MS–DRG Assignment
2. Payment for Comorbid Conditions
3. Patient Age Adjustments
4. Variable *Per Diem* Adjustments
C. Facility-Level Adjustments
1. Wage Index Adjustment
a. Background
b. Wage Index for RY 2011
c. OMB Bulletins
2. Adjustment for Rural Location
3. Teaching Adjustment
4. Cost of Living Adjustment for IPFs Located in Alaska and Hawaii
5. Adjustment for IPFs With a Qualifying Emergency Department (ED)
D. Other Payment Adjustments and Policies
1. Outlier Payments
a. Update to the Outlier Fixed Dollar Loss Threshold Amount
b. Statistical Accuracy of Cost-to-Charge Ratios
2. Expiration of the Stop-Loss Provision
V. Comments Beyond the Scope of the May 2009 IPF PPS Notice With Request for Comments
VI. Waiver of Proposed Rulemaking
VII. Collection of Information Requirements
VIII. Regulatory Impact Analysis
Addenda

Acronyms

Because of the many terms to which we refer by acronym in this notice, we are listing the acronyms used and their corresponding terms in alphabetical order below:

BBRA Medicare, Medicaid and SCHIP [State Children's Health Insurance Program] Balanced Budget Refinement Act of 1999, (Pub. L. 106–113).
CBSA Core-Based Statistical Area.
CCR Cost-to-charge ratio.
CAH Critical access hospital.
DSM–IV–TR Diagnostic and Statistical Manual of Mental Disorders Fourth Edition—Text Revision.
DRGs Diagnosis-related groups.
FY Federal fiscal year.
ICD–9–CM International Classification of Diseases, 9th Revision, Clinical Modification.
IPFs Inpatient psychiatric facilities.
IRFs Inpatient rehabilitation facilities.
LTCHs Long-term care hospitals.
MedPAR Medicare provider analysis and review file.
RY Rate Year.
TEFRA Tax Equity and Fiscal Responsibility Act of 1982, (Pub. L. 97–248).

I. Background

A. Annual Requirements for Updating the IPF PPS

In November 2004, we implemented the inpatient psychiatric facilities (IPF) prospective payment system (PPS) in a final rule that appeared in the November 15, 2004 **Federal Register** (69 FR 66922). In developing the IPF PPS, in order to ensure that the IPF PPS is able to account adequately for each IPF's case-mix, we performed an extensive regression analysis of the relationship between the *per diem* costs and certain patient and facility characteristics to determine those characteristics associated with statistically significant cost differences on a *per diem* basis. For characteristics with statistically significant cost differences, we used the regression coefficients of those variables to determine the size of the corresponding payment adjustments.

In that final rule, we explained that we believe it is important to delay updating the adjustment factors derived from the regression analysis until we have IPF PPS data that includes as much information as possible regarding the patient-level characteristics of the population that each IPF serves. Therefore, we indicated that we did not intend to update the regression analysis and recalculate the Federal *per diem* base rate and the patient- and facility-level adjustments until we complete that analysis. Until that analysis is complete, we stated our intention to publish a notice in the **Federal Register** each spring to update the IPF PPS (71 FR 27041).

Updates to the IPF PPS as specified in 42 CFR § 412.428 include the following:

- A description of the methodology and data used to calculate the updated Federal *per diem* base payment amount.
- The rate of increase factor as described in § 412.424(a)(2)(iii), which is based on the excluded hospital with capital market basket under the update methodology of section 1886(b)(3)(B)(ii) of the Social Security Act (the Act) for each year (effective from the implementation period until June 30, 2006).
- For discharges occurring on or after July 1, 2006, the rate of increase factor for the Federal portion of the IPF's payment, which is based on the rehabilitation, psychiatric, and long-term care (RPL) market basket.
- The best available hospital wage index and information regarding whether an adjustment to the Federal

per diem base rate is needed to maintain budget neutrality.

• Updates to the fixed dollar loss threshold amount in order to maintain the appropriate outlier percentage.

• Description of the International Classification of Diseases, 9th Revision, Clinical Modification (ICD–9–CM) coding and diagnosis-related groups (DRGs) classification changes discussed in the annual update to the hospital inpatient prospective payment system (IPPS) regulations.

• Update to the electroconvulsive therapy (ECT) payment by a factor specified by CMS.

• Update to the national urban and rural cost-to-charge ratio medians and ceilings.

• Update to the cost of living adjustment factors for IPFs located in Alaska and Hawaii, if appropriate.

Our most recent annual update occurred in the May 2009 IPF PPS notice with request for comments (74 FR 20362) (hereinafter referred to as the May 2009 IPF PPS notice) that set forth updates to the IPF PPS payment rates for RY 2010. This notice updates the IPF *per diem* payment rates that were published in the May 2009 IPF PPS notice in accordance with our established policies.

B. Overview of the Legislative Requirements of the IPF PPS

Section 124 of the Medicare, Medicaid, and SCHIP (State Children's Health Insurance Program) Balanced Budget Refinement Act of 1999, (Pub. L. 106–113) (BBRA) required implementation of the IPF PPS. Specifically, section 124 of the BBRA mandated that the Secretary develop a *per diem* PPS for inpatient hospital services furnished in psychiatric hospitals and psychiatric units that includes an adequate patient classification system that reflects the differences in patient resource use and costs among psychiatric hospitals and psychiatric units.

Section 405(g)(2) of the Medicare Prescription Drug, Improvement, and Modernization Act of 2003 (MMA) (Pub. L. 108–173) extended the IPF PPS to distinct part psychiatric units of critical access hospitals (CAHs).

To implement these provisions, we published various proposed and final rules in the **Federal Register**. For more information regarding these rules, *see* the CMS Web sites *http://www.cms.hhs.gov/InpatientPsychFacilPPS/*and *http://www.cms.hhs.gov/InpatientpsychfacilPPS/02_regulations.asp.*

Section 1886(s)(3)(A) of the Act, which was added by Section 3401(f) of the Patient Protection and Affordable Care Act (Pub. L. 111–148) as amended by Section 10319(e) of that Act and by Section 1105 of the Health Care and Education Reconciliation Act of 2010 (Pub. L. 111–152), requires the application of an "Other Adjustment" that reduces any update to the IPF PPS base rate by 0.25 percentage point for the rate year beginning in 2010. We are implementing that provision for RY 2011 in this notice.

C. IPF PPS—General Overview

The November 2004 IPF PPS final rule (69 FR 66922) established the IPF PPS, as authorized under section 124 of the BBRA and codified at subpart N of part 412 of the Medicare regulations. The November 2004 IPF PPS final rule set forth the *per diem* Federal rates for the implementation year (the 18-month period from January 1, 2005 through June 30, 2006), and it provided payment for the inpatient operating and capital costs to IPFs for covered psychiatric services they furnish (that is, routine, ancillary, and capital costs, but not costs of approved educational activities, bad debts, and other services or items that are outside the scope of the IPF PPS). Covered psychiatric services include services for which benefits are provided under the fee-for-service Part A (Hospital Insurance Program) Medicare program.

The IPF PPS established the Federal *per diem* base rate for each patient day in an IPF derived from the national average daily routine operating, ancillary, and capital costs in IPFs in FY 2002. The average *per diem* cost was updated to the midpoint of the first year under the IPF PPS, standardized to account for the overall positive effects of the IPF PPS payment adjustments, and adjusted for budget neutrality.

The Federal *per diem* payment under the IPF PPS is comprised of the Federal *per diem* base rate described above and certain patient- and facility-level payment adjustments that were found in the regression analysis to be associated with statistically significant *per diem* cost differences.

The patient-level adjustments include age, DRG assignment, comorbidities, and variable *per diem* adjustments to reflect higher *per diem* costs in the early days of an IPF stay. Facility-level adjustments include adjustments for the IPF's wage index, rural location, teaching status, a cost of living adjustment for IPFs located in Alaska and Hawaii, and presence of a qualifying emergency department (ED).

The IPF PPS provides additional payment policies for: outlier cases; stop-loss protection (which was applicable only during the IPF PPS transition period); interrupted stays; and a per treatment adjustment for patients who undergo ECT.

A complete discussion of the regression analysis appears in the November 2004 IPF PPS final rule (69 FR 66933 through 66936).

Section 124 of BBRA does not specify an annual update rate strategy for the IPF PPS and is broadly written to give the Secretary discretion in establishing an update methodology. Therefore, in the November 2004 IPF PPS final rule, we implemented the IPF PPS using the following update strategy:

• Calculate the final Federal *per diem* base rate to be budget neutral for the 18-month period of January 1, 2005 through June 30, 2006.

• Use a July 1 through June 30 annual update cycle.

• Allow the IPF PPS first update to be effective for discharges on or after July 1, 2006 through June 30, 2007.

II. Transition Period for Implementation of the IPF PPS

In the November 2004 IPF PPS final rule, we provided for a 3-year transition period. During this 3-year transition period, an IPF's total payment under the PPS was based on an increasing percentage of the Federal rate with a corresponding decreasing percentage of the IPF PPS payment that is based on reasonable cost concepts. However, effective for cost reporting periods beginning on or after January 1, 2008, IPF PPS payments are based on 100 percent of the Federal rate.

III. Updates to the IPF PPS for RY Beginning July 1, 2010

The IPF PPS is based on a standardized Federal *per diem* base rate calculated from IPF average *per diem* costs and adjusted for budget-neutrality in the implementation year. The Federal *per diem* base rate is used as the standard payment per day under the IPF PPS and is adjusted by the patient- and facility-level adjustments that are applicable to the IPF stay. A detailed explanation of how we calculated the average *per diem* cost appears in the November 2004 IPF PPS final rule (69 FR 66926).

A. Determining the Standardized Budget-Neutral Federal Per Diem Base Rate

Section 124(a)(1) of the BBRA requires that we implement the IPF PPS in a budget neutral manner. In other words, the amount of total payments

under the IPF PPS, including any payment adjustments, must be projected to be equal to the amount of total payments that would have been made if the IPF PPS were not implemented. Therefore, we calculated the budget-neutrality factor by setting the total estimated IPF PPS payments to be equal to the total estimated payments that would have been made under the Tax Equity and Fiscal Responsibility Act of 1982 (TEFRA) (Pub. L. 97–248) methodology had the IPF PPS not been implemented.

Under the IPF PPS methodology, we calculated the final Federal *per diem* base rate to be budget neutral during the IPF PPS implementation period (that is, the 18-month period from January 1, 2005 through June 30, 2006) using a July 1 update cycle. We updated the average cost per day to the midpoint of the IPF PPS implementation period (that is, October 1, 2005), and this amount was used in the payment model to establish the budget-neutrality adjustment.

A step-by-step description of the methodology used to estimate payments under the TEFRA payment system appears in the November 2004 IPF PPS final rule (69 FR 66926).

1. Standardization of the Federal *Per Diem* Base Rate and Electroconvulsive Therapy (ECT) Rate

In the November 2004 IPF PPS final rule, we describe how we standardized the IPF PPS Federal *per diem* base rate in order to account for the overall positive effects of the IPF PPS payment adjustment factors. To standardize the IPF PPS payments, we compared the IPF PPS payment amounts calculated from the FY 2002 Medicare Provider Analysis and Review (MedPAR) file to the projected TEFRA payments from the FY 2002 cost report file updated to the midpoint of the IPF PPS implementation period (that is, October 2005). The standardization factor was calculated by dividing total estimated payments under the TEFRA payment system by estimated payments under the IPF PPS. The standardization factor was calculated to be 0.8367.

As described in detail in the May 2006 IPF PPS final rule (71 FR 27045), in reviewing the methodology used to simulate the IPF PPS payments used for the November 2004 IPF PPS final rule, we discovered that due to a computer code error, total IPF PPS payments were underestimated by about 1.36 percent. Since the IPF PPS payment total should have been larger than the estimated figure, the standardization factor should have been smaller (0.8254 vs. 0.8367). In turn, the Federal *per diem* base rate and the ECT rate should have been reduced by 0.8254 instead of 0.8367.

To resolve this issue, in RY 2007, we amended the Federal *per diem* base rate and the ECT payment rate prospectively. Using the standardization factor of 0.8254, the average cost per day was effectively reduced by 17.46 percent (100 percent minus 82.54 percent = 17.46 percent).

2. Calculation of the Budget Neutrality Adjustment

To compute the budget neutrality adjustment for the IPF PPS, we separately identified each component of the adjustment, that is, the outlier adjustment, stop-loss adjustment, and behavioral offset.

A complete discussion of how we calculate each component of the budget neutrality adjustment appears in the November 2004 IPF PPS final rule (69 FR 66932 through 66933) and in the May 2006 IPF PPS final rule (71 FR 27044 through 27046).

a. Outlier Adjustment

Since the IPF PPS payment amount for each IPF includes applicable outlier amounts, we reduced the standardized Federal *per diem* base rate to account for aggregate IPF PPS payments estimated to be made as outlier payments. The outlier adjustment was calculated to be 2 percent. As a result, the standardized Federal *per diem* base rate was reduced by 2 percent to account for projected outlier payments.

b. Stop-Loss Provision Adjustment

As explained in the November 2004 IPF PPS final rule, we provided a stop-loss payment during the transition from cost-based reimbursement to the *per diem* payment system to ensure that an IPF's total PPS payments were no less than a minimum percentage of their TEFRA payment, had the IPF PPS not been implemented. We reduced the standardized Federal *per diem* base rate by the percentage of aggregate IPF PPS payments estimated to be made for stop-loss payments. As a result, the standardized Federal *per diem* base rate was reduced by 0.39 percent to account for stop-loss payments. Since the transition was completed in RY 2009, the stop-loss provision is no longer applicable, and for cost reporting periods beginning on or after January 1, 2008, IPFs were paid 100 percent PPS.

c. Behavioral Offset

As explained in the November 2004 IPF PPS final rule, implementation of the IPF PPS may result in certain changes in IPF practices, especially with respect to coding for comorbid medical conditions. As a result, Medicare may make higher payments than assumed in our calculations. Accounting for these effects through an adjustment is commonly known as a behavioral offset.

Based on accepted actuarial practices and consistent with the assumptions made in other PPSs, we assumed in determining the behavioral offset that IPFs would regain 15 percent of potential "losses" and augment payment increases by 5 percent. We applied this actuarial assumption, which is based on our historical experience with new payment systems, to the estimated "losses" and "gains" among the IPFs. The behavioral offset for the IPF PPS was calculated to be 2.66 percent. As a result, we reduced the standardized Federal *per diem* base rate by 2.66 percent to account for behavioral changes. As indicated in the November 2004 IPF PPS final rule, we do not plan to change adjustment factors or projections until we analyze IPF PPS data.

If we find that an adjustment is warranted, the percent difference may be applied prospectively to the established PPS rates to ensure the rates accurately reflect the payment level intended by the statute. In conducting this analysis, we will be interested in the extent to which improved coding of patients' principal and other diagnoses, which may not reflect real increases in underlying resource demands, has occurred under the PPS.

B. Update of the Federal Per Diem Base Rate and Electroconvulsive Therapy Rate

1. Market Basket for IPFs Reimbursed under the IPF PPS

As described in the November 2004 IPF PPS final rule (69 FR 66931), the average *per diem* cost was updated to the midpoint of the implementation year. This updated average *per diem* cost of $724.43 was reduced by 17.46 percent to account for standardization to projected TEFRA payments for the implementation period, by 2 percent to account for outlier payments, by 0.39 percent to account for stop-loss payments, and by 2.66 percent to account for the behavioral offset. The Federal *per diem* base rate in the implementation year was $575.95. The increase in the *per diem* base rate for RY 2009 included the 0.39 percent increase due to the removal of the stop-loss provision. We indicated in the November 2004 IPF PPS final rule (69 FR 66932) that we would remove this 0.39 percent reduction to the Federal *per diem* base rate after the transition. For RY 2009 and beyond, the stop-loss

provision has ended and is therefore no longer a part of budget neutrality.

Due to new section 1886(s)(3)(A) of the Act, which requires the application of an "Other Adjustment" that reduces the update to the IPF PPS base rate for the rate year beginning in CY 2010, we reduced the update to the IPF PPS base rate by 0.25 percent for rate year 2011. Applying the market basket increase of 2.4 percent, with the "Other Adjustment" of −0.25%, and the wage index budget neutrality factor of 0.9999 to the RY 2010 Federal *per diem* base rate of $651.76 yields a Federal *per diem* base rate of $665.71 for RY 2011. Similarly, applying the market basket increase with the "Other Adjustment", and the wage index budget neutrality factor to the RY 2010 ECT rate yields an ECT rate of $286.60 for RY 2011.

a. Market Basket Index for the IPF PPS

The market basket index that was used to develop the IPF PPS was the excluded hospital with capital market basket. This market basket was based on 1997 Medicare cost report data and included data for Medicare-participating IPFs, inpatient rehabilitation facilities (IRFs), long-term care hospitals (LTCHs), cancer, and children's hospitals.

Beginning with the May 2006 IPF PPS final rule (71 FR 27046 through 27054), IPF PPS payments were updated using a 2002-based market basket reflecting the operating and capital cost structures for IRFs, IPFs, and LTCHs (hereafter referred to as the rehabilitation, psychiatric, long-term care (RPL) market basket).

We excluded cancer and children's hospitals from the RPL market basket because their payments are based entirely on reasonable costs subject to rate-of-increase limits established under the authority of section 1886(b) of the Act, which are implemented in regulations at § 413.40. They are not reimbursed through a PPS. Also, the FY 2002 cost structures for cancer and children's hospitals are noticeably different than the cost structures of the IRFs, IPFs, and LTCHs. A complete discussion of the RPL market basket appears in the May 2006 IPF PPS final rule (71 FR 27046 through 27054).

In the May 2009 IPF PPS notice (74 FR 20362), we requested public comment on the possibility of creating a stand-alone IPF market basket. In this notice, we are responding to those comments in the "Comments on Creating a Stand-Alone IPF Market Basket" section.

b. Overview of the RPL Market Basket

The RPL market basket is a fixed weight, Laspeyres-type price index. A market basket is described as a fixed-weight index because it answers the question of how much it would cost, at another time, to purchase the same mix (quantity and intensity) of goods and services needed to provide services in a base period. The effects on total expenditures resulting from changes in the mix of goods and services purchased subsequent to the base period are not measured. In this manner, the market basket measures pure price change only. Only when the index is rebased would changes in the quantity and intensity be captured in the cost weights. Therefore, we rebase the market basket periodically so that cost weights reflect recent changes in the mix of goods and services that hospitals purchase to furnish patient care between base periods.

The terms "rebasing" and "revising," while often used interchangeably, actually denote different activities. Rebasing means moving the base year for the structure of costs of an input price index (for example, shifting the base year cost structure from FY 1997 to FY 2002). Revising means changing data sources, methodology, or price proxies used in the input price index. In 2006, we rebased and revised the market basket used to update the IPF PPS. Table 1 below sets forth the completed FY 2002-based RPL market basket including the cost categories, weights, and price proxies.

TABLE 1—FY 2002-BASED RPL MARKET BASKET COST CATEGORIES, WEIGHTS, AND PRICE PROXIES

Cost categories	FY 2002-based RPL market basket cost weight	FY 2002-based RPL market basket price proxies
TOTAL	100.000	
Compensation	65.877	
Wages and Salaries*	52.895	ECI—Wages and Salaries, Civilian Hospital Workers.
Employee Benefits*	12.982	ECI—Benefits, Civilian Hospital Workers.
Professional Fees, Non-Medical*	2.892	ECI—Compensation for Professional & Related occupations.
Utilities	0.656	
Electricity	0.351	PPI—Commercial Electric Power.
Fuel Oil, Coal, *etc*	0.108	PPI—Commercial Natural Gas.
Water and Sewage	0.197	CPI—U—Water & Sewage Maintenance.
Professional Liability Insurance	1.161	CMS Professional Liability Premium Index.
All Other Products and Services	19.265	
All Other Products	13.323	
Pharmaceuticals	5.103	PPI Prescription Drugs.
Food: Direct Purchase	0.873	PPI Processed Foods & Feeds.
Food: Contract Service	0.620	CPI—U Food Away From Home.
Chemicals	1.100	PPI Industrial Chemicals.
Medical Instruments	1.014	PPI Medical Instruments & Equipment.
Photographic Supplies	0.096	PPI Photographic Supplies.
Rubber and Plastics	1.052	PPI Rubber & Plastic Products.
Paper Products	1.000	PPI Converted Paper & Paperboard Products.
Apparel	0.207	PPI Apparel.
Machinery and Equipment	0.297	PPI Machinery & Equipment.
Miscellaneous Products**	1.963	PPI Finished Goods less Food & Energy.
All Other Services	5.942	
Telephone	0.240	CPI—U Telephone Services.
Postage	0.682	CPI—U Postage.
All Other: Labor Intensive*	2.219	ECI—Compensation for Private Service Occupations.
All Other: Non-labor Intensive	2.800	CPI—U All Items.
Capital-Related Costs***	10.149	

TABLE 1—FY 2002-BASED RPL MARKET BASKET COST CATEGORIES, WEIGHTS, AND PRICE PROXIES—Continued

Cost categories	FY 2002-based RPL market basket cost weight	FY 2002-based RPL market basket price proxies
Depreciation	6.186	
Fixed Assets	4.250	Boeckh Institutional Construction 23-year useful life.
Movable Equipment	1.937	PPI Machinery & Equipment 11-year useful life.
Interest Costs	2.775	
Nonprofit	2.081	Average yield on domestic municipal bonds (Bond Buyer 20 bonds) vintage-weighted (23 years).
For Profit	0.694	Average yield on Moody's Aaa bond vintage-weighted (23 years).
Other Capital-Related Costs	1.187	CPI—U Residential Rent.

* Labor-related.
** Blood and blood-related products is included in miscellaneous products.
*** A portion of capital costs (0.46) are labor-related.

Note: Due to rounding, weights may not sum to total.

We evaluated the price proxies using the criteria of reliability, timeliness, availability, and relevance. *Reliability* indicates that the index is based on valid statistical methods and has low sampling variability. *Timeliness* implies that the proxy is published regularly (preferably at least once a quarter). *Availability* means that the proxy is publicly available. Finally, *relevance* means that the proxy is applicable and representative of the cost category weight to which it is applied. The Consumer Price Indexes (CPIs), Producer Price Indexes (PPIs), and Employment Cost Indexes (ECIs) used as proxies in this market basket meet these criteria.

We note that the proxies are the same as those used for the FY 1997-based excluded hospital with capital market basket. Because these proxies meet our criteria of reliability, timeliness, availability, and relevance, we believe they continue to be the best measure of price changes for the cost categories. For further discussion on the FY 1997-based excluded hospital with capital market basket, *see* the August 1, 2002 hospital inpatient prospective payment system (IPPS) final rule (67 FR at 50042).

The RY 2011 (that is, beginning July 1, 2010) update for the IPF PPS using the FY 2002-based RPL market basket and Information Handling Services (IHS) Global Insight's 1st quarter 2010 forecast for the market basket components is 2.4 percent. This includes increases in both the operating section and the capital section for the 12-month RY period (that is, July 1, 2010 through June 30, 2011). IHS Global Insight, Inc. is a nationally recognized economic and financial forecasting firm that contracts with CMS to forecast the components of the market baskets.

2. Labor-Related Share

Due to the variations in costs and geographic wage levels, we believe that payment rates under the IPF PPS should continue to be adjusted by a geographic wage index. This wage index applies to the labor-related portion of the Federal *per diem* base rate, hereafter referred to as the labor-related share.

The labor-related share is determined by identifying the national average proportion of operating costs that are related to, influenced by, or vary with the local labor market. Using our current definition of labor-related, the labor-related share is the sum of the relative importance of wages and salaries, fringe benefits, professional fees, labor-intensive services, and a portion of the capital share from an appropriate market basket. We used the FY 2002-based RPL market basket cost weights relative importance to determine the labor-related share for the IPF PPS.

The labor-related share for RY 2011 is the sum of the RY 2011 relative importance of each labor-related cost category, and reflects the different rates of price change for these cost categories between the base year (FY 2002) and RY 2011. The sum of the relative importance for the RY 2011 operating costs (wages and salaries, employee benefits, professional fees, and labor-intensive services) is 71.506 percent, as shown in Table 2 below. The portion of capital that is influenced by the local labor market is estimated to be 46 percent, which is the same percentage used in the FY 1997-based IRF and IPF payment systems.

Since the relative importance for capital is 8.466 percent of the FY 2002-based RPL market basket in RY 2011, we are taking 46 percent of 8.466 percent to determine the labor-related share of capital for RY 2011. The result is 3.894 percent, which we added to 71.506 percent for the operating cost amount to determine the total labor-related share for RY 2011. Thus, the labor-related share that we are using for IPF PPS in RY 2011 is 75.400 percent. Table 2 below shows the RY 2011 labor-related share using the FY 2002-based RPL market basket. We note that this labor-related share is determined by using the same methodology as employed in calculating all previous IPF labor-related shares.

A complete discussion of the IPF labor-related share methodology appears in the November 2004 IPF PPS final rule (69 FR 66952 through 66954).

TABLE 2—TOTAL LABOR-RELATED SHARE—RELATIVE IMPORTANCE FOR RY 2011

Cost category	FY 2002-based RPL market basket labor-related share relative importance (percent) RY 2010 *	FY 2002-based RPL market basket labor-related share relative importance (percent) RY 2011 **
Wages and salaries	53.062	52.600
Employee benefits	13.852	13.935
Professional fees	2.895	2.853

TABLE 2—TOTAL LABOR-RELATED SHARE—RELATIVE IMPORTANCE FOR RY 2011—Continued

Cost category	FY 2002-based RPL market basket labor-related share relative importance (percent) RY 2010 *	FY 2002-based RPL market basket labor-related share relative importance (percent) RY 2011 **
All other labor-intensive services	2.126	2.118
Subtotal	71.935	71.506
Labor-related share of capital costs (0.46)	3.954	3.894
Total	75.889	75.400

* Based on 2009 1st Quarter forecast.
** Based on 2010 1st Quarter forecast.

3. Comments on Creating a Stand-Alone IPF Market Basket

In the May 2009 IPF PPS notice (74 FR 20362), we expressed our interest in exploring the possibility of creating a stand-alone IPF market basket that reflects the cost structures of only IPF providers. Of the available options, one would be to join the Medicare cost report data from freestanding IPF providers (presently incorporated into the RPL market basket) with data from hospital-based IPF providers. An examination of the Medicare cost report data comparing freestanding and hospital-based IPFs reveals considerable differences between the two with respect to cost levels and cost structures.

In order to better understand the observed cost differences between freestanding and hospital-based IPFs, we reviewed, in detail, several explanatory variables such as geographic variation, case mix (including DRG, comorbidity, and age), urban or rural status, length of stay, teaching status, and the presence of a qualifying emergency department. Despite this analysis, we were unable to sufficiently explain the differences in costs between these two types of IPF providers. As a result, we felt that further research was required and solicited public comment on additional information that would help us to better understand the reasons for the variations in costs and cost structures, as reported by cost report data, between freestanding and hospital-based IPFs (74 FR 20376).

We received several timely comments from the public on this issue. A summary of the comments and our responses to those comments are below.

Comment: Several commenters recommended that CMS consider creating an IPF-specific market basket. These commenters stated that including hospital-based IPF data in the market basket and pursuing a greater understanding of the differences between freestanding and hospital-based IPFs are both worthy undertakings. The commenters cited that from 2005 through 2007, the number of hospital-based IPFs has decreased by 1.4 percent while the number of freestanding IPFs has increased by 1.0 percent. The commenters expressed concern that these trends will continue, and likely accelerate. Furthermore, the commenters stated that in 2007, hospital-based IPFs experienced negative margins while freestanding IPF margins were positive. Given that more than 60 percent of IPF discharges are from hospital-based units, the commenters believe that preserving access to care for these patients (especially those who have coexisting physical conditions or experience a crisis and enter the emergency department for treatment) is vital. One commenter stated that including hospital-based IPF data in the market basket would increase transparency and highlight the differences between freestanding and hospital-based providers.

Response: We are actively examining the technical merits of creating a stand-alone IPF market basket. Since publication of the May 2009 IPF PPS notice, we have been reviewing the Medicare cost report and claims data for both hospital-based and freestanding IPFs to better understand the differences in total Medicare costs per day. Parts of our analysis were based on comments received by the public, which we address in more detail below. Based on our research to date, which has not adequately explained the cost-per-day differences between freestanding and hospital-based providers, we do not believe it is technically appropriate to move from the RPL market basket to update IPF payments at this time.

Comment: Several commenters supported the ongoing application of the RPL market basket to update inpatient psychiatric facility payment rates. One commenter recommended we continue this method in order to maintain a reasonable population size of facilities to ensure stability in the calculation of the market basket. The commenter asserted that if the RPL market basket was split into separate market baskets for IRFs, IPFs, and LTCHs, there would be much more volatility in the year-to-year changes, especially for LTCHs.

Response: We appreciate the comments regarding the continued support for using the RPL market basket to update inpatient psychiatric facility payment rates. Likewise, we appreciate the comment regarding sample size considerations with respect to splitting the RPL market basket into its respective pieces. Indeed, sample size and its impact on the volatility of the estimates will be extensively scrutinized before we would propose to change the mechanism used to update payments to inpatient psychiatric facilities, inpatient rehabilitation facilities, and long-term care hospitals.

Comment: One commenter supported the investigation of the differences in cost structures between hospital-based and freestanding IPFs. Besides determining the source of these differences, the commenter also stated it is important for CMS to determine whether the differences should be recognized (for example, are higher costs in IPF hospital-based facilities due to allocation of overhead to the unit or to differences in case mix or patient severity that is not measurable using available administrative data). This commenter also acknowledged that seeking outside input regarding differences in cost structures between hospital-based and freestanding IPFs is appropriate. However, the commenter

recommended that CMS proceed with caution as it may be difficult for CMS to confirm that the methods used to collect outside data are sound and that the data are representative of the industry as a whole. The commenter also stated that CMS should ultimately determine whether the market basket should in fact be based on the cost structure of hospital-based and freestanding IPFs (instead of just one type of facility) if the higher costs cannot be explained by differences in case mix and other patient characteristics.

Response: Although we asked for outside information to help us better understand these differences, we agree with the commenter that any outside information should be carefully examined.

As we have stated, we currently do not feel it is appropriate to incorporate data from hospital-based IPFs with that of freestanding IPFs to create a stand-alone IPF market basket given the observed and unexplained differences in cost structures.

Comment: Several commenters stated that creating a stand-alone IPF market basket could be a more accurate index for the costs of delivering care incurred by IPFs. However, the commenters stated that they did not have any independent data to help CMS in developing a stand-alone market basket at this time. The commenters suggested that the issue of a stand-alone IPF market basket continue to be analyzed by CMS.

Response: We agree with the commenters and plan to continue to analyze costs and Medicare claims data for hospital-based and freestanding providers.

Comment: One commenter supports the development of a stand-alone IPF market basket. However, the commenter encourages CMS to avoid mixing data from hospital-based and freestanding IPFs. The commenter claims that hospital-based IPFs incur higher costs than freestanding IPFs in treating Medicare patients for the following reasons:

- The acuity levels and medical needs of psychiatric patients that present in a hospital's qualified emergency room will result in higher treatment costs and lengths of stay.
- Hospitals provide a greater range of ancillary services.
- Some hospitals operate approved psychiatric residency teaching programs.

Therefore, the commenter is reluctant to support a combined hospital-based, freestanding IPF market basket at this time. The commenter also offered to assist CMS with any information he or she can provide.

Response: We appreciate the commenter's input on possible reasons why hospital-based IPFs have higher costs than freestanding IPFs. As stated above, we compared the medical needs of the patients, as measured by the adjustments for DRG, comorbidities, and age. Our analysis did show that hospital-based providers, on average, treat more complex patients; however, the differences in the complexity of the patients, as well as other facility-based adjustments, did not adequately explain the differences in total Medicare costs per day between hospital-based and freestanding providers. In addition, using both Medicare cost report and claims data, we found that hospital-based providers, on average, had shorter lengths of stay than freestanding providers.

Per the commenter's suggestion, and using MCR data, we also compared the Medicare ancillary costs per day of hospital-based and freestanding providers. We found that hospital-based facilities, on average, tend to have higher Medicare ancillary costs per day than freestanding facilities. The differences were mostly attributable to higher emergency room and laboratory costs. These higher ancillary costs accounted for about ten percent of the overall difference between hospital-based and freestanding providers' total Medicare costs per day.

In addition, we compared the average approved teaching costs for hospital-based and freestanding providers. We found that hospital-based providers have higher teaching-related costs associated with Medicare approved programs relative to free standing providers; however, the difference accounted for only three percent of the total difference in Medicare costs per day for hospital-based and freestanding providers.

Comment: One commenter simply agreed with CMS that before implementation of a new market basket method, the method should be fully evaluated and the projected impact known.

Response: We agree with the commenter's suggestion. Before any implementation, CMS will fully evaluate our methodology to ensure that any proposed market basket most accurately reflects the cost structures associated with providing psychiatric care to Medicare patients.

Comment: One commenter does not support the adoption of a stand-alone IPF market basket at this time, pending further study, as the commenter is not convinced that CMS has the appropriate level of psychiatric cost data available to compile an accurate market basket for IPFs alone. These conclusions were based on the following reasons:

- There are a small number of facilities and often limited data (for example, only 4 percent of IPFs reported contract labor costs for FY 2002).
- Benefits, contract labor, and blood cost weights were developed using the FY 2002-based IPPS market basket.
- Other detailed cost categories were derived from the FY 2002-based IPPS market basket.
- No cost data specific to psychiatry (that is, Wages and Salaries—based on Civilian Hospital Workers).

The commenter stated that without release of both relevant internal data available only to CMS on the previously mentioned IPF market basket issues, as well as specific data on the types of cost differences between the various cost categories of IRF, IPF, and LTCH facilities, they are unable to comment on an independent IPF market basket at this time. The commenter believes that more detailed analysis needs to be conducted and released before they could consider supporting any change to the current RPL-based market basket update process.

Response: We are in the process of evaluating multiple years of data in order to determine whether a stand-alone IPF market basket would be a more appropriate index for updating IPF PPS payments. We agree with the commenter that there is a lack of IPF-specific benefit and contract labor cost data. Currently, benefit and contract labor cost data are collected on Worksheet S–3, part II of the Medicare cost report (MCR), but are only required of IPPS hospitals. We proposed under separate cover to modify the present-day hospital MCR in order to collect benefit and contract labor data on a separate worksheet (proposed Worksheet S–3, part V) which would be completed by all hospitals (*http://www.cms.hhs.gov/PaperworkReductionActof1995/PRAL/itemdetail.asp?filterType=none&filterByDID=-99&sortByDID=2&sortOrder=descending&itemID=CMS1224069&intNumPerPage*). We disagree with the commenter that we are not capturing IPF-specific data for wages and salaries since all hospitals are required to report this data on the MCRs, which provides the sources of our wages and salaries cost weight. We believe the commenter may be referencing the Employment Cost Index (ECI) for wages and salaries for hospital civilian workers which we use to proxy price changes associated with the wages and salary cost weight. This proxy is used because the Bureau of Labor

Statistics does not publish a wages and salaries price index specific to IPFs only. However, the ECI for wages and salaries for hospital civilian workers does include the price changes of IPFs, as well as other hospital-types (including general surgical hospitals).

IV. Update of the IPF PPS Adjustment Factors

A. Overview of the IPF PPS Adjustment Factors

The IPF PPS payment adjustments were derived from a regression analysis of 100 percent of the FY 2002 MedPAR data file, which contained 483,038 cases. For this notice, we used the same results of the regression analysis used to implement the November 2004 IPF PPS final rule. For a more detailed description of the data file used for the regression analysis, *see* the November 2004 IPF PPS final rule (69 FR 66935 through 66936). While we have since used more recent claims data to set the fixed dollar loss threshold amount, we use the same results of this regression analysis to update the IPF PPS for RY 2010 as well as RY 2011.

As previously stated, we do not plan to update the regression analysis until we are able to analyze IPF PPS claims and cost report data. However, we continue to monitor claims and payment data independently from cost report data to assess issues, to determine whether changes in case-mix or payment shifts have occurred among freestanding governmental, non-profit and private psychiatric hospitals, and psychiatric units of general hospitals, and CAHs and other issues of importance to IPFs.

B. Patient-Level Adjustments

In the May 2008 IPF PPS notice (73 FR 25709) and in the May 2009 IPF PPS notice (74 FR 20362), we provided payment adjustments for the following patient-level characteristics: Medicare Severity diagnosis related groups (MS–DRGs) assignment of the patient's principal diagnosis, selected comorbidities, patient age, and the variable *per diem* adjustments.

1. Adjustment for MS–DRG Assignment

The IPF PPS includes payment adjustments for the psychiatric DRG assigned to the claim based on each patient's principal diagnosis. The IPF PPS recognizes the MS–DRGs. The DRG adjustment factors were expressed relative to the most frequently reported psychiatric DRG in FY 2002, that is, DRG 430 (psychoses). The coefficient values and adjustment factors were derived from the regression analysis.

In accordance with § 412.27(a), payment under the IPF PPS is conditioned on IPFs admitting "only patients whose admission to the unit is required for active treatment, of an intensity that can be provided appropriately only in an inpatient hospital setting, of a psychiatric principal diagnosis that is listed in Chapter Five ("Mental Disorders") of the International Classification of Diseases, Ninth Revision, Clinical Modification (ICD–9–CM)" or in the Fourth Edition, Text Revision of the American Psychiatric Association's Diagnostic and Statistical Manual, (DSM–IV–TR). IPF claims with a principal diagnosis included in Chapter Five of the ICD–9–CM or the DSM–IV–TR are paid the Federal *per diem* base rate under the IPF PPS and all other applicable adjustments, including any applicable DRG adjustment. Psychiatric principal diagnoses that do not group to one of the designated DRGs still receive the Federal *per diem* base rate and all other applicable adjustments, but the payment would not include a DRG adjustment.

The Standards for Electronic Transaction final rule published in the **Federal Register** on August 17, 2000 (65 FR 50312), adopted the ICD–9–CM as the designated code set for reporting diseases, injuries, impairments, other health related problems, their manifestations, and causes of injury, disease, impairment, or other health related problems. Therefore, we use the ICD–9–CM as the designated code set for the IPF PPS.

We believe that it is important to maintain the same diagnostic coding and DRG classification for IPFs that are used under the IPPS for providing the psychiatric care. Therefore, when the IPF PPS was implemented for cost reporting periods beginning on or after January 1, 2005, we adopted the same diagnostic code set and DRG patient classification system (that is, the CMS DRGs) that was utilized at the time under the hospital inpatient prospective payment system (IPPS). Since the inception of the IPF PPS, the DRGs used as the patient classification system under the IPF PPS have corresponded exactly with the CMS DRGs applicable under the IPPS for acute care hospitals.

Every year, changes to the ICD–9–CM coding system are addressed in the IPPS proposed and final rules. The changes to the codes are effective October 1 of each year and must be used by acute care hospitals as well as other providers to report diagnostic and procedure information. The IPF PPS has always incorporated ICD–9–CM coding changes made in the annual IPPS update. We publish coding changes in a Transmittal/Change Request, similar to how coding changes are announced by the IPPS and LTCH PPS. Those ICD–9–CM coding changes are also published in the following IPF PPS RY update, in either the IPF PPS proposed and final rules, or in an IPF PPS update notice.

In the May 2008 IPF PPS notice (73 FR 25714), we discussed CMS' effort to better recognize resource use and the severity of illness among patients. CMS adopted the new MS–DRGs for the IPPS in the FY 2008 IPPS final rule with comment period (72 FR 47130). We believe by better accounting for patients' severity of illness in Medicare payment rates, the MS–DRGs encourage hospitals to improve their coding and documentation of patient diagnoses. The MS–DRGs, which are based on the CMS DRGs, represent a significant increase in the number of DRGs (from 538 to 745, an increase of 207). For a full description of the development and implementation of the MS–DRGs, *see* the FY 2008 IPPS final rule with comment period (72 FR 47141 through 47175).

All of the ICD–9–CM coding changes are reflected in the FY 2010 GROUPER, Version 27.0, effective for IPPS discharges occurring on or after October 1, 2009 through September 30, 2010. The GROUPER Version 27.0 software package assigns each case to an MS–DRG on the basis of the diagnosis and procedure codes and demographic information (that is, age, sex, and discharge status). The Medicare Code Editor (MCE) 26.0 uses the new ICD–9–CM codes to validate coding for IPPS discharges on or after October 1, 2009. For additional information on the GROUPER Version 27.0 and MCE 26.0, *see* Transmittal 1816 (Change Request 6634), dated October 1, 2009. The IPF PPS has always used the same GROUPER and Code Editor as the IPPS. Therefore, the ICD–9–CM changes, which were reflected in the GROUPER Version 27.0 and MCE 26.0 on October 1, 2009, also became effective for the IPF PPS for discharges occurring on or after October 1, 2009.

The impact of the new MS–DRGs on the IPF PPS was negligible. Mapping to the MS–DRGs resulted in the current 17 MS–DRGs, instead of the original 15 DRGs, for which the IPF PPS provides an adjustment. Although the code set is updated, the same associated adjustment factors apply now that have been in place since implementation of the IPF PPS, with one exception that is unrelated to the update to the codes. When DRGs 521 and 522 were consolidated into MS–DRG 895, we carried over the adjustment factor of 1.02 from DRG 521 to the newly

consolidated MS–DRG. This was done to reflect the higher claims volume under DRG 521, with more than eight times the number of claims than billed under DRG 522. The updates are reflected in Table 5. For a detailed description of the mapping changes from the original DRG adjustment categories to the current MS–DRG adjustment categories, we refer readers to the May 2008 IPF PPS notice (73 FR 25714).

The official version of the ICD–9–CM is available on CD–ROM from the U.S. Government Printing Office. The FY 2009 version can be ordered by contacting the Superintendent of Documents, U.S. Government Printing Office, Department 50, Washington, DC 20402–9329, telephone number (202) 512–1800. Questions concerning the ICD–9–CM should be directed to Patricia E. Brooks, Co-Chairperson, ICD–9–CM Coordination and Maintenance Committee, CMS, Center for Medicare Management, Hospital and Ambulatory Policy Group, Division of Acute Care, Mailstop C4–08–06, 7500 Security Boulevard, Baltimore, Maryland 21244–1850.

Further information concerning the official version of the ICD–9–CM can be found in the IPPS final rule with comment period, "Changes to Hospital Inpatient Prospective Payment System and Fiscal Year 2010 Rates" in the August 27, 2009 **Federal Register** (74 FR 43754) and at *http://www.cms.hhs.gov/AcuteInpatientPPS/IPPS/list.asp#TopOfPage*.

Tables 3 and 4 below list the FY 2010 new and invalid ICD–9–CM diagnosis codes that group to one of the 17 MS–DRGs for which the IPF PPS provides an adjustment. These tables are only a listing of FY 2010 changes and do not reflect all of the currently valid and applicable ICD–9–CM codes classified in the MS–DRGs. When coded as a principal code or diagnosis, these codes receive the correlating MS–DRG adjustment.

TABLE 3—FY 2010 NEW DIAGNOSIS CODES

Diagnosis code	Description	MS–DRG
438.13	Late effects of cerebrovascular disease, dysarthria	056, 057
438.14	Late effects of cerebrovascular disease, fluency disorder	056, 057
799.21	Nervousness	880
799.22	Irritability	880
799.23	Impulsiveness	882
799.24	Emotional lability	883
799.25	Demoralization and apathy	880
799.29	Other signs and symptoms involving emotional state	880

TABLE 4—FY 2010 INVALID DIAGNOSIS CODES

Diagnosis code	Description	MS–DRG
799.2	Nervousness	880

We do not plan to update the regression analysis until we are able to analyze IPF PPS data. The MS–DRG adjustment factors (as shown in Table 5 below) will continue to be paid for discharges occurring in RY 2011.

TABLE 5—RY 2011 CURRENT MS–DRGS APPLICABLE FOR THE PRINCIPAL DIAGNOSIS ADJUSTMENT

MS–DRG	MS–DRG descriptions	Adjustment factor
056	Degenerative nervous system disorders w MCC	1.05
057	Degenerative nervous system disorders w/o MCC	1.05
080	Nontraumatic stupor & coma w MCC	1.07
081	Nontraumatic stupor & coma w/o MCC	1.07
876	O.R. procedure w principal diagnoses of mental illness	1.22
880	Acute adjustment reaction & psychosocial dysfunction	1.05
881	Depressive neuroses	0.99
882	Neuroses except depressive	1.02
883	Disorders of personality & impulse control	1.02
884	Organic disturbances & mental retardation	1.03
885	Psychoses	1.00
886	Behavioral & developmental disorders	0.99
887	Other mental disorder diagnoses	0.92
894	Alcohol/drug abuse or dependence, left AMA	0.97
895	Alcohol/drug abuse or dependence w rehabilitation therapy	1.02
896	Alcohol/drug abuse or dependence w/o rehabilitation therapy w MCC	0.88
897	Alcohol/drug abuse or dependence w/o rehabilitation therapy w/o MCC	0.88

2. Payment for Comorbid Conditions

The intent of the comorbidity adjustments is to recognize the increased costs associated with comorbid conditions by providing additional payments for certain concurrent medical or psychiatric conditions that are expensive to treat. In the May 2009 IPF PPS notice (74 FR 20362), we explained that the IPF PPS includes 17 comorbidity categories and identified the new, revised, and deleted ICD–9–CM diagnosis codes that generate a comorbid condition payment adjustment under the IPF PPS for RY 2010 (77 FR 20372).

Comorbidities are specific patient conditions that are secondary to the patient's principal diagnosis and that require treatment during the stay.

Diagnoses that relate to an earlier episode of care and have no bearing on the current hospital stay are excluded and must not be reported on IPF claims. Comorbid conditions must exist at the time of admission or develop subsequently, and affect the treatment received, length of stay (LOS), or both treatment and LOS.

For each claim, an IPF may receive only one comorbidity adjustment per comorbidity category, but it may receive an adjustment for more than one comorbidity category. Billing instructions require that IPFs must enter the full ICD–9–CM codes for up to 8 additional diagnoses if they co-exist at the time of admission or develop subsequently and impact the treatment provided.

The comorbidity adjustments were determined based on the regression analysis using the diagnoses reported by IPFs in FY 2002. The principal diagnoses were used to establish the DRG adjustments and were not accounted for in establishing the comorbidity category adjustments, except where ICD–9–CM "code first" instructions apply. As we explained in the May 2008 IPF PPS notice (73 FR 25716), the code first rule applies when a condition has both an underlying etiology and a manifestation due to the underlying etiology. For these conditions, the ICD–9–CM has a coding convention that requires the underlying conditions to be sequenced first followed by the manifestation. Whenever a combination exists, there is a "use additional code" note at the etiology code and a code first note at the manifestation code.

As discussed in the MS–DRG section, it is our policy to maintain the same diagnostic coding set for IPFs that is used under the IPPS for providing the same psychiatric care. Although the ICD–9–CM code set has been updated, the same adjustment factors have been in place since the implementation of the IPF PPS. Table 6 below lists the FY 2010 new ICD diagnosis codes that impact the comorbidity adjustments under the IPF PPS. Table 6 is not a list of all currently valid ICD codes applicable for the IPF PPS comorbidity adjustments.

TABLE 6—FY 2010 NEW ICD CODES APPLICABLE FOR THE COMORBIDITY ADJUSTMENT

Diagnosis code	Description	Comorbidity category
209.31	Merkel cell carcinoma of the face	Oncology Treatment.
209.32	Merkel cell carcinoma of the scalp and neck	Oncology Treatment.
209.33	Merkel cell carcinoma of the upper limb	Oncology Treatment.
209.34	Merkel cell carcinoma of the lower limb	Oncology Treatment.
209.35	Merkel cell carcinoma of the trunk	Oncology Treatment.
209.36	Merkel cell carcinoma of other sites	Oncology Treatment.
209.70	Secondary neuroendocrine tumor, unspecified site	Oncology Treatment.
209.71	Secondary neuroendocrine tumor of distant lymph nodes	Oncology Treatment.
209.72	Secondary neuroendocrine tumor of liver	Oncology Treatment.
209.73	Secondary neuroendocrine tumor of bone	Oncology Treatment.
209.74	Secondary neuroendocrine tumor of peritoneum	Oncology Treatment.
209.75	Secondary Merkel cell carcinoma	Oncology Treatment.
209.79	Secondary neuroendocrine tumor of other sites	Oncology Treatment.
239.81	Neoplasms of unspecified nature, retina and choroid	Oncology Treatment.
239.89	Neoplasms of unspecified nature, other specified sites	Oncology Treatment.
969.00	Poisoning by antidepressant, unspecified	Poisoning.
969.01	Poisoning by monoamine oxidase inhibitors	Poisoning.
969.02	Poisoning by selective serotonin and norepinephrine reuptake inhibitors	Poisoning.
969.03	Poisoning by selective serotonin reuptake inhibitors	Poisoning.
969.04	Poisoning by tetracyclic antidepressants	Poisoning.
969.05	Poisoning by tricyclic antidepressants	Poisoning.
969.09	Poisoning by other antidepressants	Poisoning.
969.70	Poisoning by psychostimulant, unspecified	Poisoning.
969.71	Poisoning by caffeine	Poisoning.
969.72	Poisoning by amphetamines	Poisoning.
969.73	Poisoning by methylphenidate	Poisoning.
969.79	Poisoning by other psychostimulants	Poisoning.

Table 7 below lists the FY 2010 revised ICD diagnosis codes that are applicable for the comorbidity adjustment.

TABLE 7—FY 2010 REVISED ICD CODES APPLICABLE FOR THE COMORBIDITY ADJUSTMENT

Diagnosis code	Description	Comorbidity category
584.5	Acute kidney failure with lesion of tubular necrosis	Renal Failure, Acute.
584.6	Acute kidney failure with lesion of renal cortical necrosis	Renal Failure, Acute.
584.7	Acute kidney failure with lesion of renal medullary [papillary] necrosis	Renal Failure, Acute.
584.8	Acute kidney failure with other specified pathological lesion in kidney	Renal Failure, Acute.
584.9	Acute kidney failure, unspecified	Renal Failure, Acute.
639.3	Kidney failure following abortion and ectopic and molar pregnancies	Renal Failure, Acute.
669.32	Acute kidney failure following labor and delivery, delivered, with mention of postpartum complication.	Renal Failure, Acute.
669.34	Acute kidney failure following labor and delivery, postpartum condition or complication	Renal Failure, Acute.

Table 8 below lists the invalid FY 2010 ICD–9–CM codes no longer applicable for the comorbidity adjustment.

TABLE 8—FY 2010 INVALID ICD CODES NO LONGER APPLICABLE FOR THE COMORBIDITY ADJUSTMENT

Diagnosis code	Description	Comorbidity category
239.8	Neoplasm of unspecified nature of other specified sites	Oncology Treatment.
969.0	Poisoning by antidepressants	Poisoning.
969.7	Poisoning by psychostimulants	Poisoning.

For RY 2011, we are applying the seventeen comorbidity categories for which we are providing an adjustment, their respective codes, including the new FY 2010 ICD–9–CM codes, and their respective adjustment factors in Table 9 below.

TABLE 9—RY 2011 DIAGNOSIS CODES AND ADJUSTMENT FACTORS FOR COMORBIDITY CATEGORIES

Description of comorbidity	ICD–9CM code	Adjustment factor
Developmental Disabilities	317, 3180, 3181, 3182, and 319	1.04
Coagulation Factor Deficits	2860 through 2864	1.13
Tracheostomy	51900 through 51909 and V440	1.06
Renal Failure, Acute	5845 through 5849, 63630, 63631, 63632, 63730, 63731, 63732, 6383, 6393, 66932, 66934, 9585.	1.11
Renal Failure, Chronic	40301, 40311, 40391, 40402, 40412, 40413, 40492, 40493, 5853, 5854, 5855, 5856, 5859, 586, V4511, V4512, V560, V561, and V562.	1.11
Oncology Treatment	1400 through 2399 with a radiation therapy code 92.21–92.29 or chemotherapy code 99.25.	1.07
Uncontrolled Diabetes-Mellitus with or without complications.	25002, 25003, 25012, 25013, 25022, 25023, 25032, 25033, 25042, 25043, 25052, 25053, 25062, 25063, 25072, 25073, 25082, 25083, 25092, and 25093.	1.05
Severe Protein Calorie Malnutrition	260 through 262	1.13
Eating and Conduct Disorders	3071, 30750, 31203, 31233, and 31234	1.12
Infectious Disease	01000 through 04110, 042, 04500 through 05319, 05440 through 05449, 0550 through 0770, 0782 through 07889, and 07950 through 07959.	1.07
Drug and/or Alcohol Induced Mental Disorders.	2910, 2920, 29212, 2922, 30300, and 30400	1.03
Cardiac Conditions	3910, 3911, 3912, 40201, 40403, 4160, 4210, 4211, and 4219	1.11
Gangrene	44024 and 7854	1.10
Chronic Obstructive Pulmonary Disease	49121, 4941, 5100, 51883, 51884, V4611, V4612, V4613 and V4614	1.12
Artificial Openings—Digestive and Urinary	56960 through 56969, 9975, and V441 through V446	1.08
Severe Musculoskeletal and Connective Tissue Diseases.	6960, 7100, 73000 through 73009, 73010 through 73019, and 73020 through 73029.	1.09
Poisoning	96500 through 96509, 9654, 9670 through 9699, 9770, 9800 through 9809, 9830 through 9839, 986, 9890 through 9897.	1.11

3. Patient Age Adjustments

As explained in the November 2004 IPF PPS final rule (69 FR 66922), we analyzed the impact of age on *per diem* cost by examining the age variable (that is, the range of ages) for payment adjustments.

In general, we found that the cost per day increases with age. The older age groups are more costly than the under 45 age group, the differences in *per diem* cost increase for each successive age group, and the differences are statistically significant.

For RY 2011, we are continuing to use the patient age adjustments currently in effect as shown in Table 10 below.

TABLE 10—AGE GROUPINGS AND ADJUSTMENT FACTORS

Age	Adjustment factor
Under 45	1.00
45 and under 50	1.01
50 and under 55	1.02
55 and under 60	1.04
60 and under 65	1.07
65 and under 70	1.10
70 and under 75	1.13
75 and under 80	1.15
80 and over	1.17

4. Variable *Per Diem* Adjustments

We explained in the November 2004 IPF PPS final rule (69 FR 66946) that the regression analysis indicated that *per diem* cost declines as the LOS increases. The variable *per diem* adjustments to the Federal *per diem* base rate account for ancillary and administrative costs that occur disproportionately in the first days after admission to an IPF.

We used a regression analysis to estimate the average differences in *per diem* cost among stays of different lengths. As a result of this analysis, we established variable *per diem* adjustments that begin on day 1 and decline gradually until day 21 of a patient's stay. For day 22 and thereafter, the variable *per diem* adjustment remains the same each day for the remainder of the stay. However, the adjustment applied to day 1 depends upon whether the IPF has a qualifying ED. If an IPF has a qualifying ED, it receives a 1.31 adjustment factor for day 1 of each stay. If an IPF does not have a qualifying ED, it receives a 1.19 adjustment factor for day 1 of the stay. The ED adjustment is explained in more detail in section IV.C.5 of this notice.

For RY 2011, we are continuing to use the variable *per diem* adjustment factors currently in effect as shown in Table 11 below. A complete discussion of the variable *per diem* adjustments appears in the November 2004 IPF PPS final rule (69 FR 66946).

TABLE 11—VARIABLE PER DIEM ADJUSTMENTS

Day-of-stay	Adjustment factor
Day 1—IPF Without a Qualifying ED	1.19
Day 1—IPF With a Qualifying ED	1.31
Day 2	1.12
Day 3	1.08
Day 4	1.05
Day 5	1.04
Day 6	1.02
Day 7	1.01
Day 8	1.01
Day 9	1.00
Day 10	1.00
Day 11	0.99
Day 12	0.99
Day 13	0.99
Day 14	0.99
Day 15	0.98
Day 16	0.97
Day 17	0.97
Day 18	0.96
Day 19	0.95
Day 20	0.95
Day 21	0.95
After Day 21	0.92

C. Facility-Level Adjustments

The IPF PPS includes facility-level adjustments for the wage index, IPFs located in rural areas, teaching IPFs, cost of living adjustments for IPFs located in Alaska and Hawaii, and IPFs with a qualifying ED.

1. Wage Index Adjustment

a. Background

As discussed in the May 2006 IPF PPS final rule and in the May 2008 and May 2009 update notices, in providing an adjustment for geographic wage levels, the labor-related portion of an IPF's payment is adjusted using an appropriate wage index. Currently, an IPF's geographic wage index value is determined based on the actual location of the IPF in an urban or rural area as defined in § 412.64(b)(1)(ii)(A) through § 412.64(C).

b. Wage Index for RY 2011

Since the inception of the IPF PPS, we have used hospital wage data in developing a wage index to be applied to IPFs. We are continuing that practice for RY 2011. We apply the wage index adjustment to the labor-related portion of the Federal rate, which is 75.400 percent. This percentage reflects the labor-related relative importance of the RPL market basket for RY 2011 (*see* section III.B.2 of this notice). The IPF PPS uses the pre-floor, pre-reclassified hospital wage index. Changes to the wage index are made in a budget neutral manner so that updates do not increase expenditures.

For RY 2011, we are applying the most recent hospital wage index (that is, the FY 2010 pre-floor, pre-reclassified hospital wage index because this is the most appropriate index as it best reflects the variation in local labor costs of IPFs in the various geographic areas) using the most recent hospital wage data (that is, data from hospital cost reports for the cost reporting period beginning during FY 2006), and applying an adjustment in accordance with our budget neutrality policy. This policy requires us to estimate the total amount of IPF PPS payments in RY 2010 using the applicable wage index value divided by the total estimated IPF PPS payments in RY 2011 using the most recent wage index. The estimated payments are based on FY 2008 IPF claims, inflated to the appropriate RY. This quotient is the wage index budget neutrality factor, and it is applied in the update of the Federal *per diem* base rate for RY 2011 in addition to the market basket described in section III.B.1 of this notice. The wage index budget neutrality factor for RY 2011 is 0.9999.

The wage index applicable for RY 2011 appears in Table 1 and Table 2 in Addendum B of this notice. As explained in the May 2006 IPF PPS final rule for RY 2007 (71 FR 27061), the IPF PPS applies the hospital wage index without a hold-harmless policy, and without an out-commuting adjustment or out-migration adjustment because the statutory authority for these policies applies only to the IPPS.

Also in the May 2006 IPF PPS final rule for RY 2007 (71 FR 27061), we adopted the changes discussed in the Office of Management and Budget (OMB) Bulletin No. 03–04 (June 6, 2003), which announced revised definitions for Metropolitan Statistical Areas (MSAs), and the creation of Micropolitan Statistical Areas and Combined Statistical Areas. In adopting the OMB Core-Based Statistical Area (CBSA) geographic designations, since the IPF PPS was already in a transition period from TEFRA payments to PPS payments, we did not provide a separate transition for the CBSA-based wage index.

As was the case in RY 2010, for RY 2011 we will continue to use the CBSA-based wage index values as presented in Tables 1 and 2 in Addendum B of this notice. A complete discussion of the CBSA labor market definitions appears in the May 2006 IPF PPS final rule (71 FR 27061 through 27067).

In summary, for RY 2011 we will use the FY 2010 wage index data (collected from cost reports submitted by hospitals for cost reporting periods beginning during FY 2006) to adjust IPF PPS payments beginning July 1,2010.

c. OMB Bulletins

The Office of Management and Budget (OMB) publishes bulletins regarding CBSA changes, including changes to CBSA numbers and titles. In the May 2008 IPF PPS notice, we incorporated the CBSA nomenclature changes published in the most recent OMB bulletin that applies to the hospital wage data used to determine the current IPF PPS wage index (73 FR 25721). We will continue to do the same for all such OMB CBSA nomenclature changes in future IPF PPS rules and notices, as necessary. The OMB bulletins may be accessed online at *http://www.whitehouse.gov/omb/bulletins/index.html*.

2. Adjustment for Rural Location

In the November 2004 IPF PPS final rule, we provided a 17 percent payment adjustment for IPFs located in a rural area. This adjustment was based on the regression analysis, which indicated that the *per diem* cost of rural facilities was 17 percent higher than that of urban facilities after accounting for the influence of the other variables included in the regression. For RY 2011, we are applying a 17 percent payment adjustment for IPFs located in a rural area as defined at § 412.64(b)(1)(ii)(C). As stated in the November 2004 IPF PPS final rule, we do not intend to update the adjustment factors derived from the regression analysis until we are able to analyze IPF PPS data. A complete discussion of the adjustment for rural locations appears in the November 2004 IPF PPS final rule (69 FR 66954).

3. Teaching Adjustment

In the November 2004 IPF PPS final rule, we implemented regulations at § 412.424(d)(1)(iii) to establish a facility-level adjustment for IPFs that are, or are part of, teaching hospitals. The teaching adjustment accounts for the higher indirect operating costs experienced by hospitals that participate in graduate medical education (GME) programs. The payment adjustments are made based on the number of full-time equivalent (FTE) interns and residents training in the IPF and the IPF's average daily census.

Medicare makes direct GME payments (for direct costs such as resident and

teaching physician salaries, and other direct teaching costs) to all teaching hospitals including those paid under the IPPS, and those that were once paid under the TEFRA rate-of-increase limits but are now paid under other PPSs. These direct GME payments are made separately from payments for hospital operating costs and are not part of the PPSs. The direct GME payments do not address the estimated higher indirect operating costs teaching hospitals may face.

For teaching hospitals paid under the TEFRA rate-of-increase limits, Medicare did not make separate payments for indirect medical education costs because payments to these hospitals were based on the hospitals' reasonable costs which already included these higher indirect costs that may be associated with teaching programs.

The results of the regression analysis of FY 2002 IPF data established the basis for the payment adjustments included in the November 2004 IPF PPS final rule. The results showed that the indirect teaching cost variable is significant in explaining the higher costs of IPFs that have teaching programs. We calculated the teaching adjustment based on the IPF's "teaching variable," which is one plus the ratio of the number of FTE residents training in the IPF (subject to limitations described below) to the IPF's average daily census (ADC).

We established the teaching adjustment in a manner that limited the incentives for IPFs to add FTE residents for the purpose of increasing their teaching adjustment. We imposed a cap on the number of FTE residents that may be counted for purposes of calculating the teaching adjustment. We emphasize that the cap limits the number of FTE residents that teaching IPFs may count for the purposes of calculating the IPF PPS teaching adjustment, not the number of residents teaching institutions can hire or train. We calculated the number of FTE residents that trained in the IPF during a "base year" and used that FTE resident number as the cap. An IPF's FTE resident cap is ultimately determined based on the final settlement of the IPF's most recent cost report filed before November 15, 2004 (that is, the publication date of the IPF PPS final rule).

In the regression analysis, the logarithm of the teaching variable had a coefficient value of 0.5150. We converted this cost effect to a teaching payment adjustment by treating the regression coefficient as an exponent and raising the teaching variable to a power equal to the coefficient value. We note that the coefficient value of 0.5150 was based on the regression analysis holding all other components of the payment system constant.

As with other adjustment factors derived through the regression analysis, we do not plan to rerun the regression analysis until we analyze IPF PPS data. Therefore, for RY 2011, we are retaining the coefficient value of 0.5150 for the teaching adjustment to the Federal *per diem* base rate.

A complete discussion of how the teaching adjustment was calculated appears in the November 2004 IPF PPS final rule (69 FR 66954 through 66957) and the May 2008 IPF PPS notice (73 FR 25721).

FTE Intern and Resident Cap Adjustment

CMS has been asked to reconsider the current policy on the FTE intern and resident cap adjustment and to permit an increase in the FTE resident cap when the IPF increases the number of FTE residents it trains due to the acceptance of relocated residents when another IPF closes or closes its psychiatry residency program. To help us assess how many IPFs have been, or expect to be adversely affected by their inability to adjust their caps under § 412.424(d)(1) and under these situations, we specifically requested public comment from IPFs in the May 2009 IPF PPS notice (74 FR 20362). A summary of the comments and our response to those comments are below.

Comment: We received several comments on the FTE Intern and Resident Cap Adjustment. All of the commenters recommended that CMS modify the IPF PPS resident cap policy, supporting a policy change that would permit the IPF PPS residency cap to be increased when residents in a psychiatry residency program must be relocated from one IPF to another due to closure of an IPF or an IPF's psychiatry residency training program. Many commenters expressed concern that a cap on the number of FTE residents used to calculate the teaching adjustment is based on a snapshot of activity essentially "freezing" the status of residency education at a random point in time, CY 2004. Commenters stated that it is time to substantially modify the resident cap policy for the IPF PPS. Several commenters stated that this change in residency policy could help address the psychiatrist shortage, and help ensure access to care for beneficiaries who suffer from mental health and substance use disorders. Other commenters pointed out that the demand for health care services will continue to rise with the growing needs of the 78 million "baby boomers" who will retire in 2010 and with the recent passage of Paul Wellstone and Pete Domenici Mental Health Parity and Addiction Equality Act of 2008. The commenters further stated that the U.S. already faces a shortage of psychiatrists, and these factors could potentially elevate what is now a problem to what could be a crisis.

Several commenters stated that in FY 2000, CMS instituted a temporary adjustment to the IPPS FTE cap policy when a hospital increases the number of FTE residents it trains due to the acceptance of relocated residents when another hospital closes (64 FR 41552). The commenters further stated that in FY 2002, CMS also implemented a similar policy for acute care hospitals that accept relocated residents from a closed program (66 FR 39899). The commenters indicated that the same need exists for IPFs that accept displaced residents when an IPF closes or when an IPF or acute care hospital closes its psychiatric residency program. The commenters recommended that CMS implement a temporary resident cap increase policy to the current FTE resident cap when an IPF increases the number of FTE residents it trains due to the acceptance of relocated residents. The commenters believe this change is necessary in order to promote consistency among payment systems and to ensure that residents training in psychiatry can continue their training when their original residency training program closes.

Several commenters suggested that although the extent of the problem of displaced psychiatry residents is not clear at this time, the number of inpatient psychiatric units is declining. Therefore, they agreed that a temporary increase in the resident cap, similar to that allowed for acute care hospitals, would provide an incentive for IPFs to accept those psychiatry residents who are displaced by the closure of residency training programs. Some commenters expressed concern that inpatient psychiatric programs are closing in different parts of the country and believe the cap issue could become more of a problem in the future.

One association surveyed IPFs and concluded that the cap does impact IPF training of psychiatric residents. Specifically, they stated that certain IPFs reported that they trained additional residents from a closed residency program and have exceeded their caps because of those residents. Other IPFs in the survey reported that they had been asked to train additional residents but had not agreed because

these additional residents would have caused them to exceed their cap.

Another commenter believes the cap limits the flexibility of health systems to become more efficient by consolidating programs and residency training. This commenter indicated that while they have not heard of many facilities that have experienced a problem exceeding the cap, they were aware of specific cases where it has created problems and prevented some changes in the training of residents from one IPF to another. The example cited was a facility in the northwest that is part of a large health system, wanted to close down their training program in their outpatient department and shift the residents to an IPF owned by the health system. However, they indicated that the cap prevented the system from moving the residents from the outpatient program to the IPF.

Another commenter believes this change is necessary and has personally encountered this situation when a local IPF was closed and their residents had to be relocated, some of which came to the commenter's facility. The commenter stated that a change in this policy would help keep needed residency slots in the local communities.

One commenter indicated that they trained 24.56 FTE(s), which included 1.60 FTE(s) from a closed IPF. The commenter's cap is 18.18. The commenter indicated training of the closed IPF's residents did not give them relief from the cap.

Response: We appreciate all comments received on the FTE intern and resident cap adjustment. We will take all comments into consideration as we assess the IPF PPS regulations with respect to developing the policy for the teaching cap adjustment in the future.

4. Cost of Living Adjustment for IPFs Located in Alaska and Hawaii

The IPF PPS includes a payment adjustment for IPFs located in Alaska and Hawaii based upon the county in which the IPF is located. As we explained in the November 2004 IPF PPS final rule, the FY 2002 data demonstrated that IPFs in Alaska and Hawaii had *per diem* costs that were disproportionately higher than other IPFs. Other Medicare PPSs (for example, the IPPS and LTCH PPS) have adopted a cost of living adjustment (COLA) to account for the cost differential of care furnished in Alaska and Hawaii.

We analyzed the effect of applying a COLA to payments for IPFs located in Alaska and Hawaii. The results of our analysis demonstrated that a COLA for IPFs located in Alaska and Hawaii would improve payment equity for these facilities. As a result of this analysis, we provided a COLA in the November 2004 IPF PPS final rule.

A COLA adjustment for IPFs located in Alaska and Hawaii is made by multiplying the non-labor share of the Federal *per diem* base rate by the applicable COLA factor based on the COLA area in which the IPF is located.

As previously stated in the November 2004 IPF PPS final rule, we will update the COLA factors according to updates established by the U.S. Office of Personnel Management (OPM), which issued a final rule, May 28, 2008 to change COLA rates.

The COLA factors are published on the OPM Web site at (*http://www.opm.gov/oca/cola/rates.asp*).

We note that the COLA areas for Alaska are not defined by county as are the COLA areas for Hawaii. In 5 CFR 591.207, the OPM established the following COLA areas:

(a) City of Anchorage, and 80-kilometer (50-mile) radius by road, as measured from the Federal courthouse;

(b) City of Fairbanks, and 80-kilometer (50-mile) radius by road, as measured from the Federal courthouse;

(c) City of Juneau, and 80-kilometer (50-mile) radius by road, as measured from the Federal courthouse;

(d) Rest of the State of Alaska.

For RY 2011, IPFs located in Alaska and Hawaii will continue to receive the updated COLA factors based on the COLA area in which the IPF is located as shown in Table 12 below.

TABLE 12—COLA FACTORS FOR ALASKA AND HAWAII IPFS

Location	COLA
Alaska:	
Anchorage	1.23
Fairbanks	1.23
Juneau	1.23
Rest of Alaska	1.25
Hawaii:	
Honolulu County	1.25
Hawaii County	1.18
Kauai County	1.25
Maui County	1.25
Kalawao County	1.25

5. Adjustment for IPFs With a Qualifying Emergency Department (ED)

Currently, the IPF PPS includes a facility-level adjustment for IPFs with qualifying EDs. We provide an adjustment to the Federal *per diem* base rate to account for the costs associated with maintaining a full-service ED. The adjustment is intended to account for ED costs incurred by a freestanding psychiatric hospital with a qualifying ED or a distinct part psychiatric unit of an acute hospital or a CAH for preadmission services otherwise payable under the Medicare Outpatient Prospective Payment System (OPPS) furnished to a beneficiary during the day immediately preceding the date of admission to the IPF (*see* § 413.40(c)(2)) and the overhead cost of maintaining the ED. This payment is a facility-level adjustment that applies to all IPF admissions (with one exception described below), regardless of whether a particular patient receives preadmission services in the hospital's ED.

The ED adjustment is incorporated into the variable *per diem* adjustment for the first day of each stay for IPFs with a qualifying ED. That is, IPFs with a qualifying ED receive an adjustment factor of 1.31 as the variable *per diem* adjustment for day 1 of each stay. If an IPF does not have a qualifying ED, it receives an adjustment factor of 1.19 as the variable *per diem* adjustment for day 1 of each patient stay.

The ED adjustment is made on every qualifying claim except as described below. As specified in § 412.424(d)(1)(v)(B), the ED adjustment is not made where a patient is discharged from an acute care hospital or critical access hospital (CAH) and admitted to the same hospital's or CAH's psychiatric unit. An ED adjustment is not made in this case because the costs associated with ED services are reflected in the DRG payment to the acute care hospital or through the reasonable cost payment made to the CAH. If we provided the ED adjustment in these cases, the hospital would be paid twice for the overhead costs of the ED, as stated in the November 2004 IPF PPS final rule (69 FR 66960).

Therefore, when patients are discharged from an acute care hospital or CAH and admitted to the same hospital's or CAH's psychiatric unit, the IPF receives the 1.19 adjustment factor as the variable *per diem* adjustment for the first day of the patient's stay in the IPF.

For RY 2011, we are retaining the 1.31 adjustment factor for IPFs with qualifying EDs. A complete discussion of the steps involved in the calculation of the ED adjustment factor appears in the November 2004 IPF PPS final rule (69 FR 66959 through 66960) and the May 2006 IPF PPS final rule (71 FR 27070 through 27072).

D. Other Payment Adjustments and Policies

For RY 2011, the IPF PPS includes: An outlier adjustment to promote access

to IPF care for those patients who require expensive care and to limit the financial risk of IPFs treating unusually costly patients. In this section, we also explain the reason for ending the stop-loss provision that was applicable during the transition period.

1. Outlier Payments

In the November 2004 IPF PPS final rule, we implemented regulations at § 412.424(d)(3)(i) to provide a per-case payment for IPF stays that are extraordinarily costly. Providing additional payments to IPFs for extremely costly cases strongly improves the accuracy of the IPF PPS in determining resource costs at the patient and facility level. These additional payments reduce the financial losses that would otherwise be incurred in treating patients who require more costly care and, therefore, reduce the incentives for IPFs to under-serve these patients.

We make outlier payments for discharges in which an IPF's estimated total cost for a case exceeds a fixed dollar loss threshold amount (multiplied by the IPF's facility-level adjustments) plus the Federal *per diem* payment amount for the case.

In instances when the case qualifies for an outlier payment, we pay 80 percent of the difference between the estimated cost for the case and the adjusted threshold amount for days 1 through 9 of the stay (consistent with the median LOS for IPFs in FY 2002), and 60 percent of the difference for day 10 and thereafter. We established the 80 percent and 60 percent loss sharing ratios because we were concerned that a single ratio established at 80 percent (like other Medicare PPSs) might provide an incentive under the IPF *per diem* payment system to increase LOS in order to receive additional payments. After establishing the loss sharing ratios, we determined the current fixed dollar loss threshold amount of $6,565 through payment simulations designed to compute a dollar loss beyond which payments are estimated to meet the 2 percent outlier spending target.

a. Update to the Outlier Fixed Dollar Loss Threshold Amount

In accordance with the update methodology described in § 412.428(d), we are updating the fixed dollar loss threshold amount used under the IPF PPS outlier policy. Based on the regression analysis and payment simulations used to develop the IPF PPS, we established a 2 percent outlier policy which strikes an appropriate balance between protecting IPFs from extraordinarily costly cases while ensuring the adequacy of the Federal *per diem* base rate for all other cases that are not outlier cases.

We believe it is necessary to update the fixed dollar loss threshold amount because analysis of the latest available data (that is, FY 2008 IPF claims) and rate increases indicates adjusting the fixed dollar loss amount is necessary in order to maintain an outlier percentage that equals 2 percent of total estimated IPF PPS payments.

In the May 2006 IPF PPS final rule (71 FR 27072), we describe the process by which we calculate the outlier fixed dollar loss threshold amount. We continue to use this process for RY 2011. We begin by simulating aggregate payments with and without an outlier policy, and applying an iterative process to determine an outlier fixed dollar loss threshold amount that will result in outlier payments being equal to 2 percent of total estimated payments under the simulation. Based on this process, we are updating the outlier fixed dollar loss threshold amount to $6,372 to maintain estimated outlier payments at 2 percent of total estimated IPF payments for RY 2011.

b. Statistical Accuracy of Cost-to-Charge Ratios

As previously stated, under the IPF PPS, an outlier payment is made if an IPF's cost for a stay exceeds a fixed dollar loss threshold amount. In order to establish an IPF's cost for a particular case, we multiply the IPF's reported charges on the discharge bill by its overall cost-to-charge ratio (CCR). This approach to determining an IPF's cost is consistent with the approach used under the IPPS and other PPSs. In FY 2004, we implemented changes to the IPPS outlier policy used to determine CCRs for acute care hospitals because we became aware that payment vulnerabilities resulted in inappropriate outlier payments. Under the IPPS, we established a statistical measure of accuracy for CCRs in order to ensure that aberrant CCR data did not result in inappropriate outlier payments.

As we indicated in the November 2004 IPF PPS final rule, because we believe that the IPF outlier policy is susceptible to the same payment vulnerabilities as the IPPS, we adopted an approach to ensure the statistical accuracy of CCRs under the IPF PPS (69 FR 66961). Therefore, we adopted the following procedure in the November 2004 IPF PPS final rule:

- We calculated two national ceilings, one for IPFs located in rural areas and one for IPFs located in urban areas. We computed the ceilings by first calculating the national average and the standard deviation of the CCR for both urban and rural IPFs.

To determine the rural and urban ceilings, we multiplied each of the standard deviations by 3 and added the result to the appropriate national CCR average (either rural or urban). The upper threshold CCR for IPFs in RY 2011 is 1.7383 for rural IPFs, and 1.7377 for urban IPFs, based on CBSA-based geographic designations. If an IPF's CCR is above the applicable ceiling, the ratio is considered statistically inaccurate and we assign the appropriate national (either rural or urban) median CCR to the IPF.

We are applying the national CCRs to the following situations:

++ New IPFs that have not yet submitted their first Medicare cost report.

++ IPFs whose overall CCR is in excess of 3 standard deviations above the corresponding national geometric mean (that is, above the ceiling).

++ Other IPFs for which the Medicare contractor obtains inaccurate or incomplete data with which to calculate a CCR.

For new IPFs, we are using these national CCRs until the facility's actual CCR can be computed using the first tentatively or final settled cost report.

We are not making any changes to the procedures for ensuring the statistical accuracy of CCRs in RY 2011. However, we are updating the national urban and rural CCRs (ceilings and medians) for IPFs for RY 2011 based on the CCRs entered in the latest available IPF PPS Provider Specific File.

The national CCRs for RY 2011 are 0.6480 for rural IPFs and 0.5170 for urban IPFs and will be used in each of the three situations listed above. These calculations are based on the IPF's location (either urban or rural) using the CBSA-based geographic designations.

A complete discussion regarding the national median CCRs appears in the November 2004 IPF PPS final rule (69 FR 66961 through 66964).

2. Expiration of the Stop-Loss Provision

In the November 2004 IPF PPS final rule, we implemented a stop-loss policy that reduced financial risk to IPFs projected to experience substantial reductions in Medicare payments during the period of transition to the IPF PPS. This stop-loss policy guaranteed that each facility received total IPF PPS payments that were no less than 70 percent of its TEFRA payments had the IPF PPS not been implemented. This policy was applied to the IPF PPS portion of Medicare payments during the 3-year transition.

In the implementation year, the 70 percent of TEFRA payment stop-loss policy required a reduction in the standardized Federal *per diem* and ECT base rates of 0.39 percent in order to make the stop-loss payments budget neutral. As described in the May 2008 IPF PPS notice for RY 2009, we increased the Federal *per diem* base rate and ECT rate by 0.39 percent because these rates were reduced by 0.39 percent in the implementation year to ensure stop-loss payments were budget neutral.

The stop-loss provision ended during RY 2009 (that is for discharges occurring on or after July 1, 2008 through June 30, 2009). The stop-loss policy is no longer applicable under the IPF PPS.

V. Comments Beyond the Scope of the May 2009 IPF PPS Notice With Request for Comments

In the May 2009 IPF PPS notice, which specifically solicited comments on the IPF PPS teaching adjustment and the market basket, we received several public comments which were outside the scope of that notice. Below, we are providing a summary of the comments and our response.

Comment: Two commenters recommended that CMS continue its study of the wage index in favor of future changes that create a more equitable system and adequately reimburse hospitals for providing quality care to beneficiaries. The commenters recommend that the Bureau of Labor Statistics (BLS) data approach be used to construct a hospital compensation index. They support the elimination of the separate Occupational Mix Survey documents and the large additional reporting burden it creates for hospitals.

One commenter expressed concern that a large increase in the fixed dollar threshold amount will significantly reduce the number of inpatient cases eligible for outlier payments and consequently, further reduce the ability of psychiatric facilities to provide necessary psychiatric care to Medicare beneficiaries. The commenter recommends that CMS continue examining its data to determine more specifically the causes for the increase and if further analysis suggests that the threshold increase is still valid, CMS should publish these reasons as part of the final rule.

One commenter recommended that CMS revisit the Variable *Per Diem* Adjustments that have been established in the November 2004 IPF PPS final rule (69 FR 66946) and to validate these adjustments based on current claim information. The commenter believes the current system does not reflect all factors affecting cost. The example cited was that inpatient prospective payment system facilities receive a special payment treatment for servicing a disproportionate share of low-income patients, which is intended to reimburse a facility for additional cost incurred for handling such patients. The commenter stated that the current IPF PPS payment system does not consider this type of patient in its payment mechanism.

Response: We are not addressing these comments in this notice because they are beyond the scope of the May 2009 notice. However, we will consider the comments and decide whether to take actions based on the information or recommendations of the commenters in future rulemaking.

VI. Waiver of Proposed Rulemaking

We ordinarily publish a notice of proposed rulemaking in the **Federal Register** to provide a period for public comment before the provisions of a rule take effect. We can waive this procedure, however, if we find good cause that notice and comment procedures are impracticable, unnecessary, or contrary to the public interest and we incorporate a statement of finding and its reasons in the notice. We find it is unnecessary to undertake notice and comment rulemaking for the update in this notice because the update does not make any substantive changes in policy, but merely reflects the application of previously established methodologies. In addition, new section 1886(s)(3)(A) of the Act requires the application of an "Other Adjustment" to the update to the IPF PPS base rate in RY 2011. We applied the statutorily-required adjustment in this notice. We find that notice and comment rulemaking is unnecessary to implement that statutory provision because it is a self-implementing provision of law, not requiring the exercise of any discretion on the part of CMS. Therefore, under 5 U.S.C. 553(b)(3)(B), for good cause, we waive notice and comment procedures.

VII. Collection of Information Requirements

This document does not impose any information collection and recordkeeping requirements. Consequently, it need not be reviewed by the Office of Management and Budget under the authority of the Paperwork Reduction Act of 1995 (44 U.S.C. 35).

VIII. Regulatory Impact Analysis

A. Overall Impact

We have examined the impacts of this notice as required by Executive Order 12866 (September 1993, Regulatory Planning and Review), the September 19, 1980 Regulatory Flexibility Act (RFA) (Pub. L. 96–354), section 1102(b) of the Act, the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4), Executive Order 13132 on Federalism, and the Congressional Review Act (5 U.S.C. 804(2)).

Executive Order 12866 directs 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). A regulatory impact analysis (RIA) must be prepared for major rules with economically significant effects ($100 million or more in any 1 year). Although this notice does not meet the $100 million threshold established by Executive Order 12866, we are considering this notice to be "economically significant" because the redistributive effects are estimated to be close to constituting a shift of $100 million. For purposes of Title 5, United States Code, section 804(2), we estimate that this rulemaking is "economically significant", and is also a major rule under the Congressional Review Act. Accordingly, we have prepared a Regulatory Impact Analysis that to the best of our ability presents the costs and benefits of the rulemaking on the 1,679 IPFs.

The updates to the IPF labor-related share and wage indices are made in a budget neutral manner and thus have no effect on estimated costs to the Medicare program. Therefore, the estimated increased cost to the Medicare program is due to the update to the IPF payment rates, which results in an approximate $91 million increase in payments (due to the 2.4% market basket increase with the 0.25% "Other Adjustment" reduction, as required by new section 1886(a)(3)(A) of the Act, and the update to the outlier fixed dollar loss threshold amount, which results in about a $4 million increase in payments). The distribution of these impacts is summarized in Table 13. The net effect of the updates described in this notice results in an overall estimated $95 million increase in payments from RY 2010 to RY 2011.

The RFA requires agencies to analyze options for regulatory relief of small businesses, if a rule has a significant impact on a substantial number of small entities. For purposes of the RFA, we estimate that the great majority of IPFs are small entities as that term is used in the RFA (include small businesses, nonprofit organizations, and small

governmental jurisdictions). The majority of hospitals and most other health care providers and suppliers are small entities, either by being nonprofit organizations or by meeting the SBA definition of a small business (having revenues of $7 million to $34.5 million in any 1 year). (For details, *see* the Small Business Administration's Interim final rule that set forth size standards at 70 FR 72577, December 6, 2005.) Because we lack data on individual hospital receipts, we cannot determine the number of small proprietary IPFs or the proportion of IPFs' revenue that is derived from Medicare payments. Therefore, we assume that all IPFs are considered small entities. The Department of Health and Human Services (HHS) generally uses a revenue impact of 3 to 5 percent as a significance threshold under the RFA. As shown in Table 13, we estimate that the net revenue impact of this notice on all IPFs is to increase estimated payments by about 2.26 percent. Since the estimated impact of this notice is a net increase in revenue across all categories of IPFs, we believe that this notice would not impose a significant burden on small entities. Medicare fiscal intermediaries and carriers are not considered to be small entities. Individuals and States are not included in the definition of a small entity.

Although section 1102(b) of the Act applies to regulations for which a proposed rule is published, the HHS policy is to prepare an analysis of the impact on small rural hospitals for any regulation published. As a result, we are voluntarily determining whether this notice will have a significant impact on the operations of a substantial number of small rural hospitals. For purposes of section 1102(b) of the Act, we define a small rural hospital as a hospital with fewer than 100 beds that is located outside of an MSA. As discussed in detail below, the rates and policies set forth in this notice will not have an adverse impact on the rural hospitals based on the data of the 312 rural units and 64 rural hospitals in our database of 1,679 IPFs for which data were available.

Section 202 of the Unfunded Mandates Reform Act of 1995 (UMRA) also requires that agencies assess anticipated costs and benefits before issuing any rule whose mandates require spending in any 1 year of $100 million in 1995 dollars, updated annually for inflation. In 2010, that threshold is approximately $135 million. This notice will not impose spending costs on State, local, or Tribal governments in the aggregate, or by the private sector, of $135 million.

Executive Order 13132 establishes certain requirements that an agency must meet when it promulgates a proposed rule (and subsequent final rule) that imposes substantial direct requirement costs on State and local governments, preempts State law, or otherwise has Federalism implications. We have reviewed this notice under the criteria set forth in Executive Order 13132 and have determined that the notice will not have any substantial direct impact on State or local governments, preempt State law, or otherwise have a Federalism implication.

B. Anticipated Effects

We discuss below the historical background of the IPF PPS and the impact of this notice on the Federal Medicare budget and on IPFs.

1. Budgetary Impact

As discussed in the November 2004 and May 2006 IPF PPS final rules, we applied a budget neutrality factor to the Federal *per diem* and ECT base rates to ensure that total estimated payments under the IPF PPS in the implementation period would equal the amount that would have been paid if the IPF PPS had not been implemented. The budget neutrality factor includes the following components: Outlier adjustment, stop-loss adjustment, and the behavioral offset. As discussed in the May 2008 IPF PPS notice (73 FR 25711), the stop-loss adjustment is no longer applicable under the IPF PPS.

In accordance with § 412.424(c)(3)(ii), we indicated that we would evaluate the accuracy of the budget neutrality adjustment within the first 5 years after implementation of the payment system. We may make a one-time prospective adjustment to the Federal *per diem* and ECT base rates to account for differences between the historical data on cost-based TEFRA payments (the basis of the budget neutrality adjustment) and estimates of TEFRA payments based on actual data from the first year of the IPF PPS. As part of that process, we will reassess the accuracy of all of the factors impacting budget neutrality.

In addition, as discussed in section III.B.2 of this notice, we are using the wage index and labor market share in a budget neutral manner by applying a wage index budget neutrality factor to the Federal *per diem* and ECT base rates. Therefore, the budgetary impact to the Medicare program by this update to the IPF PPS will be due to the market basket update (*see* section III.B.2.a of this notice) with the "Other Adjustment," as required by new section 1886(s)(3)(A) of the Act, and the update to the outlier fixed dollar loss threshold amount.

2. Impacts on Providers

To understand the impact of the changes to the IPF PPS on providers, discussed in this notice, it is necessary to compare estimated payments under the IPF PPS rates and factors for RY 2011 versus those under RY 2010. The estimated payments for RY 2010 and RY 2011 will be 100 percent of the IPF PPS payment, since the transition period has ended and stop-loss payments are no longer paid. We determined the percent change of estimated RY 2011 IPF PPS payments to estimated RY 2010 IPF PPS payments for each category of IPFs. In addition, for each category of IPFs, we have included the estimated percent change in payments resulting from the update to the outlier fixed dollar loss threshold amount, the wage index changes for the RY 2011 IPF PPS, and the market basket update, as adjusted by the "Other Adjustment".

To illustrate the impacts of the final RY 2011 changes in this notice, our analysis begins with an RY 2010 baseline simulation model based on FY 2008 IPF payments inflated to the midpoint of RY 2010 using IHS Global Insight's most recent forecast of the market basket update (*see* section III.2.b of this notice); the estimated outlier payments in RY 2010; the CBSA designations for IPFs based on OMB's MSA definitions after June 2003; the FY 2009 pre-floor, pre-reclassified hospital wage index; the RY 2010 labor-market share; and the RY 2010 percentage amount of the rural adjustment. During the simulation, the total estimated outlier payments are maintained at 2 percent of total estimated IPF PPS payments.

Each of the following changes is added incrementally to this baseline model in order for us to isolate the effects of each change:

- The update to the outlier fixed dollar loss threshold amount.
- The FY 2010 pre-floor, pre-reclassified hospital wage index and RY 2011 final labor-related share.
- Our final comparison illustrates the percent change in payments from RY 2010 (that is, July 1, 2009 to June 30, 2010) to RY 2011 (that is, July 1, 2010 to June 30, 2011) and includes a 2.4 percent market basket update to the IPF PPS base rates with a −0.25% "Other Adjustment" to the IPF PPS base rates, as required by new section 1886(s)(3)(A) of the Act.

TABLE 13—PROJECTED IMPACTS

Facility by type	Number of facilities	Projected impacts (% Change) Outlier	CBSA wage index & labor share	Total with market basket & other adjustment [1]
(1)	(2)	(3)	(4)	(5)
All Facilities	1,679	0.11	0.00	2.26
Total Urban	1,303	0.11	0.02	2.28
Total Rural	376	0.09	−0.10	2.14
Urban DPU	899	0.15	−0.01	2.29
Urban CAH unit	14	0.35	−0.30	2.20
Urban hospital	390	0.03	0.07	2.26
Rural DPU	259	0.11	−0.13	2.13
Rural CAH unit	53	0.06	0.17	2.39
Rural hospital	64	0.03	−0.13	2.05
Freestanding IPF By Type of Ownership:				
Urban Psychiatric Hospitals:				
Government	170	0.03	0.03	2.22
Non-Profit	115	0.03	0.16	2.35
For-Profit	105	0.03	0.02	2.20
Rural Psychiatric Hospitals:				
Government	41	0.03	−0.51	1.66
Non-Profit	10	0.04	0.20	2.40
For-Profit	13	0.01	0.88	3.06
IPF Units By Type of Ownership:				
Urban DPU:				
Government	156	0.23	0.30	2.69
Non-Profit	616	0.14	−0.13	2.17
For-Profit	127	0.10	0.12	2.37
Urban CAH:				
Government	5	0.53	−1.61	1.03
Non-Profit	8	0.28	0.13	2.56
For-Profit	1	0.03	3.18	5.43
Rural DPU:				
Government	61	0.12	0.08	2.35
Non-Profit	150	0.11	−0.26	2.00
For-Profit	48	0.11	−0.03	2.24
Rural CAH:				
Government	21	0.05	0.43	2.64
Non-Profit	28	0.07	−0.01	2.21
For-Profit	4	0.07	0.09	2.32
By Teaching Status:				
Non-teaching	1,442	0.10	−0.03	2.22
Less than 10% interns and residents to beds	131	0.11	0.15	2.42
10% to 30% interns and residents to beds	73	0.19	0.07	2.41
More than 30% interns and residents to beds	33	0.27	−0.11	2.31
By Region:				
New England	118	0.15	0.52	2.83
Mid-Atlantic	285	0.09	−0.04	2.20
South Atlantic	234	0.09	−0.03	2.21
East North Central	284	0.14	−0.40	1.88
East South Central	167	0.08	0.01	2.24
West North Central	149	0.11	0.07	2.33
West South Central	228	0.09	−0.08	2.16
Mountain	85	0.11	0.67	2.95
Pacific	129	0.15	0.02	2.32
By Bed Size:				
Psychiatric Hospitals:				
Under 12 beds	3	0.01	−0.31	1.84
Beds: 12–24	64	0.08	0.60	2.85
Beds: 25–49	69	0.08	0.09	2.32
Beds: 50–75	74	0.04	0.58	2.78
Over 75 beds	244	0.02	−0.13	2.03
Psychiatric Units:				
Under 12 beds	191	0.18	−0.09	2.24
Beds: 12–24	529	0.16	−0.16	2.14
Beds: 25–49	335	0.14	0.00	2.30
Beds: 50–75	106	0.13	−0.15	2.13

TABLE 13—PROJECTED IMPACTS—Continued

Facility by type	Number of facilities	Outlier	CBSA wage index & labor share	Total with market basket & other adjustment [1]
	Projected impacts (% Change)			
(1)	(2)	(3)	(4)	(5)
Over 75 beds	64	0.13	0.36	2.65

[1] This column shows changes in payments from RY 2010 to RY 2011. It reflects the impact of the RY 2011 market basket update with the "Other Adjustment" for the rate year beginning in 2010, as required by new section 1886(s)(3)(A) of the Act. The RY 2011 market basket update is 2.4% and the "Other Adjustment" for the rate year beginning in 2010 is −0.25%. It incorporates all of the changes displayed in Columns 3 and 4. The product of these impacts may be different from the percentage changes shown here due to rounding effects.

3. Results

Table 13 above displays the results of our analysis. The table groups IPFs into the categories listed below based on characteristics provided in the Provider of Services (POS) file, the IPF provider specific file, and cost report data from HCRIS:

- Facility Type.
- Location.
- Teaching Status Adjustment.
- Census Region.
- Size.

The top row of the table shows the overall impact on the 1,679 IPFs included in the analysis.

In column 3, we present the effects of the update to the outlier fixed dollar loss threshold amount. We estimate total outlier payments in RY 2010 to be approximately 1.9 percent of total estimated payments. Therefore, we are updating the threshold from $6,565 in RY 2010 to $6,372 in RY 2011 in order to maintain total estimated outlier payments equal to 2 percent of total estimated payments for RY 2011. The overall aggregate effect of this change (as shown in column 3 of table 13), across all hospital groups, is to increase total estimated payments to IPFs by about 0.11 percent. All categories of IPFs are projected to receive either an increase or no change in payments. There are distributional effects of this change among different categories of IPFs. Urban and rural, freestanding psychiatric hospitals; urban, for-profit IPF units located in CAHs; and psychiatric hospitals with under 12 beds and 50 or more will experience approximately a zero percent change in their payments. Alternatively, urban, government IPF units located in CAHs will receive the largest increase of 0.53 percent.

In column 4, we present the effects of the budget-neutral update to the labor-related share and the wage index adjustment under the CBSA geographic area definitions announced by OMB in June 2003. This is a comparison of the simulated RY 2011 payments under the FY 2010 hospital wage index under CBSA classification and associated labor-related share to the simulated RY 2010 payments under the FY 2009 hospital wage index under CBSA classifications and associated labor-related share. We note that there is no projected change in aggregate payments to IPFs, as indicated in the first row of column 4. However, there would be distributional effects among different categories of IPFs. For example, urban, government IPF units located in CAHs will experience a 1.61 percent decrease in payments. An urban, for-profit IPF CAH unit will receive the largest increase of 3.18 percent.

Column 5 compares our estimates of the changes reflected in this notice for RY 2011, to our estimates of payments for RY 2010 (without these changes). This column reflects all RY 2011 changes relative to RY 2010 (as shown in columns 3 and 4 and including the market basket update with the −.25% "Other Adjustment"). The average increase for all IPFs is approximately 2.26 percent. This increase includes the effects of the market basket update (2.4%) with the "Other Adjustment" (−0.25%) resulting in a 2.15 percent increase in total RY 2011 payments, and an approximate 0.11 percent increase in RY 2011 payments due to the update to the outlier fixed dollar loss threshold.

Overall, the largest payment increases ranging from 3.06 percent to 5.43 percent are projected to be among rural, for-profit freestanding IPFs and urban, for-profit IPF units located in CAHs. Urban, government IPF units located in CAHs will receive the smallest increase of 1.03 percent.

4. Effect on the Medicare Program

Based on actuarial projections resulting from our experience with other PPSs, we estimate that Medicare spending (total Medicare program payments) for IPF services over the next 5 years would be as shown in Table 14 below.

TABLE 14—ESTIMATED PAYMENTS

Rate year	Dollars in millions
July 1, 2010 to June 30, 2011	$4,438
July 1, 2011 to June 30, 2012	4,685
July 1, 2012 to June 30, 2013	4,930
July 1, 2013 to June 30, 2014	5,178
July 1, 2014 to June 30, 2015	5,450

These estimates are based on the current forecast of the increases in the RPL market basket, including an adjustment for productivity, for which we are using a preliminary estimate, for the rate year beginning in 2012 and each subsequent rate year, as required by new section 1886(s)(3)(A) of the Act, as follows:

- 2.4 percent for rate years beginning in 2010 (RY 2011).
- 2.9 percent for rate years beginning in 2011 (RY 2012).
- 1.7 percent for rate years beginning in 2012 (RY 2013).
- 1.9 percent for rate years beginning in 2013 (RY 2014).
- 2.1 percent for rate years beginning in 2014 (RY 2015).

The estimates in Table 14 also include the application of the "Other Adjustment," as required by section 1886(s)(A)(3) of the Act, as follows:

- −0.25 percent for rate years beginning in 2010.
- −0.25 percent for rate years beginning in 2011.
- −0.1 percent for rate years beginning in 2012.
- −0.1 percent for rate years beginning in 2013.
- −0.3 percent for rate years beginning in 2014.

We estimate that there would be a change in fee-for-service Medicare beneficiary enrollment as follows:

- 2.5 percent in RY 2011.
- 3.2 percent in RY 2012.
- 3.1 percent in RY 2013.

- 3.1 percent in RY 2014.
- 2.8 percent in RY 2015.

5. Effect on Beneficiaries

Under the IPF PPS, IPFs will receive payment based on the average resources consumed by patients for each day. We do not expect changes in the quality of care or access to services for Medicare beneficiaries under the RY 2011 IPF PPS. In fact, we believe that access to IPF services will be enhanced due to the patient- and facility-level adjustment factors, all of which are intended to adequately reimburse IPFs for expensive cases. Finally, the outlier policy is intended to assist IPFs that experience high-cost cases.

C. Alternatives Considered

The statute does not specify an update strategy for the IPF PPS and is broadly written to give the Secretary discretion in establishing an update methodology. Therefore, we are updating the IPF PPS using the methodology published in the November 2004 IPF PPS final rule.

We note that this notice does not initiate any policy changes with regard to the IPF PPS; rather, it simply provides an update to the rates for RY 2011. Therefore, no options were considered.

D. Accounting Statement

As required by OMB Circular A–4 (available at *http://www.whitehouse.gov/omb/circulars/a004/a-4.pdf*), in Table 15 below, we have prepared an accounting statement showing the classification of the expenditures associated with the provisions of this notice. This table provides our best estimate of the increase in Medicare payments under the IPF PPS notice, as a result of the changes presented in this notice, and based on the data for 1,679 IPFs in our database. All expenditures are classified as transfers to Medicare providers (that is, IPFs).

TABLE 15—ACCOUNTING STATEMENT: CLASSIFICATION OF ESTIMATED EXPENDITURES, FROM THE 2010 IPF PPS RY TO THE 2011 IPF PPS RY

[In millions]

Category	Transfers
Annualized Monetized Transfers.	$95.
From Whom To Whom?	Federal Government To IPF Medicare Providers.

In accordance with the provisions of Executive Order 12866, this notice was reviewed by OMB.

(Catalog of Federal Domestic Assistance Program No. 93.773, Medicare—Hospital Insurance; and Program No. 93.774, Medicare—Supplementary Medical Insurance Program)

Dated: March 4, 2010.

Charlene Frizzera,

Acting Administrator, Centers for Medicare & Medicaid Services.

Approved: April 20, 2010.

Kathleen Sebelius,

Secretary.

Addendum A—Rate and Adjustment Factors

PER DIEM RATE

Federal *Per Diem* Base Rate	$665.71
Labor Share (0.75400)	501.95
Non-Labor Share (0.24600)	163.76

Fixed Dollar Loss Threshold Amount: $6,372.

Wage Index Budget Neutrality Factor: 0.9999.

FACILITY ADJUSTMENTS

Rural Adjustment Factor.	1.17.
Teaching Adjustment Factor.	0.5150.
Wage Index	Pre-reclass Hospital Wage Index (FY 2010).

COST OF LIVING ADJUSTMENTS (COLAS)

Alaska	
Anchorage	1.23
Fairbanks	1.23
Juneau	1.23
Rest of Alaska	1.25
Hawaii	
Honolulu County	1.25
Hawaii County	1.18
Kauai County	1.25
Maui County	1.25
Kalawao County	1.25

PATIENT ADJUSTMENTS

ECT—Per Treatment	$286.60

VARIABLE PER DIEM ADJUSTMENTS

	Adjustment factor
Day 1—Facility Without a Qualifying Emergency Department	1.19
Day 1—Facility With a Qualifying Emergency Department	1.31
Day 2	1.12
Day 3	1.08
Day 4	1.05
Day 5	1.04
Day 6	1.02
Day 7	1.01
Day 8	1.01
Day 9	1.00
Day 10	1.00
Day 11	0.99
Day 12	0.99
Day 13	0.99
Day 14	0.99
Day 15	0.98
Day 16	0.97
Day 17	0.97
Day 18	0.96
Day 19	0.95
Day 20	0.95
Day 21	0.95
After Day 21	0.92

AGE ADJUSTMENTS

Age (in years)	Adjustment factor
Under 45	1.00
45 and under 50	1.01
50 and under 55	1.02
55 and under 60	1.04
60 and under 65	1.07
65 and under 70	1.10
70 and under 75	1.13
75 and under 80	1.15
80 and over	1.17

DRG ADJUSTMENTS

MS–DRG	MS–DRG descriptions	Adjustment factor
056	Degenerative nervous system disorders w MCC	1.05

DRG ADJUSTMENTS—Continued

MS–DRG	MS–DRG descriptions	Adjustment factor
057	Degenerative nervous system disorders w/o MCC.	
080	Nontraumatic stupor & coma w MCC	1.07
081	Nontraumatic stupor & coma w/o MCC.	
876	O.R. procedure w principal diagnoses of mental illness	1.22
880	Acute adjustment reaction & psychosocial dysfunction	1.05
881	Depressive neuroses	0.99
882	Neuroses except depressive	1.02
883	Disorders of personality & impulse control	1.02
884	Organic disturbances & mental retardation	1.03
885	Psychoses	1.00
886	Behavioral & developmental disorders	0.99
887	Other mental disorder diagnoses	0.92
894	Alcohol/drug abuse or dependence, left AMA	0.97
895	Alcohol/drug abuse or dependence w rehabilitation therapy	1.02
896	Alcohol/drug abuse or dependence w/o rehabilitation therapy w MCC	0.88
897	Alcohol/drug abuse or dependence w/o rehabilitation therapy w/o MCC.	

COMORBIDITY ADJUSTMENTS

Comorbidity	Adjustment factor
Developmental Disabilities	1.04
Coagulation Factor Deficit	1.13
Tracheostomy	1.06
Eating and Conduct Disorders	1.12
Infectious Diseases	1.07
Renal Failure, Acute	1.11
Renal Failure, Chronic	1.11
Oncology Treatment	1.07
Uncontrolled Diabetes Mellitus	1.05
Severe Protein Malnutrition	1.13
Drug/Alcohol Induced Mental Disorders	1.03
Cardiac Conditions	1.11
Gangrene	1.10
Chronic Obstructive Pulmonary Disease	1.12
Artificial Openings—Digestive & Urinary	1.08
Severe Musculoskeletal & Connective Tissue Diseases	1.09
Poisoning	1.11

Addendum B—RY 2011 CBSA Wage Index Tables

In this addendum, we provide Tables 1 and 2 which indicate the CBSA-based wage index values for urban and rural providers.

TABLE 1—RY 2011 WAGE INDEX FOR URBAN AREAS BASED ON CBSA LABOR MARKET AREAS

CBSA code	Urban area (constituent counties)	Wage index
10180	Abilene, TX	0.7946
	Callahan County, TX	
	Jones County, TX	
	Taylor County, TX	
10380	Aguadilla-Isabela-San Sebastián, PR	0.3462
	Aguada Municipio, PR	
	Aguadilla Municipio, PR	
	Añasco Municipio, PR	
	Isabela Municipio, PR	
	Lares Municipio, PR	
	Moca Municipio, PR	
	Rincón Municipio, PR	
	San Sebastián Municipio, PR	
10420	Akron, OH	0.8850
	Portage County, OH	
	Summit County, OH	
10500	Albany, GA	0.8899

TABLE 1—RY 2011 WAGE INDEX FOR URBAN AREAS BASED ON CBSA LABOR MARKET AREAS—Continued

CBSA code	Urban area (constituent counties)	Wage index
	Baker County, GA	
	Dougherty County, GA	
	Lee County, GA	
	Terrell County, GA	
	Worth County, GA	
10580	Albany-Schenectady-Troy, NY	0.8777
	Albany County, NY	
	Rensselaer County, NY	
	Saratoga County, NY	
	Schenectady County, NY	
	Schoharie County, NY	
10740	Albuquerque, NM	0.9399
	Bernalillo County, NM	
	Sandoval County, NM	
	Torrance County, NM	
	Valencia County, NM	
10780	Alexandria, LA	0.8012
	Grant Parish, LA	
	Rapides Parish, LA	
10900	Allentown-Bethlehem-Easton, PA-NJ	0.9611
	Warren County, NJ	
	Carbon County, PA	
	Lehigh County, PA	
	Northampton County, PA	
11020	Altoona, PA	0.8863
	Blair County, PA	
11100	Amarillo, TX	0.8689
	Armstrong County, TX	
	Carson County, TX	
	Potter County, TX	
	Randall County, TX	
11180	Ames, IA	0.9493
	Story County, IA	
11260	Anchorage, AK	1.2013
	Anchorage Municipality, AK	
	Matanuska-Susitna Borough, AK	
11300	Anderson, IN	0.9052
	Madison County, IN	
11340	Anderson, SC	0.9023
	Anderson County, SC	
11460	Ann Arbor, MI	1.0293
	Washtenaw County, MI	
11500	Anniston-Oxford, AL	0.7643
	Calhoun County, AL	
11540	Appleton, WI	0.9289
	Calumet County, WI	
	Outagamie County, WI	
11700	Asheville, NC	0.9057
	Buncombe County, NC	
	Haywood County, NC	
	Henderson County, NC	
	Madison County, NC	
12020	Athens-Clarke County, GA	0.9492
	Clarke County, GA	
	Madison County, GA	
	Oconee County, GA	
	Oglethorpe County, GA	
12060	Atlanta-Sandy Springs-Marietta, GA	0.9591
	Barrow County, GA	
	Bartow County, GA	
	Butts County, GA	
	Carroll County, GA	
	Cherokee County, GA	
	Clayton County, GA	
	Cobb County, GA	
	Coweta County, GA	
	Dawson County, GA	
	DeKalb County, GA	
	Douglas County, GA	
	Fayette County, GA	
	Forsyth County, GA	

TABLE 1—RY 2011 WAGE INDEX FOR URBAN AREAS BASED ON CBSA LABOR MARKET AREAS—Continued

CBSA code	Urban area (constituent counties)	Wage index
	Fulton County, GA	
	Gwinnett County, GA	
	Haralson County, GA	
	Heard County, GA	
	Henry County, GA	
	Jasper County, GA	
	Lamar County, GA	
	Meriwether County, GA	
	Newton County, GA	
	Paulding County, GA	
	Pickens County, GA	
	Pike County, GA	
	Rockdale County, GA	
	Spalding County, GA	
	Walton County, GA	
12100	Atlantic City-Hammonton, NJ	1.1554
	Atlantic County, NJ	
12220	Auburn-Opelika, AL	0.8138
	Lee County, AL	
12260	Augusta-Richmond County, GA-SC	0.9409
	Burke County, GA	
	Columbia County, GA	
	McDuffie County, GA	
	Richmond County, GA	
	Aiken County, SC	
	Edgefield County, SC	
12420	Austin-Round Rock, TX	0.9518
	Bastrop County, TX	
	Caldwell County, TX	
	Hays County, TX	
	Travis County, TX	
	Williamson County, TX	
12540	Bakersfield, CA	1.1232
	Kern County, CA	
12580	Baltimore-Towson, MD	1.0214
	Anne Arundel County, MD	
	Baltimore County, MD	
	Carroll County, MD	
	Harford County, MD	
	Howard County, MD	
	Queen Anne's County, MD	
	Baltimore City, MD	
12620	Bangor, ME	1.0154
	Penobscot County, ME	
12700	Barnstable Town, MA	1.2618
	Barnstable County, MA	
12940	Baton Rouge, LA	0.8180
	Ascension Parish, LA	
	East Baton Rouge Parish, LA	
	East Feliciana Parish, LA	
	Iberville Parish, LA	
	Livingston Parish, LA	
	Pointe Coupee Parish, LA	
	St. Helena Parish, LA	
	West Baton Rouge Parish, LA	
	West Feliciana Parish, LA	
12980	Battle Creek, MI	1.0000
	Calhoun County, MI	
13020	Bay City, MI	0.9267
	Bay County, MI	
13140	Beaumont-Port Arthur, TX	0.8383
	Hardin County, TX	
	Jefferson County, TX	
	Orange County, TX	
13380	Bellingham, WA	1.1395
	Whatcom County, WA	
13460	Bend, OR	1.1446
	Deschutes County, OR	
13644	Bethesda-Frederick-Gaithersburg, MD	1.0298
	Frederick County, MD	
	Montgomery County, MD	

TABLE 1—RY 2011 WAGE INDEX FOR URBAN AREAS BASED ON CBSA LABOR MARKET AREAS—Continued

CBSA code	Urban area (constituent counties)	Wage index
13740	Billings, MT	0.8781
	Carbon County, MT	
	Yellowstone County, MT	
13780	Binghamton, NY	0.8780
	Broome County, NY	
	Tioga County, NY	
13820	Birmingham-Hoover, AL	0.8554
	Bibb County, AL	
	Blount County, AL	
	Chilton County, AL	
	Jefferson County, AL	
	St. Clair County, AL	
	Shelby County, AL	
	Walker County, AL	
13900	Bismarck, ND	0.7637
	Burleigh County, ND	
	Morton County, ND	
13980	Blacksburg-Christiansburg-Radford, VA	0.8394
	Giles County, VA	
	Montgomery County, VA	
	Pulaski County, VA	
	Radford City, VA	
14020	Bloomington, IN	0.9043
	Greene County, IN	
	Monroe County, IN	
	Owen County, IN	
14060	Bloomington-Normal, IL	0.9378
	McLean County, IL	
14260	Boise City-Nampa, ID	0.9318
	Ada County, ID	
	Boise County, ID	
	Canyon County, ID	
	Gem County, ID	
	Owyhee County, ID	
14484	Boston-Quincy, MA	1.2186
	Norfolk County, MA	
	Plymouth County, MA	
	Suffolk County, MA	
14500	Boulder, CO	1.0266
	Boulder County, CO	
14540	Bowling Green, KY	0.8469
	Edmonson County, KY	
	Warren County, KY	
14600	Bradenton-Sarasota-Venice, FL	0.9735
	Manatee County, FL	
	Sarasota County, FL	
14740	Bremerton-Silverdale, WA	1.0755
	Kitsap County, WA	
14860	Bridgeport-Stamford-Norwalk, CT	1.2792
	Fairfield County, CT	
15180	Brownsville-Harlingen, TX	0.9020
	Cameron County, TX	
15260	Brunswick, GA	0.9178
	Brantley County, GA	
	Glynn County, GA	
	McIntosh County, GA	
15380	Buffalo-Niagara Falls, NY	0.9740
	Erie County, NY	
	Niagara County, NY	
15500	Burlington, NC	0.8749
	Alamance County, NC	
15540	Burlington-South Burlington, VT	1.0106
	Chittenden County, VT	
	Franklin County, VT	
	Grand Isle County, VT	
15764	Cambridge-Newton-Framingham, MA	1.1278
	Middlesex County, MA	
15804	Camden, NJ	1.0374
	Burlington County, NJ	
	Camden County, NJ	
	Gloucester County, NJ	

TABLE 1—RY 2011 WAGE INDEX FOR URBAN AREAS BASED ON CBSA LABOR MARKET AREAS—Continued

CBSA code	Urban area (constituent counties)	Wage index
15940	Canton-Massillon, OH	0.8813
	Carroll County, OH	
	Stark County, OH	
15980	Cape Coral-Fort Myers, FL	0.9076
	Lee County, FL	
16020	Cape Girardeau-Jackson, MO-IL	0.9047
	Alexander County, IL	
	Bollinger County, MO	
	Cape Girardeau County, MO	
16180	Carson City, NV	1.0531
	Carson City, NV	
16220	Casper, WY	0.9520
	Natrona County, WY	
16300	Cedar Rapids, IA	0.8984
	Benton County, IA	
	Jones County, IA	
	Linn County, IA	
16580	Champaign-Urbana, IL	1.0108
	Champaign County, IL	
	Ford County, IL	
	Piatt County, IL	
16620	Charleston, WV	0.8141
	Boone County, WV	
	Clay County, WV	
	Kanawha County, WV	
	Lincoln County, WV	
	Putnam County, WV	
16700	Charleston-North Charleston-Summerville, SC	0.9279
	Berkeley County, SC	
	Charleston County, SC	
	Dorchester County, SC	
16740	Charlotte-Gastonia-Concord, NC-SC	0.9474
	Anson County, NC	
	Cabarrus County, NC	
	Gaston County, NC	
	Mecklenburg County, NC	
	Union County, NC	
	York County, SC	
16820	Charlottesville, VA	0.9372
	Albemarle County, VA	
	Fluvanna County, VA	
	Greene County, VA	
	Nelson County, VA	
	Charlottesville City, VA	
16860	Chattanooga, TN-GA	0.8831
	Catoosa County, GA	
	Dade County, GA	
	Walker County, GA	
	Hamilton County, TN	
	Marion County, TN	
	Sequatchie County, TN	
16940	Cheyenne, WY	0.9344
	Laramie County, WY	
16974	Chicago-Naperville-Joliet, IL	1.0471
	Cook County, IL	
	DeKalb County, IL	
	DuPage County, IL	
	Grundy County, IL	
	Kane County, IL	
	Kendall County, IL	
	McHenry County, IL	
	Will County, IL	
17020	Chico, CA	1.1198
	Butte County, CA	
17140	Cincinnati-Middletown, OH-KY-IN	0.9483
	Dearborn County, IN	
	Franklin County, IN	
	Ohio County, IN	
	Boone County, KY	
	Bracken County, KY	
	Campbell County, KY	

TABLE 1—RY 2011 WAGE INDEX FOR URBAN AREAS BASED ON CBSA LABOR MARKET AREAS—Continued

CBSA code	Urban area (constituent counties)	Wage index
	Gallatin County, KY	
	Grant County, KY	
	Kenton County, KY	
	Pendleton County, KY	
	Brown County, OH	
	Butler County, OH	
	Clermont County, OH	
	Hamilton County, OH	
	Warren County, OH	
17300	Clarksville, TN-KY	0.7980
	Christian County, KY	
	Trigg County, KY	
	Montgomery County, TN	
	Stewart County, TN	
17420	Cleveland, TN	0.7564
	Bradley County, TN	
	Polk County, TN	
17460	Cleveland-Elyria-Mentor, OH	0.8914
	Cuyahoga County, OH	
	Geauga County, OH	
	Lake County, OH	
	Lorain County, OH	
	Medina County, OH	
17660	Coeur d'Alene, ID	0.9235
	Kootenai County, ID	
17780	College Station-Bryan, TX	0.9498
	Brazos County, TX	
	Burleson County, TX	
	Robertson County, TX	
17820	Colorado Springs, CO	0.9821
	El Paso County, CO	
	Teller County, CO	
17860	Columbia, MO	0.8618
	Boone County, MO	
	Howard County, MO	
17900	Columbia, SC	0.8789
	Calhoun County, SC	
	Fairfield County, SC	
	Kershaw County, SC	
	Lexington County, SC	
	Richland County, SC	
	Saluda County, SC	
17980	Columbus, GA-AL	0.8724
	Russell County, AL	
	Chattahoochee County, GA	
	Harris County, GA	
	Marion County, GA	
	Muscogee County, GA	
18020	Columbus, IN	0.9536
	Bartholomew County, IN	
18140	Columbus, OH	1.0101
	Delaware County, OH	
	Fairfield County, OH	
	Franklin County, OH	
	Licking County, OH	
	Madison County, OH	
	Morrow County, OH	
	Pickaway County, OH	
	Union County, OH	
18580	Corpus Christi, TX	0.8693
	Aransas County, TX	
	Nueces County, TX	
	San Patricio County, TX	
18700	Corvallis, OR	1.1002
	Benton County, OR	
19060	Cumberland, MD-WV	0.8045
	Allegany County, MD	
	Mineral County, WV	
19124	Dallas-Plano-Irving, TX	0.9853
	Collin County, TX	
	Dallas County, TX	

TABLE 1—RY 2011 WAGE INDEX FOR URBAN AREAS BASED ON CBSA LABOR MARKET AREAS—Continued

CBSA code	Urban area (constituent counties)	Wage index
	Delta County, TX	
	Denton County, TX	
	Ellis County, TX	
	Hunt County, TX	
	Kaufman County, TX	
	Rockwall County, TX	
19140	Dalton, GA	0.8666
	Murray County, GA	
	Whitfield County, GA	
19180	Danville, IL	0.8738
	Vermilion County, IL	
19260	Danville, VA	0.8323
	Pittsylvania County, VA	
	Danville City, VA	
19340	Davenport-Moline-Rock Island, IA-IL	0.8284
	Henry County, IL	
	Mercer County, IL	
	Rock Island County, IL	
	Scott County, IA	
19380	Dayton, OH	0.9211
	Greene County, OH	
	Miami County, OH	
	Montgomery County, OH	
	Preble County, OH	
19460	Decatur, AL	0.7799
	Lawrence County, AL	
	Morgan County, AL	
19500	Decatur, IL	0.7995
	Macon County, IL	
19660	Deltona-Daytona Beach-Ormond Beach, FL	0.8865
	Volusia County, FL	
19740	Denver-Aurora-Broomfield, CO	1.0731
	Adams County, CO	
	Arapahoe County, CO	
	Broomfield County, CO	
	Clear Creek County, CO	
	Denver County, CO	
	Douglas County, CO	
	Elbert County, CO	
	Gilpin County, CO	
	Jefferson County, CO	
	Park County, CO	
19780	Des Moines-West Des Moines, IA	0.9649
	Dallas County, IA	
	Guthrie County, IA	
	Madison County, IA	
	Polk County, IA	
	Warren County, IA	
19804	Detroit-Livonia-Dearborn, MI	0.9729
	Wayne County, MI	
20020	Dothan, AL	0.7406
	Geneva County, AL	
	Henry County, AL	
	Houston County, AL	
20100	Dover, DE	0.9931
	Kent County, DE	
20220	Dubuque, IA	0.8869
	Dubuque County, IA	
20260	Duluth, MN-WI	1.0448
	Carlton County, MN	
	St. Louis County, MN	
	Douglas County, WI	
20500	Durham-Chapel Hill, NC	0.9618
	Chatham County, NC	
	Durham County, NC	
	Orange County, NC	
	Person County, NC	
20740	Eau Claire, WI	0.9567
	Chippewa County, WI	
	Eau Claire County, WI	
20764	Edison-New Brunswick, NJ	1.1061

TABLE 1—RY 2011 WAGE INDEX FOR URBAN AREAS BASED ON CBSA LABOR MARKET AREAS—Continued

CBSA code	Urban area (constituent counties)	Wage index
	Middlesex County, NJ	
	Monmouth County, NJ	
	Ocean County, NJ	
	Somerset County, NJ	
20940	El Centro, CA	0.8766
	Imperial County, CA	
21060	Elizabethtown, KY	0.8388
	Hardin County, KY	
	Larue County, KY	
21140	Elkhart-Goshen, IN	0.9489
	Elkhart County, IN	
21300	Elmira, NY	0.8341
	Chemung County, NY	
21340	El Paso, TX	0.8541
	El Paso County, TX	
21500	Erie, PA	0.8779
	Erie County, PA	
21660	Eugene-Springfield, OR	1.1034
	Lane County, OR	
21780	Evansville, IN-KY	0.8522
	Gibson County, IN	
	Posey County, IN	
	Vanderburgh County, IN	
	Warrick County, IN	
	Henderson County, KY	
	Webster County, KY	
21820	Fairbanks, AK	1.1114
	Fairbanks North Star Borough, AK	
21940	Fajardo, PR	0.3790
	Ceiba Municipio, PR	
	Fajardo Municipio, PR	
	Luquillo Municipio, PR	
22020	Fargo, ND-MN	0.8172
	Cass County, ND	
	Clay County, MN	
22140	Farmington, NM	0.7889
	San Juan County, NM	
22180	Fayetteville, NC	0.9358
	Cumberland County, NC	
	Hoke County, NC	
22220	Fayetteville-Springdale-Rogers, AR-MO	0.8775
	Benton County, AR	
	Madison County, AR	
	Washington County, AR	
	McDonald County, MO	
22380	Flagstaff, AZ	1.2475
	Coconino County, AZ	
22420	Flint, MI	1.1234
	Genesee County, MI	
22500	Florence, SC	0.8114
	Darlington County, SC	
	Florence County, SC	
22520	Florence-Muscle Shoals, AL	0.7998
	Colbert County, AL	
	Lauderdale County, AL	
22540	Fond du Lac, WI	0.9660
	Fond du Lac County, WI	
22660	Fort Collins-Loveland, CO	1.0175
	Larimer County, CO	
22744	Fort Lauderdale-Pompano Beach-Deerfield Beach, FL	1.0383
	Broward County, FL	
22900	Fort Smith, AR-OK	0.7861
	Crawford County, AR	
	Franklin County, AR	
	Sebastian County, AR	
	Le Flore County, OK	
	Sequoyah County, OK	
23020	Fort Walton Beach-Crestview-Destin, FL	0.8758
	Okaloosa County, FL	
23060	Fort Wayne, IN	0.9012
	Allen County, IN	

TABLE 1—RY 2011 WAGE INDEX FOR URBAN AREAS BASED ON CBSA LABOR MARKET AREAS—Continued

CBSA code	Urban area (constituent counties)	Wage index
	Wells County, IN	
	Whitley County, IN	
23104	Fort Worth-Arlington, TX	0.9499
	Johnson County, TX	
	Parker County, TX	
	Tarrant County, TX	
	Wise County, TX	
23420	Fresno, CA	1.1267
	Fresno County, CA	
23460	Gadsden, AL	0.8266
	Etowah County, AL	
23540	Gainesville, FL	0.8978
	Alachua County, FL	
	Gilchrist County, FL	
23580	Gainesville, GA	0.9123
	Hall County, GA	
23844	Gary, IN	0.9288
	Jasper County, IN	
	Lake County, IN	
	Newton County, IN	
	Porter County, IN	
24020	Glens Falls, NY	0.8456
	Warren County, NY	
	Washington County, NY	
24140	Goldsboro, NC	0.9056
	Wayne County, NC	
24220	Grand Forks, ND-MN	0.7775
	Polk County, MN	
	Grand Forks County, ND	
24300	Grand Junction, CO	0.9721
	Mesa County, CO	
24340	Grand Rapids-Wyoming, MI	0.9178
	Barry County, MI	
	Ionia County, MI	
	Kent County, MI	
	Newaygo County, MI	
24500	Great Falls, MT	0.8354
	Cascade County, MT	
24540	Greeley, CO	0.9578
	Weld County, CO	
24580	Green Bay, WI	0.9621
	Brown County, WI	
	Kewaunee County, WI	
	Oconto County, WI	
24660	Greensboro-High Point, NC	0.9062
	Guilford County, NC	
	Randolph County, NC	
	Rockingham County, NC	
24780	Greenville, NC	0.9401
	Greene County, NC	
	Pitt County, NC	
24860	Greenville-Mauldin-Easley, SC	0.9980
	Greenville County, SC	
	Laurens County, SC	
	Pickens County, SC	
25020	Guayama, PR	0.3537
	Arroyo Municipio, PR	
	Guayama Municipio, PR	
	Patillas Municipio, PR	
25060	Gulfport-Biloxi, MS	0.8783
	Hancock County, MS	
	Harrison County, MS	
	Stone County, MS	
25180	Hagerstown-Martinsburg, MD-WV	0.8965
	Washington County, MD	
	Berkeley County, WV	
	Morgan County, WV	
25260	Hanford-Corcoran, CA	1.1010
	Kings County, CA	
25420	Harrisburg-Carlisle, PA	0.9286
	Cumberland County, PA	

TABLE 1—RY 2011 WAGE INDEX FOR URBAN AREAS BASED ON CBSA LABOR MARKET AREAS—Continued

CBSA code	Urban area (constituent counties)	Wage index
	Dauphin County, PA	
	Perry County, PA	
25500	Harrisonburg, VA	0.9025
	Rockingham County, VA	
	Harrisonburg City, VA	
25540	Hartford-West Hartford-East Hartford, CT	1.1194
	Hartford County, CT	
	Middlesex County, CT	
	Tolland County, CT	
25620	Hattiesburg, MS	0.7664
	Forrest County, MS	
	Lamar County, MS	
	Perry County, MS	
25860	Hickory-Lenoir-Morganton, NC	0.9000
	Alexander County, NC	
	Burke County, NC	
	Caldwell County, NC	
	Catawba County, NC	
25980	Hinesville-Fort Stewart, GA [1]	0.9028
	Liberty County, GA	
	Long County, GA	
26100	Holland-Grand Haven, MI	0.8696
	Ottawa County, MI	
26180	Honolulu, HI	1.1662
	Honolulu County, HI	
26300	Hot Springs, AR	0.9004
	Garland County, AR	
26380	Houma-Bayou Cane-Thibodaux, LA	0.7875
	Lafourche Parish, LA	
	Terrebonne Parish, LA	
26420	Houston-Sugar Land-Baytown, TX	0.9841
	Austin County, TX	
	Brazoria County, TX	
	Chambers County, TX	
	Fort Bend County, TX	
	Galveston County, TX	
	Harris County, TX	
	Liberty County, TX	
	Montgomery County, TX	
	San Jacinto County, TX	
	Waller County, TX	
26580	Huntington-Ashland, WV-KY-OH	0.9097
	Boyd County, KY	
	Greenup County, KY	
	Lawrence County, OH	
	Cabell County, WV	
	Wayne County, WV	
26620	Huntsville, AL	0.9064
	Limestone County, AL	
	Madison County, AL	
26820	Idaho Falls, ID	0.9436
	Bonneville County, ID	
	Jefferson County, ID	
26900	Indianapolis-Carmel, IN	0.9742
	Boone County, IN	
	Brown County, IN	
	Hamilton County, IN	
	Hancock County, IN	
	Hendricks County, IN	
	Johnson County, IN	
	Marion County, IN	
	Morgan County, IN	
	Putnam County, IN	
	Shelby County, IN	
26980	Iowa City, IA	0.9548
	Johnson County, IA	
	Washington County, IA	
27060	Ithaca, NY	1.0112
	Tompkins County, NY	
27100	Jackson, MI	0.8720
	Jackson County, MI	

TABLE 1—RY 2011 WAGE INDEX FOR URBAN AREAS BASED ON CBSA LABOR MARKET AREAS—Continued

CBSA code	Urban area (constituent counties)	Wage index
27140	Jackson, MS	0.8186
	Copiah County, MS	
	Hinds County, MS	
	Madison County, MS	
	Rankin County, MS	
	Simpson County, MS	
27180	Jackson, TN	0.8581
	Chester County, TN	
	Madison County, TN	
27260	Jacksonville, FL	0.9105
	Baker County, FL	
	Clay County, FL	
	Duval County, FL	
	Nassau County, FL	
	St. Johns County, FL	
27340	Jacksonville, NC	0.8026
	Onslow County, NC	
27500	Janesville, WI	0.9201
	Rock County, WI	
27620	Jefferson City, MO	0.8709
	Callaway County, MO	
	Cole County, MO	
	Moniteau County, MO	
	Osage County, MO	
27740	Johnson City, TN	0.7722
	Carter County, TN	
	Unicoi County, TN	
	Washington County, TN	
27780	Johnstown, PA	0.8233
	Cambria County, PA	
27860	Jonesboro, AR	0.7722
	Craighead County, AR	
	Poinsett County, AR	
27900	Joplin, MO	0.8285
	Jasper County, MO	
	Newton County, MO	
28020	Kalamazoo-Portage, MI	1.0264
	Kalamazoo County, MI	
	Van Buren County, MI	
28100	Kankakee-Bradley, IL	1.0174
	Kankakee County, IL	
28140	Kansas City, MO-KS	0.9679
	Franklin County, KS	
	Johnson County, KS	
	Leavenworth County, KS	
	Linn County, KS	
	Miami County, KS	
	Wyandotte County, KS	
	Bates County, MO	
	Caldwell County, MO	
	Cass County, MO	
	Clay County, MO	
	Clinton County, MO	
	Jackson County, MO	
	Lafayette County, MO	
	Platte County, MO	
	Ray County, MO	
28420	Kennewick-Pasco-Richland, WA	1.0448
	Benton County, WA	
	Franklin County, WA	
28660	Killeen-Temple-Fort Hood, TX	0.8702
	Bell County, TX	
	Coryell County, TX	
	Lampasas County, TX	
28700	Kingsport-Bristol-Bristol, TN-VA	0.7999
	Hawkins County, TN	
	Sullivan County, TN	
	Bristol City, VA	
	Scott County, VA	
	Washington County, VA	
28740	Kingston, NY	0.9367

TABLE 1—RY 2011 WAGE INDEX FOR URBAN AREAS BASED ON CBSA LABOR MARKET AREAS—Continued

CBSA code	Urban area (constituent counties)	Wage index
	Ulster County, NY	
28940	Knoxville, TN	0.7881
	Anderson County, TN	
	Blount County, TN	
	Knox County, TN	
	Loudon County, TN	
	Union County, TN	
29020	Kokomo, IN	0.9862
	Howard County, IN	
	Tipton County, IN	
29100	La Crosse, WI-MN	0.9915
	Houston County, MN	
	La Crosse County, WI	
29140	Lafayette, IN	0.9181
	Benton County, IN	
	Carroll County, IN	
	Tippecanoe County, IN	
29180	Lafayette, LA	0.8516
	Lafayette Parish, LA	
	St. Martin Parish, LA	
29340	Lake Charles, LA	0.7985
	Calcasieu Parish, LA	
	Cameron Parish, LA	
29404	Lake County-Kenosha County, IL-WI	1.0475
	Lake County, IL	
	Kenosha County, WI	
29420	Lake Havasu City-Kingman, AZ	1.0567
	Mohave County, AZ	
29460	Lakeland-Winter Haven, FL	0.8390
	Polk County, FL	
29540	Lancaster, PA	0.9204
	Lancaster County, PA	
29620	Lansing-East Lansing, MI	0.9770
	Clinton County, MI	
	Eaton County, MI	
	Ingham County, MI	
29700	Laredo, TX	0.8078
	Webb County, TX	
29740	Las Cruces, NM	0.8939
	Dona Ana County, NM	
29820	Las Vegas-Paradise, NV	1.2130
	Clark County, NV	
29940	Lawrence, KS	0.8580
	Douglas County, KS	
30020	Lawton, OK	0.7847
	Comanche County, OK	
30140	Lebanon, PA	0.8119
	Lebanon County, PA	
30300	Lewiston, ID-WA	0.9570
	Nez Perce County, ID	
	Asotin County, WA	
30340	Lewiston-Auburn, ME	0.9085
	Androscoggin County, ME	
30460	Lexington-Fayette, KY	0.8889
	Bourbon County, KY	
	Clark County, KY	
	Fayette County, KY	
	Jessamine County, KY	
	Scott County, KY	
	Woodford County, KY	
30620	Lima, OH	0.9379
	Allen County, OH	
30700	Lincoln, NE	0.9563
	Lancaster County, NE	
	Seward County, NE	
30780	Little Rock-North Little Rock-Conway, AR	0.8559
	Faulkner County, AR	
	Grant County, AR	
	Lonoke County, AR	
	Perry County, AR	
	Pulaski County, AR	

TABLE 1—RY 2011 WAGE INDEX FOR URBAN AREAS BASED ON CBSA LABOR MARKET AREAS—Continued

CBSA code	Urban area (constituent counties)	Wage index
	Saline County, AR	
30860	Logan, UT-ID	0.8993
	Franklin County, ID	
	Cache County, UT	
30980	Longview, TX	0.8049
	Gregg County, TX	
	Rusk County, TX	
	Upshur County, TX	
31020	Longview, WA	1.0707
	Cowlitz County, WA	
31084	Los Angeles-Long Beach-Santa Ana, CA	1.2039
	Los Angeles County, CA	
31140	Louisville-Jefferson County, KY-IN	0.8964
	Clark County, IN	
	Floyd County, IN	
	Harrison County, IN	
	Washington County, IN	
	Bullitt County, KY	
	Henry County, KY	
	Meade County, KY	
	Nelson County, KY	
	Oldham County, KY	
	Shelby County, KY	
	Spencer County, KY	
	Trimble County, KY	
31180	Lubbock, TX	0.8751
	Crosby County, TX	
	Lubbock County, TX	
31340	Lynchburg, VA	0.8521
	Amherst County, VA	
	Appomattox County, VA	
	Bedford County, VA	
	Campbell County, VA	
	Bedford City, VA	
	Lynchburg City, VA	
31420	Macon, GA	0.9826
	Bibb County, GA	
	Crawford County, GA	
	Jones County, GA	
	Monroe County, GA	
	Twiggs County, GA	
31460	Madera-Chowchilla, CA	0.7958
	Madera County, CA	
31540	Madison, WI	1.1234
	Columbia County, WI	
	Dane County, WI	
	Iowa County, WI	
31700	Manchester-Nashua, NH	1.0171
	Hillsborough County, NH	
31740	Manhattan, KS	0.7878
	Geary County, KS	
	Pottawatomie County, KS	
	Riley County, KS	
31860	Mankato-North Mankato, MN	0.9177
	Blue Earth County, MN	
	Nicollet County, MN	
31900	Mansfield, OH	0.9100
	Richland County, OH	
32420	Mayagüez, PR	0.3704
	Hormigueros Municipio, PR	
	Mayagüez Municipio, PR	
32580	McAllen-Edinburg-Mission, TX	0.8852
	Hidalgo County, TX	
32780	Medford, OR	1.0070
	Jackson County, OR	
32820	Memphis, TN-MS-AR	0.9268
	Crittenden County, AR	
	DeSoto County, MS	
	Marshall County, MS	
	Tate County, MS	
	Tunica County, MS	

TABLE 1—RY 2011 WAGE INDEX FOR URBAN AREAS BASED ON CBSA LABOR MARKET AREAS—Continued

CBSA code	Urban area (constituent counties)	Wage index
	Fayette County, TN	
	Shelby County, TN	
	Tipton County, TN	
32900	Merced, CA	1.2123
	Merced County, CA	
33124	Miami-Miami Beach-Kendall, FL	0.9954
	Miami-Dade County, FL	
33140	Michigan City-La Porte, IN	0.9311
	LaPorte County, IN	
33260	Midland, TX	0.9546
	Midland County, TX	
33340	Milwaukee-Waukesha-West Allis, WI	1.0151
	Milwaukee County, WI	
	Ozaukee County, WI	
	Washington County, WI	
	Waukesha County, WI	
33460	Minneapolis-St. Paul-Bloomington, MN-WI	1.1095
	Anoka County, MN	
	Carver County, MN	
	Chisago County, MN	
	Dakota County, MN	
	Hennepin County, MN	
	Isanti County, MN	
	Ramsey County, MN	
	Scott County, MN	
	Sherburne County, MN	
	Washington County, MN	
	Wright County, MN	
	Pierce County, WI	
	St. Croix County, WI	
33540	Missoula, MT	0.9206
	Missoula County, MT	
33660	Mobile, AL	0.7785
	Mobile County, AL	
33700	Modesto, CA	1.2502
	Stanislaus County, CA	
33740	Monroe, LA	0.7752
	Ouachita Parish, LA	
	Union Parish, LA	
33780	Monroe, MI	0.8885
	Monroe County, MI	
33860	Montgomery, AL	0.8304
	Autauga County, AL	
	Elmore County, AL	
	Lowndes County, AL	
	Montgomery County, AL	
34060	Morgantown, WV	0.8459
	Monongalia County, WV	
	Preston County, WV	
34100	Morristown, TN	0.7201
	Grainger County, TN	
	Hamblen County, TN	
	Jefferson County, TN	
34580	Mount Vernon-Anacortes, WA	1.0452
	Skagit County, WA	
34620	Muncie, IN	0.8386
	Delaware County, IN	
34740	Muskegon-Norton Shores, MI	0.9823
	Muskegon County, MI	
34820	Myrtle Beach-North Myrtle Beach-Conway, SC	0.8730
	Horry County, SC	
34900	Napa, CA	1.4453
	Napa County, CA	
34940	Naples-Marco Island, FL	0.9662
	Collier County, FL	
34980	Nashville-Davidson—Murfreesboro—Franklin, TN	0.9689
	Cannon County, TN	
	Cheatham County, TN	
	Davidson County, TN	
	Dickson County, TN	
	Hickman County, TN	

TABLE 1—RY 2011 WAGE INDEX FOR URBAN AREAS BASED ON CBSA LABOR MARKET AREAS—Continued

CBSA code	Urban area (constituent counties)	Wage index
	Macon County, TN	
	Robertson County, TN	
	Rutherford County, TN	
	Smith County, TN	
	Sumner County, TN	
	Trousdale County, TN	
	Williamson County, TN	
	Wilson County, TN	
35004	Nassau-Suffolk, NY	1.2477
	Nassau County, NY	
	Suffolk County, NY	
35084	Newark-Union, NJ-PA	1.1419
	Essex County, NJ	
	Hunterdon County, NJ	
	Morris County, NJ	
	Sussex County, NJ	
	Union County, NJ	
	Pike County, PA	
35300	New Haven-Milford, CT	1.1545
	New Haven County, CT	
35380	New Orleans-Metairie-Kenner, LA	0.9092
	Jefferson Parish, LA	
	Orleans Parish, LA	
	Plaquemines Parish, LA	
	St. Bernard Parish, LA	
	St. Charles Parish, LA	
	St. John the Baptist Parish, LA	
	St. Tammany Parish, LA	
35644	New York-White Plains-Wayne, NY-NJ	1.3005
	Bergen County, NJ	
	Hudson County, NJ	
	Passaic County, NJ	
	Bronx County, NY	
	Kings County, NY	
	New York County, NY	
	Putnam County, NY	
	Queens County, NY	
	Richmond County, NY	
	Rockland County, NY	
	Westchester County, NY	
35660	Niles-Benton Harbor, MI	0.8903
	Berrien County, MI	
35980	Norwich-New London, CT	1.1399
	New London County, CT	
36084	Oakland-Fremont-Hayward, CA	1.6404
	Alameda County, CA	
	Contra Costa County, CA	
36100	Ocala, FL	0.8556
	Marion County, FL	
36140	Ocean City, NJ	1.0160
	Cape May County, NJ	
36220	Odessa, TX	0.9862
	Ector County, TX	
36260	Ogden-Clearfield, UT	0.9361
	Davis County, UT	
	Morgan County, UT	
	Weber County, UT	
36420	Oklahoma City, OK	0.8900
	Canadian County, OK	
	Cleveland County, OK	
	Grady County, OK	
	Lincoln County, OK	
	Logan County, OK	
	McClain County, OK	
	Oklahoma County, OK	
36500	Olympia, WA	1.1531
	Thurston County, WA	
36540	Omaha-Council Bluffs, NE-IA	0.9608
	Harrison County, IA	
	Mills County, IA	
	Pottawattamie County, IA	

TABLE 1—RY 2011 WAGE INDEX FOR URBAN AREAS BASED ON CBSA LABOR MARKET AREAS—Continued

CBSA code	Urban area (constituent counties)	Wage index
	Cass County, NE	
	Douglas County, NE	
	Sarpy County, NE	
	Saunders County, NE	
	Washington County, NE	
36740	Orlando-Kissimmee, FL	0.8951
	Lake County, FL	
	Orange County, FL	
	Osceola County, FL	
	Seminole County, FL	
36780	Oshkosh-Neenah, WI	0.9152
	Winnebago County, WI	
36980	Owensboro, KY	0.8357
	Daviess County, KY	
	Hancock County, KY	
	McLean County, KY	
37100	Oxnard-Thousand Oaks-Ventura, CA	1.2301
	Ventura County, CA	
37340	Palm Bay-Melbourne-Titusville, FL	0.9060
	Brevard County, FL	
37380	Palm Coast, FL	0.9603
	Flagler County, FL	
37460	Panama City-Lynn Haven-Panama City Beach, FL	0.8324
	Bay County, FL	
37620	Parkersburg-Marietta-Vienna, WV-OH	0.7716
	Washington County, OH	
	Pleasants County, WV	
	Wirt County, WV	
	Wood County, WV	
37700	Pascagoula, MS	0.8433
	George County, MS	
	Jackson County, MS	
37764	Peabody, MA	1.0871
	Essex County, MA	
37860	Pensacola-Ferry Pass-Brent, FL	0.8312
	Escambia County, FL	
	Santa Rosa County, FL	
37900	Peoria, IL	0.9155
	Marshall County, IL	
	Peoria County, IL	
	Stark County, IL	
	Tazewell County, IL	
	Woodford County, IL	
37964	Philadelphia, PA	1.0739
	Bucks County, PA	
	Chester County, PA	
	Delaware County, PA	
	Montgomery County, PA	
	Philadelphia County, PA	
38060	Phoenix-Mesa-Scottsdale, AZ	1.0630
	Maricopa County, AZ	
	Pinal County, AZ	
38220	Pine Bluff, AR	0.7281
	Cleveland County, AR	
	Jefferson County, AR	
	Lincoln County, AR	
38300	Pittsburgh, PA	0.8625
	Allegheny County, PA	
	Armstrong County, PA	
	Beaver County, PA	
	Butler County, PA	
	Fayette County, PA	
	Washington County, PA	
	Westmoreland County, PA	
38340	Pittsfield, MA	1.0658
	Berkshire County, MA	
38540	Pocatello, ID	0.9239
	Bannock County, ID	
	Power County, ID	
38660	Ponce, PR	0.4220
	Juana Díaz Municipio, PR	

TABLE 1—RY 2011 WAGE INDEX FOR URBAN AREAS BASED ON CBSA LABOR MARKET AREAS—Continued

CBSA code	Urban area (constituent counties)	Wage index
	Ponce Municipio, PR	
	Villalba Municipio, PR	
38860	Portland-South Portland-Biddeford, ME	1.0187
	Cumberland County, ME	
	Sagadahoc County, ME	
	York County, ME	
38900	Portland-Vancouver-Beaverton, OR-WA	1.1498
	Clackamas County, OR	
	Columbia County, OR	
	Multnomah County, OR	
	Washington County, OR	
	Yamhill County, OR	
	Clark County, WA	
	Skamania County, WA	
38940	Port St. Lucie, FL	0.9896
	Martin County, FL	
	St. Lucie County, FL	
39100	Poughkeepsie-Newburgh-Middletown, NY	1.1216
	Dutchess County, NY	
	Orange County, NY	
39140	Prescott, AZ	1.0121
	Yavapai County, AZ	
39300	Providence-New Bedford-Fall River, RI-MA	1.0782
	Bristol County, MA	
	Bristol County, RI	
	Kent County, RI	
	Newport County, RI	
	Providence County, RI	
	Washington County, RI	
39340	Provo-Orem, UT	0.9548
	Juab County, UT	
	Utah County, UT	
39380	Pueblo, CO	0.8570
	Pueblo County, CO	
39460	Punta Gorda, FL	0.8774
	Charlotte County, FL	
39540	Racine, WI	0.9373
	Racine County, WI	
39580	Raleigh-Cary, NC	0.9663
	Franklin County, NC	
	Johnston County, NC	
	Wake County, NC	
39660	Rapid City, SD	1.0046
	Meade County, SD	
	Pennington County, SD	
39740	Reading, PA	0.9263
	Berks County, PA	
39820	Redding, CA	1.4039
	Shasta County, CA	
39900	Reno-Sparks, NV	1.0285
	Storey County, NV	
	Washoe County, NV	
40060	Richmond, VA	0.9521
	Amelia County, VA	
	Caroline County, VA	
	Charles City County, VA	
	Chesterfield County, VA	
	Cumberland County, VA	
	Dinwiddie County, VA	
	Goochland County, VA	
	Hanover County, VA	
	Henrico County, VA	
	King and Queen County, VA	
	King William County, VA	
	Louisa County, VA	
	New Kent County, VA	
	Powhatan County, VA	
	Prince George County, VA	
	Sussex County, VA	
	Colonial Heights City, VA	
	Hopewell City, VA	

TABLE 1—RY 2011 WAGE INDEX FOR URBAN AREAS BASED ON CBSA LABOR MARKET AREAS—Continued

CBSA code	Urban area (constituent counties)	Wage index
	Petersburg City, VA	
	Richmond City, VA	
40140	Riverside-San Bernardino-Ontario, CA	1.1285
	Riverside County, CA	
	San Bernardino County, CA	
40220	Roanoke, VA	0.8671
	Botetourt County, VA	
	Craig County, VA	
	Franklin County, VA	
	Roanoke County, VA	
	Roanoke City, VA	
	Salem City, VA	
40340	Rochester, MN	1.1136
	Dodge County, MN	
	Olmsted County, MN	
	Wabasha County, MN	
40380	Rochester, NY	0.8724
	Livingston County, NY	
	Monroe County, NY	
	Ontario County, NY	
	Orleans County, NY	
	Wayne County, NY	
40420	Rockford, IL	1.0152
	Boone County, IL	
	Winnebago County, IL	
40484	Rockingham County, NH	1.0125
	Rockingham County, NH	
	Strafford County, NH	
40580	Rocky Mount, NC	0.8845
	Edgecombe County, NC	
	Nash County, NC	
40660	Rome, GA	0.8915
	Floyd County, GA	
40900	Sacramento—Arden-Arcade—Roseville, CA	1.4073
	El Dorado County, CA	
	Placer County, CA	
	Sacramento County, CA	
	Yolo County, CA	
40980	Saginaw-Saginaw Township North, MI	0.9122
	Saginaw County, MI	
41060	St. Cloud, MN	1.1107
	Benton County, MN	
	Stearns County, MN	
41100	St. George, UT	0.9236
	Washington County, UT	
41140	St. Joseph, MO-KS	1.0189
	Doniphan County, KS	
	Andrew County, MO	
	Buchanan County, MO	
	DeKalb County, MO	
41180	St. Louis, MO-IL	0.9102
	Bond County, IL	
	Calhoun County, IL	
	Clinton County, IL	
	Jersey County, IL	
	Macoupin County, IL	
	Madison County, IL	
	Monroe County, IL	
	St. Clair County, IL	
	Crawford County, MO	
	Franklin County, MO	
	Jefferson County, MO	
	Lincoln County, MO	
	St. Charles County, MO	
	St. Louis County, MO	
	Warren County, MO	
	Washington County, MO	
	St. Louis City, MO	
41420	Salem, OR	1.0974
	Marion County, OR	
	Polk County, OR	

TABLE 1—RY 2011 WAGE INDEX FOR URBAN AREAS BASED ON CBSA LABOR MARKET AREAS—Continued

CBSA code	Urban area (constituent counties)	Wage index
41500	Salinas, CA	1.5207
	Monterey County, CA	
41540	Salisbury, MD	0.9110
	Somerset County, MD	
	Wicomico County, MD	
41620	Salt Lake City, UT	0.9378
	Salt Lake County, UT	
	Summit County, UT	
	Tooele County, UT	
41660	San Angelo, TX	0.7914
	Irion County, TX	
	Tom Green County, TX	
41700	San Antonio, TX	0.8857
	Atascosa County, TX	
	Bandera County, TX	
	Bexar County, TX	
	Comal County, TX	
	Guadalupe County, TX	
	Kendall County, TX	
	Medina County, TX	
	Wilson County, TX	
41740	San Diego-Carlsbad-San Marcos, CA	1.1752
	San Diego County, CA	
41780	Sandusky, OH	0.8888
	Erie County, OH	
41884	San Francisco-San Mateo-Redwood City, CA	1.5874
	Marin County, CA	
	San Francisco County, CA	
	San Mateo County, CA	
41900	San Germán-Cabo Rojo, PR	0.4740
	Cabo Rojo Municipio, PR	
	Lajas Municipio, PR	
	Sabana Grande Municipio, PR	
	San Germán Municipio, PR	
41940	San Jose-Sunnyvale-Santa Clara, CA	1.6404
	San Benito County, CA	
	Santa Clara County, CA	
41980	San Juan-Caguas-Guaynabo, PR	0.4363
	Aguas Buenas Municipio, PR	
	Aibonito Municipio, PR	
	Arecibo Municipio, PR	
	Barceloneta Municipio, PR	
	Barranquitas Municipio, PR	
	Bayamón Municipio, PR	
	Caguas Municipio, PR	
	Camuy Municipio, PR	
	Canóvanas Municipio, PR	
	Carolina Municipio, PR	
	Cataño Municipio, PR	
	Cayey Municipio, PR	
	Ciales Municipio, PR	
	Cidra Municipio, PR	
	Comerío Municipio, PR	
	Corozal Municipio, PR	
	Dorado Municipio, PR	
	Florida Municipio, PR	
	Guaynabo Municipio, PR	
	Gurabo Municipio, PR	
	Hatillo Municipio, PR	
	Humacao Municipio, PR	
	Juncos Municipio, PR	
	Las Piedras Municipio, PR	
	Loíza Municipio, PR	
	Manatí Municipio, PR	
	Maunabo Municipio, PR	
	Morovis Municipio, PR	
	Naguabo Municipio, PR	
	Naranjito Municipio, PR	
	Orocovis Municipio, PR	
	Quebradillas Municipio, PR	
	Río Grande Municipio, PR	

TABLE 1—RY 2011 WAGE INDEX FOR URBAN AREAS BASED ON CBSA LABOR MARKET AREAS—Continued

CBSA code	Urban area (constituent counties)	Wage index
	San Juan Municipio, PR San Lorenzo Municipio, PR Toa Alta Municipio, PR Toa Baja Municipio, PR Trujillo Alto Municipio, PR Vega Alta Municipio, PR Vega Baja Municipio, PR Yabucoa Municipio, PR	
42020	San Luis Obispo-Paso Robles, CA San Luis Obispo County, CA	1.2550
42044	Santa Ana-Anaheim-Irvine, CA Orange County, CA	1.1972
42060	Santa Barbara-Santa Maria-Goleta, CA Santa Barbara County, CA	1.2213
42100	Santa Cruz-Watsonville, CA Santa Cruz County, CA	1.6735
42140	Santa Fe, NM Santa Fe County, NM	1.0694
42220	Santa Rosa-Petaluma, CA Sonoma County, CA	1.5891
42340	Savannah, GA Bryan County, GA Chatham County, GA Effingham County, GA	0.9043
42540	Scranton—Wilkes-Barre, PA Lackawanna County, PA Luzerne County, PA Wyoming County, PA	0.8375
42644	Seattle-Bellevue-Everett, WA King County, WA Snohomish County, WA	1.1577
42680	Sebastian-Vero Beach, FL Indian River County, FL	0.9362
43100	Sheboygan, WI Sheboygan County, WI	0.9166
43300	Sherman-Denison, TX Grayson County, TX	0.8064
43340	Shreveport-Bossier City, LA Bossier Parish, LA Caddo Parish, LA De Soto Parish, LA	0.8383
43580	Sioux City, IA-NE-SD Woodbury County, IA Dakota County, NE Dixon County, NE Union County, SD	0.9094
43620	Sioux Falls, SD Lincoln County, SD McCook County, SD Minnehaha County, SD Turner County, SD	0.8983
43780	South Bend-Mishawaka, IN-MI St. Joseph County, IN Cass County, MI	0.9690
43900	Spartanburg, SC Spartanburg County, SC	0.9341
44060	Spokane, WA Spokane County, WA	1.0444
44100	Springfield, IL Menard County, IL Sangamon County, IL	0.9545
44140	Springfield, MA Franklin County, MA Hampden County, MA Hampshire County, MA	1.0373
44180	Springfield, MO Christian County, MO Dallas County, MO Greene County, MO Polk County, MO Webster County, MO	0.8453

TABLE 1—RY 2011 WAGE INDEX FOR URBAN AREAS BASED ON CBSA LABOR MARKET AREAS—Continued

CBSA code	Urban area (constituent counties)	Wage index
44220	Springfield, OH	0.9195
	Clark County, OH	
44300	State College, PA	0.9096
	Centre County, PA	
44700	Stockton, CA	1.2331
	San Joaquin County, CA	
44940	Sumter, SC	0.8152
	Sumter County, SC	
45060	Syracuse, NY	0.9785
	Madison County, NY	
	Onondaga County, NY	
	Oswego County, NY	
45104	Tacoma, WA	1.1195
	Pierce County, WA	
45220	Tallahassee, FL	0.8406
	Gadsden County, FL	
	Jefferson County, FL	
	Leon County, FL	
	Wakulla County, FL	
45300	Tampa-St. Petersburg-Clearwater, FL	0.8982
	Hernando County, FL	
	Hillsborough County, FL	
	Pasco County, FL	
	Pinellas County, FL	
45460	Terre Haute, IN	0.9061
	Clay County, IN	
	Sullivan County, IN	
	Vermillion County, IN	
	Vigo County, IN	
45500	Texarkana, TX—Texarkana, AR	0.8113
	Miller County, AR	
	Bowie County, TX	
45780	Toledo, OH	0.9541
	Fulton County, OH	
	Lucas County, OH	
	Ottawa County, OH	
	Wood County, OH	
45820	Topeka, KS	0.9026
	Jackson County, KS	
	Jefferson County, KS	
	Osage County, KS	
	Shawnee County, KS	
	Wabaunsee County, KS	
45940	Trenton-Ewing, NJ	1.0552
	Mercer County, NJ	
46060	Tucson, AZ	0.9505
	Pima County, AZ	
46140	Tulsa, OK	0.8662
	Creek County, OK	
	Okmulgee County, OK	
	Osage County, OK	
	Pawnee County, OK	
	Rogers County, OK	
	Tulsa County, OK	
	Wagoner County, OK	
46220	Tuscaloosa, AL	0.8698
	Greene County, AL	
	Hale County, AL	
	Tuscaloosa County, AL	
46340	Tyler, TX	0.8312
	Smith County, TX	
46540	Utica-Rome, NY	0.8460
	Herkimer County, NY	
	Oneida County, NY	
46660	Valdosta, GA	0.7944
	Brooks County, GA	
	Echols County, GA	
	Lanier County, GA	
	Lowndes County, GA	
46700	Vallejo-Fairfield, CA	1.4934
	Solano County, CA	

TABLE 1—RY 2011 WAGE INDEX FOR URBAN AREAS BASED ON CBSA LABOR MARKET AREAS—Continued

CBSA code	Urban area (constituent counties)	Wage index
47020	Victoria, TX	0.8054
	Calhoun County, TX	
	Goliad County, TX	
	Victoria County, TX	
47220	Vineland-Millville-Bridgeton, NJ	1.0207
	Cumberland County, NJ	
47260	Virginia Beach-Norfolk-Newport News, VA-NC	0.8960
	Currituck County, NC	
	Gloucester County, VA	
	Isle of Wight County, VA	
	James City County, VA	
	Mathews County, VA	
	Surry County, VA	
	York County, VA	
	Chesapeake City, VA	
	Hampton City, VA	
	Newport News City, VA	
	Norfolk City, VA	
	Poquoson City, VA	
	Portsmouth City, VA	
	Suffolk City, VA	
	Virginia Beach City, VA	
	Williamsburg City, VA	
47300	Visalia-Porterville, CA	1.0221
	Tulare County, CA	
47380	Waco, TX	0.8377
	McLennan County, TX	
47580	Warner Robins, GA	0.8754
	Houston County, GA	
47644	Warren-Troy-Farmington Hills, MI	0.9806
	Lapeer County, MI	
	Livingston County, MI	
	Macomb County, MI	
	Oakland County, MI	
	St. Clair County, MI	
47894	Washington-Arlington-Alexandria, DC-VA-MD-WV	1.0882
	District of Columbia, DC	
	Calvert County, MD	
	Charles County, MD	
	Prince George's County, MD	
	Arlington County, VA	
	Clarke County, VA	
	Fairfax County, VA	
	Fauquier County, VA	
	Loudoun County, VA	
	Prince William County, VA	
	Spotsylvania County, VA	
	Stafford County, VA	
	Warren County, VA	
	Alexandria City, VA	
	Fairfax City, VA	
	Falls Church City, VA	
	Fredericksburg City, VA	
	Manassas City, VA	
	Manassas Park City, VA	
	Jefferson County, WV	
47940	Waterloo-Cedar Falls, IA	0.8518
	Black Hawk County, IA	
	Bremer County, IA	
	Grundy County, IA	
48140	Wausau, WI	0.9440
	Marathon County, WI	
48260	Weirton-Steubenville, WV-OH	0.7368
	Jefferson County, OH	
	Brooke County, WV	
	Hancock County, WV	
48300	Wenatchee-East Wenatchee, WA	0.9719
	Chelan County, WA	
	Douglas County, WA	
48424	West Palm Beach-Boca Raton-Boynton Beach, FL	0.9879
	Palm Beach County, FL	

TABLE 1—RY 2011 WAGE INDEX FOR URBAN AREAS BASED ON CBSA LABOR MARKET AREAS—Continued

CBSA code	Urban area (constituent counties)	Wage index
48540	Wheeling, WV-OH	0.6869
	Belmont County, OH	
	Marshall County, WV	
	Ohio County, WV	
48620	Wichita, KS	0.9018
	Butler County, KS	
	Harvey County, KS	
	Sedgwick County, KS	
	Sumner County, KS	
48660	Wichita Falls, TX	0.9197
	Archer County, TX	
	Clay County, TX	
	Wichita County, TX	
48700	Williamsport, PA	0.7877
	Lycoming County, PA	
48864	Wilmington, DE-MD-NJ	1.0555
	New Castle County, DE	
	Cecil County, MD	
	Salem County, NJ	
48900	Wilmington, NC	0.8986
	Brunswick County, NC	
	New Hanover County, NC	
	Pender County, NC	
49020	Winchester, VA-WV	0.9777
	Frederick County, VA	
	Winchester City, VA	
	Hampshire County, WV	
49180	Winston-Salem, NC	0.8953
	Davie County, NC	
	Forsyth County, NC	
	Stokes County, NC	
	Yadkin County, NC	
49340	Worcester, MA	1.1089
	Worcester County, MA	
49420	Yakima, WA	0.9949
	Yakima County, WA	
49500	Yauco, PR	0.3348
	Guánica Municipio, PR	
	Guayanilla Municipio, PR	
	Peñuelas Municipio, PR	
	Yauco Municipio, PR	
49620	York-Hanover, PA	0.9299
	York County, PA	
49660	Youngstown-Warren-Boardman, OH-PA	0.8679
	Mahoning County, OH	
	Trumbull County, OH	
	Mercer County, PA	
49700	Yuba City, CA	1.1265
	Sutter County, CA	
	Yuba County, CA	
49740	Yuma, AZ	0.9143
	Yuma County, AZ	

[1] At this time, there are no hospitals located in this urban area on which to base a wage index.

TABLE 2—RY 2011 WAGE INDEX BASED ON CBSA LABOR MARKET AREAS FOR RURAL AREAS

State code	Nonurban area	Wage index
1	Alabama	0.7327
2	Alaska	1.1669
3	Arizona	0.8790
4	Arkansas	0.7332
5	California	1.2051
6	Colorado	0.9929
7	Connecticut	1.1093
8	Delaware	0.9910
10	Florida	0.8566
11	Georgia	0.7623
12	Hawaii	1.1113
13	Idaho	0.7733
14	Illinois	0.8312
15	Indiana	0.8529
16	Iowa	0.8624
17	Kansas	0.8167
18	Kentucky	0.7813
19	Louisiana	0.7611
20	Maine	0.8579
21	Maryland	0.9131
22	Massachusetts[1]	1.1700
23	Michigan	0.8778

TABLE 2—RY 2011 WAGE INDEX BASED ON CBSA LABOR MARKET AREAS FOR RURAL AREAS—Continued

State code	Nonurban area	Wage index
24	Minnesota	0.9160
25	Mississippi	0.7638
26	Missouri	0.7671
27	Montana	0.8399
28	Nebraska	0.8705
29	Nevada	0.9674
30	New Hampshire	0.9957
31	New Jersey [1]	
32	New Mexico	0.8938
33	New York	0.8269
34	North Carolina	0.8535
35	North Dakota	0.7813
36	Ohio	0.8506
37	Oklahoma	0.7654

TABLE 2—RY 2011 WAGE INDEX BASED ON CBSA LABOR MARKET AREAS FOR RURAL AREAS—Continued

State code	Nonurban area	Wage index
38	Oregon	1.0236
39	Pennsylvania	0.8306
40	Puerto Rico [1]	0.4047
41	Rhode Island [1]	
42	South Carolina	0.8394
43	South Dakota	0.8510
44	Tennessee	0.7808
45	Texas	0.7759
46	Utah	0.8363
47	Vermont	0.9763
48	Virgin Islands	0.7416
49	Virginia	0.7869
50	Washington	1.0224
51	West Virginia	0.7396

TABLE 2—RY 2011 WAGE INDEX BASED ON CBSA LABOR MARKET AREAS FOR RURAL AREAS—Continued

State code	Nonurban area	Wage index
52	Wisconsin	0.9206
53	Wyoming	0.9535
65	Guam	0.9611

[1] All counties within the State are classified as urban, with the exception of Massachusetts and Puerto Rico. Massachusetts and Puerto Rico have areas designated as rural; however, no short-term, acute care hospitals are located in the area(s) for FY 2010. The rural Massachusetts wage index is calculated as the average of all contiguous CBSAs. The Puerto Rico wage index is the same as FY 2009.

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Federal Register

Vol. 75, No. 83

Friday, April 30, 2010

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FEDERAL REGISTER PAGES AND DATE, APRIL

16325–16640 1
16641–17024 2
17025–17280 5
17281–17554 6
17555–17846 7
17847–18046 8
18047–18376 9
18377–18746 12
18747–19180 13
19181–19532 14
19533–19872 15
19873–20236 16
20237–20510 19
20511–20770 20
20771–20894 21
20895–21154 22
21155–21498 23
21499–21972 26
21973–22202 27
22203–22496 28
22497–22690 29
22691–23150 30

CFR PARTS AFFECTED DURING APRIL

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.

2 CFR
2245 22205

3 CFR
Proclamations:
8485 18747
8487 17025
8488 17837
8489 17839
8490 17841
8491 17843
8492 17845
8493 17847
8494 18749
8495 19181
8496 19183
8497 19876
8498 20887
8499 20889
8500 20891
8501 20893
8502 21155
8503 21977
8504 22691
Executive Orders:
13536 19869
13537 20237
13538 20895
13539 21973
13540 22497
Administrative Orders:
Memorandums:
Memorandum of April 6, 2010 18045
Memorandum of April 7, 2010 19533
Memorandum of April 15, 2010 20511
Memorandum of April 16, 2010 20767
Memorandum of April 20, 2010 22203
Memorandum of April 26, 2010 22499
Presidential Determinations:
No. 2010-05 of April 7, 2010 19537
No. 2010-06 of April 7, 2010 19535

4 CFR
Proposed Rules:
200 20298

5 CFR
894 20513
Proposed Rules:
532 17316
550 18133
831 20299
841 20299
890 20314
892 20314
Ch. LXXX 19909
2425 22540
2429 22540

7 CFR
1 17555
3 17555
91 17281
205 17555
226 16325
274 18377
319 ..... 17289, 22207
735 17555
760 19185
800 17555
900 17555
916 17027
917 17027
925 17031
929 ..... 18394, 20514
932 22211
944 17031
948 17034
989 20897
996 22213
1001 21157
1005 21157
1006 21157
1007 21157
1030 21157
1032 21157
1033 21157
1124 21157
1126 21157
1131 21157
1170 17555
1245 18396
1400 19185
1412 19185
1421 19185
1435 17555
3431 20239
Proposed Rules:
28 22026
51 22707
210 20316
215 20316
220 20316
225 20316
226 20316
253 22027
916 17072
917 17072
956 18428
1245 18430
4279 20044
4287 20044
4288 ..... 20073, 20085, 21191

9 CFR
102 20771

103.....20771
104.....20771
108.....20771
112.....20771
113.....20771
114.....20771
116.....20771
124.....20771
206.....16641

Proposed Rules:
94.....19915

10 CFR

1.....21979
20.....21979
30.....21979
40.....21979
51.....20248
55.....21979
70.....21979
73.....21979
140.....16645
430 .....20112, 21981, 22213
431.....17036

Proposed Rules:
51.....16360
430 .....16958, 17075, 19296
431 .....17078, 17079, 17080, 19297, 22031

11 CFR

8.....19873
111.....19873

12 CFR

4.....17849
205.....16580
370.....20257
611.....18726
613.....18726
615.....18726
619.....18726
620.....18726
918.....17037
1261.....17037

Proposed Rules:
701.....17083
708a.....17083
708b.....17083
1203.....17622
1705.....17622

13 CFR

Proposed Rules:
115.....21521

14 CFR

23.....20516, 20518
25.....18399
27.....17041
29.....17041
39 .....16646, 16648, 16651, 16655, 16657, 16660, 16662, 16664, 17295, 19193, 19196, 19199, 19201, 19203, 19207, 19209, 20265, 21161, 21499, 22503, 22506, 22508, 22510, 22512, 22514, 22517, 22519, 22521, 22693
61.....19877
63.....19877
65.....19877
67.....17047
71 .....16329, 16330, 16331, 16333, 16335, 16336, 17851, 17852, 18047, 18402, 18403, 19212, 20773, 20774, 22695
73.....17561
91.....17041
97 .....19539, 19541, 21981, 21983, 22215, 22217
121.....17041
125.....17041
135.....17041
234.....17050

Proposed Rules:
21.....18134
23.....16676
25.....16676
27.....16676
29.....16676
33.....21523
39 .....16361, 16683, 16685, 16689, 16696, 17084, 17086, 17630, 17632, 17879, 17882, 17884, 17887, 17889, 18446, 18774, 19564, 20787, 20790, 20792, 20931, 20933, 21528, 21530, 22043, 22524, 22710
71 .....17322, 17637, 17891, 17892, 20320, 20321, 20322, 20323, 20528, 20794, 21532, 22044, 22045, 22712

15 CFR

740.....17052
748.....17052
750.....17052
762.....17052
772.....20520
774.....20520
902.....18262
922.....17055

Proposed Rules:
922.....22047

16 CFR

1450.....21985

Proposed Rules:
312.....17089
1217.....22291
1218.....22303
1500.....20533

17 CFR

190.....17297
232.....17853

Proposed Rules:
240.....21456
242.....20738
249.....21456

18 CFR

1b.....21503
38.....20901
40.....16914
284.....16337
358.....20909

Proposed Rules:
35.....20796

20 CFR

618.....16988

Proposed Rules:
350.....20299
404.....20299
416.....20299

21 CFR

Ch. I.....16353
1.....20913
2.....19213
10.....16345
118.....18751
510.....20522, 20523
522.....20268, 22545
524.....16346
529.....21162
558.....20917
801.....20913
803.....20913
807.....20913
812.....20913
814.....16347, 20913
820.....20913
822.....20913
860.....20913
900.....20913
1002.....16351, 20913
1003.....16351
1004.....16351
1005.....16351
1010.....16351
1020.....16351
1030.....16351
1040.....16351, 20913
1050.....16351

Proposed Rules:
1.....22713
165.....16363
814.....16365
882.....17093
890.....17093

23 CFR

Proposed Rules:
655.....20935
1200.....22317
1300.....22317

24 CFR

202.....20718
570.....17303
1003.....20269

Proposed Rules:
577.....20541
1000.....19920

26 CFR

1.....17854
301.....17854
602.....17854

Proposed Rules:
1.....20941
54.....19297

27 CFR

17.....16666
19.....16666
20.....16666
22.....16666
24.....16666
25.....16666
26.....16666
27.....16666
28.....16666
31.....16666
40.....16666
44.....16666
46.....16666
70.....16666

28 CFR

20.....18751
540.....21163

Proposed Rules:
540.....17324

29 CFR

2203.....18403
2204.....18403
2700.....21987
4022.....19542

Proposed Rules:
2201.....22320
2590.....19297

30 CFR

18.....17512, 20918
50.....21990
74.....17512
75.....17512, 20918
100.....21990
250.....20271, 22219
936.....18048

Proposed Rules:
780.....22723
784.....22723
816.....22723
817.....22723
943.....21534

31 CFR

103.....19241

Proposed Rules:
212.....20299

32 CFR

199.....18051
279.....19878, 21505
706.....22696
2004.....17305

Proposed Rules:
108.....18138
655.....19302
1701.....16698

33 CFR

83.....19544
100.....20294
117 .....17561, 18055, 19245, 20775, 20776, 20918, 22228
147.....18404, 19880
165 .....18055, 18056, 18058, 18755, 19246, 19248, 19250, 19882, 20523, 20776, 20778, 20920, 21164, 21167, 21990, 21993, 22228, 22232, 22234, 22697
167.....17562
334.....19885

Proposed Rules:
100 .....16700, 17099, 17103, 21191, 21194
110.....22323
117.....22724
150.....16370
165 .....16370, 16374, 16703, 17106, 17329, 18449, 18451, 18776, 18778, 19304, 19307, 20799, 20802, 22330, 22333, 22336, 22545

34 CFR

Ch. II.....16668, 18407
280.....21506

36 CFR

1200.....19555
1253.....19555

1280.....19555
Proposed Rules:
242.....22725
1191.....18781
1193.....18781
1194.....18781
1206.....17638

37 CFR

41.....19558
201.....20526
Proposed Rules:
380.....16377

38 CFR

1.....17857
59.....17859
Proposed Rules:
1.....20299
17.....17641
51.....17644
59.....17641

39 CFR

111.....17861
3001.....22190
3005.....22190
Proposed Rules:
111.....22725

40 CFR

9.....16670
50.....17004
51.....17004, 17254
52 .....16671, 17307, 17863, 17865, 17868, 18061, 18068, 18757, 19468, 19886, 20780, 20783, 20922, 21169
60.....19252
61.....19252
63.....19252
70.....17004
71.....17004
80.....22896
85.....22896
86.....22896
93.....17254
94.....22896
98.....22699
180 .....17564, 17566, 17571, 17573, 17579, 19261, 19268, 19272, 20785, 22240, 22245, 22252, 22256
228.....22524
272.....17309
721.....16670
1027.....22896
1033.....22896
1039.....22896
1042.....22896
1043.....22896
1045.....22896
1048.....22896
1051.....22896
1054.....22896
1060.....22896
1065.....22896
1068.....22896
Proposed Rules:
9.....22470
51.....19567
52 .....16387, 16388, 16706, 17894, 18142, 18143, 18782, 19567, 19920, 19921, 19923, 20805, 20942, 21197, 22047
60.....19310
61.....19310
63 .....19310, 22470, 22548
81.....22047
87.....22470
98 .....17331, 18455, 18576, 18608, 18652
228.....19311
261.....20942
268.....20942
272.....17332
302.....20942
372.....17333, 19319
721.....16706
761.....17645

42 CFR

417.....19678
422.....19678
423.....19678
440.....23068
480.....19678
483.....21175
Proposed Rules:
84.....20546
416.....21207

44 CFR

64 .....18408, 19891, 22263
65 .....18070, 18072, 18073, 18076, 18079, 18082, 18084, 18086, 18088, 18090
67 .....18091, 19895, 22699
Proposed Rules:
67.....19320, 19328

45 CFR

89.....18760
286.....17313
1609.....21506
1610.....21506
1642.....21506
2545.....22205
Proposed Rules:
146.....19297, 19335
148.....19297, 19335

46 CFR

393.....18095
Proposed Rules:
2.....21212

47 CFR

2.....19277
11.....19559
20.....22263
36.....17872
54.....17584, 17872
73.....17874, 19907
74.....17055
78.....17055
90.....19277
95.....19277
Proposed Rules:
1.....21536
20.....22338
27.....17349
36.....17109
73 .....19338, 19339, 19340
87.....22352
90.....19340
97.....20951

48 CFR

Ch. I.....19168, 19179
2.....19168
3.....21508
7.....19168
17.....19168
22.....19168
52.....19168
201.....22706
204.....18030
206.....18035
225.....18035
234.....18034
235.....18030, 18034
237.....22706
246.....22706
252.....18030, 18035
Ch. XIV 19828
Proposed Rules:
31.....19345
202.....20954
203.....20954
211.....22727
212.....20954
216.....22728
223.....18041
245.....22729
252 .....18041, 20954, 22727, 22728, 22729

49 CFR

22.....19285
23.....16357
350.....17208
367.....21993
385.....17208
395.....17208
396.....17208
571 .....17590, 17604, 17605, 22532
580.....20925
Proposed Rules:
172.....17111
173.....17111
176.....17111
383.....16391
384.....16391
390.....16391
391.....16391
392.....16391
571.....21567
580.....20965
1244.....16712

50 CFR

17 .....17062, 17466, 18107, 18782, 21179, 21394, 22012
32.....18413
36.....16636
92.....18764
223.....21512, 22276
224.....22276
300.....18110
622.....18427, 21512
648 .....17618, 18113, 18262, 18356, 20786, 21189, 22025
665.....17070
679 .....16359, 17315, 19561, 19562, 20526
Proposed Rules:
17 .....16404, 17352, 17363, 17667, 18960, 19575, 19591, 19592, 19925, 20547, 20974, 21568, 22063
18.....21571
100.....22725
216.....22731
223.....16713
224.....16713
300.....22070
622.....20548
648 .....16716, 20550, 22073, 22087

LIST OF PUBLIC LAWS

This is a continuing list of public bills from the current session of Congress which have become Federal laws. It may be used in conjunction with ''P L U S'' (Public Laws Update Service) on 202–741–6043. This list is also available online at *http://www.archives.gov/federal-register/laws.html*.

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H.R. 4573/P.L. 111–158

Haiti Debt Relief and Earthquake Recovery Act of 2010 (Apr. 26, 2010; 124 Stat. 1121)

H.R. 4887/P.L. 111–159

TRICARE Affirmation Act (Apr. 26, 2010; 124 Stat. 1123)

S.J. Res. 25/P.L. 111–160

Granting the consent and approval of Congress to amendments made by the State of Maryland, the Commonwealth of Virginia, and the District of Columbia to the Washington Metropolitan Area Transit Regulation Compact. (Apr. 26, 2010; 124 Stat. 1124)

Last List April 20, 2010

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