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

NUCLEAR REGULATORY COMMISSION

10 CFR Part 72

[NRC–2010–0183]

RIN 3150–AI88

List of Approved Spent Fuel Storage Casks: NAC–MPC System, Revision 6, Confirmation of Effective Date

AGENCY: Nuclear Regulatory Commission.

ACTION: Direct final rule: Confirmation of effective date.

SUMMARY: The Nuclear Regulatory Commission (NRC) is confirming the effective date of October 4, 2010, for the direct final rule that was published in the **Federal Register** on July 21, 2010 (75 FR 42292). This direct final rule amended the NRC's spent fuel storage regulations at 10 CFR 72.214 to revise the NAC–MPC System listing to include Amendment Number 6 to Certificate of Compliance (CoC) Number 1025.

DATES: *Effective Date:* The effective date of October 4, 2010, is confirmed for this direct final rule.

ADDRESSES: Documents related to this rulemaking, including any comments received, may be examined at the NRC Public Document Room, Room O–1F23, 11555 Rockville Pike, Rockville, MD 20852.

FOR FURTHER INFORMATION CONTACT: Jayne M. McCausland, Office of Federal and State Materials and Environmental Management Programs, U.S. Nuclear Regulatory Commission, Washington, DC 20555, telephone (301) 415–6219, e-mail *Jayne.McCausland@nrc.gov.*

SUPPLEMENTARY INFORMATION: On July 21, 2010 (75 FR 42292), the NRC published a direct final rule amending its regulations at 10 CFR 72.214 to include Amendment No. 6 to CoC No. 1025. Amendment No. 6 changes the configuration of the NAC–MPC storage system by the incorporation of a single closure lid with a welded closure ring for redundant closure into the Transportable Storage Canister (TSC) design; modification of the TSC and basket design to accommodate up to 68 La Crosse Boiling Water Reactor spent fuel assemblies (36 undamaged Exxon fuel assemblies and up to 32 damaged fuel cans (in a preferential loading pattern)) that may contain undamaged Exxon fuel assemblies and damaged Exxon and Allis Chalmers fuel assemblies and/or fuel debris; the addition of zirconium alloy shroud compaction debris to be stored with undamaged and damaged fuel assemblies; minor design modifications to the Vertical Concrete Cask incorporating design features from the MAGNASTOR System for improved operability of the system while adhering to as low as is reasonably achievable principles; an increase in the concrete pad compression strength from 4,000 psi to 6,000 psi; added justification for the 6-ft. soil depth as being conservative; and other changes to incorporate minor editorial corrections in CoC No. 1025 and Appendices A and B of the Technical Specifications (TS). Also, the Definitions in TS 1.1 are revised to include modifications and newly defined terms; the Limiting Conditions for Operation and associated Surveillance Requirements in TS 3.1 and 3.2 are revised; and editorial changes are made to TS 5.2 and 5.4. In the direct final rule, NRC stated that if no significant adverse comments were received, the direct final rule would become final on October 4, 2010. The NRC did not receive any comments on the direct final rule. Therefore, this rule will become effective as scheduled.

Dated at Rockville, Maryland, this 17th day of September 2010.

For the Nuclear Regulatory Commission.

Cindy Bladey,

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

[FR Doc. 2010–23875 Filed 9–22–10; 8:45 am]

BILLING CODE 7590–01–P

NATIONAL CREDIT UNION ADMINISTRATION

12 CFR Part 701

RIN 3133–AD67

Secondary Capital Accounts

AGENCY: National Credit Union Administration (NCUA).

ACTION: Final rule.

SUMMARY: On February 19, 2010, NCUA published an interim final rule amending its regulation governing secondary capital accounts to permit low-income designated credit unions to redeem all or part of secondary capital accepted from the United States Government or any of its subdivisions at any time after the secondary capital has been on deposit for two years. The amendments also allowed early redemption, under the same terms and conditions, of secondary capital accepted as a match to the government-funded secondary capital. Finally, the amendments changed the loss-distribution provision that applies to secondary capital accounts so that secondary capital accepted under the 2010 Community Development Capital Initiative is senior to any required matching secondary capital accepted from an alternative source. This rule confirms those amendments as final with some technical changes and clarifications.

DATES: Effective September 23, 2010.

FOR FURTHER INFORMATION CONTACT: Kevin Tuininga, Trial Attorney, at 1775 Duke Street, Alexandria, Virginia 22314–3428, or telephone: (703) 518–6543.

SUPPLEMENTARY INFORMATION:

A. Background

In February 2010, NCUA issued an interim final rule, with request for comments, to permit low-income designated credit unions ("LICUs") to redeem all or part of secondary capital ("SC") accepted from the United States Government or any of its subdivisions ("government-funded SC") [1] and its matching SC, if any, at any time after the SC has been on deposit for two

[1] Where the term appears in this preamble, Government-funded SC refers only to SC funded by the Federal Government as opposed to State governments or their subdivisions.

years. 75 FR 7339 (Feb. 19, 2010). This amendment was intended to facilitate LICU participation in the United States Department of the Treasury's ("Treasury") Community Development Capital Initiative ("CDCI"), which offered funds under the Troubled Asset Relief Program ("TARP") to LICUs in the form of SC ("CDCI SC"). To comply with the terms of the CDCI, the interim final also provided that CDCI SC must be held senior to its matching SC, if any, and gave LICUs two options for ensuring the subordination of matching SC. In this final rule, NCUA is confirming the amendments to its rule on the redemption and priority of certain SC accounts. The final rule also makes a number of technical adjustments and clarifications to reflect terms of the CDCI that have developed since the interim final rule was issued.

1. The CDCI

Treasury announced the CDCI on February 3, 2010 as a new program under the TARP aimed to invest lower-cost capital in community development financial institutions.[2] To qualify for CDCI consideration, credit unions must have a low-income designation pursuant to 12 CFR 701.34 and a Community Development Financial Institution ("CDFI") certification from the CDFI Fund.[3]

The terms of the CDCI provide that a LICU accepted for participation is eligible to issue CDCI Senior Securities up to an aggregate principal amount of 3.5 percent of the LICU's total assets. The Senior Securities have either an eight-year or thirteen-year maturity and are purchased by Treasury.[4] Securities with a thirteen-year maturity pay cumulative interest at an annual rate of two percent until the eighth anniversary of their date of issuance. Over the remaining five years to maturity, the securities pay cumulative interest at an annual rate of nine percent. Securities with an eight-year maturity pay cumulative interest at an annual rate of two percent through maturity.

In some circumstances, the CDCI terms may require LICUs to obtain matching funds from non-government sources. Where match is required, a LICU must agree to hold the matching SC subordinate to the CDCI SC. In particular, the subordination terms require that all of a LICU's CDCI SC be redeemed before any of its match may be redeemed. CDCI SC along with its matching SC is subject to NCUA's regulation governing SC accounts. § 701.34(b)–(d).

2. The Interim Final Rule

The interim final rule sought to remove any regulatory disincentive for LICUs to apply for participation in the CDCI and to make other changes necessary to alleviate conflicts between NCUA's regulation and the terms of the CDCI. To do so, the interim final rule exempted all government-funded SC from the limits of the redemption schedule in § 701.34(d)(3). It also exempted SC accepted as a match to government-funded SC from the redemption schedule limits. The exemption was intended to give LICUs the opportunity to avoid the nine-percent interest rate over the last five years to maturity on CDCI SC that was initially offered with only a 13-year maturity. The exception also sought to avoid subjecting LICUs to potentially high interest rates on SC accepted as a match to CDCI SC. In contemplation of similar future opportunities, the exemption language was drafted to encompass the early redemption of government-funded SC accepted under programs other than the CDCI that could arise in response to adverse economic conditions.

The interim final rule also amended the loss distribution procedures applicable to SC accounts to ensure that CDCI SC would be held senior to any matching SC required under the Initiative. In particular, the interim final rule authorized LICUs to choose between two different methods of match subordination.

The two subordination methods apply only to CDCI SC and its match accepted under the CDCI of 2010 and not to government-funded SC accepted under other programs that do not require seniority status. LICUs eligible to accept CDCI SC without any match must follow the pro-rata loss distribution procedure that makes the CDCI SC available to cover a loss at the same rate as any other SC. The interim final rule did not affect in any manner the SC redemption procedures for non-government-funded SC that is not accepted as a match to government-funded SC.

B. Summary of Public Comments

NCUA received two comment letters on the interim final rule: One from a national trade association and one on behalf of two State credit union leagues. One comment letter expressed support for the interim final rule and did not suggest any changes. The other comment letter also expressed support but advised clarification on whether early redemption would be permitted where government-funded SC is only partially matched.

NCUA believes the interim final rule in its current form guards against ambiguity to the extent possible with regard to early redemption. The rule states, without reference to ratio, that matching SC is eligible for early redemption under the same terms and conditions as the government-funded SC with which it is matched. Under the plain meaning of the rule, to be "matching secondary capital," the account in question must necessarily have met all the requirements to qualify as matching SC pursuant to the terms of the program under which the government-funded SC was offered. Assuming the SC qualified as match, the rule makes the match eligible for early redemption. Rather than eliminating ambiguity, addressing amounts or ratios in clarifying circumstances where matching SC is eligible for early redemption could raise further questions with regard to the congruity of rate, term, priority, or some other unanticipated variable. Divergence in these variables does not affect whether SC accepted as a match to government-funded SC is eligible for early redemption.[5]

C. Final Rule

This final rule confirms the amendments made in the interim final rule. It also includes some technical changes and clarifications that respond to considerations that arose during development and implementation of the CDCI.

At the time of the interim final's issuance, Treasury referred to what is now the CDCI as the "CDC Program." To account for this name change, in § 701.34(b)(7), this final rule replaces "Community Development Capital Program" and its abbreviation with "Community Development Capital Initiative" or "CDCI."

In addition, finalized seniority terms with respect to SC accepted as a match to CDCI SC will be such that no amount of the match can be redeemed until every dollar of the CDCI SC has been

[2] The Emergency Economic Stabilization Act of 2008 authorized the Secretary of the Treasury to establish the TARP for the purpose of restoring and sustaining the viability of financial institutions. 12 U.S.C. 5211.

[3] The CDFI Fund is operated by Treasury and charged with promoting economic revitalization and community development through investment in community development financial institutions.

[4] At the time the interim final was approved, Treasury was offering to purchase only thirteen-year Senior Securities.

[5] Eligibility for early redemption, however, does not mean early redemption is automatically approved. The terms of the particular government program, applicable SC contract, and the criteria for Regional Director approval could still restrict early redemption.

returned to Treasury.[6] Thus, the final rule eliminates the interim final rule's now-unnecessary language in § 701.34(b)(7)(i)–(ii) that contemplates the possibility matching SC could be properly redeemed prior to redemption of CDCI SC.

Although Treasury's more recent articulation of the CDCI contemplates issuance of eight-year securities bearing two percent interest for the entire term, the final rule retains the exceptions for early redemption of both government-funded SC and its match.[7] Doing so will allow LICUs who are able to recruit match with a longer maturity or that do not require matching SC to choose to accept the thirteen-year CDCI SC. These LICUs can later decide whether to seek early redemption or retain the CDCI SC despite the interest rate spike to nine-percent.

The final change relates to the schedule for recognizing net-worth value set forth in § 701.34(c)(2). Without an adjustment in this final rule, a problem arises with literal application of the net-worth recognition schedule in some instances where a LICU suffers a loss to, or redeems all or part of, government-funded SC and/or its matching SC before or during the last five years to maturity. To illustrate, if a LICU redeems half of its government-funded SC in year eight of its thirteen-year maturity, the net-worth recognition schedule directs the LICU to recognize 80 percent of the original account balance as net worth although the LICU retains only half of the account's original balance.

To correct this problem, the final rule expressly provides that a LICU's recordation of the net-worth value of an account in its financial statement may never exceed the remaining balance of the account after early redemptions or losses. For SC accounts with less than five years remaining maturity, a LICU must record the net-worth value of the accounts in its financial statement in accordance with the lesser of the following: (1) The remaining balance of the account after early redemptions and losses; or (2) the declining percentage calculations set forth in the net-worth schedule that are based on the original balance of the account.[8]

D. Immediate Effective Date

NCUA is issuing this rulemaking as a final rule effective upon publication. The Administrative Procedure Act ("APA"), 5 U.S.C. 553, requires that, once finalized, a substantive rulemaking must have a delayed effective date of 30 days from the date of publication, except for good cause. In this regard, NCUA believes the 30-day delayed effective date is inapplicable because the final rule makes only technical adjustments and clarifications to the interim final rule and to § 701.34. As such, the rule is not substantive and is not subject to the 30-day publication requirement. Even if the rule were otherwise subject to the 30-day requirement, NCUA believes good cause exists for waiving the 30-day delayed effective date because the interim final rule is already in effect and is not significantly altered by this final rule.

Regulatory Procedures

Regulatory Flexibility Act

The Regulatory Flexibility Act requires NCUA to prepare an analysis to describe any significant economic impact a rule may have on a substantial number of small entities (primarily those under ten million dollars in assets). This final rule does not impose any regulatory burden, instead providing LICUs with the flexibility to redeem SC accepted from the United States Government or any of its subdivisions, along with its matching SC, at any time after the SC has been on deposit for two years. The rule will not have a significant economic impact on a substantial number of small credit unions. Thus, a Regulatory Flexibility Analysis is not required.

Paperwork Reduction Act

NCUA has determined this rule will not increase paperwork requirements under the Paperwork Reduction Act of 1995 and regulations of the Office of Management and Budget.

Executive Order 13132

Executive Order 13132 encourages independent regulatory agencies to consider the impact of their regulatory actions on State and local interests. NCUA, an independent regulatory agency as defined in 44 U.S.C. 3502(5), voluntarily adheres to the fundamental federalism principles addressed by the Executive Order. This rule 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. Accordingly, this rule does not constitute a policy that has federalism implications for purposes of the Executive Order.

Treasury and General Government Appropriations Act, 1999

NCUA has determined the final rule will not affect family well-being within the meaning of section 654 of the Treasury and General Government Appropriations Act, 1999, Public Law 105–277, 112 Stat. 2681 (1998).

Small Business Regulatory Enforcement Fairness Act

The Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121) ("SBREFA") provides generally for congressional review of agency rules. A reporting requirement is triggered in instances where NCUA issues a final rule as defined by Section 551 of the Administrative Procedure Act. 5 U.S.C. 551. The Office of Information and Regulatory Affairs, an office within the Office of Management and Budget, has determined that this is not a major rule for purposes of SBREFA.

List of Subjects in 12 CFR Part 701

Credit, Credit unions, Mortgages.

By the National Credit Union Administration Board, this 16th day of September, 2010.

Mary F. Rupp,

Secretary of the Board.

■ For the reasons discussed above, the interim final rule amending 12 CFR part 701 published on February 19, 2010 (75 FR 7339), which was effective February 19, 2010, is confirmed as final with the following changes:

PART 701—ORGANIZATION AND OPERATION OF FEDERAL CREDIT UNIONS

■ 1. The authority citation for part 701 continues to read as follows:

Authority: 12 U.S.C. 1752(5), 1755, 1756, 1757, 1758, 1759, 1761a, 1761b, 1766, 1767, 1782, 1784, 1786, 1787, 1789. Section 701.6 is also authorized by 15 U.S.C. 3717. Section 701.31 is also authorized by 15 U.S.C. 1601 et seq.; 42 U.S.C. 1981 and 3601–3610. Section 701.35 is also authorized by 42 U.S.C. 4311–4312.

■ 2. Amend § 701.34 by revising paragraphs (b)(7) and (c)(2) introductory

[6] The language of the interim final rule states that CDCI SC becomes available to cover losses only after its matching SC has been depleted or "properly redeemed." During initial development of the CDCI, it was unclear whether Treasury would require matching funds to be on hand for the entire term of the CDCI SC or whether a shorter, minimum term might apply to matching SC. Since the interim final's approval, Treasury has confirmed that it will not allow redemption of any SC accepted as a match to CDCI SC until all of the CDCI SC has been redeemed.

[7] Treasury agreed to offer LICUs the option of issuing eight-year securities to ease concerns investors would be unwilling to contribute matching SC to LICUs with a maturity as long as thirteen years.

[8] Application of the net-worth schedule has no effect on how losses are distributed among accounts under the pro-rata loss distribution procedure of § 701.34(b)(7).

text and adding paragraphs (c)(2)(i) and (c)(2)(ii) introductory text prior to the table to read as follows:

§ 701.34 Designation of low income status; Acceptance of secondary capital accounts by low-income designated credit unions.

* * * * *

(b) * * *

(7) *Availability to cover losses.* Funds deposited into a secondary capital account, including interest accrued and paid into the secondary capital account, must be available to cover operating losses realized by the LICU that exceed its net available reserves (exclusive of secondary capital and allowance accounts for loan and lease losses), and to the extent funds are so used, the LICU must not restore or replenish the account under any circumstances. The LICU may, in lieu of paying interest into the secondary capital account, pay accrued interest directly to the investor or into a separate account from which the secondary capital investor may make withdrawals. Losses must be distributed pro-rata among all secondary capital accounts held by the LICU at the time the losses are realized. In instances where a LICU accepted secondary capital from the United States Government or any of its subdivisions under the Community Development Capital Initiative of 2010 ("CDCI secondary capital") and matching funds were required under the Initiative and are on deposit in the form of secondary capital at the time a loss is realized, a LICU must apply either of the following pro-rata loss distribution procedures to its secondary capital accounts with respect to the loss:

(i) If not inconsistent with any agreements governing other secondary capital on deposit at the time a loss is realized, the CDCI secondary capital may be excluded from the calculation of the pro-rata loss distribution until all of its matching secondary capital has been depleted, thereby causing the CDCI secondary capital to be held as senior to all other secondary capital until its matching secondary capital is exhausted. The CDCI secondary capital should be included in the calculation of the pro-rata loss distribution and is available to cover the loss only after all of its matching secondary capital has been depleted.

(ii) Regardless of any agreements applicable to other secondary capital, the CDCI secondary capital and its matching secondary capital may be considered a single account for purposes of determining a pro-rata share of the loss and the amount determined as the pro-rata share for the combined account must first be applied to the matching secondary capital account, thereby causing the CDCI secondary capital to be held as senior to its matching secondary capital. The CDCI secondary capital is available to cover the loss only after all of its matching secondary capital has been depleted.

* * * * *

(c) * * *

(2) Schedule for recognizing net worth value. The LICU's reflection of the net worth value of the accounts in its financial statement may never exceed the full balance of the secondary capital on deposit after any early redemptions and losses. For accounts with remaining maturities of less than five years, the LICU must reflect the net worth value of the accounts in its financial statement in accordance with the lesser of:

(i) The remaining balance of the accounts after any redemptions and losses; or

(ii) The amounts calculated based on the following schedule:

* * * * *

[FR Doc. 2010–23652 Filed 9–22–10; 8:45 am]

BILLING CODE 7535–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2010–0555; Directorate Identifier 2010–NM–053–AD; Amendment 39–16438; AD 2010–20–04]

RIN 2120–AA64

Airworthiness Directives; Gulfstream Aerospace LP (Type Certificate Previously Held by Israel Aircraft Industries, Ltd.) Model Galaxy and Gulfstream 200 Airplanes

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

ACTION: Final rule.

SUMMARY: We are adopting a new airworthiness directive (AD) for the products listed above. This 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:

Extension of airbrakes above 360 KIAS [knots indicated air speed]/0.79 M_i [Mach indicated] results in aerodynamic driven vibration of the airbrake which, if not limited per Revision 14 to the AFM [airplane flight manual], can lead to high cycle fatigue failure of the airbrake in-board hinge.

The unsafe condition is high cycle fatigue of the airbrake in-board hinge, which can result in loss of the airbrake, which in turn can lead to reduced controllability of the airplane. We are issuing this AD to require actions to correct the unsafe condition on these products.

DATES: This AD becomes effective October 28, 2010.

ADDRESSES: You may examine the AD docket on the Internet at *http://www.regulations.gov* or in person at the U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Mike Borfitz, Aerospace Engineer, International Branch, ANM–116, Transport Airplane Directorate, FAA, 1601 Lind Avenue, SW., Renton, Washington 98057–3356; telephone (425) 227–2677; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION:

Discussion

We issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 to include an AD that would apply to the specified products. That NPRM was published in the **Federal Register** on June 25, 2010 (75 FR 36296). That NPRM proposed to correct an unsafe condition for the specified products. The MCAI states:

Extension of airbrakes above 360 KIAS [knots indicated air speed]/0.79 M_i [Mach indicated] results in aerodynamic driven vibration of the airbrake which, if not limited per Revision 14 to the AFM [airplane flight manual], can lead to high cycle fatigue failure of the airbrake in-board hinge.

The unsafe condition is high cycle fatigue of the airbrake in-board hinge, which can result in loss of the airbrake, which in turn can lead to reduced controllability of the airplane. The required action includes revising the Limitations section of the Gulfstream 200 Airplane Flight Manual to prohibit deploying the air brakes above the stated speed. You may obtain further information by examining the MCAI in the AD docket.

Comments

We gave the public the opportunity to participate in developing this AD. We received no comments on the NPRM or on the determination of the cost to the public.

Conclusion

We reviewed the available data and determined that air safety and the

public interest require adopting the AD as proposed.

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 required different actions in this AD from those in the MCAI in order to follow our FAA policies. Any such differences are highlighted in a NOTE within the AD.

Costs of Compliance

We estimate that this AD will affect about 90 products of U.S. registry. We also estimate that it will take about 1 work-hour per product to comply with the basic requirements of this AD. The average labor rate is $85 per work-hour. Based on these figures, we estimate the cost of this AD to the U.S. operators to be $7,650, or $85 per product.

Authority for This Rulemaking

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

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

Regulatory Findings

We determined that this 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.

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 the NPRM, 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.

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:

2010–20–04 Gulfstream Aerospace LP (Type Certificate Previously Held by Israel Aircraft Industries, Ltd.): Amendment 39–16438. Docket No. FAA–2010–0555; Directorate Identifier 2010–NM–053–AD.

Effective Date

(a) This airworthiness directive (AD) becomes effective October 28, 2010.

Affected ADs

(b) None.

Applicability

(c) This AD applies to Gulfstream Aerospace LP (Type Certificate previously held by Israel Aircraft Industries, Ltd.) Model Galaxy and Gulfstream 200 airplanes, all serial numbers, certificated in any category.

Subject

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

Reason

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

Extension of airbrakes above 360 KIAS [knots indicated air speed]/0.79 M_i [Mach indicated] results in aerodynamic driven vibration of the airbrake which, if not limited per Revision 14 to the AFM [airplane flight manual], can lead to high cycle fatigue failure of the airbrake in-board hinge.

The unsafe condition is high cycle fatigue of the airbrake in-board hinge, which can result in loss of the airbrake, which in turn can lead to reduced controllability of the airplane.

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) Within 60 days after the effective date of this AD: Revise the Limitations section of the Gulfstream 200 AFM to include the following statement. This may be done by inserting a copy of this AD into the AFM.

"**MAXIMUM AIR BRAKES OPERATION/ EXTENDED SPEED**

360 KIAS/0.79 M_i

NOTE

During emergency, air brakes may be used at speeds above 0.79 M_i."

Note 1: When a statement identical to that in paragraph (g) of this AD has been included in the general revisions of the AFM, the general revisions may be inserted into the AFM, and the copy of this AD may be removed from the AFM.

Note 2: The Gulfstream 200 AFM applies to both the Model Galaxy and Gulfstream 200 airplanes.

FAA AD Differences

Note 3: This AD differs from the MCAI and/or service information as follows:

No differences.

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: Mike Borfitz, Aerospace Engineer, International Branch, ANM–116, Transport Airplane Directorate, FAA, 1601 Lind Avenue, SW., Renton, Washington 98057–3356; telephone (425) 227–2677; 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 Israeli Airworthiness Directive 01–10–01–07R1, dated January 20, 2010, for related information.

Material Incorporated by Reference

(j) None.

Issued in Renton, Washington, on September 10, 2010.

Jeffrey E. Duven,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2010–23741 Filed 9–22–10; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2010–0632; Directorate Identifier 2010–CE–025–AD; Amendment 39–16426; AD 2010–18–12]

RIN 2120–AA64

Airworthiness Directives; Robert E. Rust, Jr. Model DeHavilland DH.C1 Chipmunk 21, DH.C1 Chipmunk 22, and DH.C1 Chipmunk 22A Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; correction.

SUMMARY: The FAA is correcting an airworthiness directive (AD) that published in the **Federal Register**. That AD applies to the products listed above. The AD number in the 14 CFR Part 39 section and the § 39.13 [Amended] section is incorrect. This document corrects that error. In all other respects, the original document remains the same.

DATES: This AD remains effective October 7, 2010.

ADDRESSES: You may examine the AD docket on the Internet at *http://www.regulations.gov;* or in person at the Docket Management Facility between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this AD, the regulatory evaluation, any comments received, and other information. The address for the Docket Office (phone: 800–647–5527) is Document Management Facility, U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590.

FOR FURTHER INFORMATION CONTACT: Carey O'Kelley, Aerospace Engineer, FAA, Atlanta Aircraft Certification Office (ACO), 1701 Columbia Avenue, College Park, Georgia 30337; *telephone:* (404) 474–5543; *fax:* (404) 474–5606; *e-mail: carey.o'kelley@faa.gov.*

SUPPLEMENTARY INFORMATION: Airworthiness Directive 2010–18–12, amendment 39–16426 (75 FR 53861, September 2, 2010), currently requires you to do a one-time inspection of the flap operating system for an unapproved latch plate design installation, with replacement as necessary for Robert E. Rust, Jr. Model DeHavilland DH.C1 Chipmunk 21, DH.C1 Chipmunk 22, and DH.C1 Chipmunk 22A airplanes.

As published, the AD number in the 14 CFR Part 39 section and § 39.13 [Amended] section is incorrect.

No other part of the preamble or regulatory information has been changed; therefore, only the changed portion of the final rule is being published in the **Federal Register**.

The effective date of this AD remains October 7, 2010.

Correction of Non-Regulatory Text

In the **Federal Register** of September 2, 2010, AD 2010–18–12; Amendment 39–16426 is corrected as follows:

On page 53861, in the 3rd column, on line 6 under 14 CFR Part 39, change "AD 2010–18–01" to "AD 2010–18–12."

On page 53863, in the 1st column, on line 4 under § 39.13 [Amended], change "AD 2010–18–01" to "AD 2010–18–12."

Issued in Kansas City, Missouri, on August 16, 2010.

William J. Timberlake,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2010–23745 Filed 9–22–10; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2010–0777; Airspace Docket No. 10–ASO–29]

Amendment of Class E Airspace; Brewton, AL

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule, technical amendment.

SUMMARY: This action amends Class E airspace at Brewton Municipal Airport, Brewton, AL, by updating the geographic coordinates of the airport to aid in the navigation of our National Airspace System.

DATES: *Effective date:* 0901 UTC. October 25, 2010.

FOR FURTHER INFORMATION CONTACT: Melinda Giddens, Operations Support Group, Eastern Service Center, Federal Aviation Administration, P.O. Box 20636, Atlanta, Georgia 30320; telephone (404) 305–5610.

SUPPLEMENTARY INFORMATION:

History

The FAA received a request from the National Aeronautical Navigation Services (NANS) to update the geographic coordinates of Brewton Municipal Airport, Brewton, AL. This action makes the adjustment. Accordingly, since this is an administrative change, and does not involve a change in the dimensions or operating requirements of that airspace, notice and public procedures under 5 U.S.C. 553(b) are unnecessary.

The Class E airspace designations are published in Paragraph 6005 of FAA order 7400.9U, dated August 18, 2010, and effective September 15, 2010, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designations listed in this document will be published subsequently in the Order.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them, operationally current, is non-controversial and unlikely to result in adverse or negative comments. 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.

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 amends controlled airspace at Brewton, AL.

Lists 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 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 Federal Aviation Administration Order 7400.9U, Airspace Designations and Reporting Points, dated August 18, 2010, and effective September 15, 2010, is amended as follows:

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

* * * * *

ASO AL E5 Brewton, AL [Amended]

Brewton Municipal Airport, AL
(Lat. 31°03′03″ N., long 87°03′58″ W)
Crestview, FL VORTAC
(Lat. 30°49′34″ N., long 86°40′45″ W)

That airspace extending upward from 700 feet above the surface within a 7-mile radius of the Brewton Municipal Airport and within 4 miles each side of the Crestview, FL, VORTAC 304° radial, extending from the 7-mile radius to 15 miles northwest of the VORTAC.

Issued in College Park, Georgia, on September 15, 2010.

Myron A. Jenkins,

Acting Manager, Operations Support Group, Eastern Service Center, Air Traffic Organization.

[FR Doc. 2010–23731 Filed 9–22–10; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2010–0429; Airspace Docket No. 10–ASO–24]

Establishment of Class E Airspace; Homestead, FL

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action establishes Class E Airspace at Homestead, FL, to accommodate the additional airspace needed for the Standard Instrument Approach Procedures (SIAPs) developed for Homestead General Aviation Airport. This action enhances the safety and airspace management of Instrument Flight Rules (IFR) operations at the airport.

DATES: Effective 0901 UTC, November 18, 2010. The Director of the Federal Register approves this incorporation by reference action under title 1, Code of Federal Regulations, part 51, subject to the annual revision of FAA Order 7400.9 and publication of conforming amendments.

FOR FURTHER INFORMATION CONTACT: Melinda Giddens, Operations Support Group, Eastern Service Center, Federal Aviation Administration, P.O. Box 20636, Atlanta, Georgia 30320; telephone (404) 305–5610.

SUPPLEMENTARY INFORMATION:

History

On May 11, 2010, the FAA published in the **Federal Register** a notice of proposed rulemaking to establish Class E airspace at Homestead, FL (75 FR 26148) Docket No. FAA–2010–0429. 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 7400.9U dated August 18, 2010, and effective September 15, 2010, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designations listed in this document will be published subsequently in the Order.

The Rule

This amendment to Title 14, Code of Federal Regulations (14 CFR) part 71 establishes the Class E airspace extending upward from 700 feet above the surface at Homestead, FL, to provide controlled airspace required to support the SIAPs developed for Homestead General Aviation Airport. This action is necessary for the safety and management of IFR operations at the airports.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current, is non-controversial and unlikely to result in adverse or negative comments. 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 United States Code. Subtitle I, section 106 describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority.

This rulemaking is promulgated under the authority described in subtitle VII, part A, subpart 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 Class E airspace at Homestead, FL.

Lists 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 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 Federal Aviation Administration Order 7400.9U, Airspace Designations and Reporting Points, dated August 18, 2010, effective September 15, 2010, is amended as follows:

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

* * * * *

ASO FL E5 Homestead, FL [NEW]

Homestead General Aviation Airport, FL
(Lat. 25°29′57″ N., long. 80°33′15″ W.)

That airspace extending upward from 700 feet above the surface within a 6.5-mile radius of Homestead General Aviation Airport.

Issued in College Park, Georgia, on September 15, 2010.

Myron A. Jenkins,

Acting Manager, Operations Support Group, Eastern Service Center, Air Traffic Organization.

[FR Doc. 2010–23727 Filed 9–22–10; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2010–0248; Airspace Docket No. 10–ANE–10]

Revocation of Class E Airspace, Brunswick, ME; and Establishment of Class E Airspace, Wiscasset, ME

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action removes Class E Airspace at Brunswick NAS, Brunswick, ME, as the airport has closed and the associated Standard Instrument Approach Procedures (SIAPs) removed, and establishes Class E airspace at Wiscasset, ME, to accommodate the SIAPs developed for the airport. This action will enhance the safety and management of Instrument Flight Rules (IFR) operations within the National Airspace System.

DATES: Effective 0901 UTC, November 18, 2010. The Director of the Federal Register approves this incorporation by reference action under title 1, Code of Federal Regulations, part 51, subject to the annual revision of FAA Order 7400.9 and publication of conforming amendments.

FOR FURTHER INFORMATION CONTACT: Melinda Giddens, Operations Support Group, Eastern Service Center, Federal Aviation Administration, P.O. Box 20636, Atlanta, Georgia 30320; telephone (404) 305–5610.

SUPPLEMENTARY INFORMATION:

History

On March 29, 2010, the FAA published in the **Federal Register** a notice of proposed rulemaking to remove Class E airspace at Brunswick, ME and establish Class E airspace at Wiscasset, ME (75 FR 15361) Docket No. FAA–2010–0248. 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 7400.9U dated August 18, 2019, and effective September 15, 2010, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designations listed in this document will be published subsequently in the Order.

The Rule

This amendment to Title 14, Code of Federal Regulations (14 CFR) part 71 removes the Class E airspace at Brunswick NAS, Brunswick, ME to reflect the closing of the airport and the removal of the SIAPs, and establishes Class E airspace extending upward from 700 feet above the surface at Wiscasset Airport, Wiscasset, ME. This action is necessary for the safety and management of IFR operations at the airport.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current, is non-controversial and unlikely to result in adverse or negative comments. 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 United States Code. Subtitle I, section 106 describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority.

This rulemaking is promulgated under the authority described in subtitle VII, part A, subpart 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 removes controlled airspace at Brunswick, ME and establishes controlled airspace at Wiscasset Airport, Wiscasset, ME.

Lists 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 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 Federal Aviation Administration Order 7400.9U, Airspace Designations and Reporting Points, dated August 18, 2010, effective September 15, 2010, is amended as follows:

Paragraph 6005 Class E Airspace Areas Extending Upward from 700 feet or More Above the Surface of the Earth.

* * * * *

ANE ME E5 Brunswick, ME [REMOVED]

* * * * *

ANE ME E5 Wiscasset, ME [NEW]

Wiscasset Airport, ME
(Lat. 43°57′40″ N., long. 69°42′45″ W.)

That airspace extending upward from 700 feet above the surface within a 6.3-mile radius of the Wiscasset Airport and within 2 miles each side of the 232° bearing from the

airport, extending from the 6.3-mile radius to 10.2 miles southwest of the airport and within 2 miles each side of the 052° bearing from the airport, extending from the 6.3-mile radius to 9.8 miles to the northeast of the airport.

Issued in College Park, Georgia, on September 15, 2010.

Myron A. Jenkins,

Acting Manager, Operations Support Group, Eastern Service Center, Air Traffic Organization.

[FR Doc. 2010–23726 Filed 9–22–10; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF LABOR

Mine Safety and Health Administration

30 CFR Part 75

RIN 1219–AB76

Maintenance of Incombustible Content of Rock Dust in Underground Coal Mines

AGENCY: Mine Safety and Health Administration, Labor.

ACTION: Emergency Temporary Standard; public hearings; close of comment period.

SUMMARY: The Mine Safety and Health Administration (MSHA) is issuing an emergency temporary standard (ETS) under section 101(b) of the Federal Mine Safety and Health Act of 1977 in response to the grave danger that miners in underground bituminous coal mines face when accumulations of coal dust are not made inert. MSHA has concluded, from investigations of mine explosions and other reports, that immediate action is necessary to protect miners.

Accumulations of coal dust can ignite, resulting in an explosion, or after an explosion, they can intensify flame propagation, increasing the severity of explosions. The ETS requires mine operators to increase the incombustible content of combined coal dust, rock dust, and other dust to at least 80 percent in underground areas of bituminous coal mines. The ETS further requires that the incombustible content of such combined dust be raised 0.4 percent for each 0.1 percent of methane present. The ETS strengthens the protections for miners by reducing the potential for a coal mine explosion and reducing the severity of explosions should they occur.

DATES: *Effective date:* September 23, 2010.

Compliance dates: Each mine operator shall comply with the ETS by the dates listed below.

1. October 7, 2010. Newly mined areas.

2. November 22, 2010. All other areas of the mine.

Persons and organizations are encouraged to submit comments on the ETS by October 19, 2010. The ETS must be replaced with a final rule within 9 months.

Hearing dates: October 26, 2010, October 28, 2010, November 16, 2010, and November 18, 2010. The locations are listed in the Public Hearings section below under the **SUPPLEMENTARY INFORMATION** section of this document. Post-hearing comments must be received by midnight Eastern Standard Time on December 20, 2010.

ADDRESSES: Comments must be identified with "RIN: 1219–AB76" and may be sent to MSHA by any of the following methods:

- *Federal E-Rulemaking Portal*: *http://www.regulations.gov*. Follow the on-line instructions for submitting comments.
- *Electronic mail: zzMSHA-comments@dol.gov.* Include "RIN: 1219–AB76" in the subject line of the message.
- *Facsimile:* 202–693–9441. Include "RIN: 1219–AB76" in the subject line of the message.
- *Regular Mail:* MSHA, Office of Standards, Regulations, and Variances, 1100 Wilson Boulevard, Room 2350, Arlington, Virginia 22209–3939.
- *Hand Delivery or Courier:* MSHA, Office of Standards, Regulations, and Variances, 1100 Wilson Boulevard, Room 2350, Arlington, Virginia. Sign in at the receptionist's desk on the 21st floor.

FOR FURTHER INFORMATION CONTACT: Patricia W. Silvey, Director, Office of Standards, Regulations, and Variances, MSHA, at *silvey.patricia@dol.gov* (e-mail), 202–693–9440 (voice), or 202–693–9441 (facsimile).

SUPPLEMENTARY INFORMATION: MSHA is including the following outline to assist the public in finding information in the preamble.

I. Introduction
  A. Availability of Information
  B. Public Hearings
II. Basis for Emergency Temporary Standard
  A. Regulatory Authority
  B. Grave Danger
III. Discussion of Emergency Temporary Standard (ETS)
  A. Background
  B. Discussion
IV. Regulatory Economic Analysis
  A. Executive Order (E.O.) 12866
  B. Population at Risk
  C. Benefits
  D. Compliance Costs
  E. Net Benefits
V. Feasibility
  A. Technological Feasibility
  B. Economic Feasibility
VI. Regulatory Flexibility Act (RFA) and Small Business Regulatory Enforcement Fairness Act (SBREFA)
  A. Definition of a Small Mine
  B. Factual Basis for Certification
VII. Paperwork Reduction Act of 1995
VIII. Other Regulatory Considerations
  A. The Unfunded Mandates Reform Act of 1995
  B. Executive Order 13132: Federalism
  C. The Treasury and General Government Appropriations Act of 1999: Assessment of Federal Regulations and Policies on Families
  D. Executive Order 12630: Government Actions and Interference With Constitutionally Protected Property Rights
  E. Executive Order 12988: Civil Justice Reform
  F. Executive Order 13045: Protection of Children From Environmental Health Risks and Safety Risks
  G. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments
  H. Executive Order 13211: Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use
IX. References
X. Emergency Temporary Standard—Regulatory Text

I. Introduction

This ETS is issued under section 101(b) of the Federal Mine Safety and Health Act of 1977 (Mine Act) as amended by the Mine Improvement and New Emergency Response (MINER) Act of 2006, 30 U.S.C. 811(b). This ETS revises existing 30 CFR 75.403 on the incombustible content of combined coal dust, rock dust and other dust to strengthen the protection for miners by greatly minimizing the potential for a coal dust explosion in an underground bituminous coal mine.

In accordance with section 101(b)(3) of the Mine Act, the ETS serves as an emergency temporary final rule with immediate effect and provides an opportunity for notice and comment, after which time a final rule will be issued. That final rule may differ from the ETS. The Mine Act states that the ETS is a temporary standard and must be superseded by a final rule within nine months. The legislative history of the Mine Act reinforces the statutory language regarding the ETS providing opportunity for comment "so that all views can be carefully considered in connection with the issuance of a permanent standard." S. Rept. No. 95–181, 24 (1977). The preamble discusses the specific provision that MSHA intends to address in the final rule. MSHA solicits comments from the mining community on this ETS.

A. Availability of Information

Public Comments: MSHA will post all comments on the Internet without change, including any personal information provided. Access comments electronically at *http://www.msha.gov/regsinfo.htm* or *http://www.regulations.gov*. Review comments in person at the Office of Standards, Regulations, and Variances, 1100 Wilson Boulevard, Room 2350, Arlington, Virginia. Sign in at the receptionist's desk on the 21st floor.

E-mail notification: MSHA maintains a list that enables subscribers to receive e-mail notification when the Agency publishes rulemaking documents in the **Federal Register.** To subscribe, go to *http://www.msha.gov/subscriptions/subscribe.aspx*.

B. Public Hearings

MSHA will hold four public hearings on the ETS to provide the public with an opportunity to present oral statements, written comments, and other information on this rulemaking. The public hearings will begin at 9 a.m. and end after the last presenter speaks, and in any event not later than 5 p.m., on the following dates at the locations indicated:

Date	Location	Contact No.
October 26, 2010	Marriott St. Louis Airport, 10700 Pear Tree Lane, St. Louis, MO 63134	(314) 423–9700
October 28, 2010	Sheraton Birmingham, 2101 Richard Arrington Jr. Blvd N, Birmingham, AL 35203	(205) 324–5000
November 16, 2010	Hilton Suites Lexington Green, 245 Lexington Green Circle, Lexington, KY 40511	(859) 271–4000
November 18, 2010	Charleston Marriott Town Center, 200 Lee Street East, Charleston, WV 25301	(304) 345–6500

The hearings will begin with an opening statement from MSHA, followed by an opportunity for members of the public to make oral presentations. You do not have to make a written request to speak; however, persons and organizations wishing to speak are encouraged to notify MSHA in advance for scheduling purposes.

Speakers and other attendees may present information to MSHA for inclusion in the rulemaking record. The hearings will be conducted in an informal manner. Formal rules of evidence or cross examination will not apply.

A verbatim transcript of the proceedings will be prepared and made a part of the rulemaking record. Copies of the transcript will be available to the public. The transcript may also be viewed on MSHA's Web site at *http://www.msha.gov/regsinfo.htm*, under Statutory and Regulatory Information. MSHA will accept post-hearing written comments and other appropriate information for the record from any interested party, including those not presenting oral statements.

II. Basis for the Emergency Temporary Standard

A. Regulatory Authority

Section 101(b) of the Mine Act provides that:

1. The Secretary shall provide, without regard to the requirements of chapter 5, title 5, United States Code, for an emergency temporary mandatory health or safety standard to take immediate effect upon publication in the **Federal Register** if [s]he determines (A) that miners are exposed to grave danger from exposure to substances or agents determined to be toxic or physically harmful, or to other hazards, and (B) that such emergency standard is necessary to protect miners from such danger.

2. A temporary mandatory health or safety standard shall be effective until superseded by a mandatory standard promulgated in accordance with the procedures prescribed in paragraph (3) of this subsection.

3. Upon publication of such standard in the **Federal Register**, the Secretary shall commence a proceeding in accordance with section 101(a) [involving notice and comment], and the standards as published shall also serve as a proposed rule for the proceeding. The Secretary shall promulgate a mandatory health or safety standard under this paragraph no later than nine months after publication of the emergency temporary standard as provided in paragraph (2).

An ETS is an extraordinary measure provided by the Mine Act to enable MSHA "to react quickly to grave dangers that threaten miners before those dangers manifest themselves in serious or fatal injuries or illnesses." S. Rept. No. 95–181, 24 (1977). Additionally, the Senate Report states—

* * * once the Secretary has identified a grave danger that threatens miners the Committee expects the Secretary to issue an emergency temporary standard as quickly as possible, not necessarily waiting until [s]he can investigate how well that grave danger is being managed or controlled in particular mines. *Id. at 24.*

An ETS takes effect upon publication in the **Federal Register**, and is a fully enforceable standard.

To assure the optimum protection of miners, the ETS authority applies to all types of grave dangers without qualification. The legislative history of the Mine Act emphasizes that "to exclude any kind of grave danger would contradict the basic purpose of emergency temporary standards—protecting miners from grave dangers." *Id.* The ETS authority covers dangers arising from exposure to toxic or physically harmful substances or agents and to "other hazards." It applies to dangers longstanding or novel, to dangers that "result from conditions whose harmful potential has just been discovered" or to which large numbers of miners are "newly exposed." *Id.*

A record of fatalities or serious injuries is not necessary before an ETS can be issued because "[d]isasters, fatalities, and disabilities are the very thing this provision is designed to prevent." *Id.* at 23. At the same time, the legislative history of the Mine Act is clear that an ETS is not limited to new dangers in the mining industry: "That a danger has gone unremedied should not be a bar to issuing an emergency standard. Indeed, if such is the case the need for prompt action is that much more pressing." *Id.* at 24.

When issuing an ETS, MSHA is "not required to prove the existence of grave danger as a matter of record evidence prior to taking action." *Id.* The legislative history expressly recognizes "the need to act quickly where, in the judgment of the Secretary, a grave danger to miners exists." *Id.* The ETS is a critical statutory tool that MSHA can use to take immediate action to significantly reduce the potential for the loss of life in the mines.

MSHA accordingly has used an ETS to require-

- Hands-on training for miners in the use of self-contained self-rescue (SCSR) devices (52 FR 24373, June 30, 1987);
- Training and mine evacuation procedures for underground coal mines (67 FR 76658, Dec. 12, 2002);
- New accident notification timeframes, new safety equipment, and training and drills in mine emergency evacuations (71 FR 12252, Mar. 9, 2006); and
- Sealing of abandoned areas (72 FR 28797, May 22, 2007).

B. Grave Danger and the Need for an Emergency Temporary Standard

MSHA has determined that a revised standard for "Maintenance of incombustible content of rock dust" (30

CFR § 75.403) is necessary to immediately protect miners from hazards of coal dust explosions. This determination is based on: MSHA's accident investigation reports of mine explosions in intake air courses that involved coal dust (Dubaniewicz 2009); the National Institute for Occupational Safety and Health's (NIOSH) Report of Investigations 9679 (Cashdollar et al. 2010), "Recommendations for a New Rock Dusting Standard to Prevent Coal Dust Explosions in Intake Airways"; and MSHA's experience and data.

Rock dust is a pulverized stone used to cover coal dust and render accumulations of it inert. In order to prevent an explosion from propagating, rock dust must be effectively applied wherever coal dust accumulates. The mine operator's procedures for applying rock dust must be designed to assure that rock dust effectively inerts coal dust accumulations. Rock dust, when effectively applied, can prevent explosions or reduce the severity of explosions.

Under the existing standard, mine operators are required to apply rock dust in bituminous coal mines to reduce the explosion potential of the coal dust and other dust generated during mining operations. Effective rock dust application is essential to protect miners from the potential of a coal dust explosion; or if one occurs, to reduce its severity. Based on the Federal Coal Mine Health and Safety Act of 1969 (Coal Act), Public Law 91–173, MSHA established a standard that requires mine operators to maintain at least 80 percent incombustible content of the combined coal dust, rock dust, and other dust in return airways. In all other areas of the mine, the combined dust must contain at least 65 percent incombustible content. The higher limit for return airways was determined in large part because fine "float" coal dust (100 percent < 200 mesh or 75 micrometers (μm)) tends to collect in these airways.

In the 1920s, the U.S. Bureau of Mines (the Bureau) conducted industry-wide surveys of coal dust particle size produced by mining. The Bureau conducted large-scale explosion tests using dust particles of the size range obtained from the survey to determine the amount of rock dust required to prevent explosion propagation. The results of this research are the basis for MSHA's existing standard.

Mining technology, equipment, and methods have changed significantly since the 1920s and NIOSH and MSHA conducted a survey to update information about existing coal dust particle size distribution in underground bituminous coal mines. MSHA inspectors collected a variety of dust samples from intake [1] and return airways of U.S. coal mines. NIOSH found that the coal dust particle size distribution in intake airways is much finer than in mines of the 1920s because of the significant changes in mining methods and equipment (Cashdollar et al. 2010).

Given the results of the latest coal dust particle size survey, NIOSH conducted a series of large-scale dust explosion tests at the NIOSH Lake Lynn Experimental Mine (LLEM) using the dust survey results to determine the incombustible content necessary to prevent explosion propagation. NIOSH determined that the finer coal dust particle size found in intake airways requires a greater incombustible content to significantly decrease the potential for propagation of explosions than the 65 percent required under MSHA's existing standard, since the explosion hazard increases as the coal dust particle size decreases. In addition, despite survey indications that return dust particle sizes are finer than those in the past studies, NIOSH finds that the existing requirement of 80 percent incombustible content is still sufficient for these areas.

Based on the results of this testing, NIOSH recommends an 80 percent total incombustible content (TIC) in both intake and return airways of bituminous coal mines (Cashdollar et al. 2010). The coal dust particle size survey and explosion test results indicate that the existing requirement of 80 percent TIC in return airways is still sufficient and appropriate.

During the period from 1976 through 2001 (26 years) there were 6 explosions that resulted in 46 fatalities in which rock dusting conditions and practices in intake air courses contributed to the severity of the explosions (Dubaniewicz 2009). MSHA's experience indicates that many large explosions in underground bituminous coal mines are propagated by coal dust.

Based on NIOSH's data and recommendations, and MSHA data and experience, the Secretary has determined that miners are exposed to grave danger in areas of underground bituminous coal mines that are not properly and sufficiently rock dusted in accordance with the requirements in this ETS and that this ETS is necessary to protect miners from such danger.

[1] This term refers to all areas of an underground mine other than returns that require rock dusting. These include intake airways, conveyor belt entries not used as air intakes, and other neutral entries such as roadways and track entries.

III. Discussion of the Emergency Temporary Standard

A. Background

When drafting the Federal Coal Mine Safety Act of 1952, Public Law 49–77 (1952), the Congress recognized a need to prevent major disasters in underground coal mines. At that time, the Congress particularly noted the threat of coal mine explosions due to accumulations of coal dust.

Under the Coal Act of 1969, Congress emphasized, among other things, the need for interim safety standards to improve control of combustibles—such as loose coal—that propagate explosions. The Congress recognized the need to prevent coal dust from accumulating in explosive quantities and to prevent coal dust explosions. Congress included language related to rock dusting, which provided:

> Where rock dust is required to be applied, it shall be distributed upon the top, floor, and sides of all underground areas of a coal mine and maintained in such quantities that the incombustible content of the combined coal dust, rock dust, and other dust shall be not less than 65 per centum, but the incombustible content in the return aircourses shall be no less than 80 per centum. Where methane is present in any ventilating current, the per centum of incombustible content of such combined dust shall be increased 1.0 and 0.4 per centum for each 0.1 per centum of methane where 65 and 80 per centum, respectively, of incombustibles are required. [Conference Report No. 91–761, Section 304(d)].

The Congress retained this Coal Act provision in the Mine Act. This provision is MSHA's existing standard for rock dusting.

B. Discussion

This ETS revises existing 30 CFR 75.403 to require mine operators to increase the incombustible content of the combined coal dust, rock dust, and other dust in all accessible areas of underground bituminous coal mines to at least 80 percent. Rock dust must be distributed upon the top, floor, and sides of all underground areas of a bituminous coal mine and maintained in such quantities that the incombustible content of the combined coal dust, rock dust, and other dust will be at least 80 percent. Existing MSHA standards require the incombustible content in the return air courses to be at least 80 percent and in all other areas to be at least 65 percent. This ETS increases the incombustible content in all areas, other than return air courses, from 65 percent to 80 percent. In addition, the ETS requires that where methane is present in any ventilating current, the percent of incombustible

content of such combined dust shall be increased 0.4 percent for each 0.1 percent of methane. This is a conforming change to the existing requirement. MSHA solicits comments regarding the increase in incombustible content of dust in air courses where methane is present. Please include rationale and supporting documentation for any suggested alternative compliance methods.

It is the responsibility of mine operators to comply with the ETS immediately. MSHA recognizes, however, that operators may need additional time for compliance for both newly mined areas and other areas of the mine. For newly mined areas, the ETS includes a short delayed compliance date to allow operators to purchase additional rock dust, related materials, and equipment. For other areas of the mine, which may be extensive in some cases, the ETS provides operators with additional time to apply rock dust. By October 7, 2010, mine operators must rock dust all newly mined areas in accordance with the ETS. By November 22, 2010, all other areas of the mine must be rock dusted in accordance with the ETS. MSHA encourages operators to begin rock dusting all other areas, starting with areas that pose the greatest risk to miners. Those areas include areas near the active faces and areas that contain ignition sources, such as conveyor belt drives and conveyor belt entries because they pose the greatest potential for methane and coal dust explosions.

Dust samples collected and analyzed by MSHA in each of the Agency's districts that cover bituminous coal mines were used by NIOSH to determine the incombustible content necessary to minimize explosion propagation. The samples were collected in intake and return airways, and the results indicate that particle sizes of the dust in underground areas are significantly finer than those measured in the 1920s, which were the basis for the existing standard as noted above. According to the NIOSH report, the finer dust particle size results from changes in underground coal mining technology since the 1920s. This decrease in particle size occurred as new mining technologies were adopted by the industry (*e.g.,* mining methods involving increased mechanization) (Cashdollar *et al.* 2010).

MSHA's existing rock dust standard which requires a 65 percent TIC dust mixture does not adequately protect miners. LLEM tests have shown that a 68 percent TIC dust mixture with coarse coal dust from the Pittsburgh seam (20 percent < 200 mesh) will propagate dust explosions. LLEM inerting experiments also demonstrated that at least 76.4 percent TIC suspended in the air in a laboratory test environment is required to prevent explosion propagation for medium-size coal dust (38 percent < 200 mesh). LLEM experiments have also shown that the TIC required to prevent flame propagation becomes much less dependent on coal particle size as the TIC approaches and exceeds 80 percent (Cashdollar *et al.* 2010). Consistent with NIOSH findings, the ETS requires 80 percent TIC for all areas that require rock dusting. The ETS is consistent with the requirement in the West Virginia Executive Order issued on April 14, 2010, relating to total incombustible content of dust.

IV. Regulatory Economic Analysis

A. Executive Order 12866: Regulatory Planning and Review

Under Executive Order (E.O.) 12866, the Agency must determine whether a regulatory action is "significant" and subject to review by the Office of Management and Budget (OMB). Section 3(f) of E.O. 12866 defines a "significant regulatory action" as an action that is likely to result in a rule: (1) Having an annual effect on the economy of $100 million or more, or adversely and materially affecting a sector of the economy, productivity, competition, jobs, the environment, public health or safety or state local or tribal governments or communities (also referred to as "economically significant"); (2) creating serious inconsistency or otherwise interfering with an action taken or planned by another agency; (3) materially altering the budgetary impacts of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or (4) raising novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in this Executive Order.

MSHA has determined that this ETS does not have an annual effect of $100 million or more on the economy, and is not an economically "significant regulatory action" pursuant to § 3(f) of E.O. 12866. MSHA requests comments on all the estimates of costs and benefits presented in this ETS.

MSHA has not prepared a separate regulatory economic analysis for this rulemaking. Rather, the analysis is presented below.

B. Population at Risk

The ETS applies to all underground bituminous coal mines in the United States. There are approximately 415 active underground bituminous coal mines employing 47,119 miners. Table 1 presents the 415 underground bituminous coal mines by employment size.

TABLE 1—UNDERGROUND BITUMINOUS COAL MINES AND MINERS, 12 MONTH AVERAGE AS OF JANUARY 2010, BY EMPLOYMENT SIZE *

Mine size	Number of underground bituminous coal mines	Total employment at underground coal mines
1–19 Employees	73	1,136
20–500 Employees	330	29,390
501+ Employees	12	9,708
Contractors	.....	6,885
Total	415	47,119

* Source: MSHA MSIS Data (March 2010).

The 415 underground coal mines produced an estimated 331.7 million short tons of coal in 2009. The average price of coal in underground mines in 2008 was $51.35 per short ton and was obtained from the Department of Energy (DOE), Energy Information Administration (EIA), *Annual Coal Report 2008,* October 2009, Table 28.

Table 2 presents the coal production and revenues for 2009.

TABLE 2—COAL PRODUCTION IN SHORT TONS AND COAL REVENUES IN 2009 FOR MINES AFFECTED BY THE ETS

Mine size	Coal production	Coal revenue
1–19 Employees	4,972,836	$255,355,129
20–500 Employees	236,453,706	12,141,897,803
500+ Employees	90,256,010	4,634,646,114
Total	331,682,552	17,031,889,045

C. Benefits

Accumulations of coal dust can propagate and contribute to the severity of mine explosions. During the period 1976 to 2001 (26 years) there were 26 fatal methane and/or coal dust explosions in underground coal mines that resulted in 139 fatalities (Dubaniewicz 2009). In 6 of those 26 explosions, the rock dusting conditions and practices in intake air courses were identified as either the cause or a contributing factor in the explosions. In addition to reviewing the Dubaniewicz report, MSHA also reviewed the Agency's own fatal investigation reports for these explosions. Based upon this review, MSHA determined that the requirements in this ETS would have either prevented or reduced the severity of these explosions. These explosions resulted in 46 deaths, approximately 2 deaths per year (46 deaths/26 years). MSHA acknowledges that the requirements in this ETS probably would not have prevented all of the deaths from the 6 explosions, and estimates that the ETS would have prevented approximately 1 to 1.5 deaths per year.

MSHA also studied explosions and ignitions resulting in non-fatal injuries that occurred during the period from 1986 through 2001 (16 years). During that time, there were 3 explosions that resulted in at least 4 non-fatal injuries in which rock dusting conditions and practices contributed to the explosions. Based on the data, MSHA determined that the requirements in the ETS would have prevented 1 additional injury about every 4 years (4 injuries/16 years).

However, these estimates are not precise and the ETS could result in additional injuries prevented. MSHA is also aware of at least 4 explosions or ignitions occurring from 1985 through 2008 which did not result in any injuries or fatalities; however, the investigation report concluded that poor rock dust practices contributed to these explosions. MSHA projects that the ETS would improve rock dust practices in underground bituminous coal mines and the safety and health of miners.

The provisions of the ETS will decrease explosibility of the coal dust deposited in underground bituminous coal mines, which will decrease both the probability that an explosion will occur, and, if an explosion does occur, the severity of the explosion. MSHA projects a significant reduction in fatalities and injuries with the implementation of the ETS.

MSHA calculates benefits in terms of an annual average. However, the ETS is targeted at mine explosions, which are catastrophic events that may not occur on a regular basis. They can unfortunately occur multiple times in a single year but may not occur again for a number of years. Thus, MSHA's average estimate of 1 to 1.5 deaths prevented a year cannot fully reflect the impact of preventing a given explosion or series of explosions, since each would be unique in terms of its impacts. MSHA has estimated the benefits of the ETS within this context. The number of fatalities and injuries that may be prevented by this ETS may be understated. MSHA requests comments on the Agency's benefit estimates, as well as supporting data.

D. Compliance Costs

MSHA estimates that the ETS will result in total yearly costs for operators of underground bituminous coal mines of approximately $22.0 million: $0.3 million for mines with 1–19 employees; $15.8 million for mines with 20–500 employees; and $6.0 million for mines with 501 or more employees.

As is noted below, MSHA's cost estimates are based upon 2009 data. On April 14, 2010, West Virginia (WV) issued an Executive Order requiring that dust samples meet the NIOSH recommendation of 80% total incombustible content. MSHA did not consider the WV requirement in its analysis; thus the cost estimates attributable to the ETS may be overstated.

Derivation of Compliance Costs

Results from 26,576 intake rock dust samples collected by MSHA in 2009 show that over 75% of the samples had a total incombustible content (TIC) equal to or greater than 80%. While it is not possible to precisely determine the additional amount of rock dust needed based upon these samples, MSHA developed cost estimates using the following:

- MSHA assumed that the costs related to the 25% of samples that were below 80% TIC were the costs of going from 65% required under the existing standard to 80% TIC.
- Some samples that were below 80% TIC were below 65% TIC and others were above 65% TIC. To calculate costs, MSHA assumed that 25% of the mines in each size category would have to increase the TIC in the intakes from 65% to 80%, and developed costs accordingly.

MSHA estimates that approximately 18 mines with fewer than 20 employees (73 mines × 25%); 83 mines with 20–500 employees (330 mines × 25%); and 3 mines with more than 500 employees (12 mines × 25%) will incur costs to comply with the ETS.

MSHA also estimates that these mines will require 115% more rock dust to comply with the ETS. The 115% increase in the amount of rock dust needed was calculated by solving the following set of equations:

- The initial amount of rock dust (RD_0) equals 65% of the initial amount of total dust (TD_0), as is specified in equation 1.

Equation 1: $RD_0 = 0.65 \times TD_0$

- The initial amount of rock dust (RD_0) plus the added rock dust (RD_{AD}) equals 80% of the initial amount of total dust (TD_0) plus the added rock dust (RD_{AD}) as is specified in equation 2.

Equation 2: $RD_0 + RD_{AD} = 0.8 \times (TD_0 + RD_{AD})$

Based upon the experience of MSHA's field staff, MSHA estimates the total costs associated with purchasing and applying rock dust to comply with the existing rock dust requirements are $0.20 per ton of coal produced for mine operators with fewer than 20 employees and $0.23 per ton of coal produced for mine operators with 20 or more

employees. Therefore, the estimated additional compliance cost for the affected mines will be $0.23 ($0.20 × 115%) per ton of coal produced for mine operators with fewer than 20 employees and $0.27 ($0.23 × 115%) per ton of coal produced for mine operators with 20 or more employees.

From these estimates, MSHA projects that the costs for purchasing and applying rock dust would increase by $22.0 million per year due to the ETS. Table 3 shows that, disaggregated by mine size, yearly costs will be approximately: $0.3 million for mine operators with fewer than 20 employees; $15.8 million for mine operators with 20–500 employees; and $6.0 million for mine operators with more than 500 employees.

TABLE 3—PROJECTED COMPLIANCE COSTS BASED ON MINE SIZE AND ADDITIONAL ROCK DUST PER SHORT TON OF COAL PRODUCED

Mine size	Mine count	Average preliminary 2009 coal production (short tons) per mine	Additional rock dust costs per short ton of coal produced	Increase in yearly costs to apply rock dust to comply with ETS
1–19 Employees	18	68,121	$0.230	$282,000
20–500 Employees	83	716,526	0.265	15,760,000
501+ Employees	3	7,521,334	0.265	5,979,000
Total	104	.....	.....	22,021,000

MSHA solicits comments on the above estimates as well as information that would enable a more specific analysis of costs, which could include the costs of: Additional rock dust; increased labor needed to apply the rock dust; and any additional equipment that would be necessary, such as, pod dusters, trickle dusters, finger dusters, and scoop batteries. For equipment, please include the type, number of pieces, costs, and expected service life. Please explain whether mining methods would affect the costs (*e.g.,* longwall compared to non-longwall mines).

E. Net Benefits

This section presents a summary of the estimated net benefits of the ETS for informational purposes only. Under the Mine Act, MSHA is not required to use estimated net benefits as the basis for its decision.

MSHA based its estimates of the monetary values for the benefits associated with the ETS on relevant literature. To estimate the monetary values of these reductions in cases, MSHA performed an analysis of the imputed value of fatalities avoided based on a willingness-to-pay approach. This approach relies on the theory of compensating wage differentials (*i.e.,* the wage premium paid to workers to accept the risk associated with various jobs) in the labor market. A number of studies have shown a correlation between higher job risk and higher wages, suggesting that employees demand monetary compensation in return for incurring a greater risk of injury or fatality.

Viscusi & Aldy (2003) conducted an analysis of studies that use a willingness-to-pay methodology to estimate the imputed value of life-saving programs (*i.e.,* meta-analysis) and found that each fatality avoided was valued at approximately $7 million and each lost work-day injury was approximately $50,000 in 2000 dollars. Using the GDP Deflator (U.S. Bureau of Economic Analysis, 2010), this yields an estimate of $8.7 million for each fatality avoided and $62,000 for each injury avoided in 2009 dollars. This value of a statistical life (VSL) estimate is within the range of the substantial majority of such estimates in the literature ($1 million to $10 million per statistical life), as discussed in OMB Circular A–4 (OMB, 2003).

Although MSHA is using the Viscusi & Aldy (2003) study as the basis for monetizing the expected benefits of the ETS, the Agency does so with several reservations, given the methodological difficulties involved in estimating the compensating wage differentials (see Hintermann, Alberini and Markandya, 2008). Furthermore, these estimates pooled across different industries may not capture the unique circumstances faced by coal miners. For example, some have suggested that VSL models be disaggregated to account for different levels of risk, as might occur in coal mining (see Sunstein, 2004). In addition, coal miners may have few options of alternative employers and in some cases only one employer (near-monopsony or monopsony) that may depress wages below those in a more competitive labor market.

MSHA recognizes that monetizing the value of a statistical life is difficult and involves uncertainty and imprecision. In the future, MSHA plans to work with other agencies to refine the approach taken in this ETS.

Based upon the estimated prevention of 1 to 1.5 deaths per year and 1 injury every 4 years, the ETS would result in monetized benefits of approximately $8.7 to 13.1 million per year. As noted above, MSHA believes that the ETS may prevent additional injuries; however, due to data limitations, quantification is not possible and they have not been included in the monetized benefits.

In addition to the injuries and fatalities prevented, MSHA anticipates that savings to operators would result from the ETS preventing or reducing the severity of explosions. As noted above, 6 explosions (about 0.23 per year) involving fatalities occurred in the 26 year period 1976 to 2001 and 4 explosions (about 0.17 per year) that did not involve any fatalities or injuries occurred in the 24 year period 1985 through 2008. MSHA estimates that the ETS would prevent or reduce the severity of about one explosion every two and a half years.

Explosions can result in tremendous costs to a mine operator. MSHA estimates that the time to recover a mine after an explosion is a minimum of 8 weeks. Factors such as lost wages, lost production, rehabilitation, payment for the mine rescue teams and other staff, and miscellaneous expenses could result in costs that range between $2 and $7 million, depending on the extent of the explosion and the size of the mine.

Additional costs include lost equipment, which could run into the millions of dollars. For example, the cost of a set of advancing type mining equipment (continuous mining machine, roof bolting machine, shuttle car, scoop and power center) would be approximately $8 million while the cost of a longwall unit would be approximately $200 million. Replacing the electric and waterlines, rails, roof

supports, pumps, and power centers could add a couple of million dollars more to costs.

If a mine operator is unable to reopen the mine after an explosion like some of the mines examined by MSHA, costs will vary depending on the amount of recoverable reserves. The anticipated cost of lost reserves could range from a few million dollars for a small mine to in excess of hundreds of million dollars for a large mine.

Based upon these values, MSHA estimates that preventing or reducing the severity of a typical explosion in an underground coal mine will save the operator approximately $15 to $40 million in direct costs (*e.g.,* mine rescue, wages and equipment). Based on one explosion every two and a half years, MSHA estimates that the ETS will result in annual savings to operators of between $6 million ($15 million per explosion x 0.4 explosions per year) and $16 million ($40 million per explosion x 0.4 explosions per year) depending upon the size of the mine and severity of the explosion. In addition, MSHA believes that the ETS will prevent operator losses resulting from the inability to recover coal reserves, although MSHA has not quantified these savings due to the imprecision of the data. Furthermore, MSHA's average estimate of 1 to 1.5 deaths prevented a year cannot fully reflect the impact of preventing a given explosion or series of explosions, since each would be unique in terms of its impacts. MSHA solicits comments on the net benefit estimates.

TABLE 4—MONETIZED NET BENEFITS MILLIONS OF 2009 DOLLARS

Yearly fatalities and injuries avoided	Yearly cost to apply additional rock dust	Yearly savings from reducing explosions	Annual net benefits
$8.7 to $13.1	$22.0	$6 to $16	−7.3 to 7.1

Note: The ETS is targeted at the prevention of explosions, which are rare but catastrophic events. The net benefits, which must be estimated on an annual basis, do not necessarily reflect the impact of preventing a given explosion or series of explosions, since each would be unique in terms of its impacts.

V. Feasibility

MSHA has concluded that the requirements of the ETS are technologically and economically feasible.

A. Technological Feasibility

MSHA concludes that this ETS is technologically feasible. The ETS is not technology-forcing. The benefits of rock dusting have been known for at least a century. Mine operators have been required to comply with the existing rock dusting requirements in 30 CFR 75.403 for more than 30 years. While the ETS will increase the total incombustible content of dust in the mine, the ETS will not require operators to make any innovations in existing equipment or techniques used to rock dust. However, MSHA recognizes that operators may need additional time to purchase additional rock dust, related materials, and equipment for newly mined areas, and to apply the rock dust in other areas of the mine.

B. Economic Feasibility

MSHA also concludes that this ETS is economically feasible. The U.S. underground bituminous sector produced an estimated 331,682,552 short tons of coal in 2009. Using the 2008 price of underground coal of $51.35 per short ton, and estimated 2009 coal production in tons, underground coal revenues are estimated to be approximately $17 billion. MSHA estimated the yearly compliance costs of the ETS to be $22.0 million, which is 0.13 percent of revenues ($22.0 million/$17 billion) for underground bituminous coal mines. MSHA has traditionally used a revenue screening test—whether the yearly compliance costs of a regulation are less than 1 percent of revenues—to establish presumptively that compliance with the regulation is economically feasible for the mining community.

VI. Regulatory Flexibility Act and Small Business Regulatory Enforcement Fairness Act (SBREFA)

Pursuant to the Regulatory Flexibility Act (RFA) of 1980, as amended by SBREFA, MSHA has analyzed the impact of the ETS on small businesses. Based on that analysis, MSHA has notified the Chief Counsel for Advocacy, Small Business Administration, and made the certification under the Regulatory Flexibility Act at 5 U.S.C. 605(b) that the ETS will not have a significant economic impact on a substantial number of small entities. The factual basis for this certification is presented below.

A. Definition of a Small Mine

Under the RFA, in analyzing the impact of the ETS on small entities, MSHA must use the Small Business Administration (SBA) definition for a small entity or, after consultation with the SBA Office of Advocacy, establish an alternative definition for the mining industry by publishing that definition in the **Federal Register** for notice and comment. MSHA has not taken such an action and is required to use the SBA definition. The SBA defines a small entity in the mining industry as an establishment with 500 or fewer employees.

In addition to examining small entities as defined by SBA, MSHA has also looked at the impact of this ETS on underground bituminous coal mines with fewer than 20 employees, which MSHA and the mining community have traditionally referred to as "small mines." These small mines differ from larger mines not only in the number of employees, but also in economies of scale in material produced, in the type and amount of production equipment, and in supply inventory. The costs of complying with the ETS and the impact of the ETS on small mines will also be different. It is for this reason that small mines are of special concern to MSHA.

MSHA concludes that it can certify that the ETS will not have a significant economic impact on a substantial number of small entities that are covered by this ETS. The Agency has determined that this is the case both for mines with fewer than 20 employees and for mines with 500 or fewer employees.

B. Factual Basis for Certification

MSHA initially evaluates the impacts on "small entities" by comparing the estimated compliance costs of a rule for small entities in the sector affected by the rule to the estimated revenues for the affected sector. When estimated compliance costs are less than one percent of the estimated revenues, the Agency believes it is generally appropriate to conclude that there is no significant economic impact on a substantial number of small entities. When estimated compliance costs exceed one percent of revenues, MSHA investigates whether a further analysis is required.

For underground bituminous coal mines, the estimated preliminary 2009 production was 4,972,836 short tons for mines that had fewer than 20 employees and 241,426,542 short tons for mines that had 500 or fewer employees. Using the 2008 price of underground coal of $51.35 per short ton and total 2009 coal production in short tons, underground coal revenues are estimated to be approximately $255.4 million for mines employing fewer than 20 employees and $12.4 billion for mines employing 500 or fewer employees. The yearly costs of the ETS for mines that have fewer than 20 employees is 0.11 percent ($282,000/$255.4 million) of annual revenues, and the yearly costs of the ETS for mines that have 500 or fewer employees is 0.13 percent ($16.0 million/$12.4 billion) of annual revenues. Using either MSHA's traditional definition of a small mine (one having fewer than 20 employees) or SBA's definition of a small mine (one having 500 or fewer employees), the yearly costs for underground bituminous coal mines to comply with the ETS will be less than 1 percent of estimated revenues. Accordingly, MSHA has certified that the ETS will not have a significant impact on a substantial number of small entities that are covered by the ETS.

VII. Paperwork Reduction Act of 1995

This ETS contains no additional information collections subject to review by OMB under the Paperwork Reduction Act.

VIII. Other Regulatory Considerations

A. The Unfunded Mandates Reform Act of 1995

MSHA has reviewed the ETS under the Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1501 *et seq*). MSHA has determined that this ETS does not include any federal mandate that may result in increased expenditures by State, local, or tribal governments; nor will it increase private sector expenditures by more than $100 million in any one year or significantly or uniquely affect small governments. Accordingly, the Unfunded Mandates Reform Act of 1995 requires no further Agency action or analysis.

B. Executive Order 13132: Federalism

This ETS does not have "federalism implications" because 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." Accordingly, under E.O. 13132, no further Agency action or analysis is required.

C. The Treasury and General Government Appropriations Act of 1999: Assessment of Federal Regulations and Policies on Families

Section 654 of the Treasury and General Government Appropriations Act of 1999 (5 U.S.C. 601 *note*) requires agencies to assess the impact of Agency action on family well-being. MSHA has determined that this ETS will have no effect on family stability or safety, marital commitment, parental rights and authority, or income or poverty of families and children. This ETS impacts only the underground bituminous coal mine industry. Accordingly, MSHA certifies that this ETS would not impact family well-being.

D. Executive Order 12630: Government Actions and Interference With Constitutionally Protected Property Rights

This ETS does not implement a policy with takings implications. Accordingly, under E.O. 12630, no further Agency action or analysis is required.

E. Executive Order 12988: Civil Justice Reform

This ETS was written to provide a clear legal standard for affected conduct and was carefully reviewed to eliminate drafting errors and ambiguities, so as to minimize litigation and undue burden on the Federal court system. Accordingly, this ETS will meet the applicable standards provided in section 3 of E.O. 12988, Civil Justice Reform.

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

This ETS will have no adverse impact on children. Accordingly, under E.O. 13045, no further Agency action or analysis is required.

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

This ETS does not have "tribal implications" because it will not "have substantial direct effects on one or more Indian tribes, on the relationship between the Federal government and Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes." Accordingly, under E.O. 13175, no further Agency action or analysis is required.

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

Executive Order 13211 requires agencies to publish a statement of energy effects when a rule has a significant energy action (*i.e.,* it adversely affects energy supply, distribution or use). MSHA has reviewed this ETS for its energy effects because the ETS applies to the underground coal mining sector. Because this ETS will result in yearly costs of approximately $22.0 million to the underground coal mining industry, relative to annual revenues of $17 billion in 2009, MSHA has concluded that it is not a significant energy action because it is not likely to have a significant adverse effect on the supply, distribution, or use of energy. Accordingly, under this analysis, no further Agency action or analysis is required.

IX. References

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X. Emergency Temporary Standard—Regulatory Text

List of Subjects in 30 CFR Part 75

Mine safety and health, Underground coal mines, Combustible materials and rock dusting.

Joseph A. Main,

Assistant Secretary of Labor for Mine Safety and Health.

■ Chapter I of Title 30, part 75 of the Code of Federal Regulations is amended as follows:

PART 75—SAFETY STANDARDS FOR UNDERGROUND COAL MINES

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

Authority: 30 U.S.C. 811, 864.

■ 2. Revise § 75.403 to read as follows:

§ 75.403 Maintenance of incombustible content of rock dust.

Where rock dust is required to be applied, it shall be distributed upon the top, floor, and sides of all underground areas of a coal mine and maintained in such quantities that the incombustible content of the combined coal dust, rock dust, and other dust shall be not less than 80 percent. Where methane is present in any ventilating current, the percent of incombustible content of such combined dust shall be increased 0.4 percent for each 0.1 percent of methane.

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DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket No. USCG–2010–0705]

RIN 1625–AA00

Safety Zone; Blue Angels at Kaneohe Bay Air Show, Oahu, HI

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing two temporary safety zones while the U.S. Navy Blue Angels Squadron conducts aerobatic performances over Kaneohe Bay, Oahu, Hawaii. These safety zones are necessary to protect watercraft and the general public from hazards associated with the U.S. Navy Blue Angels aircraft low flying, high powered jet aerobatics over open waters.

DATES: This rule is effective from 9 a.m. on September 24, 2010, through 7 p.m. on September 26, 2010.

ADDRESSES: Comments and material received from the public, as well as documents mentioned in this preamble as being available in the docket, are part of docket USCG–2010–0705 and are available online by going to *http://www.regulations.gov,* inserting USCG–2010–0705 in the "Keyword" box, and then clicking "Search." This material is 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 Lieutenant Commander Marcella Granquist, Waterways Management Division, U.S. Coast Guard Sector Honolulu, telephone 808–842–2600, e-mail *Marcella.A.Granquist@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

On August 18, 2010, we published a notice of proposed rulemaking (NPRM) entitled: Safety Zone; Blue Angels at Kaneohe Bay Air Show, Oahu, HI in the **Federal Register** (75 FR 159). We received no comments on the proposed rule. No public meeting was requested, and none was held.

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 the duration to complete meetings with local stakeholders, required before a safety zone could be designated, did not afford the time needed before the rulemaking process could be completed to protect watercraft and the general public from hazards associated with the U.S. Navy Blue Angels aerial aerobatics.

Basis and Purpose

On July 20, 2010, Kaneohe Bay Air Show 2010 coordinators informed the U.S. Coast Guard of a State of Hawaii approved Air Show plan that include an aerial performance "show box" extending beyond the Kaneohe Bay Naval Defensive Sea Area (NDSA) as established by Executive Order No. 8681 of February 14, 1941. Within this "show box", the U.S. Navy Blue Angels Squadron will conduct aerobatic performances, exhibiting their aircraft's maximum performance capabilities, over Kaneohe Bay, Oahu, Hawaii during a 3-day period. Taking into account the hazards associated within this "show box" during the Squadron's high powered, multiple jet aircraft performances, and that Kaneohe Bay normally experiences heavy waterway traffic during weekends, two safety zones for the portions of the "show box" that extend beyond the Kaneohe Bay NDSA was determined to be appropriate by the Captain of the Port so as to ensure the safety of all watercraft and the general public during the performances.

Discussion of Comments and Changes

As planning for the event developed, it was suggested that the best course of action would be to modify the temporary safety zones, by moving the "show box" northeast, to ensure channels within Kaneohe Bay remained open during the Blue Angels' performance. The Coast Guard believes that the slightly modified area is better suited to accommodating the needs of the air show and safeguarding the public. Consequently, the two safety zones were moved slightly but remain intact to cover the areas of the required "show box" that fall outside of the NDSA. The coordinates for the two temporary safety zones are now as follows: (1) Southwest of Mokapu Peninsula: The NDSA extending from 21°26.449 N, 157°47.071 W then Southeast to 21°26.270 N, 157°46.895 W then Northwest at a bearing of 51° True to the NDSA. (2) North of Mokapu Peninsula: The NDSA extending Northeast to position 21°27.943 N, 157°44.953 W then Southeast to 21°28.251 N, 157°44.880 W then South at a bearing of 239° True to the NDSA. Even with the modifications, we note that transit through Kaneohe Bay, the Sampan Channel and Kaneohe Bay Entrance Channel will remain open.

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.

Although this rule restricts access to the waters within the two temporary safety zones, the effect of this rule will not be significant because watercraft will be able to transit around without restriction. Furthermore, watercraft will be able to transit through the safety zones with permission from the Honolulu Captain of the Port.

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 rule would not have a significant economic impact on a substantial number of small entities. While the temporary safety zones are being enforced, watercraft will be able to transit freely around the zones. Furthermore, watercraft will be allowed to transit through the temporary safety zones if permission to enter is granted by the Honolulu Captain of the Port. Before the effective period, we will issue daily maritime advisories and widely available to users of the area including VHF Channel 16.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), in the NPRM we offered to assist small entities in understanding the rule so that they could 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 would call 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 (adjusted for inflation) or more in any one year. Though this rule would 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 cause 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 would not create an environmental risk to health or risk to safety that might 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 would 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 023–01 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 two temporary safety zones for daily offshore Blue Angels performances permitted as a marine event. 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 is amending 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 § 165.T14–210 to read as follows:

§ 165.T14–210 Safety Zone; Blue Angels at Kaneohe Bay Air Show, Oahu, Hawaii.

(a) *Location.* The following areas, consisting of all waters contained within an area of one box on the southwest side and one box on the north side of the Kaneohe Bay Naval Defensive Sea Area (NDSA) as established by Executive Order No. 8681 of February 14, 1941, in Kaneohe Bay, Oahu, Hawaii, are temporary safety zones. This safety zone extends from the surface of the water to the ocean floor. These coordinates are based upon the National Oceanic and Atmospheric Administration Coast Survey, Pacific Ocean, Oahu, Hawaii, chart 19359.

(1) Southwest of Mokapu Peninsula: The NDSA extending from 21°26.449 N, 157°47.071 W then Southeast to 21°26.270 N, 157°46.895 W then Northwest at a bearing of 51°True to the NDSA.

(2) North of Mokapu Peninsula: The NDSA extending Northeast to position 21°27.943 N, 157°44.953 W then Southeast to 21°28.251 N, 157°44.880 W then South at a bearing of 239° True to the NDSA.

(b) *Regulations.* (1) Entry into or remaining in the temporary safety zones described in paragraph (a) of this section is prohibited unless authorized by the Honolulu Coast Guard Captain of the Port.

(2) Persons desiring to transit in the safety zones may contact the Honolulu Captain of the Port on VHF channel 16 (156.800 MHz), or at telephone numbers 808–842–2600 or 808–563–9906 to seek permission to transit the area. If permission is granted, all persons and watercraft must comply with the instructions of the Honolulu Captain of the Port or her designated representative.

(c) *Effective period.* This rule is effective from 9 a.m. local (HST) time September 24, 2010, through 7 p.m. local (HST) time September 26, 2010. This rule will be enforced daily between the hours of 9 a.m. local (HST) time to 7 p.m. local (HST) time during September 24–26, 2010.

(d) *Regulations.* In accordance with the general regulations in 33 CFR part 165, subpart C, no person or vessel may enter or remain in either zone except for support vessels/aircraft and support personnel, or other watercraft authorized by the Honolulu Captain of the Port or her designated representatives.

(e) *Penalties.* Vessels or persons violating this rule would be subject to the penalties set forth in 33 U.S.C. 1232 and 50 U.S.C. 192.

Dated: September 8, 2010.

J.M. Nunan,

Captain, U.S. Coast Guard, Captain of the Port Honolulu.

[FR Doc. 2010–23768 Filed 9–22–10; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF VETERANS AFFAIRS

38 CFR Part 3

RIN 2900–AN21

Specially Adapted Housing and Special Home Adaptation

AGENCY: Department of Veterans Affairs.

ACTION: Final rule.

SUMMARY: The Department of Veterans Affairs (VA) adopts as a final rule its proposal to amend its adjudication regulations regarding specially adapted housing and special home adaptation grants. This final rule incorporates certain provisions from the Veterans Benefits Act of 2003, the Veterans Benefits Improvement Act of 2004, the Veterans' Housing Opportunity and Benefits Improvement Act of 2006, and the Housing and Economic Recovery Act of 2008. These amendments are necessary to conform the regulations to the statutory provisions.

DATES: This final rule is effective October 25, 2010. Please refer to the **SUPPLEMENTARY INFORMATION** section for detailed information regarding the applicability dates of this final rule.

FOR FURTHER INFORMATION CONTACT: Thomas Kniffen, Chief, Regulations Staff (211D), Compensation and Pension Service, Veterans Benefits Administration, Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420, (202) 461–9739. (This is not a toll-free telephone number.)

SUPPLEMENTARY INFORMATION: In a document published in the **Federal Register** on December 18, 2009, (74 FR 67145), VA proposed to amend its regulations pertaining to eligibility for specially adapted housing (SAH) grants and special home adaptation (SHA) grants. The public comment period ended on February 16, 2010, and VA received no comments. Therefore, VA is adopting the proposed rule as a final rule. However, we are making one change from the proposed rule. We are inserting "rated as permanent and total"

into the first sentence of 38 CFR 3.809(b) and 3.809a(b), so that the first sentence in each paragraph states: "A member of the Armed Forces serving on active duty must have a disability rated as permanent and total that was incurred or aggravated in line of duty in active military, naval, or air service." Although we did not propose those provisions with the phrase "rated as permanent and total," it is required by the statutory provisions on which they are based. Section 2101A(a) of title 38, United States Code, requires that housing assistance provided to certain members of the Armed Forces serving on active duty be provided "to the same extent as assistance is provided under [38 U.S.C. chapter 20] to veterans eligible under [chapter 20] and subject to the same requirements as veterans under [chapter 20]." To be entitled to a SAH or SHA grant, a veteran must be entitled to compensation "for a permanent and total service-connected disability." 38 U.S.C. 2101(a)(2) and (b)(2). Therefore, for a member of the Armed Forces to be entitled to a SAH or SHA grant, the member's disability that was incurred or aggravated in line of duty in active service (*i.e.,* a service-connected disability) must be rated as permanent and total. Because the authorizing statutes require that SAH and SHA grants for Armed Forces members serving on active duty be conditioned on having a permanent and total service-connected disability, our implementing regulations must also impose that requirement.

Applicability Dates: The following applicability dates are provided for those amended regulations which do not contain an applicability date in the regulatory text. These dates are based upon the effective dates of the applicable provisions of the following Public Laws: Public Law 108–183, with applicable provisions effective December 16, 2003; Public Law 108–454, with applicable provisions effective December 10, 2004; Public Law 109–233, section 105 of which is effective December 10, 2004; and Public Law 110–289, with applicable provisions effective July 30, 2008. In accordance with the statutory provisions of these Public Laws, the following applicability dates pertain to this final rule:

(1) The revisions to § 3.809(b) introductory text and § 3.809a(b) introductory text, pertaining to eligibility for SAH and SHA grants of persons disabled by VA treatment or vocational rehabilitation, apply to applications for SAH or SHA grants received by VA on or after December 10, 2004.

(2) The addition of § 3.809(b)(5), pertaining to loss or loss of use of both upper extremities as a disability qualifying for SAH grant eligibility, applies to all applications for SAH grants received by VA on or after December 10, 2004.

(3) The addition of paragraph (b)(6) to § 3.809 and the addition of paragraphs (b)(2)(ii) through (b)(2)(iv) to 3.809a, pertaining to severe burns as disabilities qualifying for SAH and SHA grant eligibility, apply to all applications for SAH or SHA grants received by VA on or after July 30, 2008.

Paperwork Reduction Act

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

Regulatory Flexibility Act

The Secretary hereby certifies that this final rule will not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act, 5 U.S.C. 601–612. This final rule would not affect any small entities. Only VA beneficiaries could be directly affected. Therefore, pursuant to 5 U.S.C. 605(b), this final rule is exempt from the initial and final regulatory flexibility analysis requirements of sections 603 and 604.

Executive Order 12866

Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity). The Executive Order classifies a "significant regulatory action," requiring review by the Office of Management and Budget, as any regulatory action that is likely to result in a rule that may: (1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities; (2) create a serious inconsistency or otherwise interfere with an action taken or planned by another agency; (3) materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or (4) raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

The economic, interagency, budgetary, legal, and policy implications of this final rule have been examined, and it has been determined to be a significant regulatory action under the Executive Order because it is likely to result in a rule that may raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

Unfunded Mandates

The Unfunded Mandates Reform Act of 1995 requires, at 2 U.S.C. 1532, that agencies prepare an assessment of anticipated costs and benefits before issuing any rule that may result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more (adjusted annually for inflation) in any one year. This final rule would have no such effect on State, local, and tribal governments, or on the private sector.

Catalog of Federal Domestic Assistance Numbers and Titles

The Catalog of Federal Domestic Assistance program numbers and titles for the programs affected by this document are 64.106, Specially Adapted Housing for Disabled Veterans; and 64.109, Veterans Compensation for Service-Connected Disability.

Signing Authority

The Secretary of Veterans Affairs, or designee, approved this document and authorized the undersigned to sign and submit the document to the Office of the Federal Register for publication electronically as an official document of the Department of Veterans Affairs. John R. Gingrich, Chief of Staff, Department of Veterans Affairs, approved this document on September 9, 2010, for publication.

List of Subjects in 38 CFR Part 3

Administrative practice and procedure, Claims, Disability benefits, Health care, Pensions, Radioactive materials, Veterans, Vietnam.

Dated: September 17, 2010.

Robert C. McFetridge,

Director, Regulation Policy and Management, Office of General Counsel, Department of Veterans Affairs.

■ For the reasons set out in the preamble, VA amends 38 CFR part 3 as follows:

PART 3—ADJUDICATION

Subpart A—Pension, Compensation, and Dependency and Indemnity Compensation

■ 1. The authority citation for part 3, subpart A continues to read as follows:

Authority: 38 U.S.C. 501(a), unless otherwise noted.

■ 2. Revise § 3.362(e) to read as follows:

§ 3.362 Offsets under 38 U.S.C. 1151(b) of benefits awarded under 38 U.S.C. 1151(a).

* * * * *

(e) *Offset of award of benefits under 38 U.S.C. chapter 21 or 38 U.S.C. chapter 39.* (1) If a judgment, settlement, or compromise covered in paragraphs (b) through (d) of this section becomes final on or after December 10, 2004, and includes an amount that is specifically designated for a purpose for which benefits are provided under 38 U.S.C. chapter 21 (38 CFR 3.809 and 3.809a) or 38 U.S.C. chapter 39 (38 CFR 3.808), and if VA awards 38 U.S.C. chapter 21 or 38 U.S.C. chapter 39 benefits after the date on which the judgment, settlement, or compromise becomes final, the amount of the award will be reduced by the amount received under the judgment, settlement, or compromise for the same purpose.

(2) If the amount described in paragraph (e)(1) of this section is greater than the amount of an award under 38 U.S.C. chapter 21 or 38 U.S.C. chapter 39, the excess amount received under the judgment, settlement, or compromise will be offset against benefits otherwise payable under 38 U.S.C. chapter 11.

(Authority: 38 U.S.C. 1151)

■ 3. Revise § 3.800(a)(4) to read as follows:

§ 3.800 Disability or death due to hospitalization, etc.

* * * * *

(a) * * *

(4) *Offset of award of benefits under 38 U.S.C. chapter 21 or 38 U.S.C. chapter 39.* (i) If a judgment, settlement, or compromise covered by paragraph (a)(2) of this section becomes final on or after December 10, 2004, and includes an amount that is specifically designated for a purpose for which benefits are provided under 38 U.S.C. chapter 21 (38 CFR 3.809 and 3.809a) or 38 U.S.C. chapter 39 (38 CFR 3.808), and if VA awards 38 U.S.C. chapter 21 or 38 U.S.C. chapter 39 benefits after the date on which the judgment, settlement, or compromise becomes final, the amount of the award will be reduced by the amount received under the judgment, settlement, or compromise for the same purpose.

(ii) If the amount described in paragraph (a)(4)(i) of this section is greater than the amount of an award under 38 U.S.C. chapter 21 or 38 U.S.C. chapter 39, the excess amount received under the judgment, settlement, or compromise will be offset against benefits otherwise payable under 38 U.S.C. chapter 11.

(Authority: 38 U.S.C. 1151(b)(2))

* * * * *

■ 4. Amend § 3.809 by:
■ a. In the introductory text, removing "38 U.S.C. 2101(a)" and adding in its place "38 U.S.C. 2101(a) or 2101A(a)" and by removing "veteran" and adding in its place "veteran or a member of the Armed Forces serving on active duty";
■ b. Revising paragraph (a);
■ c. Revising paragraph (b) introductory text;
■ d. In paragraph (b)(3), removing "wheelchair." and adding, in its place, "wheelchair, or";
■ e. In paragraph (b)(4), removing "with the loss of loss of use" and adding in its place "with the loss or loss of use" and removing "wheelchair." and adding, in its place, "wheelchair, or";
■ f. Adding paragraphs (b)(5) and (b)(6);
■ g. Removing paragraph (c);
■ h. Redesignating paragraph (d) as new paragraph (c); and
■ i. Revising the authority citation at the end of the section.

The revisions and additions read as follows:

§ 3.809 Specially adapted housing under 38 U.S.C. 2101(a).

* * * * *

(a) *Eligibility.* A veteran must have had active military, naval, or air service after April 20, 1898. Benefits are not restricted to veterans with wartime service. On or after December 16, 2003, the benefit under this section is also available to a member of the Armed Forces serving on active duty.

(b) *Disability.* A member of the Armed Forces serving on active duty must have a disability rated as permanent and total that was incurred or aggravated in line of duty in active military, naval, or air service. A veteran must be entitled to compensation under chapter 11 of title 38, United States Code, for a disability rated as permanent and total. In either case, the disability must be due to:

* * * * *

(5) The loss or loss of use of both upper extremities such as to preclude use of the arms at or above the elbow, or

(6) Full thickness or subdermal burns that have resulted in contractures with limitation of motion of two or more extremities or of at least one extremity and the trunk.

* * * * *

(Authority: 38 U.S.C. 1151(c)(1), 2101, 2101A)

* * * * *

■ 5. Amend § 3.809a by:
■ a. In the introductory text, removing "38 U.S.C. 2101(b)" and adding in its place "38 U.S.C. 2101(b) or 2101A(a)" and by removing "April 20, 1898," and adding in its place "April 20, 1898, or to a member of the Armed Forces serving on active duty who is eligible for the benefit under this section on or after December 16, 2003,".
■ b. Removing the authority citation after the introductory text.
■ c. In paragraph (a), removing "veteran" each place it appears and adding in each place "member of the Armed Forces serving on active duty or veteran"; and by removing the last sentence.
■ d. Revising paragraph (b).
■ e. Removing paragraph (c).
■ f. Revising the authority citation at the end of the section.
■ g. Adding a cross-reference immediately after the authority citation at the end of the section.

The revisions and addition read as follows:

§ 3.809a Special home adaptation grants under 38 U.S.C. 2101(b).

* * * * *

(b) A member of the Armed Forces serving on active duty must have a disability rated as permanent and total that was incurred or aggravated in line of duty in active military, naval, or air service. A veteran must be entitled to compensation under chapter 11 of title 38, United States Code, for a disability rated as permanent and total. In either case, the disability must:

(1) Include the anatomical loss or loss of use of both hands, or

(2) Be due to:

(i) Blindness in both eyes with 5/200 visual acuity or less, or

(ii) Deep partial thickness burns that have resulted in contractures with limitation of motion of two or more extremities or of at least one extremity and the trunk, or

(iii) Full thickness or subdermal burns that have resulted in contracture(s) with limitation of motion of one or more extremities or the trunk, or

(iv) Residuals of an inhalation injury (including, but not limited to, pulmonary fibrosis, asthma, and chronic obstructive pulmonary disease).

(Authority: 38 U.S.C. 1151(c)(1), 2101, 2101A, 2104)

Cross-Reference: Assistance to certain disabled veterans in acquiring specially adapted housing. *See* §§ 36.4400 through 36.4410 of this chapter.

[FR Doc. 2010–23629 Filed 9–22–10; 8:45 am]

BILLING CODE 8320–01–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R09–OAR–2009–0958; FRL–9204–3]

Revisions to the California State Implementation Plan, San Joaquin Valley Unified Air Pollution Control District

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is finalizing approval of revisions to the San Joaquin Valley Unified Air Pollution Control District (SJVUAPCD) portion of the California State Implementation Plan (SIP). These revisions were proposed in the **Federal Register** on March 26, 2010 and concern volatile organic compound (VOC) emissions from refinery vacuum producing systems and process unit turnaround. We are approving local rules that regulate these emission sources under the Clean Air Act as amended in 1990 (CAA or the Act).

DATES: *Effective Date:* This rule is effective on October 25, 2010.

ADDRESSES: EPA has established docket number EPA–R09–OAR–2009–0958 for this action. The index to the docket is available electronically at *http://www.regulations.gov* and in hard copy at EPA Region IX, 75 Hawthorne Street, San Francisco, California. While all documents in the docket are listed in the index, some information may be publicly available only at the hard copy location (*e.g.*, copyrighted material), and some may not be publicly available in either location (*e.g.,* CBI). To inspect the hard copy materials, please schedule an appointment during normal business hours with the contact listed in the **FOR FURTHER INFORMATION CONTACT** section.

FOR FURTHER INFORMATION CONTACT: Joanne Wells, EPA Region IX, (415) 947–4118, *wells.joanne@epa.gov.*

SUPPLEMENTARY INFORMATION: Throughout this document, "we," "us" and "our" refer to EPA.

Table of Contents

I. Proposed Action
II. Public Comments and EPA Responses
III. EPA Action
IV. Statutory and Executive Order Reviews

I. Proposed Action

On March 26, 2010 (75 FR 14545), EPA proposed to approve the following rules into the California SIP.

Local agency	Rule No.	Rule title	Amended	Submitted
SJVUAPCD	4453	Refinery Vacuum Producing Devices or Systems	12/17/92	08/24/07
SJVUAPCD	4454	Refinery Process Unit Turnaround	12/17/92	08/24/07

We proposed to approve these rules because we determined that they complied with the relevant CAA requirements. Our proposed action contains more information on the rules and our evaluation.

II. Public Comments and EPA Responses

EPA's proposed action provided a 30-day public comment period. During this period, we received no comments.

III. EPA Action

No comments were submitted that change our assessment that the submitted rules comply with the relevant CAA requirements. Therefore, as authorized in section 110(k)(3) of the Act, EPA is fully approving these rules into the California SIP.

IV. Statutory and Executive Order Reviews

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

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

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

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

This action is not a "major rule" as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by November 22, 2010. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements (*see* section 307(b)(2)).

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

Dated: July 7, 2010.

Keith Takata,

Acting Regional Administrator, Region IX.

■ Part 52, chapter I, title 40 of the Code of Federal Regulations is amended as follows:

PART 52—[AMENDED]

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

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

■ 2. Section 52.220 is amended by adding paragraphs (c)(52)(i)(D), (c)(52)(iv)(G) and (c)(52)(vii)(D), by revising paragraph (c)(71)(i)(A) and adding paragraph (c)(71)(i)(B), and by adding paragraphs (c)(75)(iv) and (c)(351)(i)(C)(*3*) and (*4*) to read as follows:

§ 52.220 Identification of plan.

* * * * *

(c) * * *

(52) * * *

(i) * * *

(D) Previously approved on August 21, 1981 in paragraph (c)(52)(i)(A) of this section and now deleted without replacement within the San Joaquin Valley Unified Air Pollution Control District area, Rule 414.2.

* * * * *

(iv) * * *

(G) Previously approved on May 7, 1982 in paragraph (c)(52)(iv)(A) of this section and now deleted without replacement: Rule 414.2.

* * * * *

(vii) * * *

(D) Previously approved on May 7, 1982 in paragraph (c)(52)(vii)(A) of this section and now deleted without replacement: Rules 413.2 and 413.3.

* * * * *

(71) * * *

(i) * * *

(A) New or amended Rules 411 and 414.3.

(B) Previously approved on May 7, 1982 in paragraph (c)(71)(i)(A) of this section and now deleted without replacement: Rule 414.3.

* * * * *

(75) * * *

(iv) Previously approved on August 21, 1981 in paragraph (c)(75)(i) of this section and now deleted without replacement within the San Joaquin Valley Unified Air Pollution Control District area, Rule 414.3.

* * * * *

(351) * * *

(i) * * *

(C) * * *

(*3*) Rule 4453, "Refinery Vacuum Producing Devices or Systems," adopted on May 21, 1992 and amended on December 17, 1992.

(*4*) Rule 4454, "Refinery Process Unit Turnaround," adopted on May 21, 1992 and amended on December 17, 1992.

* * * * *

[FR Doc. 2010–23808 Filed 9–22–10; 8:45 am]

BILLING CODE 6560–50–P

Proposed Rules

Federal Register
Vol. 75, No. 184
Thursday, September 23, 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

Animal and Plant Health Inspection Service

7 CFR Part 319

[Docket No. APHIS-2007-0117]

RIN 0579-AC90

Importation of Wooden Handicrafts from China

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Proposed rule; supplemental.

SUMMARY: We are proposing a change related to our proposed rule published in the **Federal Register** on April 9, 2009, that would amend the regulations to provide for the importation of wooden handicrafts from China under certain conditions. One of those conditions would have required that, unless the handicrafts are under 6 inches in diameter and treated with methyl bromide, they must be treated with heat treatment or heat treatment with moisture reduction that raises the temperature at the center of the handicraft to at least 71.1 °C and maintains the handicraft at that center temperature for at least 75 minutes. Based on a recently published article, in this supplemental proposed rule we are proposing measures that would modify this requirement to a temperature at the center of at least 60 °C for a duration of at least 60 minutes.

DATES: We will consider all comments that we receive on or before November 22, 2010.

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

- Federal eRulemaking Portal: Go to (*http://www.regulations.gov/fdmspublic/component/main?main=DocketDetail&d=APHIS-2007-0117*) to submit or view comments and to view supporting and related materials available electronically.
- Postal Mail/Commercial Delivery: Please send one copy of your comment to Docket No. APHIS-2007-0117, Regulatory Analysis and Development, PPD, APHIS, Station 3A-03.8, 4700 River Road Unit 118, Riverdale, MD 20737-1238. Please state that your comment refers to Docket No. APHIS-2007-0117.

Reading Room: You may read any comments that we receive on this docket in our reading room. The reading room is located in room 1141 of the USDA South Building, 14th Street and Independence Avenue SW., Washington, DC. Normal reading room hours are 8 a.m. to 4:30 p.m., Monday through Friday, except holidays. To be sure someone is there to help you, please call (202) 690-2817 before coming.

Other Information: Additional information about APHIS and its programs is available on the Internet at (*http://www.aphis.usda.gov*).

FOR FURTHER INFORMATION CONTACT: Mr. John Tyrone Jones, Trade Director (Forestry Products), Phytosanitary Issues Management, PPQ, APHIS, 4700 River Road Unit 140, Riverdale, MD 20737-1231; (301) 734-8860.

SUPPLEMENTARY INFORMATION:

Background

The regulations in "Subpart-Logs, Lumber, and Other Unmanufactured Wood Articles" (7 CFR 319.40-1 through 319.40-11, referred to below as the regulations) govern the importation of various logs, lumber, and other unmanufactured wood products into the United States. Under § 319.40-9 of the regulations, all regulated articles must be inspected at the port of first arrival. If a regulated article shows any signs of pest infestation, the inspector may require treatment, if an approved treatment exists, or refuse entry of the consignment.

Prior to 2005, wood decorative items and craft products (wooden handicrafts) from China had been entering the United States in increasing quantities. However, between 2002 and 2005, the Animal and Plant Health Inspection Service (APHIS) issued more than 300 emergency action notices for wooden handicrafts from China, including artificial trees manufactured from a composite of natural and synthetic materials, garden trellis towers, home and garden wood décor, and craft items. Moreover, in 2004, the United States Department of Agriculture (USDA) intercepted live wood boring beetles, *Callidiellum villosulum* (Coleoptera: Cerambycidae), on artificial trees manufactured from wood components and on other craft products imported from China. Subsequent to these interceptions, shipments of the articles were recalled from retail stores. Based on these pest interceptions, in 2005, we suspended the importation of most wooden handicrafts (i.e., all handicrafts made from wooden logs, limbs, branches, or twigs greater than 1 centimeter in diameter) from China until a more thorough evaluation of the pest risks associated with those articles could be conducted.

APHIS prepared a pest risk assessment, titled "Pests and mitigations for manufactured wood décor and craft products from China for importation into the United States," to evaluate the risks associated with the importation of such wooden handicrafts into the United States from China. We also prepared a risk management document, titled "Pests and mitigations for manufactured wood décor and craft products from China for importation into the United States," to determine mitigations necessary to prevent pest entry, introduction, or establishment associated with imported wooden handicrafts from China. Based on the conclusions in the pest risk assessment and the accompanying risk management document, we determined that wooden handicrafts could be imported from China provided they met certain requirements for treatment, issuance of a phytosanitary certificate, inspection, and box identification.

Accordingly, on April 9, 2009, we published in the **Federal Register** (74 FR 16146-16151, Docket No. APHIS-2007-0117) a proposal[1] to authorize the importation of wooden handicrafts from China under those conditions. We solicited comments concerning the proposed rule for 60 days ending June 8, 2009. We received eight comments by that date. They were from the national plant protection organization (NPPO) of China, a State department of agriculture, manufacturers of Chinese wooden handicrafts, a public advocacy organization, and private citizens.

One of the commenters urged us to finalize the proposed rule without

[1] To view the proposed rule, supporting documents, or the comments we received, go to (*http://www.regulations.gov/search/Regs/home.html#docketDetail?R=APHIS-2007-0117*).

change. The remaining commenters provided comments on the rule in general, and requested modifications to certain of its provisions.

One commenter disagreed with our proposed requirement that would have required that, unless the wooden handicraft is 6 inches or less and treated with methyl bromide, it must be treated with heat treatment in accordance with § 319.40-7(c) or heat treatment with moisture reduction in accordance with § 319.40-7(d). At the time our proposed rule was published, paragraph (c) of § 319.40-7 provided that, if heat treatment is required for a regulated article, any heat treatment procedure may be employed that raises the temperature at the center of the regulated article to at least 71.1 °C and maintains the regulated article at that center temperature for at least 75 minutes. Similarly, paragraph (d) provided that, if heat treatment with moisture reduction is required for a regulated article, unless the article is treated with kiln drying conducted in accordance with the schedules prescribed for the article in the Dry Kin Operator's Manual, Agriculture Handbook 188, it must be treated with a method that raises the temperature at the center of the article to at least 71.1 °C and maintains the regulated article at that center temperature for at least 75 minutes.

The commenter stated that the two paragraphs require regulated articles to be treated at a significantly higher temperature and for a longer duration than the temperature and duration recommended by International Standard for Phytosanitary Measures (ISPM) 15, which recommends that wood packaging material (WPM) be treated according to a heat treatment schedule that raises the temperature at the center of the WPM to at least 56 °C and maintains the WPM at that center temperature for at least 30 minutes.[2] The commenter suggested that we should modify the proposed heat treatment requirement for Chinese wooden handicrafts to make it consistent with ISPM 15.

Because the composition of WPM often differs from that of wooden handicrafts—for example, WPM is almost always debarked, while wooden handicrafts often are not—the plant pest risks associated with these classes of articles also often differ, and we therefore determined that we could not summarily modify the heat treatment requirement in the manner suggested by the commenter. Rather, we reexamined the findings of the pest risk assessment that accompanied the proposed rule to determine whether treatment in accordance with ISPM 15 would neutralize the pests of greatest concern identified in the pest risk assessment as likely to follow the pathway on imported wooden handicrafts from China.

These pests were wood-boring beetles in the families Buprestidae, Cerambycidae, and Scolytidae. Based on a review of the relevant scientific literature and on efficacy studies conducted by the Center for Plant Health Science and Technology of APHIS' Plant Protection and Quarantine division, we determined that heat treatment of Chinese wooden handicrafts at the temperature and duration recommended by ISPM 15 would be effective in neutralizing all pests in these families except Emerald Ash Borer (EAB). EAB is an extremely destructive pest; the mortality rate for infested trees is 100 percent, and EAB has already killed more than 20 million ash trees in the United States since it was first discovered in Michigan in the summer of 2002. It was therefore our intent to retain the heat treatment requirements of the proposed rule in issuing a follow-up regulatory action.

However, in the December 2009 issue of *Journal of Economic Entomology*, an article titled "Evaluation of Heat Treatment Schedules for Emerald Ash Borer (Coloeptera: Buprestidae)" documents four recent independent experiments to determine the minimum core temperature and time duration necessary to neutralize EAB on firewood via heat treatment or heat treatment with moisture reduction. As part of the experiments, researchers obtained ash wood from trees showing visible signs of EAB infestation, split the wood, and stored it. They then heat-treated the articles in laboratory facilities (a drying oven and an environmental chamber) at temperatures and durations ranging from 45 to 65 °C and 15 to 60 minutes, respectively.

The experiments suggested that "a minimum heat treatment of 60 °C for 60 minutes…would provide >99.9% control (for EAB) based on probit estimates."[3]

Based on this article, we have reason to believe that heat treatment or heat treatment with moisture reduction methods that raise the center of wooden handicrafts from China to at least 60 °C and maintain the handicrafts at that center temperature for at least 60 minutes will neutralize all the pests of greatest concern identified in the pest risk assessment as likely to follow the pathway on imported Chinese wooden handicrafts.

On January 26, 2010, we published in the **Federal Register** a final rule (75 FR 4228-4253, Docket No. APHIS-2008-0022) that, among other things, removed all treatment schedules found in 7 CFR chapter III, including those in § 319.40-7(c) and (d). It replaced all such schedules with a reference to 7 CFR part 305, which contains our regulations governing phytosanitary treatments. Finally, it amended 7 CFR part 305 itself to state that all approved treatment schedules for regulated articles are now found, not in the regulations, but in the PPQ Treatment Manual, and to establish a process for adding new treatment schedules for regulated articles to the Treatment Manual.[4]

Under this process, when we are proposing to add a new treatment schedule to the Treatment Manual, we will publish a notice in the **Federal Register** describing the reasons we have determined that it is necessary to add the treatment schedule to the manual and providing for a public comment period on the new treatment schedule. If we prepare documentation to support the proposed change to the Treatment Manual, we will also announce its availability via this notice.

Consistent with this process, we have prepared a treatment evaluation document (TED) to accompany this proposed rule. The TED provides information regarding why the findings of the December 2009 article, which pertain to firewood, also apply to Chinese wooden handicrafts, and why we believe that heat treatment methods that raise the center of the wooden handicrafts to at least 60 °C and maintain the handicrafts at that center temperature for at least 60 minutes will neutralize all the pests of greatest concern likely to follow the pathway on those handicrafts. The TED is available from the person listed under **FOR FURTHER INFORMATION CONTACT** or on the Regulations.gov Web site (see **ADDRESSES** above for a link to Regulations.gov).

In our proposed rule, proposed paragraph (o)(1)(i) of § 319.40-5 would have required that wooden handicrafts from China be treated with heat

[2] To view ISPM 15, go to: (*https://www.ippc.int/index.php?id=13399&tx_publication_pi1[showUid]=133703&frompage=13399&type=publication&subtype=&L=0#item*).

[3] Myers, Scott, Ivich Fraser, and Victor Mastro, "Evaluation of Heat Treatment Schedules for Emerald Ash Borer (Coloeptera: Buprestidae)", *Journal of Economic Entomology*, 102:6 (December 2009), 2048-2055.

[4] The Treatment Manual is available on the Internet at (*http://www.aphis.usda.gov/import_export/plants/manuals/ports/treatment.shtml*).

treatment in accordance with § 319.40-7(c) or with heat treatment with moisture reduction in accordance with § 319.40-7(d). However, as we mentioned above, these paragraphs no longer contain heat treatment schedules; all approved schedules now are listed only in the PPQ Treatment Manual. Accordingly, under this supplemental proposal, paragraph (o)(1)(i) would now require that wooden handicrafts be treated with heat treatment or heat treatment with moisture reduction as specified in the PPQ Treatment Manual, in accordance with 7 CFR part 305. If we finalize our April 2009 proposed rule and this supplemental proposal, we would add heat treatment that raises the center of Chinese wooden handicrafts to at least 60 °C and maintains the handicrafts at that center temperature for at least 60 minutes to the PPQ Treatment Manual as an approved treatment for these handicrafts, and modified paragraph (o)(1)(i) would require such a treatment.

Executive Order 12866 and Regulatory Flexibility Act

This proposed rule has been determined to be not significant for the purposes of Executive Order 12866, and therefore, has not been reviewed by the Office of Management and Budget.

This action supplements a proposed rule published in the **Federal Register** on April 9, 2009. We prepared an initial regulatory flexibility analysis for the proposed rule that considered the potential effects of the rule on small entities. The analysis identified individuals engaged in wood product manufacturing, importing of the regulated articles, or furniture and related products manufacturing as the entities most likely to be affected by the proposed rule.

The analysis took into consideration that the cost of treating Chinese handicrafts could be passed on to certain of these entities. However, it also noted that China already has in place the heat treatment facilities necessary to conduct treatment, and expected that, because of this, any increase in prices due to individual treatments would not be significant.

In assessing the possible cost of heat treatment, we determined that, because China already has heat treatment facilities at their disposal, a range of treatment schedules and durations would cost approximately the same amount per treatment, and would accordingly result in the same cost pass-through. The treatment schedule that we would authorize in this supplemental proposal—one that raises the center of Chinese wooden handicrafts to at least 60 °C and maintains the handicrafts at that center temperature for at least 60 minutes—falls within this range.

Therefore, we believe that the findings of the initial regulatory flexibility analysis prepared for the proposed rule are still accurate and appropriate.

That analysis was included in the proposed rule in its entirety, and is available on the Internet at the Regulations.gov Web site (see **ADDRESSES** at the beginning of this document for a link to Regulations.gov).

Paperwork Reduction Act

This action supplements a proposed rule published in the **Federal Register** on April 9, 2009, that would amend the regulations to provide for the importation of wooden handicrafts from China under certain conditions. That proposed rule would necessitate the use of certain information collection activities, including the completion of phytosanitary certificates and identification tags of packages of wooden handicrafts.

This supplemental proposed rule contains no new information collection or recordkeeping requirements under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

List of Subjects in 7 CFR Part 319

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

■ For the reasons set forth in the preamble, we propose to amend 7 CFR part 319 as set out in the proposed rule published on April 9, 2009 (74 FR 16146-16151, Docket No. APHIS-2007-0117), as follows:

PART 319—FOREIGN QUARANTINE NOTICES

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

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

■ 2. In § 319.40-5, paragraph (o)(1)(i) is revised to read as follows:

§ 319.40-5 Importation and entry requirements for specified articles.

* * * * *

(o) * * *

(1) * * *

(i) Wooden handicrafts must be treated with heat treatment or heat treatment with moisture reduction as specified in the PPQ Treatment Manual in accordance with part 305 of this chapter.

* * * * *

Done in Washington, DC, this 17th day of September 2010.

Kevin Shea,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 2010–23817 Filed 9–22–10; 8:45 am]

BILLING CODE 3410–34–S

DEPARTMENT OF AGRICULTURE

Farm Service Agency

7 CFR Parts 761, 763, and 764

RIN 0560–AI03

Farm Loan Programs Loan Making Activities

AGENCY: Farm Service Agency, USDA.

ACTION: Proposed rule.

SUMMARY: The Farm Service Agency (FSA) is proposing to amend the Farm Loan Programs (FLP) loan making regulations to implement four provisions of the Food, Conservation, and Energy Act of 2008 (2008 Farm Bill). The first proposed amendment renames, expands, and makes the Beginning Farmer and Rancher Land Contract Guarantee Pilot Program permanent. The next two proposed amendments change the farm experience requirements in the regulations for direct Farm Operating Loans (OL) and direct Farm Ownership Loans (FO). The fourth proposed amendment makes some equine farmers and certain equine losses eligible for Emergency Loans (EM).

DATES: We will consider comments on the rule that we receive by November 22, 2010.

ADDRESSES: We invite you to submit written comments to this proposed rule and information collection. In your comment, include the volume, date, and page number of this issue of the **Federal Register**. You may also send comments about the information collection to the Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503. You may submit comments by any of the following methods:

- *E-mail: connie.holman@wdc.usda.gov.*
- *Fax:* (202) 720–6797.
- *Mail:* Director, Loan Making Division (LMD), FSA, USDA, 1400 Independence Avenue, SW., Stop 0522, Washington, DC 20250–0522.
- *Hand Delivery or Courier:* Deliver comments to FSA, LMD, 1280 Maryland Avenue, SW., Suite 240, Washington, DC 20024.

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

Comments may be inspected in the Office of the Director, LMD, FSA, at 1280 Maryland Avenue, SW., Suite 240, Washington, DC between 8 a.m. and 4:30 p.m., except holidays.

FOR FURTHER INFORMATION CONTACT: Connie Holman, Senior Loan Officer, LMD, FSA; telephone: (202) 690–0756; fax: (202) 720–6797; e-mail: *connie.holman@wdc.usda.gov.* Persons with disabilities or who require alternative means for communication (Braille, large print, audio tape, etc.) should contact the USDA Target Center at (202) 720–2600 (voice and TDD).

SUPPLEMENTARY INFORMATION:

Background

This rule is proposing to implement four provisions of the 2008 Farm Bill (Pub. L. 110–246) concerning FSA's loan making activities.

Land Contract Guarantee Program

The Beginning Farmer and Rancher Land Contract Guarantee Pilot Program (pilot program) was originally authorized by section 5006 of the Farm Security and Rural Investment Act of 2002 (Pub. L. 107–171) as an amendment to section 310F of the Consolidated Farm and Rural Development Act (7 U.S.C. 1936 (CONACT)). The pilot program was initially implemented in six States through a notice of funds availability (NOFA) published in the **Federal Register** on September 4, 2003 (68 FR 52557–52562) and further expanded to add three additional States through a notice published in the **Federal Register** on September 15, 2005 (70 FR 54520).

The pilot program called the Beginning Farm and Rancher Land Contract Guarantee Pilot Program was authorized in specified States for up to five guarantees of land contracts entered into by private sellers of farms to qualified beginning farmers each year from fiscal year 2003 through 2007. A land contract is a contract between a willing buyer and seller through which the buyer makes principal and interest payments to the seller over a specified time period while the seller retains title to the property until all payments are made. For the Land Contract Guarantee Program, land contract sales will be for land transfers of farmland. The pilot program provided the seller of the land a 10-year "prompt payment" guarantee of an amount not to exceed the total monetary amount of two amortized annual installments, plus the amount of two years' property taxes and hazard insurance premiums.

The pilot program produced very limited activity with only 2 guarantees made.

Based on 2008 Farm Bill amendment (section 5005) to section 310F of the CONACT, FSA proposes expanding eligibility for land contract guarantees from the pilot program eligibility of only beginning farmers. In brief, a beginning farmer is someone who has not operated a farm for more than 10 years, does not own real farm property that aggregate acreage exceeds 30 percent of the median farm acreage of the farms in the county where the property is located and will substantially participate in the operation of the farm. Eligibility for the new Land Contract Guarantee Program also will include socially disadvantaged applicants who are members of a group whose members have been subject to racial, ethnic, or gender prejudice. (*See* definitions of beginning farmer and socially disadvantaged group in 7 CFR 761.2.) As in the pilot program and consistent with other FSA loan programs, eligibility will continue to be limited to family farms, which are farms in which the majority of the labor and management decisions are provided by the farm family and other regulatory criteria are met. (*See* FSA definitions for family farm, family member, and farm in 7 CFR 761.2.) FSA believes that the proposed Land Contract Guarantee Program will provide another alternative for intergenerational transitioning of farm real estate to help ensure the future viability of family farms for beginning farmers and socially disadvantaged farmers.

In this rule, FSA proposes regulations for the Land Contract Guarantee Program in 7 CFR part 763. As proposed, the new Land Contract Guarantee Program will be similar to the pilot program, with amendments needed to comply with section 310F of the CONACT. The program will become permanent in the final rule and expand nationwide. As required by the CONACT, FSA proposes expanding the guarantee available to give the seller the option of choosing either a:

(1) Prompt payment guarantee of three years' amortized annual installments plus the amount of three years' real estate taxes and hazard insurance premiums (instead of two under the pilot), or

(2) Standard 90 percent guarantee of outstanding principal on the land contract.

As proposed, the Land Contract Guarantee Program will be consistent with other FSA farm loan programs as to general eligibility criteria and most servicing options.

As in the pilot program, the guarantee may only be used for financing the purchase of a farm on a new land contract basis. Existing contracts are not eligible for a guarantee since the purpose of the guarantee is to facilitate sales that would not occur without the guarantee.

Section 310F of the CONACT prohibits a loan guarantee "if the purchase price or the appraisal value of the farm or ranch that is the subject of the contract land sale is greater than $500,000."

In addition, these guarantees, like other Farm Loan Programs guarantees, will not be used to establish or support a non-eligible enterprise. A non-eligible enterprise is defined in 7 CFR 761.2 as a business that produces exotic animals, birds and fish; produces non-farm animals ordinarily used for pets, companionship or pleasure; markets non-farm goods; or processes farm products when the majority of the commodities are not produced by the farming operation.

Terms and Definitions

Definitions used throughout FSA farm loan programs are in 7 CFR 761.2; the Land Contract Guarantee Program will also use those definitions. Section 310F of the CONACT uses the words "farmers" and "ranchers." For consistency with existing FLP regulations, for the Land Contract Guarantee Program the word "farm" will also include the word "ranch", and the use of the word "farmer" will also include "rancher."

The Agency proposes to add the definition of "land contract" to 7 CFR 761.2 as follows:

> Land contract is an installment contract drawn between a buyer and a seller for the sale of real property, in which complete fee title ownership of the property is not transferred until all payments under the contract have been made.

Guarantee Plan Options

As specified in section 310F of the CONACT, the prompt payment guarantee plan will cover three annual amortized installments, or an amount equal to three annual installments including an amount equal to the total cost of any tax and insurance incurred during the period covered by the annual installment (rather than 2 years under the pilot). The standard guarantee plan is similar to FSA's regular guarantee program except that as specified in section 310F, it will cover an amount equal to 90 percent of the outstanding principal only and will not cover

interest. The seller selects which plan when applying for the Land Contract Guarantee Program.

When the Standard Guarantee Plan is requested, an appraisal will be completed as specified in 7 CFR 761.7. To allow flexibility, the appraisal may be completed prior to, or as a condition of approval. The appraisal will be obtained and paid for by FSA. The requirement for an appraisal is necessary to establish the Agency's initial commitment for the standard guarantee made under the Land Contract Guarantee Program. FSA will not guarantee a land contract under either the prompt payment guarantee plan or the standard guarantee if the sales price of the real estate exceeds the appraised value.

Eligibility

The seller in the land contract receives benefits from the guarantee, therefore, FSA is proposing eligibility requirements for sellers. These requirements apply to private sellers, and to each entity member, in the case of an entity seller. The private seller and, if the seller is an entity, each member of the entity must:

(1) Possess the legal capacity to enter into a legally binding agreement;

(2) Not have provided false documents or statements during past or present dealings with FSA;

(3) Not be ineligible due to disqualifications resulting from Federal Crop Insurance violation in accordance with 7 CFR part 718, and

(4) Not be suspended or debarred under 7 CFR part 3017.

FSA does not intend to evaluate the financial strength of the seller. Contracts entered into by FSA with the seller as a result of an approved land contract guarantee will be written to sufficiently protect the Government's interest in case of financial failure of the seller. The buyer will be expected to conduct an adequate investigation of the seller to protect their own interests.

FSA proposes buyer eligibility requirements that will mirror the eligibility requirements established for the Guaranteed Farm Loan program involving conventional lenders and found in 7 CFR part 762. The buyer:

(1) Must be the owner and operator of a family farm after the contract is completed. In the case of an entity buyer:

(i) Each entity member's ownership interest may not exceed the amount specified in the family farm definition in 7 CFR 761.2.

(ii) The entity members cannot themselves be entities.

(iii) The entity must be authorized to own and operate a farm in the State in which the farm is located.

(iv) If the entity members holding a majority interest are related by blood or marriage, at least one member of the entity must:

(A) Operate the farm; and

(B) Own the farm.

(v) If the entity members holding a majority interest are not related by blood or marriage, the entity members holding a majority interest must:

(A) Operate the farm; and

(B) Own the farm, or the entity itself must own the farm.

(2) Must have participated in the business operations of a farm for at least 3 years out of the last 10 years prior to the date of the application;

(3) And all entity members, in the case of an entity, must not have received debt forgiveness on any direct or guaranteed FLP loan (that was not repaid) on more than three occasions on or prior to April 4, 1996, or on any occasion after April 4, 1996;

(4) And all entity members, in the case of an entity, must not be delinquent on Federal debt other than a debt under the Internal Revenue Code of 1986, when the guarantee is issued;

(5) And all entity members, in the case of an entity, must have no outstanding unpaid judgment awarded to the United States in any non-tax court;

(6) Must and in the case of an entity, the majority interest of the entity must, be held by members, who are a U.S. citizen, non-citizen national, or qualified alien;

(7) And all entity members, in the case of an entity, must possess the legal capacity to enter into a legally binding agreement;

(8) And all entity members, in the case of an entity, must not have provided false or misleading documents or statements during past or present dealings with FSA;

(9) And all entity members, in the case of an entity, must not be ineligible as a result of a conviction for certain activities relating to controlled substances;

(10) And all entity members, in the case of an entity, must have an acceptable credit history as required by section 310F;

(11) Must be unable to enter into the land contract unless the seller can obtain a FSA guarantee as required by section 310F;

(12) And all entity members in the case of an entity, must not be ineligible due to disqualification resulting from Federal Crop Insurance violation in accordance with 7 CFR part 718;

(13) And all entity members in the case of an entity, must not be suspended or debarred under 7 CFR part 3017.

In addition, buyer eligibility will be extended to include socially disadvantaged farmers (both beginning and non-beginning) as required by section 310F.

Application Processing

FSA proposes application requirements for both the seller and the buyer. The seller will be required to provide the completed letter of interest along with the name, address, and telephone number of the chosen servicing or escrow agent.

FSA proposes the same procedure for the buyer to apply for the Land Contract Guarantee Program as is used under the direct loan program. Since the seller will not be governed by banking rules and eligibility requirements like approved lenders in FSA's regular guaranteed loan program, FSA will take a greater role in reviewing the buyer's financial capacity. Buyers must submit such information as:

(1) The completed FSA application form (same form as used in direct loan programs);

(2) If the applicant is an entity, other information such as a current personal financial statement from each member of the entity, a current financial statement for the entity itself, a copy of the entity's charter or any entity agreement, articles of incorporations and bylaws, certificate or evidence of current registration, and a resolution adopted by the Board of Directors authorizing specified officers of the entity to execute the desire land contract;

(3) Current financial information;

(4) A current farm operating plan;

(5) Brief description of the buyer proposed operation, farm training, and experience;

(6) Prior 3 years income tax and other financial records;

(7) Prior 3 years farm production records, if available;

(8) Verification of income and debts;

(9) Payment of credit report fee;

(10) Documentation of compliance with FSA environmental regulations contained in subpart G of 7 CFR part 1940;

(11) A copy of the proposed land contract; and

(12) Any other information FSA requires to process the application.

FSA proposes the same procedure for processing an incomplete application specified in 7 CFR 764.52 for direct loan processing. The section specifies that within 10 days after receipt of incomplete application will notify they

buyer of additional information needed to process the request and 20 days for the buyer to provide the needed information. If the information is not received within the initial 20 day timeframe, a subsequent letter will be sent and 10 additional days will be given to provide the missing information. The second letter will provide that if the information is not received within this 10 day timeframe, the incomplete application will be withdrawn without further notice. FSA proposes to adopt the same processing timeframes for a complete application specified in § 762.130 for standard eligible lenders in FSA's regular Guaranteed Farm Loans Program.

Downpayment, Rates, and Terms

As in the pilot program, FSA proposes that the buyer will be required to provide a minimum down payment of five percent of the purchase price of the farm. This is the minimum requirement of section 310F.

The interest rate charged by the seller to the buyer for the 10-year term of the contract cannot exceed FSA's direct FO loan rate in effect at the time the guarantee is issued plus three percentage points and the rate must remain fixed during the 10-year guarantee period. Section 310F requires a 10-year guarantee. FSA's direct loan interest rates may be obtained in any FSA office or by visiting the FSA Web site at: *http://www.fsa.usda.gov/daflp.rates.htm.*

As in the pilot program, installments on land contracts must be amortized for a minimum of 20 years and must be equal installments. FSA proposes to prohibit balloon payments during the 10-year term of the guarantee. These provisions will permit more realistic cash flow projections, improve the buyer's chance of success, protect the Government's interest, and limit the amount of FSA's exposure due to the prompt payment guarantee plan.

Fees

FSA proposes that no guarantee fees be charged to obtain or execute the "Land Contract Agreement for Prompt Payment Guarantee" or the "Land Contract Agreement for Standard Guarantee." The seller and buyer will be responsible for payment of any expenses or local government fees necessary to process the land contract agreement or for the buyer to ensure that proper title is vested in the seller including, but not limited to, attorney fees, recording costs, and notary fees.

Taxes and Insurance

FSA proposes that maintenance of both annual property taxes and hazard insurance, if applicable, will be the responsibility of the seller. FSA believes that since maintenance of both of these items will be a stipulation for payment of the guarantee in the event of default, the ultimate responsibility should rest with the seller. Agreements regarding payment of taxes and insurance made between the buyer and seller should be part of the land contract. FSA will not be party to this agreement as the land contract is between the buyer and seller only.

The land contract must contain language to ensure that any insurance proceeds received for real estate losses will be used only to replace or repair the real estate improvements that were damaged, to make other essential real estate improvements that they mutually agree on, or to pay a prior lien, with an equal amount credited to the land contract. FSA need not be named on the insurance policy, but will reduce a loss claim if insurance funds are not used to replace improvements that were damaged or used to make other essential real estate improvements. The seller will maintain flood insurance, if available, if buildings are located in a special 100-year floodplain as defined by FEMA flood hazard area maps.

Approval and Executing the Guarantee

FSA proposes to follow the procedures consistent with the pilot program for approving and executing the guarantee. Once the guarantee is approved, all parties including the seller, buyer, escrow or servicing agent, and FSA's representative will execute either the "Land Contract Agreement for Prompt Payment Guarantee" or the "Land Contract Agreement for Standard Guarantee" depending on the guarantee plan chosen by the seller. These agreements describe the conditions of the guarantee and the process for payment of claims under the respective plan.

Servicing Agents and Escrow Agents

The Land Contract Guarantee Program requires the use of a third party agent to service the loan. The distinction of "escrow agent" versus "servicing agent" will be tied to the guarantee plan that the seller chooses and the duties that the agent performs.

The prompt payment guarantee plan, as proposed requires use of a third party escrow agent. FSA proposes that escrow agents must be bonded and may include title insurance companies, attorneys, financial institutions, or any fiscally responsible institution as determined by FSA. If the terms of the land contract agreement allow, the escrow agent's fee may be taken from each payment and a pro-rata share remitted to the seller, but FSA will not dictate how to establish payment to the escrow agent. The escrow agent for the seller must provide evidence to FSA that property taxes are paid and insurance is kept current on the security property. Although not required by section 310F of the CONACT for a prompt payment guarantee, this requirement will protect FSA from losses from third party taxing authorities and losses due to failure of either the buyer or the seller to maintain adequate insurance coverage.

The standard guarantee plan, as proposed, requires use of a third party agent that FSA is proposing to call a "servicing agent" rather than an escrow agent. This "servicing agent" would perform all the duties that the escrow agent performs under the prompt payment guarantee plan, but would also perform additional duties than an escrow agent does not normally perform, but that a lender under FSA's traditional guarantee program would when servicing guaranteed loans. These additional duties include gathering financial information from the buyer, performing an annual analysis of the farming operation, doing an annual inspection of the farm, and preparing an annual inspection report. It is necessary to have a servicing agent perform these additional duties and provide the information to FSA because FSA has the potential for a much greater financial loss under the standard guarantee than under the prompt payment guarantee. If the terms of the land contract agreement allow, the servicing agent's fee may be taken from each payment submitted by the buyer, and a pro-rata share remitted to the seller; but FSA will not dictate how to establish payment to the servicing agent.

The proposed standard guarantee plan requires the servicing agent to handle transactions relating to the land contract between the buyer and seller, including receiving all contract installment payments and remitting them to the seller. The servicing agent must send the buyer a payment reminder letter 30 days prior to the due date of each annual installment. The servicing agent is also responsible for providing evidence to FSA that property taxes have been paid and hazard insurance is kept in effect when insurable structures are on the security property. In most, but not all cases, provisions for payment of taxes and hazard insurance premiums, if applicable, will be included in the land contract; however,

under the standard guarantee plan, the seller is responsible for paying property taxes. The servicing agent also must submit a status report to FSA and to the seller semi-annually as of September 30 and March 31 showing the outstanding principal and interest balance on the land contract agreement. This is the same report information that guaranteed lenders are required to submit semi-annually to FSA for the regular guaranteed program in 7 CFR 762.141. The report is used to keep FSA informed of its potential risk exposure and is required for FSA to complete its annual financial statement. The servicing agent also must perform an annual physical inspection of the collateral property and provide a written report to FSA. Annually, the servicing agent will also obtain from the buyer a current balance sheet, income statement, cash flow budget, along with any additional information needed, perform an analysis of the buyer's financial condition, and provide the information to FSA. The servicing agent also must perform any other duties that may be required by State law or agreed to by the seller and the buyer in the land contract.

The reason FSA is requiring more from the servicing agent for guarantees made under the standard guarantee plan is that FSA has greater potential financial risk exposure under this option than the prompt payment guarantee plan, where FSA's exposure for possible loss claim is limited to three annual installments plus three years' property taxes and hazard insurance premiums. Under the standard guarantee plan, FSA is liable for 90 percent of the entire principal amount of the land contract, and is not limited to just three installments as it is under the prompt payment plan.

FSA proposes that the servicing agent must be a bonded commercial lending institution or similar entity that is registered and authorized to provide escrow and collection services in the State in which the real estate is located.

Land Contract Modification

All modifications to the land contract will require FSA prior written approval except for a reduction in interest rate. Both the prompt payment guarantee plan and the standard guarantee plan allow the seller and buyer to lower the interest rate and the corresponding amortized payment schedule without FSA approval. FSA approval is not needed to lower the interest rate since that action is clearly in the best interest of both the buyer and FSA, and will not lead to an increased loss claim.

With FSA's prior written approval, the seller and the buyer may modify the land contract provided that a feasible plan can be reasonably projected throughout the remaining term of the guarantee and for the upcoming operating cycle. The seller and buyer may defer installments with prior approval from FSA.

A partial release is a release of a portion of the real estate included in the land contract. Any partial release requires prior approval by FSA, the buyer, and the seller in writing. All proceeds from a partial release sale must be applied to a prior lien owed by the seller, if one exists. In addition, an amount equal to the value of the parcel being released must be credited to the principal balance of the land contract. This is necessary because otherwise the security for the land contract would be reduced without a corresponding reduction in the debt owed by the buyer if the seller in the land contract transaction sells part of the real estate security without crediting the amount of the released property to the land contract balance.

All leasing or subleasing requests must be submitted to FSA for approval, and will only be approved if such action is determined not to be detrimental to FSA under the guarantee. Income received by the seller from royalties from mineral extraction must be applied to the principal balance of the land contract being guaranteed by FSA. If the landowner receives royalties from mineral extraction from the collateral property without crediting the amount to the land contract balance, the security for the land contract would be reduced without a corresponding reduction in debt owed by the buyer.

The seller cannot assign interest in the FSA guarantee to another party without FSA's written consent. The buyer can only transfer obligation in the land contract and the guarantee to an eligible applicant under the land contract program. The eligible applicant first must be approved by FSA and the seller in the land contract. If an eligible applicant cannot be found, the FLP Deputy Administrator may make an exception to this requirement.

If a land contract is modified, the seller must provide FSA and the escrow or servicing agent with a copy of the modified contract. Modifications other than those listed above must be approved by the FLP Deputy Administrator and will be approved only if such action is determined not to be detrimental to FSA under the guarantee.

Delinquent Account Servicing

If the buyer fails to make a payment under either the Land Contract Agreement for Prompt Payment Guarantee or Land Contract Agreement for Standard Guarantee, the escrow or servicing agent will send the first delinquent notice to the buyer within 30 days of the missed payment due date with a copy to FSA and the seller.

Under the prompt payment guarantee plan, if the buyer does not resolve the default within 30 days of the written demand, the escrow agent must make demand on FSA to pay the defaulted amount plus property taxes and insurance premiums, if applicable. This demand on FSA must be made within 90 days from the missed payment due date.

Under the standard guarantee plan, if a missed payment is not resolved within 60 days from the date of the demand letter, the seller has two options for determining the amount of the loss when a buyer defaults. The seller may either liquidate the real estate or have FSA establish the amount of loss by an appraisal.

If the seller chooses the liquidation option, the servicing agent must liquidate the real estate. The servicing agent will be required to submit a liquidation plan to FSA for approval, just as lenders do for the regular FSA guarantee program as specified in 7 CFR 762.149. This is necessary to assure FSA that the servicing agent is using a liquidation method that is likely to result in the greatest return on the sale of the property. The servicing agent will be required to have the liquidation completed within 12 months of the initial default unless prevented from doing so by bankruptcy action, redemption rights, or other legal action. FSA believes that under normal circumstances, this is an adequate amount of time to prepare a plan of liquidation, secure FSA approval of the plan, and complete liquidation. It will also prevent the possible deterioration of security property and keep loss claims to a minimum. A credit of an amount equal to the sales price received in a liquidation of the security property, with no deduction for expenses must be applied to the principal balance of the land contract. This differs from the regular guarantee loan program because in the guarantee loan program a loan is guaranteed, and the guarantee could include principal and interest, along with selling expenses and other charges to the account. In the Land Contract Guarantee program, FSA is guaranteeing only the principal amount of a land contract. To allow a deduction for

expenses would in effect be guaranteeing those expenses whereas this program only guarantees the principal amount of the land contract according to section 310F of the CONACT. The servicing agent must submit the loss claim to FSA along with a complete ledger of all transactions from the date the guarantee began.

FSA may require, but will pay for, an appraisal prior to approval of the liquidation plan. The amount of a loss claim is determined by the sale price, so before a loss claim is paid, FSA must be satisfied that the servicing agent received a realistic price for the security property. If the seller reacquires the property through liquidation, the loss claim amount will be based on the appraisal method, and the seller will give FSA a lien on the property for that amount. The reason for this is the original seller in the land contract agreement will be retaining the property, and will be required to sign a Shared Appreciation Agreement so that if the seller sells the property within 5 years for more than the amount FSA loss payment was based on, FSA will be able to enforce a future recovery. This is consistent with other FSA programs where a claim is paid on property the owner is retaining. It would not be a good use of taxpayer money to pay the seller for his loss, then have him turn around in a short time and sell at a profit, in effect collecting when he did not actually suffer a loss, and in effect double dipping.

If the seller chooses to have the amount of the loss established by an appraisal rather than liquidation of real estate, the servicing agent must inform FSA that the seller has chosen this method. FSA will obtain an appraisal and the loss will be based on the difference between that appraised valued at the time the loss is calculated and the unpaid principal balance of the land contract at that time. For the resulting appraisal amount, the seller will only be allowed to appeal whether the appraisal is Uniform Standards of Professional Appraisal Practice (USPAP) compliant, as proposed in § 763.19.

In exchange for payment of the loss claim when the appraisal method is used, the seller must give a lien to FSA on the security property in the amount of the loss claim. If the property is sold within 5 years for more than the appraised value at the time of the loss claim, the seller must repay the difference, up to the amount of the loss claim. For purposes of determining the amount to be repaid (recapture), the market value of the property may be reduced by the value of certain capital improvements made by the seller to the property in the time period from the payment of the loss claim to final disposition. This 5 year recapture period is consistent with FSA's direct loan program and with FSA's other guaranteed loan programs.

The original buyer in the land contract also has a responsibility to repay the loss claim, and is required to begin repaying the loss payment within a short time after it is paid. If the buyer has already paid back part of the loss claim to FSA and the seller sells the real estate for more than the appraised value when the claim was originally paid, the seller will only be required to repay the remaining unpaid balance. If the former buyer has paid back the entire claim, the seller will not be required to pay back any of the claim. If the seller in the original land contract does not sell the property within 5 years from the date of the loss claim, the lien will be released and the seller will have no further obligation to FSA.

Without a lien on the property, there is no realistic method of enforcing repayment from a sale of the property. This also prevents the seller from collecting on a loss and turning around in a short time period and selling the property for an amount higher than the appraised value, essentially obtaining a loss payment from the government when no loss really occurred. These provisions are consistent with other FSA loan programs.

Federal Debt and FSA Recovery of Loss Claim Payments

Any amount paid by FSA as a result of an approved loss claim is immediately due and payable by the buyer after FSA notifies the buyer that a loss claim has been paid to the seller. If the debt is not restructured into a repayment plan or the obligation otherwise cured, FSA may use all remedies available, including offset as authorized by the Debt Collection Improvement Act of 1996, to collect the debt. The amount paid on behalf of the buyer, and not yet repaid to FSA, will bear interest from the date of the FSA advance at the FLP non-program credit sales real property loan rate (available in local FSA offices) in effect at the time the first loss claim is paid.

The debt may be scheduled for repayment consistent with the buyer's repayment ability not to exceed 7 years from the date of the first FSA payment of a claim. Before a repayment plan can be approved, the buyer must provide FSA with the best lien obtainable on all of the buyer's assets. This includes ownership interest in the real estate under contract for guarantees using the prompt payment guarantee plan, if State law permits. When the buyer is an entity, the best lien obtainable will be taken on all of the entity's assets, and all assets owned by the individual members of the entity, including their interest in the guaranteed land contract.

Defaulted buyers with an FSA-approved repayment plan will supply FSA with a current balance sheet, income statement, cash flow budget, complete copy of Federal income tax returns, and any additional information needed to analyze the buyer's financial condition annually. If the buyer fails to perform as required on an FSA-approved repayment plan, the debt will be treated as a non-program loan debt, and servicing will proceed as specified in 7 CFR 766.351(c).

Negligence and Negligent Servicing

FSA may deny a loss claim in whole or in part due to seller negligence and negligent servicing that contributed to the loss claim. This also could include the escrow or servicing agent failing to seek payment of a missed installment from the buyer within the prescribed timeframes or otherwise failing to enforce the terms of the land contract; losing the collateral to a third party (for example, taxing authority, prior lienholder, etc.); not performing the duties and responsibilities required of the escrow or servicing agent; seller's failing to disclose environmental issues; or any other action in violation of the land contract or guarantee agreement not resulting in terminating of the guarantee.

Termination of Guarantee

The land contract guarantee and FSA's obligations under the agreement will terminate under the following scenarios:

(1) At the end of the 10 year term of the guarantee, without notice;

(2) When the land contract agreement is paid in full;

(3) When there is a payment of a loss claim required by the standard guarantee plan;

(4) If FSA pays 3 amortized annual installments or an amount equal to 3 annual installments (including an amount equal to the total cost of any tax and insurance incurred during the period covered by the annual installments). An FSA-approved repayment plan will not constitute payment in full until such time as the entire amount due for the FSA-approved repayment plan is paid in full;

(5) When the seller terminates the land contract for reasons other than monetary default;

(6) When there is a sale of the property without the guarantee being properly assigned; or

(7) If for any reason the land contract becomes null and void.

Eligibility Change for Direct Farm Ownership and Operating Loans

Currently, for all direct loan programs, if an applicant is relying on past farm experience to demonstrate sufficient managerial ability, the experience must have been within the last 5 years. Sections 5001 and 5101 of the 2008 Farm Bill amended sections 302 and 311 of the CONACT, respectively, to revise this eligibility requirement for FSA's direct farm ownership loan (FO) program and direct farm operating loan (OL) program to require training or farm experience, that the Secretary determines is sufficient "taking into consideration all farming experience of the applicant without regard to any lapse between farming experiences." As a result, FSA proposes to amend the experience requirements in 7 CFR 764.101 to consider all prior farming. FSA proposes to require this broadened farm experience requirement to be supplemented by on-the-job training or education that occurred within the last 5 years prior to the date of the application if all prior farming occurred more than 5 years prior to application.

FSA proposes to add the training or education requirement because the current technological innovations, market volatility, financial environment challenging today's farmers, and recent knowledge of industry practices will better equip applicants with the tools necessary to ensure the greatest chance for success in the present agriculture business climate. While farm experience is one avenue for gaining this knowledge, recent on-the-job training and education can be an equally sufficient substitute for acquiring the knowledge and skills necessary to successfully operate a farm or ranch. These changes to FO and OL regulations will allow applicants previously ineligible due to their lack of recent farm experiences an opportunity to receive assistance. FSA believes that with its history of providing supervised credit, these applicants can be provided an adequate opportunity to thrive in today's agribusiness industry.

Emergency Loans

FSA provides emergency loans to help producers recover from production and physical losses due to drought, flooding, other natural disasters, and certain quarantines. FSA proposes a number of changes in 7 CFR part 764, subpart H, "Emergency Loan Program," to carry out section 5201 of the 2008 Farm Bill that amends section 321 of the CONACT to expand EM eligibility to equine farmers. In addition, FSA proposes to amend 7 CFR 764.102 to add an exception to the limitation prohibiting the use of loan funds to support non-eligible enterprises as defined in § 761.2 that includes a business that produces nonfarm animals, birds, or aquatic organisms ordinarily used for pets, companionship, or pleasure. These proposed changes will make certain equine losses eligible under the EM Program. FSA proposes to expand EM eligibility criteria by amending 7 CFR 764.352 to extend eligibility to equine farmers whose primary enterprise is to breed, raise, and sell horses. For farmers whose primary enterprise is to breed, raise and sell horses, losses will be treated the same as losses for other types of livestock operations with a minor difference intended to accommodate the unique nature of the equine industry. FSA is proposing this change to both broaden the potential eligibility pool of farmers for EM and to adequately define qualifying equine losses. FSA proposes this definition because Conference Report (No. 110–627) language on the section clearly indicates Congress' intent to exempt losses associated with horses used for racing, showing, recreation, or pleasure and associated losses of income from eligibility under the EM Program. These losses will not be eligible and will specifically be prohibited in 7 CFR 764.353.

Since the equine industry is widely diverse and unlike many other livestock operations, FSA proposes to amend 7 CFR 764.355 to add guidelines regarding security requirements for loans to equine farmers. FSA believes these additional guidelines will allow flexibility in securing equine loss loans in States where the conventional Uniform Commercial Code (UCC) laws do not adequately address the perfection of liens on horses. In some States, to properly perfect liens on horses, the lender must obtain and hold the horse's breed registration papers, Jockey Club papers, or other papers that evidence ownership. In many instances, this procedure would impede the applicant from carrying out their normal course of business. Therefore, FSA proposes alternate security provisions in a specific order of preference. The security alternatives are similar to those developed for FSA's previous Horse Breeder Loan Program and were sufficient in providing adequate security for loans made under that program. These alternative security provisions allow equine farmers the ability to carry out the normal course of business by allowing them to pledge other resources to fulfill the loan's security requirements. The security alternatives, in preference order are: Real estate, chattels and crops (other than horses), and other assets owned by the applicant.

FSA proposes additional specific guidance on appraisal and valuation requirements in 7 CFR 764.356 for equine loans that follow the guidelines established in FSA's previous Horse Breeder Loan Program. State laws may dictate rules for establishing the value of horses and the methods used to adequately perfect liens for equine loans. In some cases, it may be necessary for States to issue State specific guidelines in consultation with their local Office of General Counsel to give additional guidance in determining equine losses and specific security procedures.

Executive Order 12866

The Office of Management and Budget (OMB) designated this rule as significant under Executive Order 12866 and, therefore, OMB reviewed this proposed rule. A cost benefit assessment of this rule is summarized below and is available from the contact listed above.

Summary of Economic Impacts

The Cost Benefit Analysis covers three provisions required by the 2008 Farm Bill: Implementation of the Beginning Farmer or Rancher and Socially Disadvantaged Farmer or Rancher Contract Land Sales Program, which expands and makes permanent a pilot program, expansion of emergency loan program eligibility to include equine farmers, and revision of farm loan eligibility criteria regarding farming and ranching experience. These provisions are authorized by Sections 5001, 5005, 5101, and 5201 of the 2008 Farm Bill.

The program changes proposed in this rule are expected to have relatively minor impacts on FSA lending programs, as they affect only a small share of total lending authority. Likewise, impacts on budget authority and workload are expected to be small.

Implementation of the land contract guarantee program on a national basis is expected to enable 140 beginning and socially-disadvantaged farmers to purchase land each year, resulting in additional loan obligations of up to $25 million annually. The USDA 2008 Agricultural Resource Management Study indicated that about one-fourth of all farmland buyers had at least one

beginning farmer present on the farm. While FSA's overall share of debt is around 7 percent for direct and guaranteed combined, its share for targeted groups tends to be larger. As a result, it is assumed that 10 percent of those eligible would actually apply and receive a guarantee, which results in FSA issuance of about 140 land contract guarantees annually once the program is fully implemented. While 140 land contracts per year, nationwide, may seem low, it is consistent with the experience of the pilot program.

The most notable impact is likely to be associated with the increased flexibility in evaluating farm experience, which will initially increase the number of farmers eligible for beginning-farmer loans. But, anticipated impacts from changing eligibility are expected to be naturally short-lived because changing the criteria for measuring farm experience is expected to enable 673 farmers to borrow in 2010 and 2011 rather than in 2012—in other words, since it moves up the year in which farmers will be eligible, the impacts will be most noticeable in 2010 and 2011. This change is expected to initially increase total obligations by $47 million in fiscal year 2011, which is a minor share of total lending.

Expansion of the EM eligibility to include equine producers is expected to increase loan obligations by just more than $2 million annually and involve an estimated 112 farmers nationwide.

Regulatory Flexibility Act

In compliance with the Regulatory Flexibility Act (5 U.S.C. 601), FSA certifies that there would not be a significant economic impact on a substantial number of small entities. All FSA direct loan borrowers and all farm entities affected by this rule are small businesses according to the North American Industry Classification System and the U. S. Small Business Administration. There is no diversity in size of the entities affected by this rule, and the costs to comply with it are the same for all entities. As discussed in the CBA summary, the expected impacts are to enable a relatively small number of farmers to buy farms through guaranteed land contracts, enable beginning farmers to qualify sooner for FSA loans, and to allow equine farmers to be eligible for EM.

Environmental Review

The environmental impacts of this rule have been considered in a manner consistent with the provisions of the National Environmental Policy Act (NEPA, 42 U.S.C. 4321–4347), the regulations of the Council on Environmental Quality (40 CFR parts 1500–1508), and the FSA regulations for compliance with NEPA (7 CFR 799 and 7 CFR part 1940, subpart G). FSA concluded that this rule will not have a significant impact on the quality of the human environment either individually or cumulatively, provided no shifts in land use are proposed and should be considered categorically excluded (7 CFR 1940.310). Therefore, FSA need not prepare an environmental assessment or environmental impact statement on this rule.

Executive Order 12372

This program is not subject to Executive Order 12372, which requires consultation with State and local officials. *See* the notice related to 7 CFR part 3015, subpart V, published in the **Federal Register** on June 24, 1983 (48 FR 29115).

Executive Order 12988

This proposed rule has been reviewed in accordance with Executive Order 12988, Civil Justice Reform. As proposed, this rule preempts State and local laws and regulations that are in conflict with this rule. Before any judicial action may be brought concerning the provisions of this rule the administrative appeal provisions of 7 CFR parts 11 and 780 must be exhausted.

Executive Order 13132

The policies in this rule would not have any substantial direct effect on States, the relationship between the Federal Government and the States, or the distribution of power and responsibilities among the various levels of government. Nor would this proposed rule impose substantial direct compliance costs on State and local governments. Therefore, consultation with the States is not required.

Executive Order 13175

The policies contained in this rule do not impose substantial unreimbursed direct compliance costs on Indian tribal governments or have tribal implications that preempt tribal law.

USDA will undertake, within 6 months after this rule becomes effective, a series of regulation Tribal consultation sessions to gain input by Tribal officials concerning the impact of this rule on Tribal governments, communities, and individuals. These sessions will establish a baseline of consultation for future actions, should any become necessary, regarding this rule. Reports from these sessions for consultation will be made part of the USDA annual reporting on Tribal Consultation and Collaboration. USDA will respond in a timely and meaningful manner to all Tribal government requests for consultation concerning this rule and will provide additional venues, such as Webinars and teleconferences, to periodically host collaborative conversations with Tribal leaders and their representatives concerning ways to improve this rule in Indian country.

Unfunded Mandates

This rule contains no Federal mandates under the regulatory provisions of Title II of the Unfunded Mandate Reform Act of 1995 (UMRA, Pub. L. 104–4) for State, local, or tribal governments, or the private sector. Therefore, this rule is not subject to the requirements of sections 202 and 205 of UMRA.

Federal Assistance Programs

The title and number of the Federal assistance programs in the Catalog of Federal Domestic Assistance to which this proposed rule would apply are:

10.404—Emergency Loans
10.406—Farm Operating Loans
10.407—Farm Ownership Loans

Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1995, FSA is requesting comments from all interested individuals and organizations on Land Contract Guarantee Program information collection activities and the change in information collection activities related to the regulatory changes in this proposed rule. In the Land Contract Guarantee Program, FSA is providing certain financial guarantees to eligible sellers in land transfers of farmland through a land contract sale to beginning farmers and socially disadvantaged farmers. The new information collection requests for Farm Loan Programs, General Program Administration; Direct Loan Making; and regular Direct Loan Servicing all result from expanding eligibility for EM to cover equine losses; and when approved will be incorporated into the existing approved ICRs (of the same titles) that will be up for a renewal this year. There are no changes to the approved burden related to the regulatory change in the required amount of farm experience.

Title: Land Contract Guarantee Program.

OMB Control Number: 0560–New.

Type of Request: New Collection.

Abstract: This information collection is required to support the regulations proposed in 7 CFR part 763, "Land Contract Guarantee Program," which establishes the requirements for FSA's

new Land Contract Guarantee Program. Information collections established in the regulations are necessary for the Agency to evaluate the buyer and seller's request for guarantee and determine if eligibility and security requirements can be met. It also establishes the requirements related to routine servicing actions necessary to monitor guarantee progress, and special servicing of land contract guarantee agreements related to buyers, sellers, and servicing and escrow agents for payment of loss claims and subsequent collection attempts.

Estimate of Burden: Public reporting for this collection of information is estimated to average 50 minutes per response.

Respondents: Individuals or households, businesses or other for-profit and farms.

Estimated Number of Respondents: 275.

Estimated Number of Responses per Respondent: 1.

Estimated Total Annual Number of Responses: 275.

Estimated Total Annual Burden on Respondents: 230 hours.

Title: Farm Loan Programs, General Program Administration.

OMB Control Number: 0560–New.

Type of Request: New Collection.

Abstract: This information collection is required to support the proposed regulatory changes that include equine losses as eligible for EM. Some of the same information collection activities will be used that are currently approved for 7 CFR part 761, "Farm Loan Programs, General Program Administration," which establishes requirements within FSA's Farm Loan Programs that are applicable to both making and servicing of all Farm Loan Programs loans including Emergency Loans. Information collections established by the regulation are necessary to ensure that program applicants and participants meet statutory eligibility requirements, loan funds are used for authorized purposes and the Government's interest in security is adequately protected. Specific information collection requirements include financial information in the form of a balance sheet and cash flow projection used in loan making and servicing decisions; information needed to establish joint bank accounts in which either loan funds, proceeds derived from the sale of loan security, or insurance proceeds may be deposited; collateral pledges from financial institutions when the balance of a supervised bank account will exceed $100,000; and documentation that construction plans and specifications comply with State and local building standards.

Estimate of Burden: Public reporting for this collection of information is estimated to average 54 minutes per response.

Type of Respondents: Individuals or households, businesses or other for profit and farms.

Estimated Number of Respondents: 388.

Estimated Number of Responses per Respondent: 1.1.

Estimated Total Number of Responses: 426.8.

Estimated Total Annual Burden on Respondents: 384 hours.

Once this information collection is approved, FSA will incorporate these collections into existing collections package 0560–0238.

Title: Direct Loan Making.

OMB Control Number: 0560–New.

Type of Request: New Collection.

*Abstrac*t: This information collection is required to support the proposed regulatory changes that include equine losses as eligible for EM in 7 CFR part 764, Direct Loan Making, which establishes the requirements for most of FSA's direct loan programs including the Emergency loan program. Information collections established in the regulation are necessary for the FSA to evaluate the loan applicant's request and determine if eligibility, loan repayment, and security requirements can be met.

Estimate of Burden: Public reporting for this collection of information is estimated to average 36 minutes per response.

Type of Respondents: Individuals or households, businesses or other for profit and farms.

Estimated Number of Respondents: 1,125.

Estimated Number of Responses per Respondent: 1.3.

Estimated Total Annual Number of Responses: 1,463.

Estimated Total Annual Burden on Respondents: 878 hours.

Once this information collection is approved, FSA will incorporate this collection into existing collections package 0560–0237.

Title: Direct Loan Servicing—Regular.

OMB Control Number: 0560–New.

*Type of Reques*t: New Collection.

Abstract: This information collection is required to support the proposed regulatory changes that include equine losses as eligible for EM. Some of the same information collection activities will be used that are currently approved for 7 CFR part 765, Direct Loan Servicing —Regular, which establishes the requirements related to routine servicing actions associated with direct loans including Emergency loans. Information collections established in the regulation are necessary for the Agency to monitor and account for loan security, including proceeds derived from the sale of security, and to process a borrower's requests for subordination or partial release of security. Information collections associated with the statutory requirement that borrowers be reviewed for graduation to commercial credit are also established in the regulation.

Estimate of Burden: Public reporting for this collection of information is estimated to average 49 minutes per response.

Type of Respondents: Individuals or households, businesses or other for profit and farms.

Estimated Number of Respondents: 48.

Estimated Number of Responses per Respondent: 1.

Estimated Total Annual Number of Responses: 48.

Estimated Total Annual Burden on Respondents: 39 hours.

Once this information collections request is approved, FSA will incorporate this collection into existing collections package 0560–0236.

We are requesting comments on all aspects of this information collection to help us to:

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

(2) Evaluate the accuracy of FSA's estimate of burden 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.

All comments received in response to this notice, including names and addresses when provided, will be a matter of public record. Comments will be summarized and included in the submission for Office of Management and Budget approval.

E-Government Act Compliance

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

access to Government information and services, and for other purposes.

List of Subjects

7 CFR Part 761

Accounting, Loan programs—agriculture, Rural areas.

7 CFR Part 763

Agriculture, Banks, Banking, Credit, Loan programs—agriculture.

7 CFR Part 764

Agriculture, Disaster assistance, Loan programs—agriculture.

For reasons discussed in the preamble, the Farm Service Agency (USDA) proposes to amend 7 CFR chapter VII as follows:

PART 761—FARM LOAN PROGRAMS; GENERAL PROGRAM ADMINISTRATION

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

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

2. Revise the part heading for 7 CFR part 761 to read as shown above.

3. Amend § 761.2 paragraph (b) to add a definition, in alphabetical order, for "Land Contract" to read as set forth below.

§ 761.2 Abbreviations and definitions.

* * * * *

(b) * * *

Land contract is an installment contract drawn between a buyer and a seller for the sale of real property, in which complete fee title ownership of the property is not transferred until all payments under the contract have been made.

* * * * *

4. Add part 763 to read as follows:

PART 763—LAND CONTRACT GUARANTEE PROGRAM

Sec.

763.1 Introduction.
763.2 Abbreviations and definitions.
763.3 Full faith and credit.
763.4 Authorized land contract purpose.
763.5 Eligibility.
763.6 Limitations.
763.7 Application requirements.
763.8 Incomplete applications.
763.9 Processing complete applications.
763.10 Feasibility.
763.11 Maximum loss amount, guarantee period, and conditions.
763.12 Down payment, rates, and terms.
763.13 Fees.
763.14 Appraisals.
763.15 Taxes and insurance.
763.16 Environmental regulation compliance.
763.17 Approving application and executing guarantee.
763.18 General servicing responsibilities.
763.19 Contract modification.
763.20 Delinquent servicing and collecting on guarantee.
763.21 Establishment of Federal debt and Agency recovery of loss claim payments.
763.22 Negligence.
763.23 Terminating the guarantee.

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

§ 763.1 Introduction.

(a) *Purpose.* The Land Contract Guaranteed Program provides certain financial guarantees to the seller in land transfers of farmland through a land contract sale to beginning farmers and socially disadvantaged farmers.

(b) *Types of guarantee.* The seller may request either of the following:

(1) *The prompt payment guarantee plan.* The Agency will guarantee an amount not to exceed three amortized annual installments plus an amount equal to the total cost of any related real estate taxes and insurance incurred during the period covered by the annual installment; or

(2) *The standard guarantee plan.* The Agency will guarantee an amount equal to 90 percent of the outstanding principal.

(c) *Guarantee period.* The guarantee period is 10 years for either plan.

§ 763.2 Abbreviations and definitions.

Abbreviations and definitions for terms used in this part are in § 761.2 of this chapter.

§ 763.3 Full faith and credit.

(a) The land contract guarantee constitutes an obligation supported by the full faith and credit of the United States. The Agency may contest the guarantee only in cases of fraud or misrepresentation by the seller, in which:

(1) The seller had actual knowledge of the fraud or misrespresentation at the time it became the seller, or

(2) The seller participated in or condoned the fraud or misrepresentation.

(b) Loss Claims also may be reduced or denied to the extent that any negligence contributed to the loss under § 763.22.

§ 763.4 Authorized land contract purpose.

The Agency will only guarantee the contract installments, real estate taxes, and insurance; or outstanding principal balance for an eligible seller of a family farm, through a land contract sale to an eligible beginning or socially disadvantaged farmer.

§ 763.5 Eligibility.

(a) *Seller eligibility requirements.* The private seller, and each entity member in the case of an entity seller, must:

(1) Possess the legal capacity to enter into a legally binding agreement;

(2) Not have provided false or misleading documents or statements during past or present dealings with the Agency;

(3) Not be ineligible due to disqualification resulting from Federal Crop Insurance violation, according to 7 CFR part 718; and

(4) Not be suspended or debarred under 7 CFR part 3017.

(b) *Buyer eligibility requirements.* The buyer must meet the following requirements to be eligible for the Land Contract Guarantee Program:

(1) Is a beginning farmer or socially disadvantaged farmer engaged primarily in farming in the United States after the guarantee is issued.

(2) Is the owner and operator of a family farm after the contract is completed. In the case of an entity buyer:

(i) Each entity member's ownership interest may not exceed the amount specified in the family farm definition in § 761.2 of this chapter.

(ii) The entity members cannot themselves be entities.

(iii) The entity must be authorized to own and operate a farm in the State in which the farm is located.

(iv) If the entity members holding a majority interest are related by blood or marriage, at least one member of the entity must:

(A) Operate the farm and

(B) Own the farm;

(v) If the entity members holding a majority interest are not related by blood or marriage, the entity members holding a majority interest must:

(A) Operate the farm; and

(B) Own the farm, or the entity itself must own the farm;

(3) Must have participated in the business operations of a farm or ranch for at least 3 years out of the last 10 years prior to the date the application is submitted.

(4) The buyer and all entity members in the case of an entity, must not have caused the Agency a loss by receiving debt forgiveness on all or a portion of any direct or guaranteed loan made under the authority of the Act by debt write-down or write-off; compromise, adjustment, reduction, or charge off under the provisions of section 331 of the Act; discharge in bankruptcy; or through payment of a guaranteed loss claim on more than three occasions on or prior to April 4, 1996, or any occasion after April 4, 1996. If the debt forgiveness is resolved by repayment of the Agency's loss, the Agency may still consider the debt forgiveness in determining the applicant's creditworthiness.

(5) The buyer and all entity members in the case of an entity, must not be delinquent on any Federal debt, other than a debt under the Internal Revenue Code of 1986 when the guarantee is issued.

(6) The buyer and all entity members in the case of an entity, may have no outstanding unpaid judgment awarded to the United States in any court. Such judgments do not include those filed as a result of action in the United States Tax Courts.

(7) The buyer and all entity members in the case of an entity, must be a citizen of the United States, United States non-citizen national, or a qualified alien under applicable Federal immigration laws. United States non-citizen nationals and qualified aliens must provide the appropriate documentation as to their immigration status as required by the U.S. Department of Homeland Security, Bureau of Citizenship and Immigration Services.

(8) The buyer and all entity members in the case of an entity, must possess the legal capacity to enter into a legally binding agreement.

(9) The buyer and all entity members in the case of an entity, must not have provided false or misleading documents or statements during past or present dealings with the Agency.

(10) The buyer and all entity members in the case of an entity, must not be ineligible as a result of a conviction for controlled substances according to 7 CFR part 718 of this chapter.

(11) The buyer and all entity members in the case of an entity must have an acceptable credit history demonstrated by satisfactory debt repayment.

(i) A history of failures to repay past debts as they came due when the ability to repay was within their control will demonstrate unacceptable credit history.

(ii) Unacceptable credit history will not include:

(A) Isolated instances of late payments, which do not represent a pattern and were clearly beyond their control; or

(B) Lack of credit history.

(12) The buyer is unable to enter into a contract unless the seller obtains an Agency guarantee to finance the purchase of the farm at reasonable rates and terms.

(13) The buyer and all entity members in the case of an entity, must not be ineligible due to disqualification resulting from Federal Crop Insurance violation, according to 7 CFR part 718.

(14) The buyer and all entity members in the case of an entity, must not be suspended or debarred under 7 CFR part 3017.

§ 763.6 Limitations.

(a) To qualify for a guarantee, the purchase price of the farm to be acquired through the land contract sale cannot exceed the lesser of:

(1) $500,000 or

(2) The current market value of the property.

(b) A guarantee will not be issued if the appraised value of the farm is greater than $500,000.

(c) Existing land contracts are not eligible for the Land Contract Guarantee Program.

(d) Guarantees may not be used to establish or support a non-eligible enterprise.

§ 763.7 Application requirements.

(a) *Seller application requirements.* A seller who contacts FSA with interest in a guarantee under the Land Contract Guarantee Program will be sent the land contract letter of interest outlining specific program details. To formally request a guarantee on the proposed land contract, the seller, and each entity member in the case of an entity, must:

(1) Complete, sign, date, and return the land contract letter of interest to the Agency, and

(2) Provide the name, address, and telephone number of the chosen servicing or escrow agent.

(b) *Buyer application requirements.* A complete application from the buyer will include:

(1) The completed Agency application form;

(2) A current Financial Statement (not older than 90 days);

(3) If the buyer is an entity:

(i) A complete list of entity members showing the address, citizenship, principle occupation, and the number of shares and percentage of ownership or stock held in the entity by each member, or the percentage of interest in the entity held by each member;

(ii) A current personal financial statement for each member of the entity;

(iii) A current financial statement for the entity itself;

(iv) A copy of the entity's charter or any entity agreement, any articles of incorporation and bylaws, any certificate or evidence of current registration (in good standing), and a resolution adopted by the Board of Directors or entity members authorizing specified officers of the entity to apply for and obtain the land contract guarantee and execute required debt, security and other instruments and agreements; and

(v) In the form of a married couple applying as a joint operation, items in paragraphs (b)(3)(i) and (b)(3)(iv) of this section will not be required. The Agency may request copies of the marriage license, prenuptial agreement, or similar documents as needed to verify loan eligibility and security. The information specified in paragraphs (b)(2)(ii) and (iii) of this section are only required to the extent needed to show the individual and joint finances of the husband and wife without duplication;

(4) A brief written description of the buyer's proposed operation;

(5) A farm operating plan;

(6) A brief written description of the buyer's farm training and experience;

(7) Three years of income tax and other financial records acceptable to FSA, unless the buyer has been farming less than 3 years;

(8) Three years of farm production records, unless the buyer has been farming less than 3 years;

(9) Verification of income and off-farm employment if relied upon for debt repayment;

(10) Verification of all debts;

(11) Payment of the credit report fee;

(12) Documentation of compliance with the environmental regulations in part 1940, subpart G, of this title;

(13) A copy of the proposed land contract; and

(14) Any additional information deemed necessary by the Agency to effectively evaluate the applicant's eligibility and farm operating plan.

§ 763.8 Incomplete applications.

(a) Within 10 days of receipt of an incomplete application, the Agency will provide the seller and buyer written notice of any additional information that must be provided. The seller or buyer, as applicable, must provide the additional information within 20 calendar days of the date of the notice.

(b) If the additional information is not received, the Agency will provide written notice that the application will be withdrawn if the information is not received within 10 calendar days of the date of the second notice.

§ 763.9 Processing complete applications.

Applications will be approved or rejected and all parties notified in writing no later than 30 calendar days after application is considered complete.

§ 763.10 Feasibility.

(a) The buyer's proposed operation as described in a form acceptable to FSA must represent the operating cycle for the farm operation and must project a feasible plan as defined in § 761.2(b).

(b) The projected income, expenses, and production estimates:

(1) Must be based on the buyer's last 3 years actual records of production and

financial management unless the buyer has been farming less than 3 years;

(2) For those farming less than 3 years, a combination of any actual history and other reliable sources of information may be used. Sources must be documented and acceptable to the Agency; and

(3) May deviate from historical performance if deviations are the direct result of specific changes in the operation, reasonable, justified, documented, and acceptable to the Agency.

(c) Price forecasts used in the plan must be reasonable, documented, and acceptable to the Agency.

(d) The Agency will analyze the buyer's business ventures other than the farm operation to determine their soundness and contribution to the operation.

(e) When a feasible plan depends on income from sources other than from owned land, the income must be dependable and likely to continue.

(f) When the buyer's farm operating plan is developed in conjunction with a proposed or existing Agency direct loan, the two farm operating plans must be consistent.

§ 763.11 Maximum loss amount, guarantee period, and conditions.

(a) *Maximum loss amount.* The maximum loss amount of loss due to nonpayment by the buyer covered by the guarantee is based on the type of guarantee initially selected by the seller as follows:

(1) The prompt payment guarantee will cover:

(i) 3 amortized annual installments; or

(ii) An amount equal to 3 annual installments (including an amount equal to the total cost of any tax and insurance incurred during the period covered by the annual installments).

(2) The standard guarantee will cover an amount equal to 90 percent of the outstanding principal balance.

(b) *Guarantee period.* The period of the guarantee will be 10 years from the effective date of the guarantee unless terminated earlier under § 763.23.

(c) *Conditions.* The seller will select an escrow agent to service a Land Contract Agreement if selecting the prompt payment guarantee plan, and a servicing agent to service a Land Contract Agreement if selecting the standard guarantee plan.

(1) An escrow agent must provide the Agency evidence of being a bonded title insurance company, attorney, financial institution or fiscally responsible institution.

(2) A servicing agent must provide the Agency evidence of being a bonded commercial lending institution or similar entity, registered and authorized to provide escrow and collection services in the State in which the real estate is located.

§ 763.12 Down payment, rates, terms, and installments.

(a) *Down payment.* The buyer must provide a minimum down payment of five percent of the purchase price of the farm.

(b) *Interest rate.* The interest rate charged by the seller must be fixed at a rate not to exceed FSA's direct farm ownership (FO) loan interest rate in effect at the time the guarantee is issued, plus three percentage points. The seller and buyer may renegotiate the interest rate for the remaining term of the contract following expiration of the guarantee.

(c) *Land contract terms.* The contract payments must be amortized for a minimum of 20 years and payments on the contract must be of equal amounts during the term of the guarantee.

(d) *Balloon installments.* Balloon payments are prohibited during the 10-year term of the guarantee.

§ 763.13 Fees.

(a) *Payment of fees.* The seller and buyer will be responsible for payment of any expenses or fees necessary to process the land contract agreement required by the State or county to ensure that proper title is vested in the seller including, but not limited to, attorney fees, recording costs, and notary fees.

(b) [Reserved]

§ 763.14 Appraisals.

(a) *Standard guarantee plan.* For the standard guarantee plan, the value of real estate to be purchased will be established by an appraisal obtained at Agency expense and completed as specified in § 761.7 of this chapter. An appraisal is required prior to, or as a condition of, approval of the guarantee.

(b) *Prompt payment guarantee plan.* The Agency may, at its option and expense, obtain an appraisal to determine value of real estate to be purchased under the prompt payment guarantee plan.

§ 763.15 Taxes and insurance.

(a) The seller will ensure that taxes and insurance on the real estate are paid timely and will provide the evidence of payment to the escrow or servicing agent.

(b) The seller will maintain flood insurance, if available, if buildings are located in a special 100-year floodplain as defined by FEMA flood hazard area maps.

(c) The seller will report any insurance claim and use of proceeds to the escrow or servicing agent.

§ 763.16 Environmental regulation compliance.

(a) *Environmental compliance requirements.* The environmental requirements contained in part 1940, subpart G, of this title must be met prior to approval of guarantee request.

(b) *Determination.* The Agency determination of whether an environmental problem exists will be based on:

(1) The information supplied with the application;

(2) Environmental resources available to the Agency including, but not limited to, documents, third parties, and government agencies;

(3) Other information supplied by the buyer or seller upon Agency request; and

(4) A visit to the farm.

§ 763.17 Approving application and executing guarantee.

(a) Approval is subject to the availability of funds, meeting the requirements in this part, and the participation of an approved escrow or servicing agent.

(b) Upon approval of the guarantee, all parties (buyer, seller, escrow or servicing agent, and Agency official) will execute the Agency's guarantee agreement.

(c) The "Land Contract Agreement for Prompt Payment Guarantee" or the "Land Contract Agreement for Standard Guarantee" will describe the conditions of the guarantee, outline the covenants and any agreements of the buyer, seller, escrow or servicing agent, and the Agency, and outline the process for payment of loss claims.

§ 763.18 General servicing responsibilities.

(a) For the prompt payment guarantee plan, the seller must use a third party escrow agent approved by the Agency. The escrow agent will:

(1) Provide the Agency a copy of the recorded land contract;

(2) Handle transactions relating to the land contract between the buyer and seller;

(3) Receive contract installment payments from the buyer and send them to the seller;

(4) Provide evidence to the Agency that property taxes are paid and insurance is kept current on the security property;

(5) Send a notice of payment due to the buyer at least 30 days prior to the installment due date;

(6) Notify the Agency and the seller if the buyer defaults;

(7) Service delinquent accounts as specified in § 763.20(a);

(8) Make demand on the Agency to pay missed payments;

(9) Send the seller any missed payment amount paid by the Agency under the guarantee;

(10) Notify the Agency on March 31 and September 30 of each year of the outstanding balance on the land contract and the status of payment; and

(11) Perform other duties as required by State law and as agreed to by the buyer and the seller;

(b) For the standard guarantee plan, the seller must use a third party servicing agent approved by the Agency. The servicing agent is required to:

(1) Provide the Agency a copy of the recorded land contract;

(2) Handle transactions relating to the land contract between the buyer and seller;

(3) Receive contract installment payments from the buyer and send them to the seller;

(4) Provide evidence to the Agency that property taxes are paid and insurance is kept current on the security property;

(5) Perform a physical inspection of the farm each year during the term of the guarantee, and provide an annual inspection report to the Agency;

(6) Obtain from the buyer a current balance sheet, income statement, cash flow budget, and any additional information needed, perform, and provide the Agency an analysis of the buyer's financial condition on an annual basis;

(7) Notify the Agency on March 31 and September 30 of each year of the outstanding balance on the land contract and the status of payment;

(8) Send a notice of payment due to the buyer at least 30 days prior to the installment due date;

(9) Notify the Agency and the seller if the buyer defaults;

(10) Service delinquent accounts as specified in § 763.20(b); and

(11) Perform other duties as required by State law and as agreed to by the buyer and the seller.

§ 763.19 Contract modification.

(a) The seller and buyer may modify the land contract to lower the interest rate and corresponding amortized payment amount without Agency approval.

(b) With prior written approval from the Agency, the seller and buyer may modify the land contract provided that, in addition to a feasible plan for the upcoming operating cycle, a feasible plan can be reasonably projected throughout the remaining term of the guarantee. Such modifications may include, but are not limited to:

(1) Deferral of installments,

(2) Leasing or subleasing, and

(3) Partial releases. All proceeds from a partial release or royalties from mineral extraction must be applied to a prior lien, if one exists, and in addition, the same amount must be credited to the principal balance of the land contract.

(4) Transfer and Assumption. If the guarantee is to remain in effect, any transfer of the property and assumption of the guaranteed debt must be made to an eligible buyer for the Land Contract Guarantee Program as specified in § 763.4, and must be approved by the Agency in writing. If an eligible applicant for transfer and assumption cannot be found, the Deputy Administrator for Farm Loan Programs may make an exception to this requirement.

(5) Assignment. The seller may not assign the contract to another party without written consent of the Agency.

(c) Any contract modifications other then those listed above must be approved by the Deputy Administrator for Farm Loan Programs, and will only be approved if such action is determined permissible by law and in the Government's best financial interests.

§ 763.20 Delinquent servicing and collecting on guarantee.

(a) *Prompt payment guarantee plan.* If the buyer fails to pay an annual amortized installment or a portion of an installment on the contract or taxes or insurance when due, the escrow agent:

(1) Must make a written demand on the buyer for payment of the defaulted amount within 30 days of the missed payment, taxes, or insurance and send a copy of the demand letter to the Agency and to the seller; and

(2) Must make demand on the Agency within 90 days from the original payment, taxes, or insurance due date, for the missed payment in the event the buyer has not made the payment.

(b) *Standard guarantee plan.* If the buyer fails to pay an annual amortized installment or a portion of an installment on the contract, then the seller has the option of either liquidating the real estate, or having the amount of the loss established by the Agency by an appraisal of the real estate. For either option, the servicing agent:

(1) Must make a written demand on the buyer for payment of the defaulted amount within 30 days of the missed payment, and send a copy of the demand letter to the Agency and to the seller; and

(2) Must immediately inform the Agency which option the seller has chosen for establishing the amount of the loss, in the event the buyer does not make the payment within 60 days of the demand letter.

(i) *Liquidation method.* If the seller chooses the liquidation method, the servicing agent will:

(A) Submit a liquidation plan to the Agency within 120 days from the missed payment for approval prior to any liquidation action. The Agency may require and pay for an appraisal prior to approval of the liquidation plan.

(B) Complete liquidation within 12 months of the missed installment unless prevented by bankruptcy, redemption rights, or other legal action.

(C) Credit an amount equal to the sale price received in a liquidation of the security property, with no deduction for expenses, to the principal balance of the land contract.

(D) File a loss claim immediately after liquidation, which must include a complete loan ledger.

(E) Base the loss claim amount on the appraisal method if the property is reacquired by the seller, through liquidation.

(ii) *Appraisal method.* If the seller chooses to have the loss amount established by appraisal rather than liquidation, the Agency will complete an appraisal on the real estate, and the loss claim amount will be based on the difference between the appraised value at the time the loss is calculated and the unpaid principal balance of the land contract at that time.

(A) The only administrative appeal allowed under § 761.6 related to the resulting appraisal amount will be a determination of whether the appraisal is Uniform Standards of Professional Appraisal Practice (USPAP) compliant.

(B) The seller will give the Agency a lien on the security property in the amount of the loss claim payment. If the property sells within 5 years from the date of the loss payment for an amount greater than the appraised value used to establish the loss claim amount, the seller must repay the difference, up to the amount of the loss claim. For purposes of determining the amount to be repaid (recapture), the market value of the property may be reduced by the value of certain capital improvements made by the seller to the property in the time period from the loss claim to final disposition. If the property is not sold within 5 years from the date of the loss payment, the Agency will release the lien and the seller will have no further obligation to the Agency.

§ 763.21 Establishment of Federal debt and Agency recovery of loss claim payments.

(a) Any amount paid by FSA as a result of an approved loss claim is immediately due and payable by the buyer after FSA notifies the buyer that a loss claim has been paid to the seller. If the debt is not restructured into a repayment plan or the obligation otherwise cured, FSA may use all remedies available, including offset as authorized by the Debt Collection Improvement Act of 1996, to collect the debt.

(1) Interest on the debt will be at the FLP non-program credit sales real property loan rate in effect at the time of the first Agency payment of a loss claim.

(2) The debt may be scheduled for repayment consistent with the buyer's repayment ability, not to exceed 7 years. Before any payment plan can be approved, the buyer must provide the Agency with the best lien obtainable on all of the buyer's assets. This includes the buyer's ownership interest in the real estate under contract for guarantees using the prompt payment guarantee plan. When the buyer is an entity, the best lien obtainable will be taken on all of the entity's assets, and all assets owned by individual members of the entity, including their ownership interest in the real estate under contract.

(b) Annually, buyers with an Agency approved repayment plan under this section will supply the Agency a current balance sheet, income statement, cash flow budget, complete copy of Federal income tax returns, and any additional information needed to analyze the buyer's financial condition.

(c) If a buyer fails to make required payments to the Agency as specified in the approved repayment plan, the debt will be treated as a non-program loan debt, and servicing will proceed as specified in § 766.351(c) of this chapter.

§ 763.22 Negligence.

(a) The Agency may deny a loss claim in whole or in part due to negligence that contributed to the loss claim. This could include, but is not limited to:

(1) The escrow or servicing agent failing to seek payment of a missed installment from the buyer within the prescribed timeframe or otherwise does not enforce the terms of the land contract;

(2) Losing the collateral to a third party, such as a taxing authority, prior lien holder, etc.;

(3) Not performing the duties and responsibilities required of the escrow or servicing agent;

(4) The seller's failing to disclose environmental issues; or

(5) Any other action in violation of the land contract or guarantee agreement that does not terminate the guarantee.

(b) [Reserved]

§ 763.23 Terminating the guarantee.

(a) The guarantee and the Agency's obligations will terminate at the earliest of the following circumstances:

(1) Full payment of the land contract;

(2) Agency payment to the seller of 3 annual installments plus property taxes and insurance, if applicable, under the prompt payment guarantee plan, if not repaid in full by the buyer. An Agency approved repayment plan will not constitute payment in full until such time as the entire amount due for the Agency approved repayment plan is paid in full;

(3) Payment of a loss claim through the standard guarantee plan;

(4) Sale of real estate without guarantee being properly assigned;

(5) The seller terminates the land contract for reasons other than monetary default; or

(6) If for any reason the land contract becomes null and void.

(b) If none of the events in paragraph (a) of this section occur, the guarantee will automatically expire, without notice, 10 years from the effective date of the guarantee.

PART 764—DIRECT LOAN MAKING

5. The authority citation for part 764 continues to read as follows:

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

6. Amend § 764.51 by revising paragraph (b)(3) to read as follows:

§ 764.51 Loan application.

* * * * *

(b) * * *

(3) A written description of the applicant's farm training and experience, including each entity member who will be involved in managing or operating the farm. Farm experience of the applicant, without regard to any lapse of time between the farm experience and the new application, may be included in the applicant's written description. If farm experience occurred more than 5 years prior to the date of the new application, the applicant must demonstrate sufficient on-the-job training or education within the last 5 years;

* * * * *

7. Amend § 764.101 by revising paragraph (i)(3) to read as follows:

§ 764.101 General eligibility requirements.

* * * * *

(i) * * *

(3) *Farming experience.* For example, the applicant has been an owner, manager, or operator of a farm business for at least one entire production cycle. Farm experience of the applicant, without regard to any lapse of time between the farm experience and the new application, will be taken into consideration in determining loan eligibility. If farm experience occurred more than 5 years prior to the date of the new application, the applicant must demonstrate sufficient on-the-job training or education within the last 5 years to demonstrate managerial ability.

* * * * *

8. Amend § 764.102 by revising paragraph (f) to read as follows:

§ 764.102 General limitations.

* * * * *

(f) Loan funds will not be used to establish or support a non-eligible enterprise, even if the non-eligible enterprise contributes to the farm. Notwithstanding this limitation an Emergency Loan may cover qualified equine losses as specified in subpart H of this part.

9. Amend § 764.352 by adding paragraph (l) to read as follows:

§ 764.352 Eligibility requirements.

* * * * *

(l) Whose primary enterprise is to breed, raise, and sell horses may be eligible under this part.

10. Amend § 764.353 by adding paragraph (g) to read as follows:

§ 764.353 Limitations.

* * * * *

(g) Losses associated with horses used for racing, showing, recreation, or pleasure or loss of income derived from racing, showing, recreation, boarding, or pleasure are not considered qualified losses under this section.

11. Amend § 764.355 by revising paragraph (b) to read as follows:

§ 764.355 Security requirements.

* * * * *

(b) EM loans made as specified in § 764.351(a)(2) and (b) generally must comply with the general security requirements established in §§ 764.103, 764.104 and 764.255(b). These general security requirements, however, do not apply to equine loss loans to the extent that a lien is not obtainable or obtaining a lien may prevent the applicant from carrying on the normal course of business. Other security may be considered for an equine loss loan in the order of priority as follows:

(1) Real Estate,

(2) Chattels and crops, other than horses,

(3) Other assets owned by the applicant,

(4) Third party pledges of property not owned by the applicant, and

(5) Repayment ability under paragraph (c) of this section.

* * * * *

12. Amend paragraph § 764.356 by adding paragraph (c) to read as follows:

§ 764.356 Appraisal and valuation requirements.

* * * * *

(c) In the case of an equine loss loan:

(1) The applicant's Federal income tax and business records will be the primary source of financial information. Sales receipts, invoices, or other official sales records will document the sales price of individual animals.

(2) If the applicant does not have 3 complete years of business records, the Agency will obtain the most reliable and reasonable information available from sources such as the Cooperative Extension Service, universities, and breed associations to document production for those years for which the applicant does not have a complete year of business records.

Signed in Washington, DC, on September 17, 2010.

Jonathan W. Coppess,

Administrator, Farm Service Agency.

[FR Doc. 2010–23830 Filed 9–22–10; 8:45 am]

BILLING CODE 3410–05–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2010–0854; Directorate Identifier 2009–NM–261–AD]

RIN 2120–AA64

Airworthiness Directives; Airbus Model A310 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 that would supersede an existing AD. 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:

During High Time Equipment (HTE) reviews conducted within the scope of the A310 aircraft Design Service Goal (DSG) extension work, Airbus discovered that the splined couplings and the sliding bearings of the flap transmission system could be affected by corrosion and wear, especially when their protective components such as wiper rings and rubber gaiters could become defective.

This condition, if not detected and corrected, could degrade the functional integrity of the flap transmission system.

* * * * *

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 November 8, 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 Airbus SAS—EAW (Airworthiness Office), 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France; telephone +33 5 61 93 36 96; fax +33 5 61 93 44 51; e-mail: *account.airworth-eas@airbus.com*; Internet *http://www.airbus.com*. 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: Dan Rodina, Aerospace Engineer, International Branch, ANM–116, Transport Airplane Directorate, FAA, 1601 Lind Avenue, SW., Renton, Washington 98057–3356; telephone (425) 227–2125; 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–2010–0854; Directorate Identifier 2009–NM–261–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

On January 16, 2007, we issued AD 2007–02–22, Amendment 39–14909 (72 FR 3708, January 26, 2007). That AD required actions intended to address an unsafe condition on the products listed above.

Since we issued AD 2007–02–22, the European Aviation Safety Agency (EASA), which is the Technical Agent for the Member States of the European Community, has issued EASA Airworthiness Directive 2006–0111R1, dated August 26, 2009 (referred to after this as "the MCAI"), to correct an unsafe condition for the specified products. The MCAI states:

During High Time Equipment (HTE) reviews conducted within the scope of the A310 aircraft Design Service Goal (DSG) extension work, Airbus discovered that the splined couplings and the sliding bearings of the flap transmission system could be affected by corrosion and wear, especially when their protective components such as wiper rings and rubber gaiters could become defective.

This condition, if not detected and corrected, could degrade the functional integrity of the flap transmission system.

For the reason described above, this AD requires repetitive inspections of the flap transmission system and associated components [for any missing, damaged, or incorrectly installed rubber gaiter, wiper rings and straps], and corrective action(s), depending on findings. [The corrective action is replacing missing, damaged, or incorrectly installed components.]

This [EASA] AD has been revised to correct the compliance time of 400 flight cycles in paragraph (3) into 400 flight hours. In addition, paragraph (4) has been introduced to clarify that the corrective actions do not end the requirement to continue the repetitive inspections, and some editorial changes for reasons of standardization. These do not affect the requirements of this AD as originally intended.

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

Relevant Service Information

Airbus has issued Mandatory Service Bulletin A310–27–2099, Revision 01, dated March 21, 2008. 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 46 products of U.S. registry.

The actions that are required by AD 2007–02–22 and retained in this proposed AD take about 3 work-hours per product, at an average labor rate of $85 per work hour. Based on these figures, the estimated cost of the currently required actions is $255 per product.

We estimate that it would take about 3 work-hours per product to comply with the revised requirements of this proposed AD. The average labor rate is $85 per work-hour. Based on these figures, we estimate the cost of the proposed AD on U.S. operators to be $11,730, or $255 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 removing Amendment 39–14909 (72 FR 3708, January 26, 2007) and adding the following new AD:

Airbus: Docket No. FAA–2010–0854; Directorate Identifier 2009–NM–261–AD.

Comments Due Date

(a) We must receive comments by November 8, 2010.

Affected ADs

(b) This AD supersedes AD 2007–02–22, Amendment 39–14909.

Applicability

(c) This AD applies to all Airbus Model A310–203, –204, –221, –222, –304, –322, –324, and –325 airplanes; certificated in any category.

Subject

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

Reason

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

During High Time Equipment (HTE) reviews conducted within the scope of the A310 aircraft Design Service Goal (DSG) extension work, Airbus discovered that the splined couplings and the sliding bearings of the flap transmission system could be affected by corrosion and wear, especially when their protective components such as wiper rings and rubber gaiters could become defective.

This condition, if not detected and corrected, could degrade the functional integrity of the flap transmission system.

* * * * *

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.

Restatement of Requirements of AD 2007–02–22, With Revised Service Information and Reduced Compliance Time for Corrective Action

Initial and Repetitive Inspections

(g) Within 2,500 flight cycles after March 2, 2007 (the effective date of AD 2007–02–22): Do a detailed inspection for any missing, damaged, or incorrectly installed wiper rings in the splined couplings of the flap transmission shafts; and a detailed inspection for any missing, damaged, or incorrectly installed rubber gaiters and straps on the sliding bearing/plunging joints of the flap transmission; in accordance with the Accomplishment Instructions of Airbus Service Bulletin A310–27–2099, dated February 17, 2006; or Airbus Mandatory Service Bulletin A310–27–2099, Revision 01, dated March 21, 2008. Repeat the inspections thereafter at intervals not to exceed 2,500 flight cycles. After the effective date of this AD, use only Airbus Mandatory Service Bulletin A310–27–2099, Revision 01, dated March 21, 2008.

Note 1: For the purposes of this AD, a detailed inspection is: "An intensive examination of a specific item, installation, or assembly to detect damage, failure, or irregularity. Available lighting is normally supplemented with a direct source of good lighting at an intensity deemed appropriate. Inspection aids such as mirror, magnifying lenses, etc., may be necessary. Surface cleaning and elaborate procedures may be required."

Corrective Actions

(h) If any damaged, missing or incorrectly installed wiper rings, rubber gaiters, or straps are found during any inspection required by paragraph (g) of this AD: At the applicable time in paragraph (h)(1) or (h)(2) of this AD, replace the applicable component with a serviceable component in accordance with the Accomplishment Instructions of Airbus Service Bulletin A310–27–2099, dated February 17, 2006; or Airbus Mandatory Service Bulletin A310–27–2099, Revision 01, dated March 21, 2008. After the effective date of this AD, use only Airbus Mandatory Service Bulletin A310–27–2099, Revision 01, dated March 21, 2008.

(1) For airplanes on which the inspection required by paragraph (g) of this AD has been done before the effective date of this AD: Within 400 flight cycles after accomplishing the inspection.

(2) For airplanes on which the inspection required by paragraph (g) of this AD has not been done on or after the effective date of this AD: Within 400 flight hours after accomplishing the inspection required by paragraph (g) of this AD.

New Requirements of This AD

Actions

(i) Accomplishment of the actions required by paragraph (h) do not terminate the repetitive inspections required by paragraph (g) of this AD.

FAA AD Differences

Note 2: This AD differs from the MCAI and/or service information as follows: No differences.

Other FAA AD Provisions

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

(1) *Alternative Methods of Compliance (AMOCs):* The Manager, International Branch, 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: Dan Rodina, Aerospace Engineer, International Branch, ANM–116, Transport Airplane Directorate, FAA, 1601 Lind Avenue, SW., Renton, Washington 98057–3356; telephone (425) 227–2125; 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. AMOCs approved previously in accordance with AD 2007–02–22, Amendment 39–14909, are approved as AMOCs for the corresponding provisions of paragraphs (g) and (h) of 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

(k) Refer to MCAI European Aviation Safety Agency Airworthiness Directive 2006–0111R1, dated August 26, 2009; and Airbus Mandatory Service Bulletin A310–27–2099, Revision 01, dated March 21, 2008; for related information.

Issued in Renton, Washington, on September 10, 2010.

Jeffrey E. Duven,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2010–23738 Filed 9–22–10; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2010–0855; Directorate Identifier 2010–NM–066–AD]

RIN 2120–AA64

Airworthiness Directives; The Boeing Company Model 737–300, –400, and –500 Series Airplanes

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

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The FAA proposes to supersede an existing airworthiness directive (AD) that applies to all Model 737–300, –400, and –500 series airplanes. The existing AD currently requires repetitive inspections for discrepancies of the fuse pins of the inboard and outboard midspar fittings of the nacelle strut, and corrective actions if necessary. This proposed AD would add replacing the midspar fuse pins with new, improved fuse pins, which would terminate the repetitive inspections. This proposed AD results from a report of corrosion damage of the chrome runout on the head side found on all four midspar fuse pins of the nacelle strut. Additionally, a large portion of the chrome plate was missing from the corroded area of the shank. We are proposing this AD to prevent damage of the fuse pins of the inboard and outboard midspar fittings of the nacelle strut, which could result in reduced structural integrity of the fuse pins, and consequent loss of the strut and separation of the engine from the airplane.

DATES: We must receive comments on this proposed AD by November 8, 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 W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

For service information identified in this proposed AD, contact Boeing Commercial Airplanes, Attention: Data & Services Management, P.O. Box 3707, MC 2H–65, Seattle, Washington 98124–2207; telephone 206–544–5000, extension 1; fax 206–766–5680; e-mail *me.boecom@boeing.com;* Internet *https://www.myboeingfleet.com.* 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 Management Facility between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this proposed AD, the regulatory evaluation, any comments received, and other information. The street address for the Docket 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: Alan Pohl, Aerospace Engineer, Airframe Branch, ANM–120S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98057–3356; telephone (425) 917–6450; fax (425) 917–6590.

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–2010–0855; Directorate Identifier 2010–NM–066–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 because of those comments.

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

Discussion

On September 29, 2008, we issued AD 2008–21–03, amendment 39–15687 (73 FR 59493, October 9, 2008), for all Model 737–300, –400, and –500 series airplanes. That AD requires repetitive inspections for discrepancies of the fuse pins of the inboard and outboard midspar fittings of the nacelle strut, and corrective actions if necessary. That AD resulted from a report of corrosion damage of the chrome runout on the head side found on all four midspar fuse pins of the nacelle strut. Additionally, a large portion of the chrome plate was missing from the corroded area of the shank. We issued that AD to detect and correct discrepancies of the fuse pins of the inboard and outboard midspar fittings of the nacelle strut, which could result in reduced structural integrity of the fuse pins, and consequent loss of the strut and separation of the engine from the airplane.

Actions Since Existing AD Was Issued

In the preamble to the NPRM of AD 2008–21–03, the FAA specified that the actions required by that AD were considered "interim action" and that the manufacturer was developing a modification to address the unsafe condition. The FAA indicated that it may consider further rulemaking action once the modification was developed, approved, and available. The manufacturer now has developed such a modification, and the FAA has determined that further rulemaking action is indeed necessary; this proposed AD follows from that determination.

Relevant Service Information

We have reviewed Boeing Alert Service Bulletin 737–54A1044, Revision 2, dated January 20, 2010. The repetitive detailed inspections and corrective actions are similar to those described in Boeing Special Attention Service Bulletin 737–54–1044, dated December 10, 2007 (referenced in AD 2008–21–03 as the appropriate source of service information). Revision 2 of the service bulletin adds procedures for replacing the midspar fuse pins with new, improved fuse pins. Replacement with the new, improved fuse pin eliminates the need for repetitive detailed inspections.

FAA's Determination and Requirements of the Proposed AD

We have evaluated all pertinent information and identified an unsafe condition that is likely to develop on other airplanes of the same type design. For this reason, we are proposing this AD, which would supersede AD 2008–21–03 and would retain the requirements of the existing AD. This proposed AD would also require replacing the midspar fuse pins with new, improved fuse pins, which would terminate the requirement for repetitive detailed inspections.

Change to Existing AD

This proposed AD would retain all requirements of AD 2008–21–03. Since AD 2008–21–03 was issued, the AD format has been revised, and certain paragraphs have been rearranged. As a result, paragraph (f) of the existing AD has been re-identified as paragraph (g) in this NPRM.

Costs of Compliance

There are about 1,961 airplanes of the affected design in the worldwide fleet. The following table provides the estimated costs for U.S. operators to comply with this proposed AD.

ESTIMATED COSTS

Action	Work hours	Average labor rate per hour	Parts	Cost per airplane	Number of U.S.-registered airplanes	Fleet cost
Repetitive detailed inspections (required by AD 2008–21–03).	4	$85	None	$340, per inspection cycle.	616	$209,440, per inspection cycle.
Midspar fuse pin replacement (new proposed action).	1 per pin (up to 4 pins per airplane).	85	$843 per pin.	Up to $3,712	616	Up to $2,286,592.

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 have 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 that the 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. *See* the **ADDRESSES** section for a location to examine the regulatory evaluation.

List of Subjects in 14 CFR Part 39

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

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

2. The FAA amends § 39.13 by removing amendment 39–15687 (73 FR 59493, October 9, 2008) and adding the following new AD:

The Boeing Company: Docket No. FAA–2010–0855; Directorate Identifier 2010–NM–066–AD.

Comments Due Date

(a) The FAA must receive comments on this AD action by November 8, 2010.

Affected ADs

(b) This AD supersedes AD 2008–21–03, Amendment 39–15687.

Applicability

(c) This AD applies to all The Boeing Company Model 737–300, –400, and –500 series airplanes, certificated in any category.

Subject

(d) Air Transport Association (ATA) of America Code 54: Nacelles/Pylons.

Unsafe Condition

(e) This AD results from a report of corrosion damage of the chrome runout on the head side found on all four midspar fuse pins of the nacelle strut. Additionally, a large portion of the chrome plate was missing from the corroded area of the shank. The Federal Aviation Administration is issuing this AD to prevent damage of the fuse pins of the inboard and outboard midspar fittings of the nacelle strut, which could result in reduced structural integrity of the fuse pins, and consequent loss of the strut and separation of the engine from the airplane.

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.

Restatement of Requirements of AD 2008–21–03

Repetitive Inspections/Corrective Actions, With Revised Service Information

(g) At the applicable time specified in paragraph 1.E., "Compliance" of Boeing Special Attention Service Bulletin 737–54–1044, dated December 10, 2007; except, where the service bulletin specifies a compliance time after the date on the service bulletin, this AD requires compliance within the specified compliance time after November 13, 2008 (the effective date of AD 2008–21–03): Do a detailed inspection for discrepancies of the fuse pins of the inboard and outboard midspar fittings of the nacelle strut by doing all the actions, including all applicable corrective actions, in accordance with the Accomplishment Instructions of Boeing Special Attention Service Bulletin 737–54–1044, dated December 10, 2007; or Boeing Alert Service Bulletin 737–54A1044, Revision 2, dated January 20, 2010. Do all applicable corrective actions before further flight. Repeat the inspection at the time specified in paragraph 1.E. of Boeing Special Attention Service Bulletin 737–54–1044, dated December 10, 2007. Accomplishing the actions of paragraph (h) of this AD terminates the requirements of this paragraph.

New Requirements of This AD

Replacement

(h) Within 120 months after the effective date of this AD, replace all midspar fuse pins having part number (P/N) 311A1092–2 with a midspar fuse pin having P/N 311A1092–3, in accordance with the Accomplishment Instructions of Boeing Alert Service Bulletin 737–54A1044, Revision 2, dated January 20, 2010. Accomplishing the requirements of this paragraph terminates the requirements of paragraph (g) of this AD for that fuse pin.

Actions Accomplished According to Previous Revision of Service Information

(i) Actions done before the effective date of this AD in accordance with Boeing Special Attention Service Bulletin 737–54–1044, Revision 1, dated November 26, 2008, are acceptable for compliance with the corresponding requirements of this AD.

Alternative Methods of Compliance (AMOCs)

(j)(1) The Manager, Seattle Aircraft Certification Office (ACO), 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: Alan Pohl, Aerospace Engineer, Airframe Branch, ANM–120S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98057–3356; telephone (425) 917–6450; fax (425) 917–6590. Information may be e-mailed to: *9-ANM-Seattle-ACO-AMOC-Requests@faa.gov.*

(2) To request a different method of compliance or a different compliance time for this AD, follow the procedures in 14 CFR 39.19. 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.

(3) An AMOC that provides an acceptable level of safety may be used for any repair required by this AD if it is approved by the Boeing Commercial Airplanes Organization Designation Authorization (ODA) that has been authorized by the Manager, Seattle ACO, to make those findings. For a repair method to be approved, the repair must meet the certification basis of the airplane, and the approval must specifically refer to this AD.

(4) AMOCs approved in accordance with the requirements of AD 2008–21–03 are acceptable for the corresponding requirements of this AD.

Issued in Renton, Washington, on September 15, 2010.

Robert D. Breneman,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2010–23841 Filed 9–22–10; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2010–0856; Directorate Identifier 2010–NM–117–AD]

RIN 2120–AA64

Airworthiness Directives; The Boeing Company Model 737–600, –700, –700C, –800, and –900 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 certain Model 737–600, –700, –700C, –800, and –900 series airplanes. This proposed AD would require inspecting for part numbers of the operational program software of the flight control computers, and doing corrective actions if necessary. This proposed AD results from reports of erroneous undetected output from a single radio altimeter channel, which resulted in premature autothrottle retard during approach. We are proposing this AD to detect and correct erroneous output from a radio altimeter channel, which could result in premature autothrottle landing flare retard and the loss of automatic speed control, and consequent loss of control of the airplane.

DATES: We must receive comments on this proposed AD by November 8, 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 W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

For service information identified in this proposed AD, contact Boeing Commercial Airplanes, Attention: Data & Services Management, P.O. Box 3707, MC 2H–65, Seattle, Washington 98124–2207; telephone 206–544–5000, extension 1; fax 206–766–5680; e-mail *me.boecom@boeing.com;* Internet *https://www.myboeingfleet.com.* 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 Management Facility between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this proposed AD, the regulatory evaluation, any comments received, and other information. The street address for the Docket 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: Richard Reed, Aerospace Engineer, Systems and Equipment Branch, ANM–130S, FAA, Seattle Aircraft Certification Office (ACO), 1601 Lind Avenue, SW., Renton, Washington 98057–3356; telephone (425) 917–6431; fax (425) 917–6590.

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–2010–0856; Directorate Identifier 2010–NM–117–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 because of those comments.

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

Discussion

We have received reports of a number of instances in service, of erroneous undetected output from a single radio altimeter channel, which resulted in premature autothrottle retard during approach. This condition can lead to premature autothrottle landing flare retard and the loss of automatic speed control, and consequent loss of control of the airplane.

Relevant Service Information

We have reviewed Boeing Alert Service Bulletin 737–22A1211, dated April 13, 2010, which describes procedures for inspecting to determine the operational program software part numbers of the flight control computers, and installing new software if necessary.

FAA's Determination and Requirements of This Proposed AD

We are proposing this AD because we evaluated all relevant information and determined the unsafe condition described previously is likely to exist or develop in other products of these same type designs. This proposed AD would require accomplishing the actions specified in the service information described previously.

Costs of Compliance

We estimate that this proposed AD would affect 207 airplanes of U.S. registry. We also estimate that it would take about 1 work-hour per product to comply with the inspection of this proposed AD. The average labor rate is $85 per work-hour. Based on these figures, we estimate the cost of the inspection of this proposed AD to the U.S. operators to be $17,595, or $85 per product.

Authority for This Rulemaking

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

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

Regulatory Findings

We determined that this proposed AD would not have federalism implications

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

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

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

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

You can find our regulatory evaluation and the estimated costs of compliance 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:

The Boeing Company: Docket No. FAA–2010–0856; Directorate Identifier 2010–NM–117–AD.

Comments Due Date

(a) We must receive comments by November 8, 2010.

Affected ADs

(b) None.

Applicability

(c) This AD applies to The Boeing Company Model 737–600, –700, –700C, –800, and –900 series airplanes, certificated in any category; as identified in Boeing Alert Service Bulletin 737–22A1211, dated April 13, 2010.

Subject

(d) Air Transport Association (ATA) of America Code 22: Auto Flight.

Unsafe Condition

(e) This AD results from reports of erroneous undetected output from a single radio altimeter channel, which resulted in premature autothrottle retard during approach. The Federal Aviation Administration is issuing this AD to detect and correct erroneous output from a radio altimeter channel, which could result in premature autothrottle landing flare retard and the loss of automatic speed control, and consequent loss of control of the airplane.

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.

Inspection for Parts

(g) Within 3 months after the effective date of this AD, inspect to determine the part number of operational program software (OPS) of the flight control computers. For any OPS having a part number identified in Table 1 of the Accomplishment Instructions of Boeing Alert Service Bulletin 737–22A1211, dated April 13, 2010, before further flight, install new software, in accordance with the Accomplishment Instructions of Boeing Alert Service Bulletin 737–22A1211, dated April 13, 2010. For any OPS having a part number identified in Table 2 of the Accomplishment Instructions of Boeing Alert Service Bulletin 737–22A1211, dated April 13, 2010, no further action is required by this paragraph.

Special Flight Permit

(h) Special flight permits, as described in Section 21.197 and Section 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199), are not allowed.

Alternative Methods of Compliance (AMOCs)

(i)(1) The Manager, Seattle Aircraft Certification Office (ACO), 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: Richard Reed, Aerospace Engineer, Systems and Equipment Branch, ANM–130S, FAA, Seattle ACO, 1601 Lind Avenue, SW., Renton, Washington 98057–3356; telephone (425) 917–6431; fax (425) 917–6590. Information may be e-mailed to: *9-ANM-Seattle-ACO-AMOC-Requests@faa.gov*.

(2) To request a different method of compliance or a different compliance time for this AD, follow the procedures in 14 CFR 39.19. 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.

Issued in Renton, Washington, on September 10, 2010.

Jeffrey E. Duven,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2010–23857 Filed 9–22–10; 8:45 am]

BILLING CODE 4910–13–P

Notices

Federal Register
Vol. 75, No. 184
Thursday, September 23, 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

Submission for OMB Review; Comment Request

September 20, 2010.

The Department of Agriculture has submitted the following information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Comments regarding (a) 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; (b) the accuracy of the agency's estimate of burden including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology should be addressed to: Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), *OIRA_Submission@OMB.EOP.GOV* or fax (202) 395–5806 and to Departmental Clearance Office, USDA, OCIO, Mail Stop 7602, Washington, DC 20250–7602. Comments regarding these information collections are best assured of having their full effect if received within 30 days of this notification. Copies of the submission(s) may be obtained by calling (202) 720–8958.

An agency may not conduct or sponsor a collection of information unless the collection of information displays a currently valid OMB control number and the agency informs potential persons who are to respond to the collection of information that such persons are not required to respond to the collection of information unless it displays a currently valid OMB control number.

Economic Research Service

Title: National Food Survey Field Test.

OMB Control Number: 0536–NEW.

Summary of collection: The Economic Research Service (ERS) will be conducting a Field Test for the National Household Food Acquisition and Purchase Survey (aka National Food Study) in preparation for a later *full-scale* implementation of the survey in 2012. The mission of ERS is to provide timely research and analysis to public and private decision makers on topics related to agriculture, food, the environment, rural America, and the impacts of USDA's food and nutrition assistance programs on clients' well-being. To achieve this mission, ERS requires a variety of data, including the availability and price of food at the point of sale, households demand for food products, household access to healthy food, and quality of household food choices. Section 17 (U.S.C. 2026) (a)(1) of the Food and Nutrition Act of 2008 provides legislative authority for the planned data collection. This section authorizes the Secretary of Agriculture to enter into contracts with private institutions to undertake research that will help to improve the administration and effectiveness of the Supplemental Nutrition Assistance Program (SNAP) in delivering nutrition-related benefits.

Need and use of the information: The primary purpose of the Field Test is to provide methodological information about two different approaches for collecting food acquisition data from households over a seven day period. The information is needed because no prior survey has collected similarly detailed information about food acquisitions in both the "food-at-home" and "food-away-from-home" categories. The full-scale National Food Study will collect information about household food acquisitions, including foods purchased and food obtained at no cost (*e.g.,* home-grown vegetables). Information also will be collected about household characteristics, including demographics, income, assets, major categories of nonfood expenditures, food security, health status (including heights and weights), and dietary knowledge. Without the field test ERS will not have sufficient information to ensure that best procedures are used to maximize data quality and minimize respondent burden in the full National Food Study of 5,000 households.

Description of respondents: Individuals or household.

Number of respondents: 1,476.

Frequency of responses: Reporting: On occasion.

Total burden hours: 3,400.

Ruth Brown,

Departmental Information Collection Clearance Officer.

[FR Doc. 2010–23819 Filed 9–22–10; 8:45 am]

BILLING CODE 3410–18–P

DEPARTMENT OF AGRICULTURE

Rural Housing Service

Notice of Funds Availability (NOFA) Inviting Applications for the Rural Community Development Initiative (RCDI) for Fiscal Year 2010

AGENCY: Rural Housing Service, USDA.

ACTION: Notice of funds availability.

SUMMARY: This Notice announces the availability of $6,256,000 of competitive grant funds for the RCDI program through the Rural Housing Service (RHS), an agency within the USDA Rural Development mission area herein referred to as the Agency. Applicants must provide matching funds in an amount at least equal to the Federal grant. These grants will be made to qualified intermediary organizations that will provide financial and technical assistance to recipients to develop their capacity and ability to undertake projects related to housing, community facilities, or community and economic development. The RCDI grant program also includes an initiative called "Great Regions." This Notice lists the information needed to submit an application for these funds.

DATES: The deadline for receipt of an application is 4 p.m. local time, December 22, 2010. The application date and time are firm. The Agency will not consider any application received after the deadline. Applicants intending to mail applications must provide sufficient time to permit delivery on or before the closing deadline date and time. Acceptance by the United States Postal Service or private mailer does not constitute delivery. Facsimile (FAX) and

postage due applications will not be accepted.

ADDRESSES: Entities wishing to apply for assistance may download the application documents and requirements delineated in this Notice from the RCDI Web site: *http://www.rurdev.usda.gov/rhs/rcdi/index.htm.* Application information for electronic submissions may be found at *http://www.grants.gov.* Applicants may also request paper application packages from the Rural Development office in their state. A list of Rural Development offices is included in this Notice.

FOR FURTHER INFORMATION CONTACT: The Rural Development office for the state the applicant is located in. A list of Rural Development State Office contacts is included in this Notice.

Programs Affected

This program is listed in the Catalog of Federal Domestic Assistance under Number 10.446. This program is not subject to the provisions of Executive Order 12372, which requires intergovernmental consultation with State and local officials because it is not listed by the Secretary of Agriculture, pursuant to 7 CFR 3015.302, as a covered program.

Paperwork Reduction Act

The paperwork burden has been cleared by the Office of Management and Budget (OMB) under OMB Control Number 0575–0180.

National Environmental Policy Act

This Notice of Funds availability (NOFA) has been reviewed in accordance with 7 CFR part 1940, subpart G, "Environmental Program." Rural Development has determined that an Environmental Impact Statement is not required because the issuance of regulations and instructions, as well as amendments to them, describing administrative and financial procedures for processing, approving and implementing the Agency's financial programs is categorically excluded in the Agency's NEPA regulation found at 7 CFR 1940.310(e)(3) of Subpart G, Environmental Program. Thus, in accordance with the National Environmental Policy Act (NEPA) of 1969 (42 U.S.C. 4321–4347), Rural Development has determined that this NOFA does not constitute a major Federal action significantly affecting the quality of the human environment. Furthermore, individual awards under this NOFA are hereby classified as Categorical Exclusions according to 1940.310(e), the award of financial assistance for planning purposes, management and feasibility studies, or environmental impact analysis, which do not require any additional documentation.

SUPPLEMENTARY INFORMATION:

Overview

Federal Agency: Rural Housing Service.

Funding Opportunity Title: Rural Community Development Initiative.

Announcement Type: Initial Announcement.

Catalog of Federal Domestic Assistance (CFDA) Number: 10.446.

Part I—Funding Opportunity Description

Congress initially created the RCDI in Fiscal Year (FY) 2000 to develop the capacity and ability of nonprofit organizations, low-income rural communities, or federally recognized tribes to undertake projects related to housing, community facilities, or community and economic development in rural areas.

Part II—Award Information

Congress appropriated $6,256,000 in FY 2010 for the RCDI. Qualified private, nonprofit and public (including tribal) intermediary organizations proposing to carry out financial and technical assistance programs will be eligible to receive the funding. The intermediary will be required to provide matching funds in an amount at least equal to the RCDI grant. The respective minimum and maximum grant amount per intermediary is $50,000 and $300,000. The intermediary must provide a program of financial and technical assistance to a private nonprofit, community-based housing and development organization, a low-income rural community or a federally recognized tribe.

Part III—Eligibility Information

A. Eligible Applicants

1. Qualified private, nonprofit, including faith-based and community organizations, in accordance with 7 CFR part 16, and public (including tribal) intermediary organizations. Definitions that describe eligible organizations and other key terms are listed below.

2. RCDI grantees that have an outstanding grant over 3 years old, as of the application due date in this Notice, will not be eligible to apply for this round of funding. Grant and matching funds must be utilized in a timely manner to ensure that the goals and objectives of the program are met.

B. Program Definitions

Agency—The Rural Housing Service (RHS) or its successor.

Beneficiary—Entities or individuals that receive benefits from assistance provided by the recipient.

Capacity—The ability of a recipient to implement housing, community facilities, or community and economic development projects.

Federally recognized tribes—Tribal entities recognized and eligible for funding and services from the Bureau of Indian Affairs, based on the current notice in the **Federal Register** published by the Bureau of Indian Affairs. Tribally Designated Housing Entities are eligible RCDI recipients.

Financial assistance—Funds, not to exceed $10,000 per award, used by the intermediary to purchase supplies and equipment to build the recipient's capacity.

Funds—The RCDI grant and matching money.

Great Regions—-Multi-jurisdictional areas typically within a State, territory, or Federally-designated Tribal land but which can cross State, territory, or Tribal boundaries. The Great Regions approach is intended to combine the resources of the Agency with those of State and local governments, educational institutions, and the private and nonprofit sectors to implement regional economic and community development strategies.

Intermediary—A qualified private, nonprofit, or public (including tribal) organization that provides financial and technical assistance to multiple recipients.

Low-income rural community—An authority, district, economic development authority, regional council, or unit of government representing an incorporated city, town, village, county, township, parish, or borough whose income is at or below 80% of either the state or national Median Household Income as measured by the 2000 Census.

Recipient—The entity that receives the financial and technical assistance from the Intermediary. The recipient must be a private, non-profit community-based housing and development organization, a low-income rural community or a Federally recognized Tribe.

Rural and rural area—Any area other than (i) a city or town that has a population of greater than 50,000 inhabitants; and (ii) the urbanized area contiguous and adjacent to such city or town.

Technical assistance—Skilled help in improving the recipient's abilities in the

areas of housing, community facilities, or community and economic development.

C. Cost Sharing or Matching

Matching funds—Cash or confirmed funding commitments. Matching funds must be at least equal to the grant amount and committed for a period of not less than the grant performance period. These funds can only be used for eligible RCDI activities. In-kind contributions such as salaries, donated time and effort, real and nonexpendable personal property and goods and services cannot be used as matching funds. Grant funds and matching funds must be used in equal proportions. This does not mean funds have to be used equally by line item. The request for advance or reimbursement and supporting documentation must show that RCDI fund usage does not exceed the cumulative amount of matching funds used. Grant funds will be disbursed pursuant to relevant provisions of 7 CFR parts 3015, 3016, and 3019, as applicable. Verification of matching funds must be submitted with the application.

The intermediary is responsible for demonstrating that matching funds are available, and committed for a period of not less than the grant performance period to the RCDI proposal. Matching funds may be provided by the intermediary or a third party. Other Federal funds may be used as matching funds if authorized by statute and the purpose of the funds is an eligible RCDI purpose. Matching funds must be used to support the overall purpose of the RCDI program. RCDI funds will be disbursed on an advance or reimbursement basis. Matching funds cannot be expended prior to execution of the RCDI Grant Agreement. No reimbursement will be made for any funds expended prior to execution of the RCDI Grant Agreement unless the grantee is a non-profit or educational entity and has requested and received written Agency approval of the costs prior to the actual expenditure. This exception is applicable for up to 90 days prior to grant closing and only applies to grantees that have received written approval but have not executed the RCDI Grant Agreement. The Agency cannot retroactively approve reimbursement for expenditures prior to execution of the RCDI Grant Agreement.

D. Other Program Requirements

1. The recipient and beneficiary, but not the intermediary, must be located in an eligible rural area. The physical location of the recipient's office that will be receiving the financial and technical assistance must be in an eligible rural area. If the recipient is a low-income community, the median household income of the area where the office is located must be at or below 80 percent of the State or national median household income, whichever is higher. The applicable Rural Development State Office can assist in determining the eligibility of an area. A listing of Rural Development State Offices is included in this Notice.

2. The recipients must be private nonprofit, including faith-based organizations, community-based housing and development organizations, low-income rural communities, or federally recognized tribes based on the RCDI definitions of these groups.

3. Documentation must be submitted to verify recipient eligibility. Acceptable documentation varies depending on the type of recipient. Private nonprofit faith or community-based organizations must provide a certificate of incorporation and good standing from the Secretary of the State of incorporation, or other similar and valid documentation of nonprofit status. For low-income rural community recipients, the Agency requires evidence that the entity is a public body and census data verifying that the median household income of the community where the office receiving the financial and technical assistance is located is at, or below, 80 percent of the State or national median household income, whichever is higher. For federally recognized tribes, the Agency needs the page listing their name from the current **Federal Register** list of tribal entities recognized and eligible for funding services (see the definition of Federally recognized tribes in this Notice for details on this list).

4. Individuals cannot be recipients.

5. The intermediary must provide matching funds at least equal to the amount of the grant. Verification of matching funds must be submitted with the application. Matching funds must be committed for a period equal to the grant performance period.

6. The intermediary must provide a program of financial and technical assistance to the recipient.

7. The intermediary organization must have been legally organized for a minimum of 3 years and have at least 3 years prior experience working with private nonprofit community-based housing and development organizations, low-income rural communities, or tribal organizations in the areas of housing, community facilities, or community and economic development.

8. Proposals must be structured to utilize the grant funds within 3 years from the date of the award.

9. Each applicant, whether singularly or jointly, may only submit one application for RCDI funds under this NOFA. This restriction does not preclude the applicant from providing matching funds for other applications.

10. Recipients can benefit from more than one RCDI application; however, after grant selections are made, the recipient can only benefit from multiple RCDI grants if the type of financial and technical assistance the recipient will receive is not duplicative.

11. The intermediary and the recipient cannot be the same entity. The recipient can be a related entity to the intermediary, if it meets the definition of a recipient, provided the relationship does not create a conflict of interest that cannot be resolved to Rural Development's satisfaction.

12. A nonprofit recipient must provide evidence that it is a valid nonprofit when the intermediary applies for the RCDI grant. Organizations with pending requests for nonprofit designations are not eligible.

13. If the recipient is a low-income rural community, identify the unit of government to which the financial and technical assistance will be provided, *e.g.,* town council or village board. The financial and technical assistance must be provided to the organized unit of government representing that community, not the community at large.

14. If a grantee has an outstanding RCDI grant over 3 years old, as of the application due date in this Notice, it is not eligible to apply for this round of funding.

15. The indirect cost category in the project budget should be used only when a grant applicant has a federally negotiated indirect cost rate. A copy of the current rate agreement must be provided with the application.

Eligible Fund Uses

Fund uses must be consistent with the RCDI purpose. A nonexclusive list of eligible grant uses includes the following:

1. Provide technical assistance to develop recipients' capacity and ability to undertake projects related to housing, community facilities, or community and economic development, i.e., the intermediary hires a staff person to provide technical assistance to the recipient or the recipient hires a staff person, under the supervision of the intermediary, to carry out the technical assistance provided by the intermediary.

2. Develop the capacity of recipients to conduct community development programs, *e.g.,* homeownership education or training for business entrepreneurs.

3. Develop the capacity of recipients to conduct development initiatives, *e.g.,* programs that support micro-enterprise and sustainable development.

4. Develop the capacity of recipients to increase their leveraging ability and access to alternative funding sources by providing training and staffing.

5. Develop the capacity of recipients to provide the technical assistance component for essential community facilities projects.

6. Assist recipients in completing pre-development requirements for housing, community facilities, or community and economic development projects by providing resources for professional services, e.g., architectural, engineering, or legal.

7. Improve recipient's organizational capacity by providing training and resource material on developing strategic plans, board operations, management, financial systems, and information technology.

8. Purchase of computers, software, and printers, limited to $10,000 per award, at the recipient level when directly related to the technical assistance program being undertaken by the intermediary.

9. Provide funds to recipients for training-related travel costs and training expenses related to RCDI.

Ineligible Fund Uses

1. Pass-through grants, capacity grants, and any funds provided to the recipient in a lump sum that are not reimbursements.

2. Funding a revolving loan fund (RLF).

3. Construction (in any form).

4. Salaries for positions involved in construction, renovations, rehabilitation, and any oversight of these types of activities.

5. Intermediary preparation of strategic plans for recipients.

6. Funding prostitution, gambling, or any illegal activities.

7. Grants to individuals.

8. Funding a grant where there may be a conflict of interest, or an appearance of a conflict of interest, involving any action by the Agency.

9. Paying obligations incurred before the beginning date without prior Agency approval or after the ending date of the grant agreement.

10. Purchasing real estate.

11. Improvement or renovation of the grantee's, or recipient's office space or for the repair or maintenance of privately owned vehicles.

12. Any other purpose prohibited in 7 CFR parts 3015, 3016, and 3019, as applicable.

13. Using funds for recipient's general operating costs.

14. Using grant or matching funds for Individual Development Accounts.

15. Purchasing vehicles.

Program Examples and Restrictions

The purpose of this initiative is to develop or increase the recipient's capacity through a program of financial and technical assistance to perform in the areas of housing, community facilities, or community and economic development. Strengthening the recipient's capacity in these areas will benefit the communities they serve. The RCDI structure requires the intermediary (grantee) to provide a program of financial and technical assistance to recipients. The recipients will, in turn, provide programs to their communities (beneficiaries). The following are examples of eligible and ineligible purposes under the RCDI program. (These examples are illustrative and are not meant to limit the activities proposed in the application. Activities that meet the objectives of the RCDI program will be considered eligible.)

1. The intermediary must work directly with the recipient, not the ultimate beneficiaries. As an example: The intermediary provides training to the recipient on how to conduct homeownership education classes. The recipient then provides ongoing homeownership education to the residents of the community—the ultimate beneficiaries. This "train the trainer" concept fully meets the intent of this initiative. The intermediary is providing technical assistance that will build the recipient's capacity by enabling them to conduct homeownership education classes for the public. This is an eligible purpose. However, if the intermediary directly provided homeownership education classes to individuals in the recipient's service area, this would not be an eligible purpose because the recipient would be bypassed.

2. If the intermediary is working with a low-income community as the recipient, the intermediary must provide the technical assistance to the entity that represents the low-income community and is identified in the application. Examples of entities representing a low-income community are a village board or a town council. If the intermediary provides technical assistance to the Board of the low-income community on how to establish a cooperative, this would be an eligible purpose. However, if the intermediary works directly with individuals from the community to establish the cooperative, this is not an eligible purpose. The recipient's capacity is built by learning skills that will enable them to support sustainable economic development in their communities on an ongoing basis.

3. The intermediary may provide technical assistance to the recipient on how to create and operate a revolving loan fund. The intermediary may not monitor or operate the revolving loan fund. RCDI funds, including matching funds, cannot be used to fund revolving loan funds.

4. The intermediary may work with recipients in building their capacity to provide planning and leadership development training. The recipients of this training would be expected to assume leadership roles in the development and execution of regional strategic plans. The intermediary would work with multiple recipients in helping communities recognize their connections to the greater regional and national economies.

5. The intermediary could provide training and technical assistance to the recipients on developing emergency shelter and feeding, short-term housing, search and rescue, and environmental accident, prevention, and clean up program plans. For longer term disaster and economic crisis responses, the intermediary could work with the recipients to develop job placement and training programs, and develop coordinated transit systems for displaced workers.

Part IV—Application and Submission Information

A. Address To Request Application Package

Entities wishing to apply for assistance may download the application documents and requirements delineated in this Notice from the RCDI Web site: *http://www.rurdev.usda.gov/rhs/rcdi.* Application information for electronic submissions may be found at *http://www.grants.gov.* Applicants may also request paper application packages from the Rural Development office in their state. A list of Rural Development State offices is included in this Notice.

B. Content and Form of Application Submission

If the applicant is ineligible or the application is incomplete, the Agency will inform the applicant in writing of the decision, reasons therefore, and its appeal rights and no further evaluation of the application will occur.

A complete application for RCDI funds must include the following:

1. A summary page, double-spaced between items, listing the following:

(This information should not be presented in narrative form.)

a. Applicant's name,

b. Applicant's address,

c. Applicant's telephone number,

d. Name of applicant's contact person and telephone number,

e. Applicant's fax number,

f. County where applicant is located,

g. Congressional district number where applicant is located,

h. Amount of grant request, and

i. Number of recipients

2. Survey on Ensuring Equal Opportunity for Applicants, OMB No. 1894–0010 Exp. 05/31/2012 (applies only to non-profit applicants only—submission is optional).

3. A detailed Table of Contents containing page numbers for each component of the application.

4. A project overview, no longer than five pages, including the following items, which will also be addressed separately and in detail under "Building Capacity" of the "Evaluation Criteria."

a. The type of technical assistance to be provided to the recipients and how it will be implemented.

b. How the capacity and ability of the recipients will be improved.

c. The overall goals to be accomplished.

d. The benchmarks to be used to measure the success of the program. Benchmarks should be specific and quantifiable.

5. Organizational documents, such as a certificate of incorporation and a current good standing certification from the Secretary of State where the applicant is incorporated and other similar and valid documentation of non-profit status, from the intermediary that confirms it has been legally organized for a minimum of 3 years as the applicant entity.

6. Verification of source and amount of matching funds, *i.e.,* a copy of a bank statement if matching funds are in cash or a copy of the confirmed funding commitment from the funding source. The verification must show that matching funds are available for the duration of the grant performance period. The verification of matching funds must be submitted with the application or the application will be considered incomplete.

The applicant will be contacted by the Agency prior to grant award to verify that the matching funds provided with the application continue to be available. The applicant will have 10 working days from the date contacted to submit verification that matching funds continue to be available. If the applicant is unable to provide the verification within that timeframe, the application will be considered ineligible. The applicant must maintain bank statements on file or other documentation for a period of at least three years after grant closing except that the records shall be retained beyond the three-year period if audit findings have not been resolved.

7. The following information for each recipient:

a. Recipient's entity name,

b. Complete address (mailing and physical location, if different),

c. County where located,

d. Number of Congressional district where recipient is located,

e. Contact person's name and telephone number, and

f. Form RD 400–4, "Assurance Agreement." If the Form RD 400–4 is not submitted for a recipient, the recipient will be considered ineligible. No information pertaining to that recipient will be included in the income or population scoring criteria and the requested funding may be adjusted due to the deletion of the recipient.

8. Submit evidence that each recipient entity is eligible:

a. Nonprofits—provide a current valid letter confirming non-profit status from the Secretary of the State of incorporation or the IRS, a current good standing certification from the Secretary of the State of incorporation, or other valid documentation of nonprofit status of each recipient.

b. Low-income rural community—provide evidence the entity is a public body, and a copy of the 2000 census data to verify the population, and evidence that the median household income is at, or below, 80 percent of either the State or national median household income. We will only accept data and printouts from *http://www.census.gov.* The specific instructions to retrieve data from this site are detailed under the "Evaluation Criteria" for "Population" and "Income."

c. Federally recognized tribes—provide the page listing their name from the **Federal Register** list of tribal entities published by the Bureau of Indian Affairs on August 11, 2009 (74 FR 40218) or a subsequent updated list in the **Federal Register**.

9. Each of the "Evaluation Criteria" must be addressed specifically and individually by category. Present these criteria in narrative form. Documentation must be limited to three pages per criterion. The "Population" and "Income" criterions for recipient locations can be provided in the form of a list; however, the source of the data must be included on the page(s).

10. A timeline identifying specific activities and proposed dates for completion.

11. A detailed project budget that includes the RCDI grant amount and matching funds. This should be a line-item budget, by category. Categories such as salaries, administrative, other, and indirect costs that pertain to the proposed project must be clearly defined. Supporting documentation listing the components of these categories must be included. The budget should be dated: year 1, year 2, year 3, as applicable.

12. Form SF–424, "Application for Federal Assistance." (Do not complete Form SF–424A, "Budget Information." A separate line-item budget should be presented as described in No. 13 of this section.)

13. Form SF–424B, "Assurances—Non-Construction Programs."

14. Form AD–1047, "Certification Regarding Debarment, Suspension, and Other Responsibility Matters—Primary Covered Transactions."

15. Form AD–1048, "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion—Lower Tier Covered Transactions."

16. Form AD–1049, "Certification Regarding Drug-Free Workplace Requirements."

17. Certification of Non-Lobbying Activities.

18. Standard Form LLL, "Disclosure of Lobbying Activities," if applicable.

19. Form RD 400–4, "Assurance Agreement," for the applicant.

20. Identify and report any association or relationship with Rural Development employees.

The required forms and certifications can be downloaded from the RCDI Web site at: *http://www.rurdev.usda.gov/rhs/rcdi.*

C. Other Submission Information

The original application package must be submitted to the Rural Development State Office where the applicant's headquarters is located. A listing of Rural Development State Offices is included in this Notice. Applications will not be accepted via facsimile or electronic mail.

Applicants may file an electronic application at *http://www.grants.gov.* Grants.gov contains full instructions on all required passwords, credentialing, and software. Follow the instructions at Grants.gov for registering and submitting an electronic application.

If a system problem or technical difficulty occurs with an electronic application, please use the customer support resources available at the Grants.gov Web site.

Technical difficulties submitting an application through Grants.gov will not be a reason to extend the application deadline. If an application is unable to be submitted through Grants.gov, a paper application must be received in the appropriate Rural Development State Office by the deadline noted previously.

First time Grants.gov users should carefully read and follow the registration steps listed on the web site. These steps need to be initiated early in the application process to avoid delays in submitting your application online.

In order to register with the Central Contractor Registry (CCR), your organization will need a DUNS number. Be sure to complete the Marketing Partner ID (MPID) and Electronic Business Primary Point of Contact fields during the CCR registration process. These are mandatory fields that are required when submitting grant applications through Grants.gov. Additional application instructions for submitting an electronic application can be found by selecting this funding opportunity on Grants.gov.

The deadline for receipt of an application is 4 p.m. local time December 22, 2010. The application deadline date and time are firm and apply to submission of the original application to the Rural Development State Office where the applicant's headquarters is located. The Agency will not consider any application received after the deadline. A listing of Rural Development State Offices, their addresses, telephone numbers, and contact person is provided elsewhere in this Notice. Applicants intending to mail applications must allow sufficient time to permit delivery on or before the closing deadline date and time. Acceptance by the United States Postal Service or private mailer does not constitute delivery. Facsimile (FAX), electronic mail or postage due applications will not be accepted.

D. Funding Restrictions

Meeting expenses. In accordance with 31 U.S.C. 1345, "Expenses of Meetings," appropriations may not be used for travel, transportation, and subsistence expenses for a meeting. RCDI grant funds cannot be used for these meeting-related expenses. Matching funds may be used to pay for these expenses. RCDI funds may be used to pay for a speaker as part of a program, equipment to facilitate the program, and the actual room that will house the meeting. RCDI funds can be used for travel, transportation, or subsistence expenses for program-related training and technical assistance purposes. Any training not delineated in the application must be approved by the Agency to verify compliance with 31 U.S.C. 1345. Travel and per diem expenses will be similar to those paid to Agency employees. Rates are based upon location. Rate information can be obtained from the applicable Rural Development State Office.

Grantees and recipients will be restricted to traveling coach class on common carrier airlines. When lodging is not available at the government rate, grantees and recipients may exceed the Government rate for lodging by a maximum of 20 percent. Meals and incidental expenses will be reimbursed at the same rate used by Agency employees. Mileage and gas reimbursement will be the same rate used by Agency employees. This rate may be obtained from the applicable Rural Development State Office.

Part V—Application Review Information

A. Evaluation Criteria

Applications will be evaluated using the following criteria and weights:

1. Building Capacity—Maximum 60 Points

The applicant must demonstrate how they will improve the recipients' capacity, through a program of financial and technical assistance, as it relates to the RCDI purposes. Capacity-building financial and technical assistance should provide new functions to the recipients or expand existing functions that will enable the recipients to undertake projects in the areas of housing, community facilities, or community and economic development that will benefit the community. The program of financial and technical assistance provided, its delivery, and the measurability of the program's effectiveness will determine the merit of the application. All applications will be competitively ranked with the applications providing the most improvement in capacity development and measurable activities being ranked the highest. Capacity-building financial and technical assistance may include, but is not limited to: Training to conduct community development programs, e.g., homeownership education, or the establishment of minority business entrepreneurs, cooperatives, or micro-enterprises; organizational development, e.g., assistance to develop or improve board operations, management, and financial systems; instruction on how to develop and implement a strategic plan; instruction on how to access alternative funding sources to increase leveraging opportunities; staffing, e.g., hiring a person at intermediary or recipient level to provide technical assistance to recipients.

a. The narrative response must:

i. Describe the nature of financial and technical assistance to be provided to the recipients and the activities that will be conducted to deliver the technical assistance;

ii. Explain how financial and technical assistance will develop or increase the recipient's capacity. Indicate whether a new function is being developed or if existing functions are being expanded or performed more effectively;

iii. Identify which RCDI purpose areas will be addressed with this assistance: Housing, community facilities, or community and economic development; and

iv. Describe how the results of the technical assistance will be measured. What benchmarks will be used to measure effectiveness? Benchmarks should be specific and quantifiable.

b. The maximum 60 points for this criterion will be broken down as follows:

1. Type of financial and technical assistance and implementation activities. 35 points.

2. An explanation of how financial and technical assistance will develop capacity. 10 points.

3. Identification of the RCDI purpose. 5 points.

4. Measurement of outcomes. 10 points.

2. Expertise—Maximum 30 Points

The applicant must demonstrate that it has conducted programs of financial and technical assistance and achieved measurable results in the areas of housing, community facilities, or community and economic development in rural areas. Provide the name, contact information, and the type and amount of the financial and technical assistance the applicant organization has provided to the following for the last 3 years:

a. Nonprofit organizations in rural areas.

b. Low-income communities in rural areas, (also include the type of entity, *e.g.,* city government, town council, or village board).

c. Federally recognized tribes or any other culturally diverse organizations.

3. Population—Maximum 30 Points

Population is based on the average population from the 2000 census data for the communities in which the recipients are located. The physical address, not mailing address, for each

recipient must be used for this criterion. Community is defined for scoring purposes as a city, town, village, county, parish, borough, or census-designated place where the recipient's office is physically located. The applicant must submit the census data from the following Web site in the form of a printout of the applicable "Fact Sheet" to verify the population figures used for each recipient. The data can be accessed on the Internet at *http://www.census.gov;* click on "American FactFinder" from the left menu; click on "Fact Sheet" from the left menu; at the right, fill in one or more fields and click "Go"; the name and population data for each recipient location must be listed in this section. The average population of the recipient locations will be used and will be scored as follows:

Population	Scoring (points)
5,000 or less	30
5,001 to 10,000	20
10,001 to 20,000	10
20,001 to 50,000	5

4. Income—Maximum 30 Points

The average of the median household income for the communities where the recipients are physically located will determine the points awarded. The physical address, not mailing address, for each recipient must be used for this criterion. Applicants may compare the average recipient median household income to the State median household income or the national median household income, whichever yields the most points. The national median household income to be used is $41,994. The applicant must submit the income data in the form of a printout of the applicable information from the following Web site to verify the income for each recipient. The data being used is from the 2000 census. The data can be accessed on the Internet at *http://www.census.gov;* click on "American FactFinder" from the left menu; click on "Fact Sheet" from the left menu; at the right, fill in one or more fields and click "Go"; the name and income data for each recipient location must be listed in this section. Points will be awarded as follows:

Average Recipient Median Income Is:

Less than 60 percent of the state or national median household income. 30 points.

From 60 to 70 percent of the state or national median household income. 20 points.

From 71 to 80 percent of the state or national median household income. 10 points

In excess of 80 percent of the state or national median household income. 0 points.

5. Soundness of Approach—Maximum 50 Points

The applicant can receive up to 50 points for soundness of approach. The overall proposal will be considered under this criterion. Applicants must list the page numbers in the application that address these factors.

a. The ability to provide the proposed financial and technical assistance based on prior accomplishments has been demonstrated.

b. The proposed financial and technical assistance program is clearly stated and the applicant has defined how this proposal will be implemented. The plan for implementation is viable.

c. Cost effectiveness will be evaluated based on the budget in the application. The proposed grant amount and matching funds should be utilized to maximize capacity building at the recipient level.

d. The proposal fits the objectives for which applications were invited.

6. Technical Assistance for the Development of Renewable Energy Systems and Energy Efficiency Improvements—Maximum 20 Points

The applicant must demonstrate how they will improve the recipients' capacity to carry out activities related to the development of renewable energy systems and energy efficiency improvements for housing, community facilities, or community and economic development.

7. Great Regions Applications—Maximum 20 Points

The Agency encourages applications that promote substantive economic growth, including job creation, as well as specifically addressing the circumstances of those sectors within the region that have fewer prospects and the greatest need for improved economic opportunity.

A Great Regions project should be designed to assist rural communities in the region to create prosperity so they are self-sustaining, repopulating and economically thriving. Applications should demonstrate:

a. Clear leadership at the Intermediary level in organizing and coordinating a regional initiative;

b. Evidence that the Recipient's region has a common economic basis that supports the likelihood of success in implementing its strategy;

c. Evidence that technical assistance will be provided that will increase the Recipient's capacity to assess their circumstance, determine a long term sustainable vision for the region, and implement a comprehensive strategic plan, including identifying performance measures and establishing a system to collect the data to allow assessment of those performance measures.

8. Local Investment Points—Maximum 20 Points

Intermediaries must be physically located in an eligible rural community and must include evidence of investment in the community. The intent is to ensure that RCDI funds are expended in the rural community.

9. State Director's Points Based on Project Merit—Maximum 20 Points

This criterion does not have to be addressed by the applicant. Up to 20 points may be awarded by the Rural Development State Director. Points may be awarded to more than one application per state or jurisdiction. The total points awarded under this criterion, to all applications, will not exceed 20. Assignment of points will include a written justification and be tied to and awarded based on how closely they align with the Rural Development State Office's strategic plan.

10. Proportional Distribution Points—20 Points

This criterion does not have to be addressed by the applicant. After applications have been evaluated and awarded points under the first 9 criteria, the Agency may award 20 points per application to promote an even distribution of grant awards between the ranges of $50,000 to $300,000.

B. Review and Selection Process

Rating and ranking. Applications will be rated and ranked on a national basis by a review panel based on the "Evaluation Criteria" contained in this Notice. If there is a tied score after the applications have been rated and ranked, the tie will be resolved by reviewing the scores for "Building Capacity" and the applicant with the highest score in that category will receive a higher ranking. If the scores for "Building Capacity" are the same, the scores will be compared for the next criterion, in sequential order, until one highest score can be determined.

Initial screening. The Agency will screen each application to determine eligibility during the period immediately following the application deadline. Listed below are examples of reasons for rejection from previous funding rounds. The following reasons for rejection are not all inclusive;

however, they represent the majority of the applications previously rejected.

1. Recipients were not located in eligible rural areas based on the definition in this Notice.

2. Applicants failed to provide evidence of recipient's status, i.e., documentation supporting nonprofit evidence of organization.

3. Applicants failed to provide evidence of committed matching funds or matching funds were not committed for a period at least equal to the grant performance period.

4. Application did not follow the RCDI structure with an intermediary and recipients.

5. Recipients were not identified in the application.

6. Intermediary did not provide evidence it had been incorporated for at least 3 years as the applicant entity.

7. Applicants failed to address the "Evaluation Criteria."

8. The purpose of the proposal did not qualify as an eligible RCDI purpose.

9. Inappropriate use of funds (*e.g.,* construction or renovations).

10. The applicant proposed providing financial and technical assistance directly to individuals.

11. The application package not received by closing date and time.

Part VI—Award Administration Information

A. General Information

Within the limit of funds available for such purpose, the awarding official of the Agency shall make grants in ranked order to eligible applicants under the procedures set forth in this Notice.

B. Award Notice

Applicants will be notified of selection by letter. Unsuccessful applicants will receive notification including appeal rights by mail. In addition, selected applicants will be requested to verify that components of the application have not changed at the time of selection and on the award obligation date, if requested by the Agency. The award is not approved until all information has been verified, and the awarding official of the Agency has signed Form RD 1940–1, "Request for Obligation of Funds."

C. Administrative and National Policy Requirements

Grantees will be required to do the following:

1. Execute a Rural Community Development Initiative Grant Agreement, which is published at the end of this Notice.

2. Execute Form RD 1940–1.

3. Use Form SF 270, "Request for Advance or Reimbursement," to request reimbursements. Provide receipts for expenditures, timesheets and any other documentation to support the request for reimbursement.

4. Provide financial status and project performance reports on a quarterly basis starting with the first full quarter after the grant award.

5. Maintain a financial management system that is acceptable to the Agency.

6. Ensure that records are maintained to document all activities and expenditures utilizing RCDI grant funds and matching funds. Receipts for expenditures will be included in this documentation.

7. Provide annual audits or management reports on Form RD 442–2, "Statement of Budget, Income and Equity," and Form RD 442–3, "Balance Sheet," depending on the amount of Federal funds expended and the outstanding balance.

8. Collect and maintain data provided by recipients on race, sex, and national origin and ensure recipients collect and maintain the same data on beneficiaries. Race and ethnicity data will be collected in accordance with OMB **Federal Register** notice, "Revisions to the Standards for the Classification of Federal Data on Race and Ethnicity," (62 FR 58782), October 30, 1997. Sex data will be collected in accordance with Title IX of the Education Amendments of 1972. These items should not be submitted with the application but should be available upon request by the Agency.

For purpose of Civil Rights, recipients are considered any State, political subdivision of any State, or instrumentality of any State or political subdivision, any public or private agency, institution, or organization, or other entity, to whom Federal financial assistance is extended, directly or through another recipient, including any successor, assignee, or transferee thereof, but such term does not include any ultimate beneficiary. Not all listed entities are eligible for all programs. Please check with the applicable state office for information regarding eligibility.

9. Provide a final project performance report.

10. Identify and report any association or relationship with Rural Development employees.

11. The intermediary and recipient must comply with Title VI of the Civil Rights Act of 1964, Title IX of the Education Amendments of 1972, Section 504 of the Rehabilitation Act of 1973, and Executive Order 12250 and RD Instruction 7 CFR 1901–E.

12. The grantee must comply with policies, guidance, and requirements as described in the following applicable OMB Circulars and Code of Federal Regulations:

a. OMB Circular A–87 (Cost Principles for State, Local, and Indian Tribal Government);

b. OMB Circular A–122 (Cost Principles for Non-profit Organizations);

c. OMB Circular A–133 (Audits of States, Local Governments, and Non-Profit Organizations);

d. 7 CFR part 3015 (Uniform Federal Assistance Regulations);

e. 7 CFR part 3016 (Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments);

f. 7 CFR part 3017 (Government-wide Debarment and Suspension (Nonprocurement);

g. 7 CFR part 3019 (Uniform Administrative Requirements for Grants and Agreements with Institutions of Higher Education, Hospitals, and Other Non-profit Organizations); and

h. 7 CFR part 3052 (Audits of States, Local Governments, and Non-Profit Organizations).

D. Reporting

Reporting requirements can be found in the Grant Agreement included in this Notice.

Part VII—Agency Contact

Contact the Rural Development office in the state where the applicant's headquarters is located. A list of Rural Development State Offices is included in this Notice.

Part VIII—Nondiscrimination Statement

The U.S. Department of Agriculture (USDA) prohibits discrimination in all its programs and activities on the basis of race, color, national origin, age disability, and where applicable, sex, marital status, familial status, parental status, religion, sexual orientation, genetic information, political beliefs, reprisal, or because all or part of an individual's income is derived from any public assistance program. (Not all prohibited bases apply to all programs) Persons with disabilities who require alternative means for communication of program information (Braille, large print, audiotape, etc.) should contact USDA's TARGET Center at (202) 720–2600 (voice and TDD). To file a complaint of discrimination, write to USDA, Director, Office of Civil Rights, 1400 Independence Avenue, SW., Washington, DC 20250–9410, or call (800) 795–3272 (voice) or (202) 720–6382 (TDD). USDA is an equal

opportunity provider, employer, and lender.

Part IX—Appeal Process

All adverse determinations regarding applicant eligibility and the awarding of points as part of the selection process are appealable pursuant to 7 CFR part 11. Instructions on the appeal process will be provided at the time an applicant is notified of the adverse decision.

Grant Amount Determination

In the event the applicant is awarded a grant that is less than the amount requested, the applicant will be required to modify its application to conform to the reduced amount before execution of the grant agreement. The Agency reserves the right to reduce or withdraw the award if acceptable modifications are not submitted by the awardee within 15 working days from the date the request for modification is made. Any modifications must be within the scope of the original application.

Rural Development State Office Contacts

Note: Telephone numbers listed are not toll-free.

Alabama State Office, Suite 601, Sterling Centre, 4121 Carmichael Road, Montgomery, AL 36106–3683, (334) 279–3400, TDD (334) 279–3495, Allen Bowen.

Alaska State Office, 800 West Evergreen, Suite 201, Palmer, AK 99645, (907) 761–7705, TDD (907) 761–8905, Merlaine Kruse.

Arizona State Office, 230 North 1st Avenue, Suite 206, Phoenix, AZ 85003, (602) 280–8745, TDD (602) 280–8705, Leonard Gradillas.

Arkansas State Office, 700 W. Capitol Ave., Rm. 3416, Little Rock, AR 72201–3225, (501) 301–3250, TDD (501) 301–3200, Ricky Carter.

California State Office, 430 G Street, Agency 4169, Davis, CA 95616–4169, (530) 792–5810, TDD (530) 792–5848, Janice Waddell.

Colorado State Office, Denver Federal Center, Building 56, Room 2300, PO Box 25426,* Denver, CO 80225–0426, 720–544–2927, TDD 720–544–2976, Delores Sanchez-Maez.

Connecticut

Served by Massachusetts State Office.

Delaware and Maryland State Office, 1221 College Park Dr., Suite 200, Dover, DE 19904–8713, (302) 857–3580, TDD (302) 697–4303, Denise MacLeish.

Florida & Virgin Islands State Office, 4440 NW. 25th Place, P.O. Box 147010, Gainesville, FL 32614–7010, (352) 338–3485, TDD (352) 338–3499, Michael Langston.

Georgia State Office, Stephens Federal Building, 355 E. Hancock Avenue, Athens, GA 30601–2768, (706) 546–2171, TDD (706) 546–2034, Jerry M. Thomas.

Guam

Served by Hawaii State Office.

Hawaii, Guam, & Western Pacific Territories State Office, Room 311, Federal Building, 154 Waianuenue Avenue, Hilo, HI 96720, (808) 933–8310, TDD (808) 933–8321, Ted Matsuo.

Idaho State Office, 9173 West Barnes Dr., Suite A1, Boise, ID 83709, (208) 378–5617, TDD (208) 378–5600, David A. Flesher.

Illinois State Office, 2118 West Park Court, Suite A, Champaign, IL 61821, (217) 403–6200, TDD (217) 403–6240, Michael Wallace.

Indiana State Office, 5975 Lakeside Boulevard, Indianapolis, IN 46278–1996, (317) 290–3100 (ext. 431), TDD (317) 290–3343, Gregg Delp.

Iowa State Office, 873 Federal Building, 210 Walnut Street, Des Moines, IA 50309, (515) 284–4663, TDD (515) 284–4858, Karla Peiffer.

Kansas State Office, 1303 SW., First American Place, Suite 100, Topeka, KS 66604–4040, (785) 271–2730, TDD (785) 271–2767, Gary L. Smith.

Kentucky State Office, 771 Corporate Drive, Suite 200, Lexington, KY 40503, (859) 224–7336, TDD (859) 224–7300, Vernon Brown.

Louisiana State Office, 3727 Government Street, Alexandria, LA 71302, (318) 473–7962, TDD (318) 473–7920, Richard Hoffpauir.

Maine State Office, 967 Illinois Ave., Suite 4, P.O. Box 405, Bangor, ME 04402–0405, (207) 990–9124, TDD (207) 942–7331, Ron Lambert.

Maryland

Served by Delaware State Office.

Massachusetts, Connecticut, & Rhode Island State Office, 451 West Street, Suite 2, Amherst, MA 01002–2999, (413) 253–4300, TDD (413) 253–7068, Daniel R. Beaudette.

Michigan State Office, 3001 Coolidge Road, Suite 200, East Lansing, MI 48823, (517) 324–5208, TDD (517) 337–6795, Christine M. Maxwell.

Minnesota State Office, 410 Farm Credit Service Building, 375 Jackson Street, St. Paul, MN 55101–1853, (651) 602–7800, TDD (651) 602–3799, Terry Louwagie.

Mississippi State Office, Federal Building, Suite 831, 100 W. Capitol Street, Jackson, MS 39269, (601) 965–4316, TDD (601) 965–5850, Bettye Oliver.

Missouri State Office, 601 Business Loop 70 West, Parkade Center, Suite 235, Columbia, MO 65203, (573) 876–0976, TDD (573) 876–9480, Clark Thomas.

Montana State Office, 2229 Boot Hill Court, Bozeman, MT 59771, (406) 585–2545, TDD (406) 585–2545, Bill Barr.

Nebraska State Office, Federal Building, Room 152, 100 Centennial Mall N., Lincoln, NE 68508, (402) 437–5559, TDD (402) 437–5551, Denise Brosius-Meeks.

Nevada State Office, 1390 South Curry Street, Carson City, NV 89703–9910, (775) 887–1222 (ext. 28), TDD (775) 885–0633, Kay Vernatter.

New Hampshire

Served by Vermont State Office.

New Jersey State Office, 8000 Midlantic Drive, 5th Floor North, Suite 500, Mt. Laurel, NJ 08054, (856) 787–7750, Kenneth Drewes.

New Mexico State Office, 6200 Jefferson St. NE., Room 255, Albuquerque, NM 87109, (505) 761–4950, TDD (505) 761–4938, Martha Torrez.

New York State Office, The Galleries of Syracuse, 441 S. Salina Street, Suite 357, Syracuse, NY 13202–2541, (315) 477–6400, TDD (315) 477–6447, Gail Giannotta.

North Carolina State Office, 4405 Bland Road, Suite 260, Raleigh, NC 27609, (919) 873–2070, TDD (919) 873–2003, William A. Hobbs.

North Dakota State Office, Federal Building, Room 208, 220 East Rosser Ave., P.O. Box 1737, Bismarck, ND 58502–1737, (701) 530–2037, TDD (701) 530–2113, Dale Van Eckhout.

Ohio State Office, Federal Building, Room 507, 200 North High Street, Columbus, OH 43215–2418, (614) 255–2400, TDD (614) 255–2554, David M. Douglas.

Oklahoma State Office, 100 USDA, Suite 108, Stillwater, OK 74074–2654, (405) 742–1000, TDD (405) 742–1007, Brian Wiles.

Oregon State Office, 1201 NE Lloyd Blvd, Suite 801, Portland, OR 97232, (503) 414–3300, TDD (503) 414–3387, Sam Goldstein.

Pennsylvania State Office, One Credit Union Place, Suite 330, Harrisburg, PA 17110–2996, (717) 237–2299, TDD (717) 237–2281, Gary Rothrock.

Puerto Rico State Office, 654 Muñoz Rivera Avenue, Suite 601, Hato Rey, PR 00918–6106, (787) 766–5095, TDD (787) 766–5332, Nereida Rodriguez.

Rhode Island

Served by Massachusetts State Office.

South Carolina State Office, Strom Thurmond Federal Building, 1835 Assembly Street, Room 1007, Columbia, SC 29201, (803) 253–3656, TDD (803) 765–5697, Jesse T. Risher.

South Dakota State Office, Federal Building, Room 210, 200 Fourth Street, SW., Huron, SD 57350, (605) 352–1100, TDD (605) 352–1147, Doug Roehl.

Tennessee State Office, Suite 300, 3322 West End Avenue, Nashville, TN 37203–1084, (615) 783–1300, TDD (615) 783–1397, Keith Head.

Texas State Office, Federal Building, Suite 102, 101 South Main, Temple, TX 76501, (254) 742–9789, TDD (254) 742–9749, Michael B. Canales.

Utah State Office, Wallace F. Bennett Federal Building, 125 South State Street, Room 4311, P.O. Box 11350, Salt Lake City, UT 84138, (801) 524–4326, TDD (801) 524–3309, Debra Meyer.

Vermont State Office, City Center, 3rd Floor, 89 Main Street, Montpelier, VT 05602, (802) 828–6011, TDD (802) 223–6365, Rhonda Shippee.

Virgin Islands

Served by Florida State Office.

Virginia State Office, Culpeper Building, Suite 238, 1606 Santa Rosa Road, Richmond, VA 23229, (804) 287–1550, TDD (804) 287–1753, Carrie Schmidt.

Washington State Office, 1835 Black Lake Boulevard, SW., Suite B, Olympia, WA 98501–5715, (360) 704–7738, Peter McMillin.

Western Pacific Territories

Served by Hawaii State Office.

West Virginia State Office, 1550 Earl Core Road, Suite 101, Morgantown, WV 26505, (304) 284–4884, TDD (304) 284–4836, Randy Plum.

Wisconsin State Office, 4949 Kirschling Court, Stevens Point, WI 54481, (715) 345–7614, TDD (715) 345–7610, Mark Brodziski.

Wyoming State Office, Federal Building, Room 1005, 100 East B Street, P.O. Box 11005, Casper, WY 82602–5006, (307) 233–6733, TDD (307) 233–6719, Alana Cannon.

Washington, DC, Stop 0787, Room 0183, 1400 Independence Avenue, SW., Washington, DC 20250–0787, (202) 720–1506, Susan Woolard.

Dated: September 17, 2010.

Tammye Treviño,

Administrator, Rural Housing Service.

United States Department of Agriculture
Rural Housing Service
Rural Community Development Initiative Grant Agreement

THIS GRANT AGREEMENT (Agreement), effective the date the Agency official signs the document, is a contract for receipt of grant funds under the Rural Community Development Initiative (RCDI).

BETWEEN

a private or public or tribal organization, (Grantee or Intermediary) and the United States of America acting through the Rural Housing Service, Department of Agriculture, (Agency or Grantor), for the benefit of recipients listed in Grantee's application for the grant.

WITNESSETH:

The principal amount of the grant is $_____(Grant Funds). Matching funds, in an amount equal to the grant funds, will be provided by Grantee. The Grantee and Grantor will execute Form RD 1940–1, "Request for Obligation of Funds."

WHEREAS,

Grantee will provide a program of financial and technical assistance to develop the capacity and ability of nonprofit organizations, low-income rural communities, or federally recognized tribes to undertake projects related to housing, community facilities, or community and economic development in rural areas;

According to the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless it displays a valid OMB control number. The valid OMB control number for this information collection is 0575–0180. The time required to complete this information collection is estimated to average 30 minutes per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and reviewing the collection of information.

NOW, THEREFORE, in consideration of the grant;

Grantee agrees that Grantee will:

A. Provide a program of financial and technical assistance in accordance with the proposal outlined in the application as approved by the Agency, (see Attachment A), the terms of which are incorporated with this Agreement and must be adhered to. Any changes to the approved program of financial and technical assistance must be approved in writing by the Grantor;

B. Use Grant Funds only for the purposes and activities specified in the application package approved by the Agency including the approved budget. Any uses not provided for in the approved budget must be approved in writing by the Agency in advance;

C. Charge expenses for travel and per diem that will not exceed the rates paid Agency employees for similar expenses. Grantees and recipients will be restricted to traveling coach class on common carrier airlines. When lodging is not available at the government rate, rates may exceed the Government rate by a maximum of 20 percent. Meals and incidental expenses will be reimbursed at the same rate used by Agency employees, which is based upon location. Mileage and gas will be reimbursed at the existing Government rate. Rates can be obtained from the applicable State Office;

D. Charge meeting expenses in accordance with 31 U.S.C. 1345. Grant funds may not be used for travel, transportation, and subsistence expenses for a meeting. Matching funds may be used to pay these expenses. Any meeting or training not delineated in the application must be approved by the Agency to verify compliance with 31 U.S.C. 1345;

E. Request for advances or reimbursement for grant activities. If payment is to be made by advance, the Grantee shall request advance payment, but not more frequently than once every 30 days, of grant funds by using Standard Form 270, "Request for Advance or Reimbursement." Receipts, invoices, hourly wage rate, personnel payroll records, or other documentation must be provided by intermediary. This information must be maintained in the intermediary's files.

If payment is to be made by reimbursement, the Grantee shall request reimbursement of grant funds, but not more frequently than once every 30 days, by using Standard Form 270, "Request for Advance or Reimbursement." Receipts, invoices, hourly wage rate, personnel payroll records, or other documentation, as determined by the Agency, must be provided by the intermediary to justify the amount. This information must be maintained in the intermediary's files.

All requests for advances or reimbursements must include matching fund usage. Matching funds must be expended at least pro-rata to the grant amount requested.

F. Provide periodic reports as required by the Grantor. A financial status report and a project performance report will be required on a quarterly basis (due 30 working days after each calendar quarter). The financial status report must show how grant funds and matching funds have been used to date. A final report may serve as the last quarterly report. Grantees shall constantly monitor performance to ensure that time schedules are being met and projected goals by time periods are being accomplished. The project performance reports shall include, but are not limited to, the following:

1. A description of the activities that the funds reflected in the financial status report were used for;

2. A comparison of actual accomplishments to the objectives for that period;

3. The reasons why established objectives were not met, if applicable;

4. Any problems, delays, or adverse conditions which will affect attainment of overall program objectives, prevent meeting time schedules or objectives, or preclude the attainment of particular objectives during established time periods. This disclosure shall be accomplished by a statement of the action taken or planned to resolve the situation;

5. Objectives and timetables established for the next reporting period;

6. A summary of the race, sex, and national origin of the recipients and a summary from the recipients of the race, sex, and national origin of the beneficiaries; and

7. The final report will also address the following:

a. What have been the most challenging or unexpected aspects of this program?

b. What advice would you give to other organizations planning a similar program? Please include strengths and limitations of

the program. If you had the opportunity, what would you have done differently?

c. Are there any post-grant plans for this project? If yes, how will they be financed?

G. Consider potential recipients without discrimination as to race, color, religion, sex, national origin, age, marital status, sexual orientation, or physical or mental disability;

H. Ensure that any services or training offered by the recipient, as a result of the financial and technical assistance received, must be made available to all persons in the recipient's service area without discrimination as to race, color, religion, sex, national origin, age, marital status, sexual orientation, or physical or mental disability, or genetic information (not all protected bases apply to all programs) at reasonable rates, including assessments, taxes, or fees. Programs and activities must be delivered from accessible locations. The recipient must ensure that, where there are non-English speaking populations, materials are provided in the language that is spoken;

I. Ensure recipients are required to place nondiscrimination statements in advertisements, notices, pamphlets and brochures making the public aware of their services. The Grantee and recipient are required to provide widespread outreach and public notification in promoting any type of training or services that are available through grant funds;

J. The Grantee must collect and maintain data on recipients by race, sex, and national origin. The grantee must ensure that their recipients also collect and maintain data on beneficiaries by race, sex, and national origin as required by Title VI of the Civil Rights Act of 1964 and must be provided to the Agency for compliance review purposes. USDA Rural Development will complete a pre-award and post-award compliance review. The pre-award will be before grant approval or disbursement of funds, and a post-award compliance review 90 days after the project is in full operation;

K. Upon any default under its representations or agreements contained in this instrument, Grantee, at the option and demand of Grantor, will immediately repay to Grantor any legally permitted damages together with any legally permitted interest from the date of the default. At Grantor's election, any default by the Grantee will constitute termination of the grant thereby causing cancellation of Federal assistance under the grant. The provisions of this Agreement may be enforced by Grantor, without regard to prior waivers of this Agreement, by proceedings in law or equity, in either Federal or State courts as may be deemed necessary by Grantor to ensure compliance with the provisions of this Agreement and the laws and regulations under which this grant is made;

L. Provide Financial Management Systems that will include:

1. Accurate, current, and complete disclosure of the financial results of each grant. Financial reporting will be on an accrual basis;

2. Records that identify adequately the source and application of funds for grant-supported activities. Those records shall contain information pertaining to grant awards and authorizations, obligations, unobligated balances, assets, liabilities, outlays, and income related to Grant Funds and matching funds;

3. Effective control over and accountability for all funds, property, and other assets. Grantees shall adequately safeguard all such assets and shall ensure that they are used solely for authorized purposes;

4. Accounting records supported by source documentation; and

5. Grantee tracking of fund usage and records that show matching funds and grant funds are used in equal proportions. The grantee will provide verifiable documentation regarding matching fund usage, i.e., bank statements or copies of funding obligations from the matching source.

M. Retain financial records, supporting documents, statistical records, and all other records pertinent to the grant for a period of at least three years after the grant agreement expires except that the records shall be retained beyond the 3-year period if audit findings have not been resolved. Microfilm or photocopies or similar methods may be substituted in lieu of original records. The Grantor and the Comptroller General of the United States, or any of their duly authorized representatives, shall have access to any books, documents, papers, and records of the Grantee's which are pertinent to the specific grant program for the purpose of making audits, examinations, excerpts, and transcripts;

N. In accordance with 7 CFR 3052, provide an A–133 audit report if $500,000 or more of Federal funds are expended in a 1-year period. If Federal funds expended during a 1 year period are less than $500,000 and there is an outstanding loan balance of $500,000 or more, an audit in accordance with generally accepted government auditing standards is required. If Federal funds expended during a 1-year period are less than $500,000 including any outstanding loan balance in which the Federal government imposes continuing compliance requirements, a management report may be submitted on Forms RD 442–2, "Statement of Budget, Income and Equity," and 442–3, "Balance Sheet", or similar;

O. Not encumber, transfer, or dispose of the equipment or any part thereof, acquired wholly or in part with Grantor funds without the written consent of the Grantor; and

P. Not duplicate other program activities for which monies have been received, are committed, or are applied to from other sources (public or private).

Grantor agrees that it will make available to Grantee for the purpose of this Agreement funds in an amount not to exceed the Grant Funds. The funds will be disbursed to Grantee on a pro rata basis with the Grantee's matching funds.

Both Parties Agree:

A. Extensions of this grant agreement may be approved by the Agency, in writing, provided in the Agency's sole discretion the extension is justified and there is a likelihood that the grantee can accomplish the goals set out and approved in the application package during the extension period. Extensions will be limited to one six-month period;

B. The Grantor must approve any changes in recipient or recipient composition;

C. The Grantor has agreed to give the Grantee the Grant Funds, subject to the terms and conditions established by the Grantor. Any Grant Funds actually disbursed and not needed for grant purposes be returned immediately to the Grantor. This agreement shall terminate 3 years from this date unless extended or unless terminated beforehand due to default on the part of the Grantee or for convenience of the Grantor and Grantee. The Grantor may terminate the grant in whole, or in part, at any time before the date of completion, whenever it is determined that the Grantee has failed to comply with the conditions of this Agreement or the applicable regulations; Termination for convenience will occur when both the Grantee and Grantor agree that the continuation of the program will not produce beneficial results commensurate with the further expenditure of funds.

D. As a condition of the Agreement, the Grantee certifies that it is in compliance with, and will comply in the course of the Agreement with, all applicable laws, regulations, Executive Orders, and other generally applicable requirements, which are incorporated into this agreement by reference, and such other statutory provisions as are specifically contained herein.

E. The Grantee will ensure that the recipients comply with Title VI of the Civil Rights Act of 1964, section 504 of the Rehabilitation Act of 1973, Executive Order 12250, and 7 CFR 1901–E. Each recipient must sign Form RD 400–4, "Assurance Agreement";

F. The provisions of 7 CFR part 3015, "Uniform Federal Assistance Regulations," part 3016, "Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments," or part 3019, "Uniform Administrative Requirements for Grants and Agreements with Institutions of Higher Education, Hospitals, and Other Nonprofit Organizations," and the fiscal year 2010 "Notice of Funds Availability (NOFA) Inviting Applications for the Rural Community Development Initiative (RCDI)" are incorporated herein and made a part hereof by reference;

IN WITNESS WHEREOF, Grantee has this day authorized and caused this Agreement to be executed by

_____

Attest

_____

By _____

(Grantee)

(Title) _____

Date _____

UNITED STATES OF AMERICA
RURAL HOUSING SERVICE

By _____

(Grantor) (Name) (Title)

Date _____

ATTACHMENT A

[Application proposal submitted by grantee.]

[FR Doc. 2010–23764 Filed 9–22–10; 8:45 am]

BILLING CODE 3410–XV–P

DEPARTMENT OF AGRICULTURE

Forest Service

National Urban and Community Forestry Advisory Council

AGENCY: Forest Service, USDA.

ACTION: Notice; Announcement for the 2011 U.S. Forest Service Urban and Community Forestry Challenge Cost Share Grant Opportunity.

SUMMARY: The National Urban and Community Foresty Advisory Council, (NUCFAC), is charged, by law, to provide recommendations to the Secretary of Agriculture on urban forestry related issues and opportunities. Part of the Council's role is to recommend the criteria for the Forest Service's Urban and Community Forestry, (U&CF) Challenge Cost Share Grant Program.

The NUCFAC has revised the criteria for the Forest Service's U&CF Challenge Cost Share Grant Program for 2011. The 2011 U&CF Challenge Cost Share Grant Program will solicit innovative grant proposals. A total anticipated amount of $855,000 would be available in 2011 for Innovation Grants.

Innovation Grants

Innovation grants are to focus on one of the Council's identified priority issues confronting the UC&F community: Climate Change, Public Health, and Economic Development.

The NUCFAC will seek proposals from organizations and partnerships that demonstrate the reach, resources and expertise to deliver meaningful, replicable results.

DATES: Applications are available electronically at the following Web site, *http://www.grants.gov,* due by 11:59 p.m., November 29, 2010.

Those that do not have access to a computer may request a hardcopy of the application and instructions by contacting Nancy Stremple at the address below.

ADDRESSES: Written comments concerning this announcement should be addressed to Nancy Stremple, Executive Staff to National Urban and Community Forestry Advisory Council, 201 14th St., SW., Yates Building (1 Central) MS–1151, Washington, DC 20250–1151. Comments may also be sent via e-mail to *nstremple@fs.fed.us,* or via facsimile to 202–690–5792

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 201 14th St., SW., Yates Building (1 Central) MS–1151, Washington, DC 20250–1151. Visitors are encouraged to call ahead to 202–205–1054 to facilitate entry into the building.

FOR FURTHER INFORMATION CONTACT: Nancy Stremple, Executive Staff or the U&CF Staff Assistant to National Urban and Community Forestry Advisory Council, 201 14th St., SW., Yates Building (1 Central) MS–1151, Washington, DC 20250–1151, phone 202–205–1054.

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, Monday through Friday.

SUPPLEMENTARY INFORMATION: The 2011 Forest Service Urban and Community Forestry Challenge Cost Share Grant instructions and application are posted on *http://www.grants.gov*. Only the instructions will be posted on the U.S. Forest Service Web sites at: *http://www.fs.fed.us/ucf.*

If interested applicants are not already registered in grants.gov, they are encouraged to register now. The process may take up to two weeks to collect the required information.

Dated: September 17, 2010.

Robin L. Thompson,

Associate Deputy Chief, State and Private Forestry.

[FR Doc. 2010–23763 Filed 9–22–10; 8:45 am]

BILLING CODE 3410–11–P

DEPARTMENT OF COMMERCE

National Institute of Standards and Technology

NIST Blue Ribbon Commission on Management and Safety—II

AGENCY: National Institute of Standards and Technology, Department of Commerce.

ACTION: Notice of establishment of the NIST Blue Ribbon Commission on Management and Safety—II and Notice of Open Meetings.

SUMMARY: Pursuant to the Federal Advisory Committee Act (5 U.S.C. app.), the Director of the National Institute of Standards and Technology announces the establishment of the NIST Blue Ribbon Commission on Management and Safety—II "Commission". The Commission will assess NIST's progress in addressing the findings of the first NIST Blue Ribbon Commission and identify additional opportunities to strengthen management and safety at NIST. This Notice also provides notice of two open meetings of the Commission. Agendas for the meetings will be posted on the agency's Web site, *http://www.nist.gov/director.*

DATES: The Commission will meet on October 12, 2010 in Gaithersburg, Maryland and on October 20, 2010 in Boulder, Colorado.

ADDRESSES: Comments on the Commission's establishment should be submitted to Kevin Kimball, National Institute of Standards and Technology, Building 101, MS 1000, 100 Bureau Drive, Gaithersburg, MD, 20899; telephone: (301) 975–3070; e-mail: *kevin.kimball@nist.gov.*

Locations of the meetings and instructions for visitor admission may be found in Section IV, Notice of Public Meetings, of this notice.

FOR FURTHER INFORMATION CONTACT: Kevin Kimball, National Institute of Standards and Technology, Building 101, MS 1000, 100 Bureau Drive, Gaithersburg, MD 20899; telephone: (301) 975–3070; e-mail: *kevin.kimball@nist.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

The NIST Blue Ribbon Commission on Management and Safety—II is established to assess NIST's progress in addressing the findings of the first NIST Blue Ribbon Commission and identify additional opportunities to strengthen management and safety at NIST. In particular, the Commission will assess NIST's progress in: Making safety a core value at NIST; Integrating safety with the conduct of operations in a meaningful way across organizational units; Benchmarking safety protocols and performance against similar organizations with strong safety cultures; Addressing a serious lack of resources for safety; and Engaging a staff that is eager, willing, and ready to embrace a safety culture.

The Commission will submit a written report on its findings.

II. Structure

The Director shall appoint the members of the Commission. The Commission will have eight members. Each member will be either a member of the first NIST Blue Ribbon Commission or a current member of the NIST Visiting Committee on Advanced Technology. Each member will be a qualified expert with public or private sector experience in one or more of the following areas: (a) Management and organizational structure; (b) Training and human resources operations; (c) Laboratory management and safety; (d) Hazardous materials safety; (e)

Emergency medical response; (f) Environmental safety; (g) Environmental remediation; and (h) Security for hazardous materials.

Each member will serve for the duration of the Commission. Members shall serve as Special Government Employees (SGEs) as such employees are defined in 18 U.S.C. 202(a).

III. Compensation

Members shall receive per diem and travel expenses as authorized by 5 U.S.C. 5703, as amended, for persons employed intermittently in the Government service. No other compensation shall be provided.

IV. Notice of Open Meetings

The meeting being held on October 12, 2010 will be held at the National Institute of Standards and Technology, Administrative Building, Gaithersburg, Maryland 20899. The meeting being held on October 20, 2010 will be held at the National Institute of Standards and Technology, Building 1, Room 1103/1105, Boulder, Colorado. Agendas for the meeting will be posted on the agency's Web site, *http://www.nist.gov/director.*

To enable NIST to make arrangements to admit visitors to the NIST campus, anyone wishing to attend these meetings should submit name, e-mail address and phone number to Mary Lou Norris *(marylou.norris@nist.gov)* no later than October 5, 2010.

Dated: September 16, 2010.

Harry S. Hertz,

Director, Baldrige National Quality Program.

[FR Doc. 2010–23724 Filed 9–22–10; 8:45 am]

BILLING CODE 3510–13–P

DEPARTMENT OF COMMERCE

International Trade Administration

A–475–824, A–201–822

Certain Stainless Steel Sheet and Strip in Coils from Italy and Mexico: Extension of Time Limits for Preliminary and Final Results of Full Five-year ("Sunset") Reviews of Antidumping Duty Orders

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: September 23, 2010.

FOR FURTHER INFORMATION CONTACT: David Cordell or Angelica Mendoza, AD/CVD Operations, Office 7, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482–0408, or (202) 482–3019, respectively.

SUPPLEMENTARY INFORMATION:

Background

On June 2, 2010, the Department published the notice of initiation of the sunset reviews of the antidumping duty orders on certain stainless steel sheet and strip (SSSS) in coils from, *inter alia*, Italy and Mexico, pursuant to section 751(c) of the Tariff Act of 1930, as amended (the Act). *See Initiation of Five-year ("Sunset") Review*, 75 FR 30777 (June 2, 2010) (*Notice of Initiation*).

The Department received a notice of intent to participate in all of the sunset reviews of the antidumping duty orders on SSSS in coils from the following petitioners: the AK Steel Corporation; Allegheny Ludlum Corporation; North American Stainless; United Steelworkers ("USW"); UAW Local 3303; and UAW Local 4104 (collectively, petitioners) within the deadline specified in 19 CFR 351.218(d)(1)(i). The petitioners claimed interested party status under sections 771(9)(C) and (D) of the Act stating that its individual members are each producers in the United States of a domestic like product.

The Department received complete substantive responses to the *Notice of Initiation* for all antidumping duty orders covering SSSS in coils from the domestic interested parties within the 30-day deadline specified in 19 CFR 351.218(d)(3)(i). The Department received a complete and timely substantive response in the sunset review of SSSS in coils from Italy from the following respondent interested parties: ThyssenKrupp Acciai Speciali Terni S.P.A. and Acciai Speciali Terni (USA) (collectively, TKAST). The Department received a complete and timely substantive response in the sunset review of SSSS in coils from Mexico from the following respondent interested parties: ThyssenKrupp Mexinox S.A. de C.V. and Mexinox USA, Inc. (collectively, Mexinox), within the applicable deadline specified in 19 CFR 351.218(d)(3)(i).[1]

On July 6, 2010, the Department received a request from domestic interested parties for an extension of the deadline for filing rebuttal comments to the substantive responses submitted by respondent parties. Pursuant to 19 CFR 351.302(b), domestic and respondent parties were granted an extension to file rebuttal comments to the substantive responses until July 9, 2010. On July 9, 2010, the Department received rebuttal comments to the substantive responses from the domestic interested parties and the respondents with respect to the sunset reviews covering the antidumping duty orders on SSSS in coils from Italy and Mexico.

19 CFR 218(e)(1)(ii)(A) provides that the Secretary normally will conclude that respondent interested parties have provided adequate response to a notice of initiation where it receives complete substantive responses from respondent interested parties accounting on average for more than 50 percent, by volume, or value basis, if appropriate, of the total exports of the subject merchandise to the United States over the five calendar years preceding the year of publication of the notice of initiation. On July 22, 2010, the Department determined that the filed substantive responses constituted adequate responses to the notice of initiation. *See* Memoranda to Richard Weible, Director, AD/CVD Operations, Office 7, entitled "Adequacy Determination in Five-year "Sunset" Review of the Antidumping Duty Order on Certain Stainless Steel Sheet and Strip (SSSS) in Coils from Italy (2005–2009)" dated July 22, 2010; and, "Adequacy Determination in Five-year "Sunset" Review of the Antidumping Duty Order on Certain Stainless Steel Sheet and Strip (SSSS) in Coils from Mexico (2005–2009)" dated July 22, 2010. In accordance with 19 CFR 351.218(e)(2)(i), on July 22, 2010, the Department determined to conduct full sunset reviews of the antidumping duty orders covering SSSS in coils from Italy and Mexico, and accordingly, notified the U.S. International Trade Commission. *See* Letter to Ms. Catherine DeFilippo, Director, Office of Investigations, U.S. International Trade Commission, from James Maeder, Director, Office 2, AD/CVD Operations, entitled "Expedited and Full Sunset Reviews of the Antidumping Duty Orders Initiated in June 2010," dated July 22, 2010.

Extension of Time Limits for Preliminary and Final Results of Reviews

Section 751(c)(5)(A) of the Act provides for the completion of a full sunset review within 240 days of the publication of the initiation notice. However, the Department may extend the period of time for making its determination by not more than 90 days, if it determines that the review is extraordinarily complicated in accordance with section 751(c)(5)(B) of the Act,.

We determine that these reviews are extraordinarily complicated, pursuant to

[1] Domestic interested and respondent parties filed substantive responses on July 2, 2010.

sections 751(c)(5)(C)(i), (ii) and (iii) of the Act, because the Department must consider a number of case–specific complex factual issues such as the trends of pre–order and post–order shipment volumes in the sunset review of the antidumping duty order on SSSS in coils from Mexico; and the Department requires additional time to analyze several complicated issues presented in the substantive comments and rebuttal comments in the case of the sunset review of the antidumping duty order on SSSS in coils from Italy. Therefore, the Department requires additional time to complete its analysis in each of these sunset reviews. Accordingly, the Department is extending the deadlines to complete its sunset reviews of the antidumping duty orders covering SSSS in coils from Italy and Mexico by 90 days. As a result, the Department intends to issue the preliminary results of the full sunset reviews by December 20, 2010,[2] and the final results by April 28, 2011.

This notice is issued in accordance with sections 751(c)(5)(B) and (C) of the Act.

Dated: September 16, 2010.

Susan H. Kuhbach,

Acting Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations.

[FR Doc. 2010–23815 Filed 9–23–10; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

Economic Development Administration

[Docket No. 100908439–0439–01]

FY 2010 Gulf Oil Spill Supplemental Federal Funding Opportunity

AGENCY: Economic Development Administration (EDA), Department of Commerce.

ACTION: Notice and request for applications.

SUMMARY: Pursuant to the Supplemental Appropriations Act, Public Law 111–212, 124 Stat. 2302 (2010), EDA announces general policies and application procedures for the FY 2010 Gulf Oil Spill Supplemental Federal Funding Opportunity. This investment assistance will be made available to help devise and implement short- or long-term economic redevelopment strategies and for technical assistance activities to address economic development challenges in regions impacted by the discharge of oil stemming from the April 20, 2010, BP Deepwater Horizon drilling rig explosion. Applicants are advised to read carefully the federal funding opportunity (FFO) announcement for this notice and request for applications. For a copy of the FFO announcement, *please see* the Web sites listed below under "Electronic Access."

DATES: Applications are accepted on a continuing basis and processed as received. Applications must be submitted electronically via *http://www.grants.gov*, as described below under "APPLICATION SUBMISSION REQUIREMENTS" and in section IV of the FFO announcement. Subject to the availability of funds, winning applicants should expect to receive grant award packages no later than September 2011. EDA expects to have all funding under this notice awarded by September 2011.

Application Submission Requirements: Applications must be submitted electronically in accordance with the instructions provided at *http://www.grants.gov.* EDA will not accept facsimile transmissions of applications. Applicants may access the application package only by following the instructions provided at *http://www.grants.gov.* The preferred electronic file format for attachments is portable document format (PDF); however, EDA will accept electronic files in Microsoft Word, WordPerfect, or Microsoft Excel.

Applicants are strongly encouraged to start early and not to wait until the approaching deadline before logging on and reviewing the application instructions at *http://www.grants.gov.* Applicants must (a) register at *http://www.grants.gov*, which can take between three to five business days or as long as four weeks if all steps are not completed correctly; (b) designate one or more Authorized Organizational Representatives (AOR) and ensure that an AOR submits the application; and (c) verify that the submission was successful. Applicants should save and print written proof of an electronic submission made at *http://www.grants.gov.* If problems occur, the applicant is advised to (a) print any error message received, and (b) call the *http://www.grants.gov* Contact Center at 1–800–518–4726 for assistance. The following link lists useful resources: *http://www.grants.gov/help/help.jsp.* Also, the following link lists frequently asked questions (FAQs): *http://www.grants.gov/applicants/resources.jsp#faqs.* If you do not find an answer to your question under the "Applicant FAQs," try consulting the "Applicant User Guide" or contacting *http://www.grants.gov* via e-mail at *support@grants.gov* or telephone at 1–800–518–4726. In addition, please read carefully section IV.C of the FFO to ensure your application is received by EDA and for specific *http://www.grants.gov* submission procedures.

FOR FURTHER INFORMATION CONTACT: For additional information regarding the FY 2010 Gulf Oil Spill Supplemental Federal Funding Opportunity, please contact Lauren Dupuis by telephone at 404–730–3035 or via e-mail at *LDupuis@eda.doc.gov* in the EDA Atlanta regional office, or Jessica Falk by telephone at 512–381–8168 or via e-mail at *JFalk@eda.doc.gov* in the EDA Austin regional office, as appropriate.

SUPPLEMENTARY INFORMATION:

Program Information: Through this FY 2010 Gulf Oil Spill Supplemental Federal Funding Opportunity, EDA intends to award investments in regions affected by the discharge of oil stemming from the April 2010 BP Deepwater Horizon spill. By this announcement, EDA solicits applications for Economic Adjustment Assistance investments (CFDA No. 11.307) authorized by the Public Works and Economic Development Act of 1965, as amended (42 U.S.C. 3121 *et seq.*) (PWEDA). Through the Economic Adjustment Assistance program, funded applications will help develop and implement on a regional basis short- or long-term economic redevelopment strategies and technical assistance activities for economic recovery in the recent oil spill-impacted regions in the United States.

The Economic Adjustment Assistance program can offer a wide range of technical, planning, or infrastructure assistance. *See* 13 CFR 307.3. This program is designed to respond adaptively to pressing economic recovery issues, and is well suited to help address the challenges faced by regions affected by the April 2010 oil spill catastrophe. *Note however, that to maximize available funding, EDA will consider applications for planning or technical assistance only.* That is, no awards will be made under this competitive solicitation for infrastructure improvements or revolving loan fund grants.

Prospective applicants should pay close attention to the information under

[2] The revised deadline falls on Sunday, December 19, 2010. It is the Department's long-standing practice, however, to issue a determination the next business day when the statutory deadline falls on a weekend, federal holiday, or any other day when the Department is closed. *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). Accordingly, the deadline for the completion of these preliminary results is revised to December 20, 2010.

"Economic Distress Criteria" below, which establishes distress criteria for applications seeking funding under this notice (*see also* section III.B of the FFO). Only applications meeting the distress criteria will be considered. On the date that EDA receives an application for funding under this FFO, the proposed project may be eligible for investment assistance based on the area having been affected by the discharge of oil that began on April 20, 2010, in connection with the explosion on the mobile offshore BP drilling unit Deepwater Horizon. EDA will consider appropriate applications that propose to respond to those effects.

This notice is for the FY 2010 Gulf Oil Spill Supplemental Federal Funding Opportunity only. Please access the separate FFO announcement posted at *http://www.grants.gov* for information regarding application and selection processes, time frames, and evaluation criteria for EDA's Economic Adjustment Assistance investments, which are funded under EDA's regular appropriations. EDA's Web site at *www.eda.gov* provides additional information on EDA and its programs.

Electronic Access: The FFO announcement for the FY 2010 Gulf Oil Spill Supplemental Federal Funding Opportunity is available at *http://www.grants.gov* and at *http://www.eda.gov.*

Funding Availability: Under the Supplemental Appropriations Act, 2010 (Pub. L. 111–212, 124 Stat. 2302 (2010)) (Act), Congress appropriated funds to respond to the Gulf of Mexico oil spill. Specifically, under the Act, EDA received a supplemental appropriation in the amount of $5,000,000 (Gulf Oil Spill Assistance):

"*[T]o carry out planning, technical assistance and other assistance under section 209, and consistent with section 703(b), of [PWEDA], in States affected by the incidents related to the discharge of oil that began in 2010 in connection with the explosion on, and sinking of, the mobile offshore drilling unit Deepwater Horizon.*"

In the Supplemental Appropriations Act, Congress directed that Gulf Oil Spill Assistance be carried out "consistent with section 703(b)" of PWEDA (42 U.S.C. 3233). Accordingly, the federal share of the cost of activities funded with amounts made available may be up to one hundred (100) percent. *See also* information provided below under "Cost Sharing or Matching Share Requirement."

Based on the location of the regions affected by the oil spill, EDA will administer the Gulf Oil Spill Assistance in its Atlanta and Austin regional offices. Currently the average size of a technical assistance investment ranges from $65,000 to $250,000. For purposes of a multi-State regional award, EDA may consider an award of up to approximately $1,500,000. Please note that the approximations provided are informational only and are not intended to restrict future awards. If an application is awarded funding, neither the Department of Commerce nor EDA is under any obligation to provide any additional future funding in connection with that award or to make any future award(s). Amendment or renewal of an award to increase funding or to extend the period of performance is at the discretion of the Department of Commerce and of EDA.

EDA Regional Office Administration of Funds: EDA will administer the Gulf Oil Spill Assistance in its Atlanta and Austin regional offices, which together cover the areas that have felt the greatest impact of the oil spill, specifically, the States of Louisiana, Mississippi, Alabama, Florida, and Texas.

Project Periods: Under the Economic Adjustment Assistance program, project periods are dependent on the nature of the project. Typically, strategy grants and implementation grants (*e.g.*, for technical assistance activities) may range from twelve (12) to eighteen (18) months. EDA will work closely with the recipient to accommodate their projected timelines.

Statutory Authority: The authority for the Economic Adjustment Assistance Program is section 209 of PWEDA (42 U.S.C. 3149). EDA's regulations, which will govern an award made under the FY 2010 Gulf Oil Spill Supplemental Federal Funding Opportunity, are codified at 13 CFR chapter III. The regulations and PWEDA are accessible at *http://www.eda.gov/InvestmentsGrants/Lawsreg.xml.*

Catalog of Federal Domestic Assistance (CFDA) Number: 11.307, Economic Adjustment Assistance.

Applicant Eligibility: Pursuant to PWEDA, eligible applicants for and eligible recipients of EDA investment assistance under this announcement include a(n): (1) District Organization; (2) Indian Tribe or a consortium of Indian Tribes; (3) State, city or other political subdivision of a State, including a special purpose unit of a State or local government engaged in economic or infrastructure development activities, or a consortium of political subdivisions; (4) institution of higher education or a consortium of institutions of higher education; or (5) public or private non-profit organization or association acting in cooperation with officials of a political subdivision of a State. *See* section 3 of PWEDA (42 U.S.C. 3122) and 13 CFR 300.3.

For the FY 2010 Gulf Oil Spill Supplemental Federal Funding Opportunity, EDA will consider applications submitted by eligible applicants located in or acting on behalf of the oil spill-affected regions. With respect to applications submitted by multiple co-applicants or an organization that is located outside of the States served by the Atlanta or Austin regional offices, EDA will ensure that the application is submitted to the appropriate regional office(s), as necessary, once they are downloaded from *http://www.grants.gov.*

Cost Sharing or Matching Share Requirement: As stated below under "Economic Distress Criteria," regional eligibility under this notice is predicated upon the applicant demonstrating that the proposed area has been affected by the discharge of oil in connection with the April 2010 BP Deepwater Horizon drilling rig explosion. Generally, the amount of the EDA grant may not exceed fifty (50) percent of the total cost of the project. Projects may receive an additional amount that shall not exceed thirty (30) percent, based on the relative needs of the region in which the project will be located, as determined by EDA. *See* section 204(a) of PWEDA (42 U.S.C. 3144) and 13 CFR 301.4(b)(1).

In the case of EDA investment assistance to a(n) (i) Indian Tribe, (ii) State (or political subdivision of a State) that the Assistant Secretary determines has exhausted its effective taxing and borrowing capacity, or (iii) non-profit organization that the Assistant Secretary determines has exhausted its effective borrowing capacity, the Assistant Secretary has the discretion to establish a maximum EDA investment rate of up to one hundred (100) percent of the total project cost. *See* sections 204(c)(1) and (2) of PWEDA (42 U.S.C. 3144) and 13 CFR 301.4(b)(5). Potential applicants should contact the appropriate EDA regional office representative listed above under "**FOR FURTHER INFORMATION CONTACT**" to make these determinations. While EDA can consider offering assistance at investment rates as described above, the Act also allows EDA to make grants up to one hundred (100) percent pursuant to section 703(b) of PWEDA (42 U.S.C. 3233). Please note, however, that EDA considers local match an important indication of local priority and generally expects to fund applications that include a local match of at least twenty (20) percent.

While cash contributions are preferred, in-kind contributions, consisting of contributions of space,

equipment, or services, or forgiveness or assumptions of debt, may provide the required non-federal share of the total project cost. *See* section 204(b) of PWEDA (42 U.S.C. 3144). EDA will fairly evaluate all in-kind contributions, which must be eligible project costs and meet applicable federal cost principles and uniform administrative requirements. Funds from other federal financial assistance awards are considered matching share funds only if such designation is authorized by statute, which may be determined by EDA's reasonable interpretation of the statute. *See* 13 CFR 300.3. The applicant must show that the matching share is committed to the project for the project period, will be available as needed, and is not conditioned or encumbered in any way that precludes its use consistent with the requirements of EDA investment assistance. *See* 13 CFR 301.5.

Economic Distress Criteria: In accordance with 13 CFR parts 301 and 307, EDA will review project eligibility at the time the application for investment assistance under this notice is received in the regional office. Project eligibility is a threshold consideration.

For Gulf Oil Spill Assistance, project eligibility is predicated upon the area having been affected by the discharge of oil that began on April 20, 2010, in connection with the explosion on, and sinking of, the mobile offshore BP drilling unit Deepwater Horizon. EDA will consider appropriate applications that propose to respond to those effects. Accordingly, in the project narrative as required in the Form ED–900, the applicant must identify and discuss the economic impacts that the oil spill has had in its region and explain the connection between its proposal and those impacts. Applicants that do not explain how their proposal is responsive to identified economic impacts of the oil spill will be determined ineligible for assistance under this notice. As of the date of the posting of this notice, EDA deems the States of Louisiana, Mississippi, Alabama, Florida, and Texas to be the States most severely affected by the discharge of oil. If circumstances dictate, EDA will consider applications from other States should they become affected by the discharge of oil resulting from the April 2010 BP Deepwater Horizon spill.

Application Package Requirements: Please read carefully section IV of the FFO to help ensure your application is complete and received by EDA. It is the applicant's responsibility to ensure that EDA receives the complete application package and to verify that its submission was received and validated successfully at *http://www.grants.gov.* Applicants are required to submit the forms listed below under at the time of application. Applications that do not contain all forms, narratives, or attachments listed below may be deemed non-responsive and excluded from consideration. The following forms are required for a complete application package:

1. Form ED–900 (*Application for Investment Assistance*)
2. Form SF–424 (*Application for Federal Assistance*)
3. Form SF–424A (*Budget Information—Non-Construction Programs*)
4. Form SF–424B (*Assurances—Non-Construction Programs*)
5. Form CD–511 (*Certification Regarding Lobbying*)

In addition, applicants may be required to and to provide certain lobbying information using Form SF–LLL (*Disclosure of Lobbying Activities*) and to submit to an individual background screening using Form CD–346 (*Applicant for Funding Assistance*). Form ED–900 provides detailed guidance to help the applicant assess whether Form SF–LLL is required and how to access it. Please note that, if applicable, one Form SF–LLL must be submitted for each co-applicant that has used or plans to use non-federal funds for lobbying in connection with this competitive solicitation. In addition, all non-profit applicants and applicants that are first-time recipients of EDA and/or DOC funding are required to provide Form CD–346 for a complete application, but please note that EDA may require other applicants to submit Form CD–346 as well to comply with DOC requirements. EDA will inform applicants if this is required. Please also see section IV.A of the FFO for more information.

Instructions for Completing Form ED–900: Form ED–900 is divided into lettered sections that correspond to specific EDA program components that address all of EDA's statutory and regulatory requirements. Based on the program under which assistance is sought, Form ED–900 details the sections and exhibits which the applicant must complete. Because this competitive solicitation seeks Economic Adjustment Assistance applications only, the applicant must complete only Sections A, B, E, and K and Exhibit C in Form ED–900.

In the narrative statement required under paragraph A.4 of Form ED–900, regarding the project impact and fulfillment of EDA's investment policy guidelines described below under "Evaluation Criteria," the applicant must describe how the proposed project responds to economic impacts of the oil spill. As noted above under "Program Information," the Gulf Oil Spill Assistance may not be used for construction purposes or revolving loan funds; assistance under this notice is available for planning and technical assistance only.

To limit the burden on the applicant, EDA may request additional documentation only if it determines that the applicant's project merits further consideration. The Form ED–900 provides detailed guidance on documentation and other information that will be requested if, and only if, EDA selects the project for further consideration. Applications will be processed on a rolling basis upon receipt, and EDA will timely inform the applicant if its application has been selected for further consideration, or if the application has not been selected for funding.

Intergovernmental Review: Applications for assistance under EDA's programs are subject to the State review requirements imposed by Executive Order 12372, "*Intergovernmental Review of Federal Programs.*"

Evaluation and Selection Procedures: Application packages that meet all eligibility requirements set out in this notice are circulated by a project officer within the applicable EDA regional office(s) for review and comments. When the necessary input and information have been obtained, each application is considered by each regional office's investment review committee (IRC), comprised of at least three EDA staff members, all of whom will be full-time federal employees. The IRC engages in discussion to (1) determine if each application meets the program-specific award and application requirements provided in 13 CFR 307.2 and 307.4 for Economic Adjustment Assistance; (2) determine if each application satisfies the award requirements set forth in this notice and the applicable FFO; (3) assess each application using the evaluation criteria set out below; and (4) make recommendations to the Regional Director, as the Deciding Official, regarding which applications to fund.

The IRC documents its recommendations put forth to the Regional Director regarding which applications merit funding. For quality control assurance, EDA Headquarters reviews the IRC's analysis of the project's fulfillment of the investment policy guidelines set forth below under "Evaluation Criteria." After receiving quality control clearance, the Regional

Director, considers the evaluations provided by the IRC and the degree to which one or more of the selection factors listed below are included, in making his decision as to which applications to fund.

Evaluation Criteria: EDA will evaluate applications received under this notice on the extent to which the proposed project will carry out the purpose of the Gulf Oil Spill Assistance, to help respond to the economic impacts of the oil spill. EDA will evaluate applications based on the investment policy guidelines listed below, and consider the extent to which a project embodies the maximum number of investment policy guidelines possible and strongly exemplifies at least one. All applications will be competitively evaluated primarily on their ability to satisfy one or more of the following investment policy guidelines, all of equal weight:

1. *Collaborative regional innovation.* Initiatives that support the development and growth of innovation clusters based on existing regional competitive strengths. Initiatives must engage stakeholders; facilitate collaboration among urban, suburban and rural (including Tribal) areas; provide stability for economic development through long-term intergovernmental and public/private collaboration; and, support the growth of existing and emerging industries.

2. *Public/private partnerships.* Investments that use both public and private sector resources and leverage complementary investments by other government/public entities and/or non-profits.

3. *Global competitiveness.* Investments that support high-growth businesses and innovation-based entrepreneurs to expand and compete in global markets.

4. *Environmentally-sustainable development.* Investments that encompass best practices in "environmentally sustainable development," broadly defined, to include projects that enhance environmental quality and develop and implement green products, processes, and buildings as part of the green economy.

5. *Economically distressed and underserved communities.* Investments that strengthen diverse communities that have suffered disproportionate economic and job losses and/or are rebuilding to become more competitive in the global economy.

6. *Total job creation.* Investments that demonstrate a clear, comprehensive, and effective strategy for the recruitment, training, placement, and retention of a skilled workforce.

7. *Implementation schedule.* Investments with demonstrated capacity to be implemented quickly and effectively, accelerating positive economic impacts.

In addition to using the investment policy guidelines set forth above, EDA will evaluate all strategy grant applications based on the (1) quality of the proposed scope of work for the development, implementation, revision or replacement of a Comprehensive Economic Development Strategy (CEDS); and (2) qualifications of the applicant to implement the goals and objectives resulting from the CEDS. *See* 13 CFR 303.3(a)(1) and (2). To ensure that the application fully meets these requirements, applicants should pay particular attention to 13 CFR 303.7(b), which sets forth specific technical requirements for the CEDS.

Selection Factors: EDA expects to fund applications recommended by the IRC; however, the Deciding Official may decide not to make a selection, or may select an application that was not recommended for any one of several reasons, including the following selecting factors:

1. A determination that the application better meets the overall objectives of section 2 of PWEDA (42 U.S.C. 3121);

2. Relative economic distress of the applicant;

3. Financial capability of the applicant and feasibility of the proposed budget;

4. Availability of program funding;

5. Geographic balance in distribution of program funds;

6. A determination that the application proposes a project with a broad, multi-State impact; or

7. The applicant's performance under previous federal financial assistance awards.

The Regional Director's final decision must be consistent with EDA's and the U.S. Department of Commerce's published policies. Any time the Regional Director makes a selection that differs from the IRC's recommendations, the Regional Director will document the rationale for the decision in writing.

The Department of Commerce Pre-Award Notification Requirements for Grants and Cooperative Agreements: The administrative and national policy requirements for all Department of Commerce awards, contained in the *Department of Commerce Pre-Award Notification Requirements for Grants and Cooperative Agreements,* published in the **Federal Register** on February 11, 2008 (73 FR 7696), are applicable to this competition.

Paperwork Reduction Act: This document contains collection-of-information requirements subject to the Paperwork Reduction Act (PRA). The use of Form ED–900 (*Application for Investment Assistance*) has been approved by the Office of Management and Budget (OMB) under the Control Number 0610–0094. The use of Forms SF–424 (*Application for Financial Assistance*), SF–424A (*Budget Information—Non-Construction Programs*), SF–424B (*Assurances—Non-Construction Programs*), SF–424C (*Budget Information—Construction Programs*), SF–424D (*Assurances—Construction Programs*), and Form SF–LLL (*Disclosure of Lobbying Activities*) has been approved under OMB Control Numbers 4040–0004, 0348–0044, 4040–0007, 4040–0008, 4040–0009, and 0348–0046 respectively. The Form CD–346 (*Applicant for Funding Assistance*) is approved under OMB Control Number 0605–0001. Notwithstanding any other provision of law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with, a collection of information subject to the requirements of the PRA unless that collection of information displays a currently valid OMB Control Number.

Executive Order 12866 (Regulatory Planning and Review): This notice has been determined to be not significant for purposes of Executive Order 12866.

Executive Order 13132 (Federalism): It has been determined that this notice does not contain policies with Federalism implications as that term is defined in Executive Order 13132.

Administrative Procedure Act/ Regulatory Flexibility Act: Prior notice and an opportunity for public comments are not required by the Administrative Procedure Act or any other law for rules concerning grants, benefits, and contracts (5 U.S.C. 553(a)(2)). Because notice and opportunity for comment are not required pursuant to 5 U.S.C. 553 or any other law, the analytical requirements of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) are inapplicable. Therefore, a regulatory flexibility analysis has not been prepared.

Dated: September 20, 2010.

Brian P. McGowan,

Deputy Assistant Secretary of Commerce for Economic Development.

[FR Doc. 2010–23845 Filed 9–22–10; 8:45 am]

BILLING CODE 3510–24–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XZ17

Mid-Atlantic Fishery Management Council (MAFMC); Meetings

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

ACTION: Notice of public meeting.

SUMMARY: The Mid-Atlantic Fishery Management Council (Council) and its Joint Spiny Dogfish Committee, its Ecosystems and Oceans Planning Committee, its Demersal and Coastal Migratory Committee, its Law Enforcement Committee, its Executive Committee, and its Squid, Mackerel, and Butterfish Committee will hold public meetings.

DATES: The meetings will be held on Tuesday, October 12, 2010, through Thursday, October 14, 2010.

ADDRESSES: Congress Hall, 251 Beach Avenue, Cape May, New Jersey 08204; telephone: 609–884–8421.

Council Address: Mid-Atlantic Fishery Management Council, 800 N. State St., Suite 201, Dover, DE 19901–3910; telephone: 302–674–2331.

FOR FURTHER INFORMATION CONTACT: Christopher M. Moore Ph.D., Executive Director, Mid-Atlantic Fishery Management Council; telephone: 302–674–2331 ext. 255.

SUPPLEMENTARY INFORMATION:

Agenda

On Tuesday, October 12, 2010–The Joint Spiny Dogfish Committee with meet from 9:30 a.m. until 12 p.m. The Ecosystems and Oceans Planning Committee will meet from 1 p.m. until 4 p.m. The Demersal and Coastal Migratory Committee will meet from 4 p.m. until 5 p.m. The Law Enforcement Committee will meet from 5 p.m. until 5:30 p.m. On Wednesday, October 13, 2010–The Executive Committee will hold a closed meeting from 8 a.m. until 9 a.m. The Council will convene at 9 a.m. From 9 a.m. until 10 a.m. the Council will receive a (MARCO) presentation. Spiny Dogfish Management Measures for 2011 and beyond will be discussed from 10 a.m. until 12 p.m. The Squid, Mackerel, and Butterfish Committee will meet from 1 p.m. until 3 p.m. On Thursday, October 14, 2010–The Council will convene at 8 a.m. Parliamentary Training will be held from 8 a.m. until 10 a.m. From 10 a.m. until 1 p.m. the Council will convene to conduct its regular Business Session, receive Organizational Reports, Council Liaison Reports, Executive Director's Report, receive a report on the status of MAFMC's FMPs, any continuing and/or new business, and Committee Reports.

Agenda items by day for the Council's Committees and the Council itself are: On Tuesday, October 12–The Joint Spiny Dogfish Committee will review and discuss SSC and Monitoring Committee recommendations as they relate to dogfish management measures for the 2011 fishing year and beyond and develop management measure recommendations for the 2011 fishing year and beyond. The Ecosystems and Ocean Planning Committee will receive an Atlantic Wind Connection project presentation by Mark Melnyk, a Fishermen's Energy wind project presentation by Dan Cohen, and a presentation by Michele Bachman on the New England Fishery Management Council's Omnibus Habitat Amendment. The Demersal and Coastal Migratory Committee will identify and discuss issues associated with present scup allocations. The Law Enforcement Committee will review the Fisheries Achievement Award (FAA) nominations and recommend a recipient for recognition. On Wednesday, October 13–The Executive Committee will hold a closed meeting. The Council will convene to receive a MARCO presentation by Laura McKay, Program Manager Virginia Coastal Zone Program. The Council will review and discuss the Scientific and Statistical Committee (SSC), the Monitoring Committee and the Joint Committee regarding Spiny Dogfish specifications as they relate to dogfish management measures for the 2011 fishing year and beyond and develop management measure recommendations for the 2011 fishing year and beyond. The Squid, Mackerel, and Butterfish Committee will meet as a Committee of the Whole to review public comments on the Supplemental Environmental Impact Statement (EIS) for Amendment 11 and select alternatives for final submission of Amendment 11. On Thursday October 14–The Council will convene to receive Parliamentary Training from Collette Trohan from A Great Meeting, Inc. The Council will hold its regular Business Session to approve the June and August minutes, receive Organizational Reports, the Liaison Reports, the Executive Director's Report, Status of the FMP's, conduct any continuing and/or new business, and receive Committee Reports.

Special Accommodations

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aid should be directed to M. Jan Saunders (302–526–5251) at least five days prior to the meeting date.

Dated: September 20, 2010.

Tracey L. Thompson,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 2010–23777 Filed 9–22–10; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Institute of Standards and Technology

Announcing a Meeting of the Information Security and Privacy Advisory Board

AGENCY: National Institute of Standards and Technology, Commerce.

ACTION: Notice.

SUMMARY: The Information Security and Privacy Advisory Board (ISPAB) will meet Wednesday, November 3, 2010, from 9 a.m. until 4:30 p.m., Thursday, November 4, 2010, from 8:30 a.m. until 5 p.m., and Friday, November 5, 2010 from 8 a.m. until 12:30 p.m. All sessions will be open to the public.

DATES: The meeting will be held on Wednesday, November 3, 2010, from 9 a.m. until 4:30 p.m., Thursday, November 4, 2010, from 8:30 a.m. until 5 p.m., and Friday, November 5, 2010 from 8 a.m. until 12:30 p.m.

ADDRESSES: The meeting will take place at the Marriott Hotel Washington, 1221 22nd Street, NW., Washington, District Of Columbia 20037 on November 3, 4, & 5, 2010. Please see admittance instructions in the **SUPPLEMENTARY INFORMATION** section of this notice.

FOR FURTHER INFORMATION CONTACT: Mr. Matthew Scholl, Information Technology Laboratory, National Institute of Standards and Technology, 100 Bureau Drive, Stop 8930, Gaithersburg, MD 20899–8930, *telephone:* (301) 975–2006.

SUPPLEMENTARY INFORMATION: Pursuant to the Federal Advisory Committee Act, 5 U.S.C. App., notice is hereby given that the Information Security and Privacy Advisory Board (ISPAB) will meet Wednesday, November 3, 2010, from 9 a.m. until 4:30 p.m., Thursday, November 4, 2010, from 8:30 a.m. until 5 p.m., and Friday, November 5, 2010 from 8 a.m. until 12:30 p.m. All sessions will be open to the public. The ISPAB was established by the Computer

Security Act of 1987 (Pub. L. 100–235) and amended by the Federal Information Security Management Act of 2002 (Pub. L. 107–347) to advise the Secretary of Commerce and the Director of NIST on security and privacy issues pertaining to federal computer systems. Details regarding the ISPAB's activities are available at *http://csrc.nist.gov/groups/SMA/ispab/index.html/.*

The agenda is expected to include the following items:

—Medical Device Vendor Panel discussion of security, anti-virus and patching issues,
—Inspectors General Panel discussion on current trends and methods for assessing agencies and thoughts on continuous monitoring,
—Presentation from USCert and the National Vulnerability Database to discuss attack and reporting data and vulnerability trends,
—Presentation from Mississippi State University on Current Research in Computer Forensics,
—CIO Panel discussion on value of clearances for understanding of threat space and influence on security programs,
—U.S. Government Configuration Baseline (USGCB),
—Secure Domain Name System (DNSSec) Deployment propagation report,
—Agency Approaches to Security Programs, CISO Innovations and micro-agencies,
—Talk with the National Security Staff/Cyber Coordinators Office,
—Update of NIST Computer Security Division, and
—Information Security and Privacy Advisory Board Work Planning Session.

Note that agenda items may change without notice because of possible unexpected schedule conflicts of presenters. The final agenda will be posted on the Web site indicated above.

Public Participation: The ISPAB agenda will include a period of time, not to exceed thirty minutes, for oral comments from the public (Thursday November 4, 2010, at 3–3:30 p.m.). Each speaker will be limited to five minutes. Members of the public who are interested in speaking are asked to contact Mr. Matthew Scholl at the telephone number indicated above.

In addition, written statements are invited and may be submitted to the ISPAB at any time. Written statements should be directed to the ISPAB Secretariat, Information Technology Laboratory, 100 Bureau Drive, Stop 8930, National Institute of Standards and Technology, Gaithersburg, MD 20899–8930. Approximately 15 seats will be available for the public and media.

Dated: September 14, 2010.

Harry S. Hertz,

Director, Baldrige National Quality Program.

[FR Doc. 2010–23723 Filed 9–22–10; 8:45 am]

BILLING CODE 3510–13–P

CONSUMER PRODUCT SAFETY COMMISSION

Sunshine Act Meetings

FEDERAL REGISTER CITATION OF PREVIOUS ANNOUNCEMENT: Vol. 75, No. 181, Monday, September 20, 2010, page 57264.

PREVIOUSLY ANNOUNCED TIME AND DATE OF MEETINGS: (1) Open to Public—10 a.m.–12 Noon., and (2) Closed to Public—2 p.m.–3 p.m., Wednesday September 22, 2010.

CHANGES TO MEETINGS: (1) For Meeting Open to the Public, Item 1. Decisional Matter: Final Interpretative Rule: Interpretation of Children's Product POSTPONED; (2) Time for Item 2: Briefing Matter: Strategic Plan, rescheduled to 10 a.m.–11 a.m.; and (3) Time for Closed Compliance Status Report rescheduled to 11 a.m.–12 Noon; For a recorded message containing the latest agenda information, call (301) 504–7948.

CONTACT PERSON FOR ADDITIONAL INFORMATION: Todd A. Stevenson, Office of the Secretary, 4330 East West Highway, Bethesda, MD 20814 (301) 504–7923.

Dated: September 21, 2010.

Todd A. Stevenson,

Secretary.

[FR Doc. 2010–24018 Filed 9–21–10; 4:15 pm]

BILLING CODE 6355–01–P

CONSUMER PRODUCT SAFETY COMMISSION

Sunshine Act Meetings

TIME AND DATE: Wednesday, September 29, 2010, 10 a.m.–11 a.m.

PLACE: Hearing Room 420, Bethesda Towers, 4330 East West Highway, Bethesda, Maryland.

STATUS: Commission Meeting—Open to the Public.

Matter To Be Considered

1. *Decisional Matter:* Final Interpretative Rule: Interpretation of Children's Product.

A live Webcast of the Meeting can be viewed at *http://www.cpsc.gov/webcast.*

For a recorded message containing the latest agenda information, call (301) 504–7948.

CONTACT PERSON FOR MORE INFORMATION: Todd A. Stevenson, Office of the Secretary, U.S. Consumer Product Safety Commission, 4330 East West Highway, Bethesda, MD 20814, (301) 504–7923.

Dated: September 21, 2010.

Todd A. Stevenson,

Secretary.

[FR Doc. 2010–24020 Filed 9–21–10; 4:15 pm]

BILLING CODE 6355–01–P

CONSUMER PRODUCT SAFETY COMMISSION

Sunshine Act Meetings

TIME AND DATE: Wednesday, September 29, 2010; 11 a.m.–12 Noon.

PLACE: Hearing Room 420, Bethesda Towers, 4330 East West Highway, Bethesda, Maryland.

STATUS: Closed to the Public.

Matter To Be Considered

Compliance Status Report

The Commission staff will brief the Commission on the status of compliance matters. For a recorded message containing the latest agenda information, call (301) 504–7948.

CONTACT PERSON FOR MORE INFORMATION: Todd A. Stevenson, Office of the Secretary, U.S. Consumer Product Safety Commission, 4330 East West Highway, Bethesda, MD 20814, (301) 504–7923.

Dated: September 21, 2010.

Todd A. Stevenson,

Secretary.

[FR Doc. 2010–24023 Filed 9–21–10; 4:15 pm]

BILLING CODE 6355–01–P

CORPORATION FOR NATIONAL AND COMMUNITY SERVICE

Sunshine Act Meeting Notice

The Board of Directors of the Corporation for National and Community Service gives notice of the following meeting:

DATE AND TIME: Wednesday, September 29, 2010, 11 a.m.–12:30 p.m.

PLACE: Corporation for National and Community Service, 1201 New York Avenue, NW., Suite 8312, Washington, DC 20525 (Please go to 10th floor reception area for escort).

CALL-IN INFORMATION: This meeting is available to the public through the

following toll-free call-in number: 800–369–1155 conference call access code number 76988. Any interested member of the public may call this number and listen to the meeting. Callers can expect to incur charges for calls they initiate over wireless lines, and the Corporation will not refund any incurred charges. Callers will incur no charge for calls they initiate over land-line connections to the toll-free telephone number. Replays are generally available one hour after a call ends. The toll-free phone number for the replay is 888–568–0542. The end replay date: October 19, 10:59 PM (CT).

STATUS: Open.

Matters To Be Considered

I. Chair's Opening Comments.
II. Consideration of Previous Meeting's Minutes.
III. CEO Report.
IV. Committee Reports:
a. Oversight, Governance and Audit Committee.
b. External Relations Committee.
c. Program, Budget and Evaluation Committee.
V. Review of Strategy Brief.
VI. Public Comments.

The Board will consider public comments on a Strategy Brief for the agency's 2011–2015 Strategic Plan. As of September 22, the Strategy Brief can be found here: *http://www.nationalservice.gov/about/focus_areas/index.asp* along with instructions for how to submit written comments for the Board to consider. Written comments must be received by 5 p.m. on Friday September 24th. Members of the public who are attending the meeting in person may also make comments for the Board to consider. Individuals who would like to speak will be asked to sign-in upon arrival.

REASONABLE ACCOMMODATIONS: The Corporation for National and Community Service provides reasonable accommodations to individuals with disabilities where appropriate. Anyone who needs an interpreter or other accommodation should notify Ida Green at *igreen@cns.gov* or 202–606–6861 by 5 p.m., September 24, 2010.

CONTACT PERSON FOR MORE INFORMATION: Emily Samose, Office of the CEO, Corporation for National and Community Service, 9th Floor, Room 9613C, 1201 New York Avenue, NW., Washington, DC 20525. Phone (202) 606–7564. Fax (202) 606–3460. TDD: (202) 606–3472. *E-mail: esamose@cns.gov.*

Dated: September 21, 2010.

Wilsie Y. Minor,

Acting General Counsel.

[FR Doc. 2010–24009 Filed 9–21–10; 4:15 pm]

BILLING CODE 6050–$$–P

DEPARTMENT OF DEFENSE

Office of the Secretary

Membership of the Defense Contract Audit Agency Senior Executive Service Performance Review Boards

AGENCY: Defense Contract Audit Agency, DOD.

ACTION: Notice.

SUMMARY: This notice announces the appointment of members to the Defense Contract Audit Agency (DCAA) Performance Review Boards. The Performance Review Boards provide fair and impartial review of Senior Executive Service (SES) performance appraisals and make recommendations to the Director, DCAA, regarding final performance ratings and performance awards for DCAA SES members.

DATES: Effective upon publication of this notice.

FOR FURTHER INFORMATION CONTACT: Sandra L. Burrell, Chief, Human Resources Management Division, Defense Contract Audit Agency, 8725 John J. Kingman Road, Suite 2133, Fort Belvoir, Virginia 22060–6219, (703) 767–1039.

SUPPLEMENTARY INFORMATION: In accordance with 5 U.S.C. 4314(c)(4), the following are the names and titles of DCAA career executives appointed to serve as members of the DCAA Performance Review Boards. Appointees will serve one-year terms, effective upon publication of this notice.

Headquarters Performance Review Board

Mr. Kenneth Saccoccia, Assistant Director, Policy and Plans, DCAA; chairperson.

Ms. Karen Cash, Assistant Director, Operations; member.

Mr. Thomas Peters, Director, Field Detachment, DCAA; member.

Regional Performance Review Board

Mr. Ronald Meldonian, Regional Director, Northeastern Region, DCAA; chairperson.

Mr. Paul Phillips, Regional Director, Eastern Region, DCAA; member.

Mr. Edward Nelson, Regional Director, Central Region, DCAA; member.

Dated: September 20, 2010.

Mitchell S. Bryman,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2010–23781 Filed 9–22–10; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Docket ID: DOD–2010–OS–0120]

Privacy Act of 1974; System of Records; Correction

AGENCY: Department of Defense (DoD).

ACTION: Notice to delete a system of records; correction.

SUMMARY: On September 13, 2010 (75 FR 55576), DoD published a notice announcing its intent to delete a Privacy Act system of records. Within that notice an incorrect Air Force system ID number and title was cited under the reasons for deleting a system of records. Also, in one instance, an incorrect system ID number was cited for the proposed deletion. This notice corrects those errors.

DATES: This proposed action will be effective without further notice on October 13, 2010, unless comments are received which result in a contrary determination.

ADDRESSES: You may submit comments, identified by docket number and title, by any of the following methods:

- *Federal Rulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Mail:* Federal Docket Management System Office, Room 3C843 Pentagon, 1160 Defense Pentagon, Washington, DC 20301–1160.

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

FOR FURTHER INFORMATION CONTACT: Mrs. Cindy Allard at (703) 588–6830.

SUPPLEMENTARY INFORMATION: The Office of the Secretary of Defense systems of records notices subject to the Privacy Act of 1974, (5 U.S.C. 552a), as amended, have been published in the **Federal Register** and are available from the Privacy Act Officer, Office of Freedom of Information, Washington

Headquarters Services, 1155 Defense Pentagon, Washington, DC 20301–1155.

On September 13, 2010, DoD published a notice announcing its intent to delete a Privacy Act system of records: OSD Military Personnel Files (October 6, 2006; 71 FR 59092). Subsequent to the publication of that notice, DoD discovered that the system ID number and title listed for an Air Force system of records is incorrect. In one instance, the September 13 notice also contained a typographical error regarding the system ID number for the proposed deletion. This notice corrects that information.

Corrections

In the notice published on September 13, 2010, in FR Doc. 2010–22755:

1. On page 55576 in the second column, under the heading "REASON", in line 2, correct the parenthetical system ID number to read "DWHS P47".

2. On page 55576 in the third column, in lines 6, 7, and 8, remove the following system ID number and title "Air Force F036 AFPC C, Indebtedness, Nonsupport Paternity" and add in its place "Air Force F 036 AF PC C, Applications for Appointment and Extended Active Duty Files".

Dated: September 20, 2010.

Mitchell S. Bryman,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2010–23791 Filed 9–22–10; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Department of the Navy

Meeting of the Secretary of the Navy Advisory Panel

AGENCY: Department of the Navy, DoD.

ACTION: Notice of partially closed meeting.

SUMMARY: The Secretary of the Navy Advisory Panel (SECNAV Advisory Panel) will deliberate the findings and recommendations for the Department of the Navy's Energy program and Asia/Pacific Engagement topic.

DATES: The meeting will be held on October 13, 2010, from 8 a.m. to 4:30 p.m.

With the exception of the Chairman's, Designated Federal Officer, Energy briefings, Public Comment, and the Energy Study deliberation (8 a.m.–12 p.m.), all other meeting sessions will be closed.

ADDRESSES: The meeting will be held at the Pentagon in the N89 Conference Room, located in room 4D447.

Access: Public access is limited due to the Pentagon security requirements. Members of the public wishing to attend will need to contact Commander Cary Knox at 703–693–0463 or Commander Marc Gage at 703–695–3042 no later than October 6, 2010, and provide their name, date of birth and Social Security number. Public transportation is recommended as public parking is not available. Members of the public wishing to attend this event must enter through the Pentagon's Metro Entrance between 7 a.m. and 7:30 a.m. where they will need two forms of identification in order to receive a visitors badge and meet their escort.

Members will then be escorted to the N89 Conference Room to attend the open sessions of the SECNAV Advisory Panel. Members of the public shall remain with their designated escorts at all times while on the Pentagon Reservation. Members of the public will be escorted back to the Pentagon Metro Entrance at 12 p.m. unless prior coordination is made to leave earlier.

FOR FURTHER INFORMATION CONTACT: Captain Jon Kaufmann, Designated Federal Officer, SECNAV Advisory Panel, Office of Program Appraisal, 1000 Navy Pentagon, Washington, DC 20350, 703–695–3032.

SUPPLEMENTARY INFORMATION: Pursuant to the provisions of the Federal Advisory Committee Act (5 U.S.C. App. 2), these matters constitute classified information that is specifically authorized by Executive Order to be kept secret in the interest of national defense and are, in fact, properly classified pursuant to such Executive Order. Accordingly, the SECNAV has determined in writing that the public interest requires that portions of this meeting be closed to the public because they will be concerned with matters listed in section 552b(c)(1), of title 5, United States Code.

Individuals or interested groups may submit written statements for consideration by the SECNAV Advisory Panel at any time or in response to the agenda of a scheduled meeting. All requests must be submitted to the Designated Federal Officer at the address detailed below.

If the written statement is in response to the agenda mentioned in this meeting notice then the statement, if it is to be considered by the SECNAV Advisory Panel for this meeting, must be received at least five days prior to the meeting in question.

The Designated Federal Officer will review all timely submissions with the SECNAV Advisory Panel Chairperson, and ensure they are provided to members of the SECNAV Advisory Panel before the meeting that is the subject of this notice.

To contact the Designated Federal Officer, write to: Designated Federal Officer, SECNAV Advisory Panel, Office of Program and Process Assessment 1000 Navy Pentagon, Washington, DC 20350, 703–697–9154.

Dated: September 17, 2010.

D. J. Werner,

Lieutenant Commander, Office of the Judge Advocate General, U.S. Navy, Federal Register Liaison Officer.

[FR Doc. 2010–23855 Filed 9–22–10; 8:45 am]

BILLING CODE 3810–FF–P

DEPARTMENT OF EDUCATION

[Docket ID ED–2010–OESE–0016]

RIN 1810–AB08

Teacher Incentive Fund

ACTION: Interim final requirements; request for comments.

SUMMARY: The Secretary of Education (Secretary) amends the final requirements for the Teacher Incentive Fund program to authorize the Department to select more than sixteen high-need schools per local educational agency (LEA) for participation in the Congressionally mandated TIF national evaluation.

DATES: These interim final requirements are effective September 23, 2010. We must receive your comments by October 25, 2010.

ADDRESSES: Submit your comments through the Federal eRulemaking Portal or via postal mail, commercial delivery, or hand delivery. We will not accept comments by fax or by e-mail. Please submit your comments only one time, in order to ensure that we do not receive duplicate copies. In addition, please include the Docket ID at the top of your comments.

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov* to submit your comments electronically. Information on using Regulations.gov, including instructions for accessing agency documents, submitting comments, and viewing the docket, is available on the site under "How To Use This Site."
- *Postal Mail, Commercial Delivery, or Hand Delivery:* If you mail or deliver your comments about these interim final requirements, address them to Office of Elementary and Secondary Education (Attention: Teacher Incentive Fund Comments), U.S. Department of Education, 400 Maryland Avenue, SW., room 3E120, Washington, DC 20202.

• *Privacy Note:* The Department's policy for comments received from members of the public (including those comments submitted by mail, commercial delivery, or hand delivery) is to make these submissions available for public viewing in their entirety on the Federal eRulemaking Portal at *http://www.regulations.gov.* Therefore, commenters should be careful to include in their comments only information that they wish to make publicly available on the Internet.

FOR FURTHER INFORMATION CONTACT: April Lee. Telephone: (202) 205–5224, or by e-mail: *TIF@ed.gov.* Note that we will not accept comments by e-mail.

If you use a telecommunications device for the deaf (TDD), call the Federal Relay Service (FRS), toll free, at 1–800–877–8339.

Individuals with disabilities can obtain this document in an accessible format (*e.g.,* braille, large print, audiotape, or computer diskette) on request to the contact person listed under **FOR FURTHER INFORMATION CONTACT**.

SUPPLEMENTARY INFORMATION:

Invitation To Comment

We invite you to submit comments regarding these interim final requirements and to assist us in complying with the specific requirements of Executive Order 12866 and its overall requirement of reducing regulatory burden that might result from these interim final requirements.

During and after the comment period you may inspect all public comments about these interim final requirements by accessing *http://www.regulations.gov.* You may also inspect the comments, in person, in room 3W100, 400 Maryland Avenue, SW., Washington, DC, between the hours of 8:30 a.m. and 4 p.m., Washington, DC time, Monday through Friday of each week except Federal holidays.

Assistance to Individuals with Disabilities in Reviewing the Rulemaking Record: On request, we will provide an appropriate accommodation or auxiliary aid to an individual with a disability who needs assistance to review the comments or other documents in the public rulemaking record for this notice. If you want to schedule an appointment for this type of accommodation or auxiliary aid, please contact the person listed under **FOR FURTHER INFORMATION CONTACT**.

Background and Summary of Interim Final Requirements: On May 21, 2010, the Secretary published a notice of final priorities, requirements, definitions, and selection criteria (NFP) for the TIF program in the **Federal Register** (75 FR 28713). The purpose of the TIF program is to support projects that develop and implement performance-based compensation systems for teachers, principals, and other personnel in high-need schools in order to increase educator effectiveness and student achievement, measured in significant part by student growth.

The NFP announced priorities, requirements, definitions, and selection criteria that would govern two separate TIF competitions, the Main TIF competition and the TIF Evaluation competition. In the same issue of the **Federal Register**, the Secretary also published a notice inviting applications (NIA) for both TIF competitions for FY 2010 (75 FR 28740).

The TIF Evaluation competition responds to a requirement in the American Recovery and Reinvestment Act of 2009, Division A, Title VIII, Public Law 111–5 (the ARRA), that the Secretary use a portion of the funds appropriated in the ARRA to conduct a national evaluation of the TIF program. Specifically, along with authorizing TIF funds to be used to support projects that implement performance-based compensation systems (PBCSs), the ARRA also requires the Department to use the appropriated funds to conduct a "rigorous national evaluation . . . utilizing randomized controlled methodology to the extent feasible, that assesses the impact of performance-based teacher and principal compensation systems supported by the funds provided in this Act on teacher and principal recruitment and retention in high-need schools and subjects." The ARRA thus requires the Department to conduct a national evaluation that will ensure adequate participation of both a treatment group and a control group.

In response to Congress' mandate, the Department developed a study methodology that relies on a sufficient number of high-need schools—both "treatment schools" in which teachers would be eligible for performance-based compensation that is one element of the LEA's PBCS, and "control schools" in which teachers would be part of the PBCS but would not be eligible to receive performance-based compensation that would be spread across a sufficient number of LEAs to yield sufficiently meaningful and generally applicable results. The Department announced in the NFP that each applicant for the TIF Evaluation competition had to identify eight or more high-need schools to be included in the TIF Evaluation. Based on our projections that 20 applicants would submit sufficiently high-quality applications for the TIF Evaluation competition, and the number of high-need schools that those applicants would propose to be included in the TIF Evaluation competition, the Department announced in the NFP that applicants could select up to 16 high-need schools per LEA to participate in the TIF Evaluation. *See* 75 FR 28735.

As an incentive for applicants to identify high-need schools for inclusion in the TIF Evaluation, the Department also announced in the NFP (75 FR 28734) that applicants whose schools were selected for inclusion in the evaluation would receive additional funding of up to $2 million to be used for TIF-related activities as specified in the NFP—$1 million for inclusion of up to eight high-need schools (four pairs), and an additional $250,000 for each additional pair of high-need schools up to a maximum of 16 schools.

After non-Federal readers reviewed and scored applications for the TIF Evaluation competition, the Department determined that the number of applicants that submitted high-quality applications for the TIF Evaluation competition, and the number of high-need schools those applicants identified for inclusion in the evaluation, were lower than the Department wanted for a study that has the desired statistical power. Even after extending an opportunity to applicants that had submitted high-quality applications for the TIF Evaluation competition to identify additional schools, up to 16 per LEA, for inclusion in the national TIF Evaluation, the number of high-need schools identified for inclusion was still lower than the Department desired for its study sample size.

The Department's decision to cap at 16 the number of an LEA's high-need schools that could be included in the evaluation (and the number of high-need schools for which the Department would provide successful applicants with incentive funding under the TIF Evaluation competition) was intended to enable the evaluation to look at the impact of performance-based compensation in a substantial number of geographically diverse LEAs. And, at the time it adopted the requirement, the Department had every reason to believe that it would receive a sufficient number of high-quality applications such that a 16-school cap would not limit the effectiveness of the evaluation. However, based on the number of applications deemed of sufficiently high quality to warrant funding, the Department has determined that including more than 16 high-need schools per LEA in the evaluation is

necessary if the Department is to use a strong design to conduct the Congressionally mandated study. Accordingly, the Secretary has decided to revise the requirements announced in the NFP by removing the cap of 16 high-need schools per LEA that may be included in the TIF Evaluation, and by removing the cap of $2,000,000 on the incentive payments that may be provided to grantees identifying additional pairs of schools, beyond the minimum required four pairs of such schools.

We recognize that implementation of this new requirement has budgetary implications for applicants that choose to offer more than 16 schools per LEA for inclusion in the evaluation. In addition to the additional incentive payments and funding for the other costs of implementing the PBCS, as stated in the NFP, the Department will provide to grantees with schools participating in the evaluation: (a) A one-percent across-the-board supplemental bonus payment for teachers, principals, and other personnel (at those sites in which the grantee has chosen to expand its PBCS to include these additional staff) in all control schools, and (b) funds necessary to meet the costs of implementing the supplemental differentiated effectiveness incentive component of the PBCS in all treatment schools. However, the Department has determined that, given the amount of available TIF funding and the limited number of high-quality applications, inclusion of additional schools beyond 16 per LEA and the award of the additional funds for inclusion of such schools will have no adverse impact on the number of grantees or the size of the TIF award that any grantee—under either the Main TIF competition or the TIF Evaluation competition—would otherwise receive.

Waiver of Rulemaking and Delayed Effective Date

Under the Administrative Procedure Act (APA) (5 U.S.C. 553), the Department is generally required to publish a notice of proposed rulemaking and provide the public with an opportunity to comment on proposed regulations prior to establishing a final rule. However, we are waiving the notice-and-comment rulemaking requirements under the APA. Section 553(b) of the APA provides that an agency is not required to conduct notice-and-comment rulemaking when the agency for good cause finds that notice and public procedure thereon are impracticable, unnecessary, or contrary to the public interest. Although these requirements are subject to the APA's notice-and-comment requirements, the Secretary has determined that it would be impracticable and contrary to the public interest to conduct notice-and-comment rulemaking.

As noted above, these interim final requirements are needed to permit the Department to include in the Congressionally mandated evaluation of the TIF program a sufficient number of high-need schools to yield study results in which one may have great confidence. The prior requirements, which limited the number of high-need schools to be included in the TIF Evaluation and the Department's award of an incentive for inclusion of such schools, to 16 per LEA and $2,000,000 in incentive payments, respectively, were based on our assumptions about numbers of high-quality applications the Department would receive, assumptions that were not correct. Additionally, we have determined that imposition of those prior requirements may prevent the TIF Evaluation from achieving its intended purpose.

As also noted in the discussion in the preceding section, this change in the TIF Evaluation competition requirements will have no financial impact on any applicant. No applicant will be denied or receive decreased TIF funding because of a decision to permit other applicants to increase the number of high-need schools participating in the evaluation and to provide greater incentive payments to them for doing so. Moreover, the Department's authority to make TIF awards under both the Main TIF competition and the TIF Evaluation competition expires on October 1, 2010. Waiver of rulemaking and the delayed effective date are needed to permit these requirements to become effective, and to make TIF awards by September 30, 2010. Even on the most expedited timeline, it would be impossible for the Department to conduct notice-and-comment rulemaking and then promulgate final requirements before the October 1, 2010 deadline as this process normally takes six months. With the Department's ability to conduct the required evaluation at stake, and with so much interest in the results of the study as they apply to performance-based compensation systems, it would be impracticable and contrary to the public interest for the Department to take this risk of not obligating funds available under the TIF Evaluation competition by September 30, 2010.

Accordingly, and in order to make timely grant awards with ARRA funds, the Secretary is issuing these interim final requirements without first publishing proposed requirements for public comment. These interim final requirements govern only the selection of schools for the TIF Evaluation.

Although the Department is adopting these requirements on an interim final basis, the Department requests public comment on the requirements. After consideration of public comments, the Secretary will publish final requirements.

The APA also requires that a substantive rule be published at least 30 days before its effective date, except as otherwise provided for good cause (5 U.S.C. 553(d)(3)). For the reasons outlined in the preceding paragraphs, the Secretary has determined that a delayed effective date for these interim final requirements would be unnecessary and contrary to the public interest, and that good cause exists to waive the requirement for a delayed effective date. As such, these interim final requirements are effective on the date of publication.

Interim Final Requirements

For the reasons discussed previously, the Secretary amends the final priorities, requirements, definitions, and selection criteria for the TIF program, published in the **Federal Register** on May 21, 2010 (75 FR 28714), by revising—

(a) The Budget Information section (75 FR 28734):

Budget Information

In paragraph one, the last sentence is revised to read as follows: "For each additional pair of schools participating in the evaluation, a successful applicant will receive an additional $250,000."

(b) The *Scope of Schools* section (75 FR 28735–28736):

Scope of Schools

1. In paragraph one, the last sentence, "In addition, no LEA will have more than 16 high-need schools (as defined in this notice) selected for the TIF Evaluation.", is removed.

2. In paragraph two, the last sentence, "The Department will use the number of eligible schools, up to 16 per LEA, that a successful applicant makes available for the TIF Evaluation.", is removed.

Executive Order 12866

Under Executive Order 12866, the Secretary must determine whether a regulatory action is "significant" and therefore subject to the requirements of the Executive order and subject to review by the Office of Management and Budget (OMB). Section 3(f) of Executive Order 12866 defines a "significant regulatory action" as an action likely to

result in a rule that may (1) Have an annual effect on the economy of $100 million or more, or adversely affect a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local or Tribal governments or communities in a material way (also referred to as an "economically significant" rule); (2) create serious inconsistency or otherwise interfere with an action taken or planned by another agency; (3) materially alter the budgetary impacts of entitlement grants, user fees, or local programs or the rights and obligations of recipients thereof; or (4) raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive order. The Secretary has determined that this regulatory action is significant under section 3(f) of the Executive order.

Potential Costs and Benefits

Under Executive Order 12866, we have assessed the potential costs and benefits of this regulatory action and have determined that these interim final requirements will not impose additional costs to grantees or the Federal government. The Department is regulating only to permit, at the discretion of each applicant that submits an application of sufficient quality, more schools per LEA to be included in the national evaluation. Additionally, the Department has determined that this regulatory action does not unduly interfere with State, local, and Tribal governments in the exercise of their governmental functions.

Regulatory Flexibility Act Certification

The small entities affected by this regulatory action are (1) small LEAs, and (2) nonprofit organizations applying for and receiving funds under this program in partnership with an LEA or a State educational agency (SEA). For the reasons stated in the NFP, 75 FR 28738–28739, the Secretary certifies that this regulatory action will not have a significant economic impact on a substantial number of small entities.

Paperwork Reduction Act of 1995

These interim final requirements contain no new information collection requirements that are subject to review by OMB under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

Intergovernmental Review

This program is subject to Executive Order 12372 and the regulations in 34 CFR part 79. One of the objectives of the Executive Order is to foster an intergovernmental partnership and a strengthened federalism. The Executive Order relies on processes developed by State and local governments for coordination and review of proposed Federal financial assistance.

This document provides notification of our specific plans regarding the TIF Evaluation competition for this program.

Electronic Access to This Document

You may 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: September 21, 2010.

Thelma Meléndez de Santa Ana,

Assistant Secretary for Elementary and Secondary Education.

[FR Doc. 2010–23922 Filed 9–22–10; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Proposed Agency Information Collection

AGENCY: U.S. Department of Energy.

ACTION: Notice and request for OMB review and comment.

SUMMARY: The Department of Energy (DOE) has submitted to the Office of Management and Budget (OMB) for clearance, a proposal for collection of information under the provisions of the Paperwork Reduction Act of 1995. The proposed collection will collect data on the status of Weatherization Assistance Program (WAP), State Energy Program (SEP) and Energy Efficiency and Conservation Block Grant (EECBG) Program activities under the American Recovery and Reinvestment Act of 2009 to ensure that recipients are compliant with Section 106 of the National Historic Preservation Act (NHPA). Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

DATES: Comments regarding this collection must be received on or before October 7, 2010. Comments should be specific in nature and indicate as precisely as possible the applicable guidance documents. If you anticipate difficulty in submitting comments within that period, contact the person listed below as soon as possible. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, please advise the DOE Desk Officer at OMB of your intention to make a submission as soon as possible. The Desk Officer may be contacted at 202–395–4650.

ADDRESSES: Written comments should be sent to the DOE Desk Officer, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 10102, 735 17th Street, NW., Washington, DC 20503; and to Christine Platt Patrick, EE–2K, U.S. Department of Energy, 1000 Independence Ave., SW., Washington, DC 20585, Fax: (202) 586–1233, E-mail: *Christine.Platt@ee.doe.gov* (Preferred).

FOR FURTHER INFORMATION CONTACT: Christine Platt Patrick, EE–2K, U.S. Department of Energy, 1000 Independence Ave., SW., Washington, DC 20585, Fax: (202) 586–1233, E-mail: *Christine.Platt@ee.doe.gov.*

Draft reporting guidance concerning the Historic Preservation reporting requirement for EECBG, WAP, and SEP will be available for review at the following Web site: *http://www1.eere.energy.gov/wip/recovery_act_guidance.html.*

SUPPLEMENTARY INFORMATION: This information collection request contains: *OMB No:* New; (2) *Information Collection Request Title:* Historic Preservation for Office of Weatherization and Intergovernmental Programs; (3) *Type of Request:* Emergency; (4) *Purpose:* To collect data on the status of Weatherization Assistance Program (WAP), State Energy Program (SEP) and Energy Efficiency and Conservation Block Grant (EECBG) Program activities to ensure compliance with Section 106 of the NHPA. (5)

Annual Estimated Number of Respondents: 2,473; (6) *Annual Estimated Number of Total Responses:* 2,473 (7) *Annual Estimated Number of Burden Hours:* 2,473; (8) *Annual Estimated Reporting and Recordkeeping Cost Burden:* 0. Statutory Authority: Section 106 of the National Historic Preservation Act (Pub. L. 89–665 106) and its implementing regulations.

Issued in Washington, DC on September 16, 2010.

Cathy Zoi,

Assistant Secretary, Energy Efficiency and Renewable Energy.

[FR Doc. 2010–23796 Filed 9–22–10; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

[OE Docket No. EA–373]

Application to Export Electric Energy; EDF Trading North America, LLC

AGENCY: Office of Electricity Delivery and Energy Reliability, DOE.

ACTION: Notice of application.

SUMMARY: EDF Trading North America, LLC (EDF) has applied for authority to transmit electric energy from the United States to Mexico pursuant to section 202(e) of the Federal Power Act.

DATES: Comments, protests, or requests to intervene must be submitted on or before October 25, 2010.

ADDRESSES: Comments, protests, or requests to intervene should be addressed as follows: Office of Electricity Delivery and Energy Reliability, Mail Code: OE–20, U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585–0350 (FAX 202–586–8008).

FOR FURTHER INFORMATION CONTACT: Christopher Lawrence (Program Office) 202–586–5260 or Michael Skinker (Program Attorney) 202–586–2793.

SUPPLEMENTARY INFORMATION: Exports of electricity from the United States to a foreign country are regulated by the Department of Energy (DOE) pursuant to sections 301(b) and 402(f) of the Department of Energy Organization Act (42 U.S.C. 7151(b), 7172(f)) and require authorization under section 202(e) of the FPA (16 U.S.C. 824a(e)).

On August 30, 2010, DOE received an application from EDF for authority to transmit electric energy from the United States to Mexico for five years as a power marketer using existing international transmission facilities. EDF does not own any electric transmission facilities nor does it hold a franchised service area.

The electric energy that EDF proposes to export to Mexico would be surplus energy purchased from electric utilities, Federal power marketing agencies and other entities within the United States. The existing international transmission facilities to be utilized by EDF have previously been authorized by Presidential permits issued pursuant to Executive Order 10485, as amended, and are appropriate for open access transmission by third parties.

Procedural Matters: Any person desiring to become a party to these proceedings or to be heard by filing comments or protests to this application should file a petition to intervene, comment, or protest at the address provided above in accordance with §§ 385.211 or 385.214 of the Federal Energy Regulatory Commission's Rules of Practice and Procedures (18 CFR 385.211, 385.214). Fifteen copies of each petition and protest should be filed with DOE on or before the date listed above.

Comments on the EDF application to export electric energy to Mexico should be clearly marked with Docket No. EA–373. Additional copies are to be filed directly with Eric Dennison, General Counsel, EDF Trading North America, LLC, 4700 W. Sam Houston Parkway N, Suite 250, Houston, TX 77041 and David J. Levine, McDermott Will & Emery LLP, 600 13th Street, NW., Washington, DC 20005. A final decision will be made on this application after the environmental impacts have been evaluated pursuant to the National Environmental Policy Act of 1969, and a determination is made by DOE that the proposed action will not adversely impact on the reliability of the U.S. electric power supply system.

Copies of this application will be made available, upon request, for public inspection and copying at the address provided above, by accessing the program Web site at *http://www.oe.energy.gov/permits_pending.htm,* or by e-mailing Odessa Hopkins at *Odessa.hopkins@hq.doe.gov.*

Issued in Washington, DC, on September 17, 2010.

Anthony J. Como,

Director, Permitting and Siting, Office of Electricity Delivery and Energy Reliability.

[FR Doc. 2010–23794 Filed 9–22–10; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

[OE Docket No. EA–372]

Application To Export Electric Energy; GDF SUEZ Energy Marketing NA, Inc.

AGENCY: Office of Electricity Delivery and Energy Reliability, DOE.

ACTION: Notice of application.

SUMMARY: GDF SUEZ Energy Marketing NA, Inc. (GSEMNA) has applied for authority to transmit electric energy from the United States to Canada pursuant to section 202(e) of the Federal Power Act.

DATES: Comments, protests, or requests to intervene must be submitted on or before October 25, 2010.

ADDRESSES: Comments, protests, or requests to intervene should be addressed as follows: Office of Electricity Delivery and Energy Reliability, Mail Code: OE–20, U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585–0350 (FAX 202–586–8008).

FOR FURTHER INFORMATION CONTACT: Christopher Lawrence (Program Office) 202–586–5260 or Michael Skinker (Program Attorney) 202–586–2793.

SUPPLEMENTARY INFORMATION: Exports of electricity from the United States to a foreign country are regulated by the Department of Energy (DOE) pursuant to sections 301(b) and 402(f) of the Department of Energy Organization Act (42 U.S.C. 7151(b), 7172(f)) and require authorization under section 202(e) of the FPA (16 U.S.C. 824a(e)).

On August 16, 2010, DOE received an application from GSEMNA for authority to transmit electric energy from the United States to Canada for five years as a power marketer using existing international transmission facilities. GSEMNA does not own any electric transmission facilities nor does it hold a franchised service area.

The electric energy that GSEMNA proposes to export to Canada would be surplus energy purchased from electric utilities, Federal power marketing agencies and other entities within the United States. The existing international transmission facilities to be utilized by GSEMNA have previously been authorized by Presidential permits issued pursuant to Executive Order 10485, as amended, and are appropriate for open access transmission by third parties.

Procedural Matters: Any person desiring to become a party to these proceedings or to be heard by filing comments or protests to this application should file a petition to intervene,

comment, or protest at the address provided above in accordance with §§ 385.211 or 385.214 of the Federal Energy Regulatory Commission's Rules of Practice and Procedures (18 CFR 385.211, 385.214). Fifteen copies of each petition and protest should be filed with DOE on or before the date listed above.

Comments on the GSEMNA application to export electric energy to Canada should be clearly marked with Docket No. EA–372. Additional copies are to be filed directly with Ray Cunningham, GDF SUEZ Energy Marketing NA, Inc., 1990 Post Oak Blvd., Suite 1900, Houston, TX 77056 *and* Catherine P. McCarthy, Dewey & LeBoeuf LLP, 1101 New York Ave., NW., Washington, DC 20005. A final decision will be made on this application after the environmental impacts have been evaluated pursuant to DOE's National Environmental Policy Act Implementing Procedures (10 CFR part 1021) and after a determination is made by DOE that the proposed action will not adversely impact on the reliability of the U.S. electric power supply system.

Copies of this application will be made available, upon request, for public inspection and copying at the address provided above, by accessing the program Web site at *http://www.oe.energy.gov/permits_pending.htm,* or by e-mailing Odessa Hopkins at *Odessa.hopkins@hq.doe.gov.*

Issued in Washington, DC, on September 17, 2010.

Anthony J. Como,

Director, Permitting and Siting, Office of Electricity Delivery and Energy Reliability.

[FR Doc. 2010–23795 Filed 9–22–10; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

[OE Docket No. EA–375]

Application To Export Electric Energy; Rainbow Energy Marketing Corporation

AGENCY: Office of Electricity Delivery and Energy Reliability, DOE.

ACTION: Notice of application.

SUMMARY: Rainbow Energy Marketing Corporation (Rainbow) has applied for authority to transmit electric energy from the United States to Mexico pursuant to section 202(e) of the Federal Power Act.

DATES: Comments, protests, or requests to intervene must be submitted on or before October 25, 2010.

ADDRESSES: Comments, protests, or requests to intervene should be addressed as follows: Office of Electricity Delivery and Energy Reliability, Mail Code: OE–20, U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585–0350 (FAX 202–586–8008).

FOR FURTHER INFORMATION CONTACT: Christopher Lawrence (Program Office) 202–586–5260 or Michael Skinker (Program Attorney) 202–586–2793.

SUPPLEMENTARY INFORMATION: Exports of electricity from the United States to a foreign country are regulated by the Department of Energy (DOE) pursuant to sections 301(b) and 402(f) of the Department of Energy Organization Act (42 U.S.C. 7151(b), 7172(f)) and require authorization under section 202(e) of the FPA (16 U.S.C. 824a(e)).

On September 16, 2010, DOE received an application from Rainbow for authority to transmit electric energy from the United States to Mexico for five years as a power marketer using existing international transmission facilities. Rainbow does not own any electric transmission facilities nor does it hold a franchised service area.

The electric energy that Rainbow proposes to export to Mexico would be surplus energy purchased from electric utilities, Federal power marketing agencies and other entities within the United States. The existing international transmission facilities to be utilized by Rainbow have previously been authorized by Presidential permits issued pursuant to Executive Order 10485, as amended, and are appropriate for open access transmission by third parties.

Procedural Matters: Any person desiring to become a party to these proceedings or to be heard by filing comments or protests to this application should file a petition to intervene, comment, or protest at the address provided above in accordance with §§ 385.211 or 385.214 of the Federal Energy Regulatory Commission's Rules of Practice and Procedures (18 CFR 385.211, 385.214). Fifteen copies of each petition and protest should be filed with DOE on or before the date listed above.

Comments on the Rainbow application to export electric energy to Mexico should be clearly marked with Docket No. EA–375. Additional copies are to be filed directly with Joseph M. Wolfe, Rainbow Energy Marketing Corporation, Kirkwood Office tower, 919 South 7th Street, Suite 405, Bismarck, ND 58504. A final decision will be made on this application after the environmental impacts have been evaluated pursuant to the National Environmental Policy Act of 1969, and a determination is made by DOE that the proposed action will not adversely impact on the reliability of the U.S. electric power supply system.

Copies of this application will be made available, upon request, for public inspection and copying at the address provided above, by accessing the program Web site at *http://www.oe.energy.gov/permits_pending.htm,* or by e-mailing Odessa Hopkins at *Odessa.hopkins@hq.doe.gov.*

Issued in Washington, DC, on September 17, 2010.

Anthony J. Como,

Director, Permitting and Siting, Office of Electricity Delivery and Energy Reliability.

[FR Doc. 2010–23798 Filed 9–22–10; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Western Area Power Administration

Boulder Canyon Project-Rate Order No. WAPA–150

AGENCY: Western Area Power Administration, DOE.

ACTION: Notice of Extension of Existing Rate-setting Formula and Approval of FY 2011 Base Charge and Rates.

SUMMARY: The Deputy Secretary of Energy confirmed and approved Rate Order No. WAPA–150 and Rate Schedule BCP–F8 extending on an interim basis the existing Boulder Canyon Project (BCP) rate-setting formula and approving the base charge and rates for FY 2011. The existing Electric Service Rate Schedule, BCP–F7, expires September 30, 2010. The Electric Service Rate Schedule contains a rate-setting formula that is recalculated annually based on updated financial and load data. The existing rate-setting formula is being extended under Rate Order No. WAPA–150 and Rate Schedule BCP–F8.

DATES: Rate Schedule BCP–F8 will be placed into effect on an interim basis on the first day of the first full billing period beginning on October 1, 2010, and will be in effect until the Federal Energy Regulatory Commission (FERC) confirms, approves, and places the rate schedule in effect on a final basis up to September 30, 2015, or until the rate schedule is superseded.

FOR FURTHER INFORMATION CONTACT: Mr. Jack Murray, Rates Manager, Desert Southwest Customer Service Region, Western Area Power Administration, P.O. Box 6457, Phoenix, AZ 85005–

6457, (602) 605–2442, e-mail *jmurray@wapa.gov.*

SUPPLEMENTARY INFORMATION: The Deputy Secretary of Energy approved on an interim basis existing Electric Rate Schedule BCP–120 for BCP electric service on August 11, 2005 (Rate Order No. WAPA–120, 70 FR 50316 (August 26, 2005)). FERC confirmed and approved the rate schedule on June 22, 2006, in FERC Docket No. EF05–5091–000 (115 FERC ¶ 61,362). The rate schedule became effective on October 1, 2005, and expires September 30, 2010.

The existing base charge and rates for BCP electric service under Rate Schedule BCP–F7 expire September 30, 2010. Effective October 1, 2010, Rate Schedule BCP–F7 will be superseded by the new base charge and rates in Rate Schedule BCP–F8. Under the existing formula, the rates for BCP electric service consist of a base charge, a capacity rate, and an energy rate. The provisional base charge is $75,182,522, the provisional capacity rate is $1.90 per kilowattmonth (kWmonth), and the provisional energy rate is 9.86 mills/kWh.

The adjusted base charge and rates reflect increases in the overall O&M program costs, visitor services, uprating program principal payments, replacement costs, and investment principal and interest payments. In addition to the annual expenses increasing, the offset of other revenues is decreasing. The new base charge and rates will provide sufficient revenue to pay all annual costs, including interest expense, and repayment of power investment within the allowable periods.

Western's existing rate-setting formula for electric service requires recalculation of the base charge and rates annually to ensure sufficient recovery of project expenses, including interest, and capital requirements up to September 30, 2015.

By Delegation Order No. 00–037.00, effective December 6, 2001, the Secretary of Energy delegated: (1) The authority to develop power and transmission rates to Western's Administrator, (2) the authority to confirm, approve, and place such rates into effect on an interim basis to the Deputy Secretary of Energy, and (3) the authority to confirm, approve, and place into effect on a final basis, to remand or to disapprove such rates to FERC. Under Delegation Order No. 00–037.00 10 CFR part 903, and 18 CFR part 300, I hereby approve Rate Order No. WAPA–150, which extends the existing rate-setting formula on an interim basis up to September 30, 2015 and approve the FY 2011 proposed BCP electric service base charge and rates. Rate Order No. WAPA–150 will be submitted to the FERC for confirmation and approval on a final basis.

Dated: September 16, 2010.

Daniel B. Poneman,

Deputy Secretary.

Department of Energy

Deputy Secretary

In the matter of: Western Area Power Administration Rate Extension for the Boulder Canyon Project; Rate Order No. WAPA–150; Electric Service Rate Schedule Order Confirming and Approving an Extension of the Boulder Canyon Project Electric Service Rate-Setting Formula and FY 2011 Base Charge and Rates Rate Schedule

The extension of the existing rate-setting formula and the approval of base charge and rates for FY 2011 were conducted in accordance with section 302 of the Department of Energy (DOE) Organization Act (42 U.S.C. 7152). This Act transferred to and vested in the Secretary of Energy the power marketing functions of the Secretary of the Department of the Interior and the Bureau of Reclamation under the Reclamation Act of 1902 (ch. 1093, 32 Stat. 388), as amended and supplemented by subsequent laws, particularly section 9(c) of the Reclamation Project Act of 1939 (43 U.S.C. 485h(c)), and other Acts that specifically apply to the project involved.

By Delegation Order No. 00–037.00, effective December 6, 2001, the Secretary of Energy delegated: (1) The authority to develop power and transmission rates to Western's Administrator, (2) the authority to confirm, approve, and place such rates into effect on an interim basis to the Deputy Secretary of Energy, and (3) the authority to confirm, approve, and place into effect on a final basis, to remand or to disapprove such rates to the Federal Energy Regulatory Commission (FERC). Existing DOE procedures for public participation in electric service rate adjustments are located at 10 CFR part 903, effective September 18, 1985 (50 FR 37835), and 18 CFR part 300. Western followed the DOE procedures in developing the rate formula approved by FERC on June 22, 2006, at 115 FERC 61362.

Background

On June 22, 2006, in Docket No. EF05–5091–000 at 115 FERC ¶ 61,362, FERC issued an order confirming, approving and placing into effect on a final basis the Electric Service Rate Schedule BCP–F7 for the Boulder Canyon Project (BCP). The Electric Service Rate Schedule, Rate Order No. WAPA–120, was approved for 5 years beginning October 1, 2005, through September 30, 2010. With this interim approval, the existing rate-setting formula will be extended up to September 30, 2015 under Rate Order No. WAPA–150.

In addition, new base charge and rates will take effect on the first day of the first full billing period beginning on or after October 1, 2010, and will remain in effect until September 30, 2011. When compared to the existing BCP electric service base charge and rates under Rate Schedule BCP–F7, the proposed base charge and rates for BCP electric service reflect an overall composite rate increase of approximately 4.20 percent effective October 1, 2010. The existing composite rate under Rate Schedule BCP–F7 is 18.93 mills per kilowatthour (mills/kWh). The proposed composite rate under Rate Schedule BCP–F8 is 19.73 mills/kWh.

BCP Electric Service Base Charge and Rates

BCP electric service rates are designed to recover an annual revenue requirement that includes operation and maintenance expenses, payments to states, visitor services, the uprating program, replacements, investment repayment and interest expense. Western's Power Repayment Study (PRS) allocates the projected annual revenue requirement for electric service equally between capacity and energy. The existing formula for developing electric service rates would sufficiently recover all project expenses (including interest) and capital requirements up to September 30, 2015.

The BCP electric service base charge and rates are increasing in FY 2011 due to the increase of $5 million in annual expenses from FY 2010 to FY 2011. In addition to the annual expense increase, other revenues, which act as an offset to total expenses, are also decreasing $2.5 million. A projected carryover at the end of FY 2010 results in mitigating the increase in the base charge to $4.5 million in FY 2011.

The existing base charge and rates for BCP electric service under Rate Schedule BCP–F7 expire September 30, 2010. As stated above, Rate Schedule BCP–F7 will be superseded by the new base charge and rates in Rate Schedule BCP–F8, effective October 1, 2010. Under the existing formula, the rates for BCP electric service consist of a base charge, a capacity rate, and an energy rate. The provisional base charge is $75,182,522, the provisional capacity

rate is $1.90 per kilowattmonth (kWmonth), and the provisional energy rate is 9.86 mills/kWh.

The adjusted base charge and rates reflect increases in the overall O&M program costs, visitor services, uprating program principal payments, replacement costs, and investment principal and interest payments. In addition to the annual expenses increasing, the offset of other revenues is decreasing. The new base charge and rates will provide sufficient revenue to pay all annual costs, including interest expense, and repayment of power investment within the allowable periods.

Western followed the Procedures for Public Participation in Power and Transmission Rate Adjustments and Extensions set forth in 10 CFR part 903.23(a)(2) in extending the BCP rate-setting formula and setting the new base charge and rates for FY 2011. The steps Western took to involve interested parties in the rate process were:

1. On February 2, 2010, Western published a notice in the **Federal Register** announcing the proposed base charge and rates for BCP, beginning the public consultation and comment period, and announcing the public information and public comment forums. (75 FR 5315) Western also announced the public forum dates as well as access to the BCP rate adjustment Web site at *http://www.wapa.gov/dsw/pwrmkt/BCP/RateAdjust.htm*.

2. On March 10, 2010, Western hosted an informal customer meeting in Phoenix, Arizona. At this informal meeting, Western explained the rationale for the rate adjustment and answered questions.

3. On April 7, 2010, Western held a public information forum at the Desert Southwest Regional Office in Phoenix, Arizona. Western provided detailed explanations of the proposed base charge and rates for BCP and answered questions. Western provided a copy of the rate presentation, supporting documentation, and informational handouts.

4. On April 22, 2010, Western held a comment forum to give the public an opportunity to comment for the record. Three individuals representing entities commented at this forum.

5. Western received one comment letter during the consultation and comment period, which ended May 3, 2010. All comments have been considered in preparing this Rate Order.

Comments

Written comments were received from the following organization:

Irrigation & Electrical Districts Association of Arizona, Arizona.

Oral comments were made on behalf of the following organizations:

Arizona Municipal Power Users Association, Arizona.
Irrigation & Electrical Districts Association of Arizona, Arizona.
Metropolitan Water District of Southern California, California.

The comments and responses regarding the electric service base charge and rates, paraphrased for brevity when not affecting the meaning of the statement(s), are discussed below. Direct quotes from comment letters are used for clarification where necessary.

Comment: A commenter stated that he objects to a 3 percent indexing factor used by the Federal Agencies for increasing their annual expenses when the Consumer Price Index (CPI) current year was less than 1 percent and the projected CPI for next year is flat, showing no increase. It was expressed that under these circumstances a 3-percent increase in expected expenditures is unrealistic.

Response: Reclamation and Western are sensitive to increased costs to the customers. Although Western's and Reclamation's budgets are not explicitly tied to the CPI or any other inflation index, both agencies are conscious of these factors and work diligently to adhere to the mandate of maintaining the lowest rates possible to the customer while using sound business principles. Both agencies continue to provide transparency in development of their annual budgets during the annual Technical Review Committee process, the Engineering and Operating Committee meetings and in the annual rate processes. Budgets are estimated as conservatively as possible, taking into consideration any increases in labor costs approved by Congress for the upcoming year. All budgets are ultimately approved in close coordination with BCP Contractors, to ensure all annual costs are covered while maintaining a safe and reliable resource.

Comment: A commenter stated that the Bureau of Reclamation's post September 11, 2001, security costs be adjusted upward or downward with regard to the CPI. Since the CPI applicable to this budget declined, a corresponding decline in the security costs should be reflected in this budget.

Response: As stated in the notes for the Boulder Canyon Project FY2011 Final Ten Year Operating Plan under Administrative and General Expense (A&GE), an adjustment for the projected security non-reimbursable costs has been incorporated into the final total for the "Post 9/11 Security contract." Per the Reclamation Directives & Standards (D&S) for Reimbursability of Security Costs, establishing provisions for the reimbursability of Reclamation security costs, under authority of the Reclamation Act of June 17, 1902 (32 Stat. 388; 43 U.S.C. 391) and acts amendatory thereof and supplementary thereto; Section 513 of the Consolidated Natural Resources Act of 2008 (Pub. L. 110–229), the projected FY2011 non-reimbursable security projected reduction in expense, utilizing the CPI as indicated in the D&S, and totaling $275,000 ($239,000 reducing A&GE and $36,000 reducing Visitor Services total) was factored into the FY2011 projected expenditures, per the "Report to Congress" and based upon the reimbursability ceiling for Reclamation. The D&S can be viewed at *http://www.usbr.gov/recman/sle/sle05-01.pdf*.

Comment: A commenter asked for an explanation of a notation made by the Bureau of Reclamation regarding the total water scheduling account being two and one half years in arrears. What impact does this statement have on the Hoover rate? Why is this account in arrears? What is being done about it?

Response: After discussions between Reclamation Water Operations, Power Office and Financial Management, Reclamation notes that the account itself is not two and one half years in arrears, and the reference will be removed from the notes under Operations summary spreadsheets in the Ten Year Operating Plan. It has no impact on the Hoover rates.

Comment: A commenter encouraged Western to file comments in FERC Docket No. RM10–11–000, Notice of Inquiry into the Integration of Variable Energy Resources, similar to those filed by the Bureau of Reclamation since integration could increase costs to the BCP.

Response: Any costs to the BCP associated with the integration of variable energy resources are speculative at this point, and therefore are not included in these proposed base charge and rates.

Availability of Information

Information about this extension and adjustment of electric service base charge and rates, including power repayment studies, comments, letters, memoranda, and other supporting material made or kept by Western used to develop the provisional base charge and rates, is available for public review in the Desert Southwest Customer Service Regional Office, Western Area

Power Administration, 615 South 43rd Avenue, Phoenix, Arizona.

Order

In view of the foregoing and under the authority delegated to me, I hereby confirm and approve on an interim basis, effective October 1, 2010, Rate Schedule BCP–F8, for the Boulder Canyon Project of the Western Area Power Administration. The rate schedule shall remain in effect on an interim basis, pending FERC confirmation and approval of it or substitute rates on a final basis up to September 30, 2015.

Dated: September 16, 2010.

Daniel B. Poneman, *Deputy Secretary.*

United States Department of Energy

Western Area Power Administration

Boulder Canyon Project, Arizona, Nevada, Southern California

Schedule of Rates for Electric Service

Effective

The first day of the first full billing period beginning on or after October 1, 2010, and remaining in effect through September 30, 2015, or until superseded.

Available

In the marketing area serviced by the Boulder Canyon Project (BCP).

Applicable

To power Contractors served by the BCP supplied through one meter, at one point of delivery, unless otherwise provided by contract.

Character and Conditions of Service

Alternating current at 60 hertz, three-phase, delivered and metered at the voltages and points established by contract.

Base Charge

The total charge paid by a Contractor for annual capacity and energy based on the annual revenue requirement. The base charge shall be composed of an energy component and a capacity component:

Energy Charge: Each Contractor shall be billed monthly an energy charge equal to the Rate Year Energy Dollar multiplied by the Contractor's firm energy percentage multiplied by the Contractor's monthly energy ratio as provided by contract.

Capacity Charge: Each Contractor shall be billed monthly a capacity charge equal to the Rate Year Capacity Dollar divided by 12 multiplied by the Contractor's contingent capacity percentage as provided by contract.

Forecast Rates

Energy: Shall be equal to the Rate Year Energy Dollar divided by the lesser of the total master schedule energy or 4,501.001 million kWhs. This rate is to be applied for use of excess energy, unauthorized overruns, and water pump energy.

Capacity: Shall be equal to the Rate Year Capacity Dollar divided by 1,951,000 kWs, to be applied for use of unauthorized overruns.

Calculated Energy Rate

Within 90 days after the end of each rate year, a Calculated Energy Rate shall be calculated. If the energy deemed delivered is greater than 4,501.001 million kWhs, then the Calculated Energy Rate shall be applied to each Contractor's energy deemed delivered. A credit or debit shall be established based on the difference between the Contractor's Energy Dollar and the Contractor's actual energy charge, to be applied the following month calculated or as soon as possible thereafter.

Lower Basin Development Fund Contribution Charge

The contribution charge is 4.5 mills/kWh for each kWh measured or scheduled to an Arizona purchaser and 2.5 mills/kWh for each kWh measured or scheduled to a California or Nevada purchaser, except for purchased power.

Billing for Unauthorized Overruns

For each billing period in which there is a contract violation involving an unauthorized overrun of the contractual power obligations, such overrun shall be billed at 10 times the Forecast Energy Rate and Forecast Capacity Rate. The contribution charge shall be applied also to each kWh of overrun.

Adjustments

None.

[FR Doc. 2010–23807 Filed 9–22–10; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Office of Energy Efficiency and Renewable Energy

[Case No. CW–013]

Energy Conservation Program for Consumer Products: Notice of Petition for Waiver of the General Electric Company From the Department of Energy Residential Clothes Washer Test Procedure, and Grant of Interim Waiver

AGENCY: Office of Energy Efficiency and Renewable Energy, Department of Energy.

ACTION: Notice of petition for waiver, notice of grant of interim waiver, and request for comments.

SUMMARY: This notice announces receipt of and publishes the General Electric Company (GE) petition for waiver (hereafter, "petition") from specified portions of the U.S. Department of Energy (DOE) test procedure for determining the energy consumption of clothes washers. Today's notice also grants an interim waiver of the clothes washer test procedure. Through this notice, DOE also solicits comments with respect to the GE petition.

DATES: DOE will accept comments, data, and information with respect to the GE petition until, but no later than October 25, 2010.

ADDRESSES: You may submit comments, identified by case number CW–013, by any of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *E-mail: AS_Waiver_Requests@ee.doe.gov* Include "Case No. CW–013" in the subject line of the message.
- *Mail:* Ms. Brenda Edwards, U.S. Department of Energy, Building Technologies Program, Mailstop EE–2J/1000 Independence Avenue, SW., Washington, DC 20585–0121. Telephone: (202) 586–2945. Please submit one signed original paper copy.
- *Hand Delivery/Courier:* Ms. Brenda Edwards, U.S. Department of Energy, Building Technologies Program, 950 L'Enfant Plaza SW., Suite 600, Washington, DC 20024. Please submit one signed original paper copy.

Instructions: All submissions received should include the agency name and case number for this proceeding. Submit electronic comments in WordPerfect, Microsoft Word, Portable Document Format (PDF), or text (American Standard Code for Information Interchange (ASCII)) file format and

avoid the use of special characters or any form of encryption. Wherever possible, include the electronic signature of the author. DOE does not accept telefacsimiles (faxes).

Any person submitting written comments must also send a copy to the petitioner, pursuant to 10 CFR 430.27(d). The contact information for the petitioner is: Ms Kelley A. Kline, Counsel—Regulatory Compliance, GE Consumer & Industrial, Appliance Park 2–225, Louisville, KY 40225, E-mail: *Kelley.Kline@GE.com.*

According to 10 CFR 1004.11, any person submitting information that he or she believes to be confidential and exempt by law from public disclosure should submit two copies to DOE: One copy of the document including all the information believed to be confidential, and one copy of the document with the information believed to be confidential deleted. DOE will make its own determination about the confidential status of the information and treat it according to its determination.

Docket: For access to the docket to review the background documents relevant to this matter, you may visit the U.S. Department of Energy, 950 L'Enfant Plaza SW., (Resource Room of the Building Technologies Program), Washington, DC 20024; (202) 586–2945, between 9 a.m. and 4 p.m., Monday through Friday, except Federal holidays. Available documents include the following items: (1) This notice; (2) public comments received; (3) the petition for waiver and application for interim waiver; and (4) prior DOE waivers and rulemakings regarding similar clothes washer products. Please call Ms. Brenda Edwards at the above telephone number for additional information regarding visiting the Resource Room.

FOR FURTHER INFORMATION CONTACT: Dr. Michael G. Raymond, U.S. Department of Energy, Building Technologies Program, Mail Stop EE–2J, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585–0121. Telephone: (202) 586–9611. E-mail: *Michael.Raymond@ee.doe.gov.*

Ms. Elizabeth Kohl, U.S. Department of Energy, Office of the General Counsel, Mail Stop GC–71, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585–0103. Telephone: (202) 586–7796. E-mail: *Elizabeth.Kohl@hq.doe.gov.*

SUPPLEMENTARY INFORMATION:

I. Background and Authority

Title III of the Energy Policy and Conservation Act ("EPCA") sets forth a variety of provisions concerning energy efficiency. Part A of Title III provides for the "Energy Conservation Program for Consumer Products Other Than Automobiles." (42 U.S.C. 6291–6309). Part A includes definitions, test procedures, labeling provisions, energy conservation standards, and the authority to require information and reports from manufacturers. Further, Part A authorizes the Secretary of Energy to prescribe test procedures that are reasonably designed to produce results which measure energy efficiency, energy use, or estimated operating costs, and that are not unduly burdensome to conduct. (42 U.S.C. 6293(b)(3)). The test procedure for automatic and semi-automatic clothes washers is contained in 10 CFR part 430, subpart B, appendix J1.

The regulations set forth in 10 CFR 430.27 contain provisions that enable a person to seek a waiver from the test procedure requirements for covered consumer products. A waiver will be granted by the Assistant Secretary for Energy Efficiency and Renewable Energy (the Assistant Secretary) if it is determined that the basic model for which the petition for waiver was submitted contains one or more design characteristics that prevents testing of the basic model according to the prescribed test procedures, or if the prescribed test procedures may evaluate the basic model in a manner so unrepresentative of its true energy consumption characteristics as to provide materially inaccurate comparative data. 10 CFR 430.27(l). Petitioners must include in their petition any alternate test procedures known to the petitioner to evaluate the basic model in a manner representative of its energy consumption. 10 CFR 430.27(b)(1)(iii). The Assistant Secretary may grant the waiver subject to conditions, including adherence to alternate test procedures. 10 CFR 430.27(l). Waivers remain in effect pursuant to the provisions of 10 CFR 430.27(m).

The waiver process also allows the Assistant Secretary to grant an interim waiver from test procedure requirements to manufacturers that have petitioned DOE for a waiver of such prescribed test procedures. 10 CFR 430.27(a)(2). An interim waiver remains in effect for 180 days or until DOE issues its determination on the petition for waiver, whichever is sooner. An interim waiver may be extended for an additional 180 days. 10 CFR 430.27(h).

II. Application for Interim Waiver and Petition for Waiver

On June 21, 2010, GE filed a petition for waiver and application for interim waiver from the test procedure applicable to automatic and semi-automatic clothes washers set forth in 10 CFR part 430, subpart B, appendix J1. In particular, GE requested a waiver to test its clothes washers with basket volumes greater than 3.8 cubic feet on the basis of the residential test procedures contained in 10 CFR part 430, Subpart B, Appendix J1, with a revised Table 5.1 which extends the range of container volumes beyond 3.8 cubic feet.

GE's petition seeks a waiver from the DOE test procedure because a test load is used within the procedure, and the mass of this test load is based on the basket volume of the test specimen, which is currently not defined for the basket sizes of the basic models cited in its waiver application. In the DOE test procedure, the relation between basket volume and test load mass is defined for basket volumes between 0 and 3.8 cubic feet. GE has designed a series of clothes washers that contain basket volumes greater than 3.8 cubic feet.

Table 5.1 of Appendix J1 defines the test load sizes used in the test procedure as linear functions of the basket volume. GE has submitted a revised table to extend the maximum basket volume from 3.8 cubic feet to 6.0 cubic feet, a table provided by the Association of Home Appliance Manufacturers (AHAM). AHAM provided calculations to extrapolate Table 5.1 of the DOE test procedure to larger container volumes. DOE believes that this procedure is reasonable because the DOE test procedure defines test load sizes as linear functions of the basket volume.

An interim waiver may be granted if it is determined that the applicant will experience economic hardship if the application for interim waiver is denied, if it appears likely that the petition for waiver will be granted, and/or the Assistant Secretary determines that it would be desirable for public policy reasons to grant immediate relief pending a determination of the petition for waiver. (10 CFR 430.27(g)). DOE determined that GE's application for interim waiver does not provide sufficient market, equipment price, shipments, and other manufacturer impact information to permit DOE to evaluate the economic hardship GE might experience absent a favorable determination on its application for interim waiver. In a previous similar case, however, DOE granted an interim test procedure waiver to Whirlpool for three of Whirlpool's clothes washer models with container capacities greater than 3.8 ft^3. 71 FR 48913 (August 22, 2006). This notice contained an alternate test procedure, which

extended the linear relationship between maximum test load size and clothes washer container volume in Table 5.1 to include a maximum test load size of 15.4 pounds (lbs) for clothes washer container volumes of 3.8 to 3.9 ft^3.

DOE believes that the values in the test load size chart submitted by GE are appropriate. In addition, DOE believes that extending the linear relationship between test load size and container capacity to larger capacities is valid. Based on this discussion, and the interim waiver granted to Whirlpool, it appears likely that the petition for waiver will be granted. DOE notes, however, publication elsewhere in today's **Federal Register** of a petition for waiver received subsequently from Samsung Electronics America, Inc. (Samsung), also for clothes washers with capacities larger than 3.8 ft^3. Samsung submitted an alternate test procedure that uses a slightly more accurate conversion factor to convert pounds to kilograms than was used by AHAM and GE. Use of Samsung's conversion factor results in small changes in revised Table 5.1. DOE will consider adopting the more accurate Table 5.1 in the subsequent decision and order. For the reasons stated above, the Department of Energy is granting an interim waiver to GE for its line of clothes washers with container volumes greater than 3.8 cubic feet, pursuant to 10 CFR 430.27(g). Therefore, *it is ordered that:*

The application for interim waiver filed by GE is hereby granted for the specified GE clothes washer basic models, subject to the specifications and conditions below.

1. GE shall not be required to test or rate the specified clothes washer products on the basis of the test procedure under 10 CFR part 430 subpart B, appendix J1.

2. GE shall be required to test and rate the specified clothes washer products according to the alternate test procedure as set forth in section IV, "Alternate test procedure."

The interim waiver applies to the following basic model groups: PTWN8055*, PTWN8050*, PFWS4600*, PFWS4605*, PFWH4400*, PFWH4405*, GFWS3600*, GFWS3605*, GFWS3500*, GFWS3505*, GFWH3400*, GFWH3405*, GFWH2400*, GFWH2405*

III. Alternate Test Procedure

EPCA requires that manufacturers use DOE test procedures to make representations about the energy consumption and energy consumption costs of products covered by EPCA. (42 U.S.C. 6293(c)). Consistent representations are important for manufacturers to make representations about the energy efficiency of their products and to demonstrate compliance with applicable DOE energy conservation standards. Pursuant to its regulations for the grant of a waiver or interim waiver from an applicable test procedure at 10 CFR 430.27, DOE is considering setting an alternate test procedure for GE in the subsequent Decision and Order. This alternate procedure is intended to allow manufacturers of clothes washers with basket capacities larger than provided for in the current test procedure to make valid representations. This test procedure is based on the expanded Table 5.1 of Appendix J1 submitted by GE. Furthermore, if DOE specifies an alternate test procedure for GE, DOE may consider applying the alternate test procedure or a similar one using the more accurate conversion factor discussed above to similar waivers for residential clothes washers.

During the period of the interim waiver granted in this notice, GE shall test its clothes washer basic models according to the provisions of 10 CFR part 430 subpart B, appendix J1, except that the expanded Table 5.1 below shall be substituted for Table 5.1 of appendix J1.

TABLE 5.1—TEST LOAD SIZES

Container volume		Minimum load		Maximum load		Average load	
cu. ft. ≥ <	(liter) ≥ <	lb	(kg)	lb	(kg)	lb	(kg)
0–0.8	0–22.7	3.00	1.36	3.00	1.36	3.00	1.36
0.80–0.90	22.7–25.5	3.00	1.36	3.50	1.59	3.25	1.47
0.90–1.00	25.5–28.3	3.00	1.36	3.90	1.77	3.45	1.56
1.00–1.10	28.3–31.1	3.00	1.36	4.30	1.95	3.65	1.66
1.10–1.20	31.1–34.0	3.00	1.36	4.70	2.13	3.85	1.75
1.20–1.30	34.0–36.8	3.00	1.36	5.10	2.31	4.05	1.84
1.30–1.40	36.8–39.6	3.00	1.36	5.50	2.49	4.25	1.93
1.40–1.50	39.6–42.5	3.00	1.36	5.90	2.68	4.45	2.02
1.50–1.60	42.5–45.3	3.00	1.36	6.40	2.90	4.70	2.13
1.60–1.70	45.3–48.1	3.00	1.36	6.80	3.08	4.90	2.22
1.70–1.80	48.1–51.0	3.00	1.36	7.20	3.27	5.10	2.31
1.80–1.90	51.0–53.8	3.00	1.36	7.60	3.45	5.30	2.40
1.90–2.00	53.8–56.6	3.00	1.36	8.00	3.63	5.50	2.49
2.00–2.10	56.6–59.5	3.00	1.36	8.40	3.81	5.70	2.59
2.10–2.20	59.5–62.3	3.00	1.36	8.80	3.99	5.90	2.68
2.20–2.30	62.3–65.1	3.00	1.36	9.20	4.17	6.10	2.77
2.30–2.40	65.1–68.0	3.00	1.36	9.60	4.35	6.30	2.86
2.40–2.50	68.0–70.8	3.00	1.36	10.00	4.54	6.50	2.95
2.50–2.60	70.8–73.6	3.00	1.36	10.50	4.76	6.75	3.06
2.60–2.70	73.6–76.5	3.00	1.36	10.90	4.94	6.95	3.15
2.70–2.80	76.5–79.3	3.00	1.36	11.30	5.13	7.15	3.24
2.80–2.90	79.3–82.1	3.00	1.36	11.70	5.31	7.35	3.33
2.90–3.00	82.1–85.0	3.00	1.36	12.10	5.49	7.55	3.42
3.00–3.10	85.0–87.8	3.00	1.36	12.50	5.67	7.75	3.52
3.10–3.20	87.8–90.6	3.00	1.36	12.90	5.85	7.95	3.61
3.20–3.30	90.6–93.4	3.00	1.36	13.30	6.03	8.15	3.70
3.30–3.40	93.4–96.3	3.00	1.36	13.70	6.21	8.35	3.79
3.40–3.50	96.3–99.1	3.00	1.36	14.10	6.40	8.55	3.88
3.50–3.60	99.1–101.9	3.00	1.36	14.60	6.62	8.80	3.99
3.60–3.70	101.9–104.8	3.00	1.36	15.00	6.80	9.00	4.08

TABLE 5.1—TEST LOAD SIZES—Continued

Container volume		Minimum load		Maximum load		Average load	
cu. ft. ≥ <	(liter) ≥ <	lb	(kg)	lb	(kg)	lb	(kg)
3.70–3.80	104.8–107.6	3.00	1.36	15.40	6.99	9.20	4.17
3.80–3.90	107.6–110.4	3.00	1.36	15.80	7.18	9.40	4.27
3.90–4.00	110.4–113.3	3.00	1.36	16.20	7.36	9.60	4.36
4.00–4.10	113.3–116.1	3.00	1.36	16.60	7.55	9.80	4.45
4.10–4.20	116.1–118.9	3.00	1.36	17.00	7.73	10.00	4.55
4.20–4.30	118.9–121.8	3.00	1.36	17.40	7.91	10.20	4.64
4.30–4.40	121.8–124.6	3.00	1.36	17.80	8.09	10.40	4.73
4.40–4.50	124.6–127.4	3.00	1.36	18.20	8.27	10.60	4.82
4.50–4.60	127.4–130.3	3.00	1.36	18.70	8.50	10.85	4.93
4.60–4.70	130.3–133.1	3.00	1.36	19.1	8.65	11.03	5.00
4.70–4.80	133.1–135.9	3.00	1.36	19.5	8.83	11.24	5.10
4.80–4.90	135.9–138.8	3.00	1.36	19.9	9.02	11.44	5.19
4.90–5.00	138.8–141.6	3.00	1.36	20.3	9.21	11.65	5.28
5.00–5.10	141.6–144.4	3.00	1.36	20.7	9.39	11.85	5.38
5.10–5.20	144.4–147.3	3.00	1.36	21.1	9.58	12.06	5.47
5.20–5.30	147.3–150.1	3.00	1.36	21.5	9.76	12.26	5.56
5.30–5.40	150.1–152.9	3.00	1.36	21.9	9.95	12.46	5.65
5.40–5.50	152.9–155.8	3.00	1.36	22.3	10.13	12.67	5.75
5.50–5.60	155.8–158.6	3.00	1.36	22.7	10.32	12.87	5.84
5.60–5.70	158.6–161.4	3.00	1.36	23.2	10.51	13.08	5.93
5.70–5.80	161.4–164.3	3.00	1.36	23.6	10.69	13.29	6.03
5.80–5.90	164.3–167.1	3.00	1.36	24.0	10.88	13.49	6.12
5.90–6.00	167.1–169.9	3.00	1.36	24.4	11.06	13.70	6.21

Notes: (1) All test load weights are bone dry weights.
(2) Allowable tolerance on the test load weights are ±0.10 lbs (0.05 kg).

IV. Summary and Request for Comments

Through today's notice, DOE announces receipt of GE's petition for waiver from certain parts of the test procedure that apply to clothes washers and grants an interim waiver to GE. DOE is publishing GE's petition for waiver in its entirety pursuant to 10 CFR p 430.27(b)(1)(iv). The petition contains no confidential information. The petition includes a suggested alternate test procedure which is to measure the energy consumption of clothes washers with capacities larger than the 3.8 ft [3] specified in the current DOE test procedure. DOE is interested in receiving comments from interested parties on all aspects of the petition, including the suggested alternate test procedure and any other alternate test procedure. Pursuant to 10 CFR p 430.27(b)(1)(iv), any person submitting written comments to DOE must also send a copy to the petitioner, whose contact information is included in the **ADDRESSES** section above.

Issued in Washington, DC on September 16, 2010.

Henry Kelly,

Principal Deputy Assistant Secretary, Energy Efficiency and Renewable Energy.

U.S. Department of Energy

Application for Interim Waiver and Petition for Waiver, 10CFR430, Subpart B, Appendix J1—U.S. Department of Energy ("DOE" or "the Department") Uniform Test Method for Measuring the Energy Consumption of Automatic and Semi-Automatic Clothes Washers

Case No.

Public Version

Submitted by:

Kelley A. Kline
Counsel–Regulatory Compliance
GE Consumer & Industrial
Appliance Park 2–225
Louisville, KY 40225
Kelley.Kline@ge.com
502–452–7603 (voice)
502–452–0395 (fax)

U.S. Department of Energy Application for Interim Waiver and Petition for Waiver, 10CFR430, Subpart B, Appendix J1—Uniform Test Method for Measuring the Energy Consumption of Automatic and Semi-Automatic Clothes Washers

Introduction

GE Appliances & Lighting, an operating division of General Electric Co., ("GE") is a leading manufacturer and marketer of household appliances, including, as relevant to this proceeding, clothes washers, files this Petition for Waiver and Application for Interim Waiver ("Petition"). GE requests that the Assistant Secretary grant it a waiver from certain parts of the test procedure promulgated by the U.S. Department of Energy ("DOE" or "the Department") for determining residential automatic and semi-automatic clothes washer energy consumption and allow GE to test its clothes washers pursuant to the modified table submitted herewith. This request is filed pursuant to 10 C.F.R. § 430.27.

GE is in the process of designing and launching new clothes washer models. A total investment and expense of $17.5MM has been made for research, development, facility upgrade, acquisition of tooling and equipment and product testing. Current production plans call for these products to begin to be manufactured on July 6, 2010.

In order to be assured that it is correctly calculating the energy consumption of the product, that the product meets the minimum energy requirements for its product class and is properly labeled, GE seeks the Department's expeditious concurrence to its proposed amendment to the clothes washer test procedure.

Even a casual review of the clothes washer test procedure [1] reveals that this regulation has been overtaken by advances in technology, especially in terms of basket volume sizes of clothes washers on the market today. GE files this Petition for Waiver and Application for Interim Waiver to modify the portions of the regulations that do not permit accurate calculation of energy performance as related to basket volume size and test load mass.

The Department's regulations provide that the Assistant Secretary will grant a Petition upon "determin[ation] that the basic model for which the waiver was requested contains a design characteristic which either prevents testing of the basic model according to the prescribed test procedures, or the prescribed test procedures may evaluate the basic model in a manner so unrepresentative of its true energy consumption characteristics as to provide materially inaccurate comparative data.[2]"

[1] 10 C.F.R. Part 430, Subpart B, App. J1

[2] 10 C.F.R. Part 430.27

GE requests that the Assistant Secretary grant this Petition on both grounds. First, because failure of the clothes washer energy test procedure to correlate load size and basket volume for larger units does not allow the energy used by GE's new clothes washer to be accurately calculated. The new clothes washers contain baskets above 3.8 cubic feet, ranging up to 4.5 cubic feet. Since Table 5.1 of Appendix J1 currently defines test load sizes used during the procedure as linear functions of the basket volume, but only up to 3.8 cubic feet, the basket sizes of GE's new models are currently not defined.

Second, if GE were to test its new clothes washers as if the basket size were 3.8 cubic feet, i.e., with an average load size of 9.4 pounds, the results of the energy test so conducted would understate the energy used by the new models.

Need for Relief

The test procedure for calculating energy consumption defines the relation between basket volume and test load mass for basket volumes between 0 and 3.8 cubic feet. Market trends, however, have led manufacturers to design clothes washers with volumes greater than 3.8 cubic feet. Therefore, the existing test procedure is not applicable for units GE will be manufacturing. Indeed, the Department recognized this lack of applicability in the decision to grant a similar waiver to GE Corp. (71FR48913)

GE hereby requests an Interim Waiver and Waiver that will allow sale of the following models based on the attached table, previously provided by AHAM to the Department in AHAM Comments on the Framework Document for Residential Clothes Washers; EERE–2008–BT–STD–0019; RIN 1904–AB90, dated October 2, 2009. Those models will be General Electric brand clothes washer models. PTWN8055*, PTWN8050*, PFWS4600*, PFWS4605*, PFWH4400*, PFWH4405*, GFWS3600*, GFWS3605*, GFWS3500*, GFWS3505*, GFWH3400*, GFWH3405*, GFWH2400*, GFWH2405*. Since there is a linear relationship between container volume and test load size, AHAM provided calculations to extend Table 5.1 in Appendix B of these comments (attached).

Thank you for your timely attention to this request for Interim Waiver and Waiver.

Respectfully submitted,
Kelley A. Kline,
Authorized Representative of GE Appliances & Lighting

CERTIFICATION

I hereby certify that GE has notified all clothes washer manufacturers listed below known to GE to sell products in the United States and forwarded them a copy of this application:

Alliance Laundry Systems, Inc., BSH Home Appliances Corp. (Bosch-Siemens Hausgerate GmbH), Electrolux Home Products, Fisher & Paykel Appliances, Inc., Haier America Trading, L.L.C., LG Electronics USA INC., Miele Appliances, Inc., Samsung Electronics America, Inc. and GE Corporation.

In addition, GE has provided courtesy copies to: The Association of Home Appliance Manufacturers (AHAM), which is generally interested in DOE proceedings affecting the industry.

Kelley A. Kline

Appendix B

TABLE 5.1—TEST LOAD SIZES

Container volume		Minimum load		Maximum load		Average load	
cu. ft. ≥ <	(liter) ≥ <	lb	(kg)	lb	(kg)	lb	(kg)
0–0.8	0–22.7	3.00	1.36	3.00	1.36	3.00	1.36
0.80–0.90	22.7–25.5	3.00	1.36	3.50	1.59	3.25	1.47
0.90–1.00	25.5–28.3	3.00	1.36	3.90	1.77	3.45	1.56
1.00–1.10	28.3–31.1	3.00	1.36	4.30	1.95	3.65	1.66
1.10–1.20	31.1–34.0	3.00	1.36	4.70	2.13	3.85	1.75
1.20–1.30	34.0–36.8	3.00	1.36	5.10	2.31	4.05	1.84
1.30–1.40	36.8–39.6	3.00	1.36	5.50	2.49	4.25	1.93
1.40–1.50	39.6–42.5	3.00	1.36	5.90	2.68	4.45	2.02
1.50–1.60	42.5–45.3	3.00	1.36	6.40	2.90	4.70	2.13
1.60–1.70	45.3–48.1	3.00	1.36	6.80	3.08	4.90	2.22
1.70–1.80	48.1–51.0	3.00	1.36	7.20	3.27	5.10	2.31
1.80–1.90	51.0–53.8	3.00	1.36	7.60	3.45	5.30	2.40
1.90–2.00	53.8–56.6	3.00	1.36	8.00	3.63	5.50	2.49
2.00–2.10	56.6–59.5	3.00	1.36	8.40	3.81	5.70	2.59
2.10–2.20	59.5–62.3	3.00	1.36	8.80	3.99	5.90	2.68
2.20–2.30	62.3–65.1	3.00	1.36	9.20	4.17	6.10	2.77
2.30–2.40	65.1–68.0	3.00	1.36	9.60	4.35	6.30	2.86
2.40–2.50	68.0–70.8	3.00	1.36	10.00	4.54	6.50	2.95
2.50–2.60	70.8–73.6	3.00	1.36	10.50	4.76	6.75	3.06
2.60–2.70	73.6–76.5	3.00	1.36	10.90	4.94	6.95	3.15
2.70–2.80	76.5–79.3	3.00	1.36	11.30	5.13	7.15	3.24
2.80–2.90	79.3–82.1	3.00	1.36	11.70	5.31	7.35	3.33
2.90–3.00	82.1–85.0	3.00	1.36	12.10	5.49	7.55	3.42
3.00–3.10	85.0–87.8	3.00	1.36	12.50	5.67	7.75	3.52
3.10–3.20	87.8–90.6	3.00	1.36	12.90	5.85	7.95	3.61
3.20–3.30	90.6–93.4	3.00	1.36	13.30	6.03	8.15	3.70
3.30–3.40	93.4–96.3	3.00	1.36	13.70	6.21	8.35	3.79
3.40–3.50	96.3–99.1	3.00	1.36	14.10	6.40	8.55	3.88
3.50–3.60	99.1–101.9	3.00	1.36	14.60	6.62	8.80	3.99
3.60–3.70	101.9–104.8	3.00	1.36	15.00	6.80	9.00	4.08
3.70–3.80	104.8–107.6	3.00	1.36	15.40	6.99	9.20	4.17
3.80–3.90	107.6–110.4	3.00	1.36	15.80	7.18	9.40	4.27
3.90–4.00	110.4–113.3	3.00	1.36	16.20	7.36	9.60	4.36
4.00–4.10	113.3–116.1	3.00	1.36	16.60	7.55	9.80	4.45
4.10–4.20	116.1–118.9	3.00	1.36	17.00	7.73	10.00	4.55
4.20–4.30	118.9–121.8	3.00	1.36	17.40	7.91	10.20	4.64
4.30–4.40	121.8–124.6	3.00	1.36	17.80	8.09	10.40	4.73
4.40–4.50	124.6–127.4	3.00	1.36	18.20	8.27	10.60	4.82
4.50–4.60	127.4–130.3	3.00	1.36	18.70	8.50	10.85	4.93
4.60–4.70	130.3–133.1	3.00	1.36	19.1	8.65	11.03	5.00
4.70–4.80	133.1–135.9	3.00	1.36	19.5	8.83	11.24	5.10
4.80–4.90	135.9–138.8	3.00	1.36	19.9	9.02	11.44	5.19

TABLE 5.1—TEST LOAD SIZES—Continued

Container volume		Minimum load		Maximum load		Average load	
cu. ft. ≥ <	(liter) ≥ <	lb	(kg)	lb	(kg)	lb	(kg)
4.90–5.00	138.8–141.6	3.00	1.36	20.3	9.21	11.65	5.28
5.00–5.10	141.6–144.4	3.00	1.36	20.7	9.39	11.85	5.38
5.10–5.20	144.4–147.3	3.00	1.36	21.1	9.58	12.06	5.47
5.20–5.30	147.3–150.1	3.00	1.36	21.5	9.76	12.26	5.56
5.30–5.40	150.1–152.9	3.00	1.36	21.9	9.95	12.46	5.65
5.40–5.50	152.9–155.8	3.00	1.36	22.3	10.13	12.67	5.75
5.50–5.60	155.8–158.6	3.00	1.36	22.7	10.32	12.87	5.84
5.60–5.70	158.6–161.4	3.00	1.36	23.2	10.51	13.08	5.93
5.70–5.80	161.4–164.3	3.00	1.36	23.6	10.69	13.29	6.03
5.80–5.90	164.3–167.1	3.00	1.36	24.0	10.88	13.49	6.12
5.90–6.00	167.1–169.9	3.00	1.36	24.4	11.06	13.70	6.21

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BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Southeastern Power Administration

Kerr-Philpott System

AGENCY: Southeastern Power Administration, (Southeastern), Department of Energy.

ACTION: Notice of interim approval.

SUMMARY: The Deputy Secretary, Department of Energy, confirmed and approved, on an interim basis new rate schedules VA–1–B, VA–2–B, VA–3–B, VA–4–B, CP&L–1–B, CP&L–2–B, CP&L–3–B, CP&L–4–B, AP–1–B, AP–2–B, AP–3–B, AP–4–B, NC–1–B, and Replacement–2–A. These rate schedules are applicable to Southeastern power sold to existing preference customers in the Virginia and North Carolina service area. The rate schedules are approved on an interim basis up to September 30, 2015, and are subject to confirmation and approval by the Federal Energy Regulatory Commission (FERC) on a final basis.

DATES: Approval of rates on an interim basis is effective October 1, 2010.

FOR FURTHER INFORMATION CONTACT: Leon Jourolmon, Assistant Administrator, Finance and Marketing, Southeastern Power Administration, Department of Energy, 1166 Athens Tech Road, Elberton, Georgia 30635–4578, (706) 213–3800.

SUPPLEMENTARY INFORMATION: The Federal Energy Regulatory Commission, by Order issued December 8, 2006, in Docket No. EF06–3041–000 (117 FERC ¶ 62,220), confirmed and approved Wholesale Power Rate Schedules VA–1–A, VA–2–A, VA–3–A, VA–4–A, CP&L–1–A, CP&L–2–A, CP&L–3–A, CP&L–4–A, AP–1–A, AP–2–A, AP–3–A, AP–4–A, NC–1–A, and Replacement–2 through September 30, 2011. This order replaces these rate schedules on an interim basis, subject to final approval by FERC.

Dated: September 16, 2010.

Daniel B. Poneman,

Deputy Secretary.

DEPARTMENT OF ENERGY

Deputy Secretary

In the Matter of:

Southeastern Power Administration, Kerr-Philpott System Power Rates; Rate Order No. SEPA–52

Order Confirming and Approving Power Rates on an Interim Basis

Pursuant to Sections 302(a) of the Department of Energy Organization Act, Public Law 95–91, the functions of the Secretary of the Interior and the Federal Power Commission under Section 5 of the Flood Control Act of 1944, 16 U.S.C. 825s, relating to the Southeastern Power Administration (Southeastern), were transferred to and vested in the Secretary of Energy. By Delegation Order No. 00–037.00, effective December 6, 2001, the Secretary of Energy delegated to Southeastern's Administrator the authority to develop power and transmission rates, to the Deputy Secretary of Energy the authority to confirm, approve, and place in effect such rates on interim basis, and to the Federal Energy Regulatory Commission (FERC) the authority to confirm, approve, and place into effect on a final basis or to disapprove rates developed by the Administrator under the delegation. This rate is issued by the Deputy Secretary pursuant to that delegation order.

Background

Power from the Kerr-Philpott Projects is presently sold under Wholesale Power Rate Schedules VA–1–A, VA–2–A, VA–3–A, VA–4–A, CP&L–1–A, CP&L–2–A, CP&L–3–A, CP&L–4–A, AP–1–A, AP–2–A, AP–3–A, AP–4–A, NC–1–A, and Replacement-2. These rate schedules were approved by the FERC on December 8, 2006, for a period ending September 30, 2011 (117 FERC ¶62,220).

Public Notice and Comment

Notice of a proposed rate adjustment for the Kerr-Philpott System was published in the **Federal Register** February 22, 2010 (75 FR 7580). The notice advised interested parties that a public information and comment forum would be held in Raleigh, North Carolina, on March 30, 2010. One party, representing the Southeastern Federal Power Customers, Inc. (SeFPC), made comments at the forum. Written comments were due on or before May 24, 2010. Southeastern received written comments from one party, the SeFPC.

SeFPC's comments have been condensed into the following 3 major categories:

1. U.S. Army Corps of Engineers (Corps) Operations and Maintenance (O&M) Expense
2. Revenue Tracking
3. True-Up Mechanisms

Southeastern's response follows each comment.

Category 1: Corps O&M

Comment 1: The SeFPC believes the repayment study includes costs for the Corps' joint O&M that have been improperly assigned to the hydropower function. Furthermore, SeFPC believes that the amount of O&M expense set forth in the repayment study for the Corps joint O&M expense is overstated. In fact, the projected overall O&M expense for fiscal year (FY) 2010 is likely overstated in light of the fact that Congress cut appropriations for O&M at the Kerr and Philpott Projects in the most recent Energy and Water Development Appropriations Bill.

Comment 2: The SeFPC members served by the Kerr-Philpott system of

projects have concerns regarding the level of O&M that Southeastern modeled for the current fiscal year 2010. Aside from the larger disagreement on the Corps improperly assigning costs to hydropower for recovery, the customers believe that in the current repayment study Southeastern has overstated the amount that the Corps will spend on O&M in the current fiscal year. During the forum, SeFPC explained that the Corps budget for O&M was cut for 2010, which should lead to a reduced amount of actual expenditure for the current fiscal year.

Southeastern, however, had modeled the level of Corps O&M, based on a projection for 2010 that was over one year old. In fact, in reviewing the most up to date information, the Corps has indeed revised its calculations revealing that the overall O&M expense allocated to hydropower in FY 2010 will be $1.5 million less than estimated at this time last year. Furthermore, the overall O&M expense for 2011 is now projected to be $2 million less in FY 2011 than what Southeastern modeled for the repayment study.

However, the repayment study that currently supports the rate increase as noticed in the **Federal Register** contains Corps O&M projected expenses that are based on last year's information. Relying on this older vintage information will likely lead Southeastern to recover more than is necessary to cover the O&M expense and require the customers to pay more than is necessary. Therefore, the hydropower customers urge Southeastern to revise the projected O&M expense in the repayment study and include a true-up mechanism in the rate that will track the actual expense.

Response to comments 1 and 2: The Corps provides estimates of O&M expenses for the next five years to the O&M Committee of the SeFPC every April. The new rate schedules for the Kerr-Philpott System were proposed before the latest projections were available. Southeastern has revised the repayment study to include the latest projections provided to the O&M Committee, which allowed Southeastern to lower the proposed rate consistent with SeFPC's comment.

Comment 3: One of the more alarming entries can be found on page 6 of the detailed report of O&M expense for the Kerr Project. For FY 2010, slightly less than $1.4 million has been slated for recovery from the hydropower customers for maintenance for environmental stewardship. The footnote reveals that this entry is for, quote, "remediation of hazardous waste removal (DDT barrels)," end quote. The footnote also indicates that there is a $2.6 million price tag attached to this activity.

But as we begin to look at the estimated cost of the DDT clean-up, we began to wonder why hydropower should bear any of this expense. DDT was used decades ago to control mosquito populations. The direct connection between vector control programs for flying insects and hydropower operations is tenuous at best.

Response 3: Classification of costs as joint or specific to any project purpose is determined by the Corps. The Corps has agreed to review the classification of the DDT clean-up costs. However, the projections used to develop these rates continue to show these costs as joint costs. If the Corps classifies these costs as specific to another purpose, the true-up discussed below will adjust the rates automatically.

Category 2: Revenue Tracking

Comment 4: Our second primary concern involves the modeling of the rate and accounting for revenues that Southeastern expects to receive in FY 2010. With generation patterns well above average for the first part of FY 2010, and record snow pack in parts of the mid-Atlantic region, we believe that generation and the associated revenues will be well above average. The proposed rate, however, is modeled on average generation and an average level of revenues.

Response 4: For the Kerr-Philpott System, energy production for the first six months of FY2010 has been about 188 percent of average. Energy production for the remainder of FY2010 is expected to return to average water conditions. Based on this information, Southeastern assumed that energy product for FY 2010 would be 140 percent of average in the repayment study used to develop these proposed rates.

Category 3: True-up Mechanisms

Comment 5: The customers have developed an interest in pursuing appropriate mechanisms in the rate design to minimize the potential for accumulated deficits, which is our third primary point. Part of this interest is borne from the experience that we have had with the current rate and the true-up mechanism that Southeastern has implemented with regard to the capital additions associated with the ongoing rewind. Drawing upon this experience, the customers would like Southeastern to include a true-up mechanism for revenues and Corps expenses to minimize the potential for deficits to accumulate. At a minimum, a true-up mechanism needs to be adopted for FY 2010, so that it accurately reflects actual revenues and expenses incurred in FY 2010.

Comment 6: While the discussion above encourages Southeastern to adopt a true up mechanism to address both the Corps O&M expenditures and revenues, the customers also encourage Southeastern to adopt, as a function of the new rate, appropriate measures to ensure transparency in the rate making process. First, Southeastern will need to identify the date upon which the rate will change based on prior year's expenditure levels and performance. The beginning of the fiscal year for Southeastern would appear to be the best date possible to implement this annual change.

Second, the customers would need some advance notice of how the rate would change. For some customers, the change in rates will require filing appropriate paperwork with State level commissions. To meet this obligation, the customers ask Southeastern to provide this notice no later than sixty (60) days before the rate would change.

Third, the customers would need publication or any other such suitable notice of the underlying data that led to the change in the rate. If at all possible, the customers would appreciate having this information in advance of the implementation of any change in the rates.

Response to 5 and 6: Based of the comments received, Southeastern has included a true-up in the design of the proposed rates. To meet the customer's request of a sixty (60) day notice and accommodate the existing accounting process, Southeastern will provide notice of the true-up by February 1 of each year and the true-up will take effect on April 1 of each year. Notice will be provided by mail to the customers.

The true-up will work as follows: The base capacity charge will include the rehabilitation true-up adjustment. The proposed initial base capacity charge will be $3.65 per kilowatt per month and the initial base energy charge will be 14.63 mills per kilowatt-hour. The proposed rates are based on a repayment study that projects that the Kerr-Philpott System will produce the following net revenue available for repayment by fiscal year:

FY 2010	$578,000
FY 2011	2,030,000
FY 2012	1,032,000
FY 2013	825,000
FY 2014	863,000
FY 2015	908,000

Southeastern proposes to establish a true-up of the capacity and energy rates based on the variance of the actual net revenue available for repayment from the planned net revenue available for repayment in the table above. For every $100,000 under-recovery of the planned net revenue available for repayment, Southeastern will increase the base capacity charge by $0.02 per kilowatt per month, up to a maximum of $0.75 per kilowatt per month, and increase the base energy charge by 0.10 mills per kilowatt-hour, up to a maximum of 3.0 mills per kilowatt per hour, to be implemented April 1 of the next fiscal year. For every $100,000 of over-recovery of the planned net revenue available for repayment, Southeastern will reduce the base capacity charge by $0.02 per kilowatt per month, up to a maximum of $0.75 per kilowatt per month, and reduce the base energy charge by 0.10 mills per kilowatt-hour, up to a maximum of 3.0 mills per kilowatt per hour, to be implemented April 1 of the next fiscal year. Southeastern will give notice by mail to the customers of the amount of the true-up to the capacity and energy rates by February 1 of the next fiscal year.

Comment 7: In the last rate structure that Southeastern adopted for the Kerr Philpott system of projects, Southeastern implemented a true up mechanism to track the inclusion of major capital improvements that became commercially operable. This feature saved the customers from paying significant sums in advance of the plant going into commercial operation. The main focus of this cost recovery was on the major rehabilitation effort for the turbines at the Kerr Project.

Although the rehabilitation effort with the turbines is nearing completion, it is clear that the Corps will continue to add major capital investments at the projects. With this anticipated action, the customers ask Southeastern to continue the true up mechanism for the capital additions.

Response 7: Southeastern will continue the true-up mechanism for capital additions, with the revision that the adjustment will take effect on April 1 of each year.

Discussion

System Repayment

An examination of Southeastern's revised system power repayment study, prepared in July 2010, for the Kerr-Philpott System shows that with the proposed rates, all system power costs are paid within the appropriate repayment period required by existing law and DOE Procedure RA 6120.2. The Administrator of Southeastern Power Administration has certified that the rates are consistent with applicable law and that they are the lowest possible rates to customers consistent with sound business principles.

Environmental Impact

Southeastern has reviewed the possible environmental impacts of the rate adjustment under consideration and has concluded that, because the adjusted rates would not significantly affect the quality of the human environment within the meaning of the National Environmental Policy Act of 1969, the proposed action is not a major Federal action for which preparation of an Environmental Impact Statement is required.

Availability of Information

Information regarding these rates, including studies and other supporting materials and transcripts of the public information and comment forum, is available for public review in the offices of Southeastern Power Administration, 1166 Athens Tech Road, Elberton, Georgia 30635, and in the Power Marketing Liaison Office, James Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585.

Order

In view of the foregoing and pursuant to the authority delegated to me by the Secretary of Energy, I hereby confirm and approve on an interim basis, effective October 1, 2010, or the first day of the month following this interim approval, attached Wholesale Power Rate Schedules VA–1–B, VA–2–B, VA–3–B, VA–4–B, CP&L–1–B, CP&L–2–B, CP&L–3–B, CP&L–4–B, AP–1–B, AP–2–B, AP–3–B, AP–4–B, NC–1–B, and Replacement–2–A. The Rate Schedules shall remain in effect on an interim basis up to September 30, 2015, unless such period is extended or until the FERC confirms and approves them or substitutes Rate Schedules on a final basis.

Dated: September 16, 2010

Daniel B. Poneman,

Deputy Secretary.

Wholesale Power Rate Schedule VA–1–B

Availability

This rate schedule shall be available to public bodies and cooperatives (any one of whom is hereinafter called the Customer) in Virginia and North Carolina to whom power may be transmitted and scheduled pursuant to contracts between the Government, Virginia Electric and Power Company (hereinafter called the Company), the Company's Transmission Operator, currently PJM Interconnection LLC (hereinafter called PJM), and the Customer. This rate schedule is applicable to customers receiving power from the Government on an arrangement where the Company schedules the power and provides the Customer a credit on their bill for Government power. Nothing in this rate schedule shall preclude modifications to the aforementioned contracts to allow an eligible customer to elect service under another rate schedule.

Applicability

This rate schedule shall be applicable to the sale at wholesale of power and accompanying energy generated at the John H. Kerr and Philpott Projects and sold under appropriate contracts between the Government and the Customer.

Character of Service

The electric capacity and energy supplied hereunder will be delivered at the delivery points of the Customer on the Company's transmission and distribution system.

Monthly Rate

The initial base monthly rate for capacity, energy, and generation services provided under this rate schedule for the period specified shall be:

Initial Base Capacity Charge

$3.65 per kilowatt of total contract demand per month.

Initial Base Energy Charge

14.63 Mills per kilowatt-hour.

The Base Capacity Charge and the Base Energy Charge will be subject to annual adjustment on April 1 of each year based on transfers to plant in service for the preceding Fiscal Year that are not included in the proposed repayment study. The adjustment will be for each increase of $1,000,000 to plant in service an increase of $0.013 per kilowatt per month added to the capacity charge and 0.052 mills per kilowatt-hour added to the energy charge.

The rates are based on a repayment study that projects that the Kerr-Philpott System will produce the following net revenue available for repayment by fiscal year:

FY 2010	$578,000
FY 2011	2,030,000
FY 2012	1,032,000
FY 2013	825,000
FY 2014	863,000
FY 2015	908,000

The rates include a true-up of the capacity and energy rates based on the variance of the actual net revenue available for repayment from the planned net revenue available for repayment in the table above. For every $100,000 under-recovery of the planned net revenue available for repayment, Southeastern will increase the base capacity charge by $0.02 per kilowatt per month, up to a maximum of $0.75 per kilowatt per month, and increase the base energy charge by 0.10 mills per kilowatt-hour, up to a maximum of 3.0 mills per kilowatt per hour, to be implemented April 1 of the next fiscal year. For every $100,000 of over-recovery of the planned net revenue available for repayment, Southeastern will reduce the base capacity charge by $0.02 per kilowatt per month, up to a maximum of $0.75 per kilowatt per month, and reduce the base energy charge by 0.10 mills per kilowatt-hour, up to a maximum of 3.0 mills per kilowatt per hour, to be implemented April 1 of the next fiscal year. Southeastern will give written notice to the customers of the amount of the true-up to the capacity and energy rates by February 1 of the next fiscal year.

Additional rates for transmission and any ancillary services provided under this rate schedule shall be the rates charged Southeastern Power Administration by the Company or PJM. Future adjustments to these rates will become effective upon acceptance for filing by the Federal Energy Regulatory Commission (FERC) of the Company's rate.

Transmission

$−0.91 Per kilowatt of total contract demand per month as of December 2009, is presented for illustrative purposes.

Ancillary Services

1.46 Mills per kilowatt-hour of energy as of December 2009, is presented for illustrative purposes.

The initial charge for transmission and Ancillary Services will be the Customer's ratable share of the charges for transmission, distribution, and ancillary services paid by the Government. The charges for transmission and ancillary services are governed by and subject to refund based upon the determination in proceedings before the FERC involving the Company's or PJM's Open Access Transmission Tariff (OATT).

Proceedings before FERC involving the OATT or the Distribution charge may result in the separation of charges currently included in the transmission rate. In this event, the Government may charge the Customer for any and all separate transmission, ancillary services, and distribution charges paid by the Government in behalf of the Customer. These charges could be recovered through a capacity charge or an energy charge, as determined by the Government.

Tandem Transmission Charge

$2.14 Per kilowatt of total contract demand per month, as an estimated cost as of December 2009.

The tandem transmission charge will recover the cost of transmitting power from a project to the border of another transmitting system. This rate will be a formulary rate based on the cost to the Government for transmission of power from the Philpott project to the border of the Virginia Electric and Power Company System and the cost to the Government for transmission of power from the John H. Kerr Project to the border of the Carolina Power & Light System. These charges could be recovered through a capacity charge or an energy charge, as determined by the Government.

Transmission and Ancillary Services

The charges for transmission and ancillary services shall be governed by and subject to refund based upon the determination in the proceeding involving the Company's or PJM's OATT.

Contract Demand

The contract demand is the amount of capacity in kilowatts stated in the contract which the Government is obligated to supply and the Customer is entitled to receive.

Energy To Be Furnished by the Government

The Government will sell to the Customer and the Customer will purchase from the Government energy each billing month equivalent to a percentage specified by contract of the energy made available to the Company (less applicable losses). The Customer's contract demand and accompanying energy will be allocated proportionately to its individual delivery points served from the Company's system. The applicable energy loss factor for transmission is specified in the OATT.

These losses shall be effective until modified by the FERC, pursuant to application by the Company or PJM under Section 205 of the Federal Power Act or Southeastern Power Administration under Section 206 of the Federal Power Act or otherwise.

Billing Month

The billing month for power sold under this schedule shall end at 12 midnight on the last day of each calendar month.

Wholesale Power Rate Schedule VA–2–B

Availability

This rate schedule shall be available to public bodies and cooperatives (any one of whom is hereinafter called the Customer) in Virginia and North Carolina to whom power may be transmitted pursuant to contracts between the Government, Virginia Electric and Power Company (hereinafter called the Company), the Company's Transmission Operator, currently PJM Interconnection LLC (hereinafter called PJM), and the Customer. The Customer has chosen to self-schedule and does not receive Government power under an arrangement where the Company schedules the power and provides a credit on the Customer's bill for Government power. The Customer is responsible for providing a scheduling arrangement with the Government. The Government is responsible for arranging transmission with the Company and PJM. Nothing in this rate schedule shall preclude modifications to the aforementioned contracts to allow an eligible customer to elect service under another rate schedule.

Applicability

This rate schedule shall be applicable to the sale at wholesale of power and accompanying energy generated at the John H. Kerr and Philpott Projects and sold under appropriate contracts between the Government and the Customer.

Character of Service

The electric capacity and energy supplied hereunder will be delivered at the delivery points of the Customer on the Company's transmission and distribution system.

Monthly Rate

The initial base monthly rate for capacity, energy, and generation services provided under this rate schedule for the period specified shall be:

Initial Base Capacity Charge

$3.65 Per kilowatt of total contract demand per month.

Initial Base Energy Charge

14.63 Mills per kilowatt-hour.

The Base Capacity Charge and the Base Energy Charge will be subject to

annual adjustment on April 1 of each year based on transfers to plant in service for the preceding fiscal year that are not included in the proposed repayment study. The adjustment will be for each increase of $1,000,000 to plant in service an increase of $0.013 per kilowatt per month added to the capacity charge and 0.052 mills per kilowatt-hour added to the energy charge.

The rates are based on a repayment study that projects that the Kerr-Philpott System will produce the following net revenue available for repayment by fiscal year:

FY 2010	$ 578,000
FY 2011	2,030,000
FY 2012	1,032,000
FY 2013	825,000
FY 2014	863,000
FY 2015	908,000

The rates include a true-up of the capacity and energy rates based on the variance of the actual net revenue available for repayment from the planned net revenue available for repayment in the table above. For every $100,000 under-recovery of the planned net revenue available for repayment, Southeastern will increase the base capacity charge by $0.02 per kilowatt per month, up to a maximum of $0.75 per kilowatt per month, and increase the base energy charge by 0.10 mills per kilowatt-hour, up to a maximum of 3.0 mills per kilowatt per hour, to be implemented April 1 of the next fiscal year. For every $100,000 of over-recovery of the planned net revenue available for repayment, Southeastern will reduce the base capacity charge by $0.02 per kilowatt per month, up to a maximum of $0.75 per kilowatt per month, and reduce the base energy charge by 0.10 mills per kilowatt-hour, up to a maximum of 3.0 mills per kilowatt per hour, to be implemented April 1 of the next fiscal year. Southeastern will give written notice to the customers of the amount of the true-up to the capacity and energy rates by February 1 of the next fiscal year.

Additional rates for transmission and any ancillary services provided under this rate schedule shall be the rates charged Southeastern Power Administration by the Company or PJM. Future adjustments to these rates will become effective upon acceptance for filing by the Federal Energy Regulatory Commission (FERC) of the Company's rate.

Transmission

$−0.91 Per kilowatt of total contract demand per month as of December 2009, is presented for illustrative purposes.

Ancillary Services

1.46 Mills per kilowatt-hour of energy as of December 2009, is presented for illustrative purposes.

The initial charge for transmission and ancillary services will be the Customer's ratable share of the charges for transmission, distribution, and ancillary services paid by the Government. The charges for transmission and ancillary services are governed by and subject to refund based upon the determination in proceedings before the FERC involving the Company's or PJM's Open Access Transmission Tariff (OATT).

Proceedings before FERC involving the OATT or the distribution charge may result in the separation of charges currently included in the transmission rate. In this event, the Government may charge the Customer for any and all separate transmission, ancillary services, and distribution charges paid by the Government in behalf of the Customer. These charges could be recovered through a capacity charge or an energy charge, as determined by the Government.

Tandem Transmission Charge

$2.14 Per kilowatt of total contract demand per month, as an estimated cost as of December 2009.

The tandem transmission charge will recover the cost of transmitting power from a project to the border of another transmitting system. This rate will be a formulary rate based on the cost to the Government for transmission of power from the Philpott project to the border of the Virginia Electric and Power Company System and the cost to the Government for transmission of power from the John H. Kerr Project to the border of the Carolina Power & Light System. These charges could be recovered through a capacity charge or an energy charge, as determined by the Government.

Transmission and Ancillary Services

The charges for transmission and ancillary services shall be governed by and subject to refund based upon the determination in the proceeding involving the Company's or PJM's OATT.

Contract Demand

The contract demand is the amount of capacity in kilowatts stated in the contract which the Government is obligated to supply and the Customer is entitled to receive.

Energy To Be Furnished by the Government

The Government will sell to the Customer and the Customer will purchase from the Government energy each billing month equivalent to a percentage specified by contract of the energy made available to the Company (less applicable losses). The Customer's contract demand and accompanying energy will be allocated proportionately to its individual delivery points served from the Company's system. The applicable energy loss factor for transmission is specified in the OATT.

These losses shall be effective until modified by FERC, pursuant to application by the Company or PJM under Section 205 of the Federal Power Act or Southeastern Power Administration under Section 206 of the Federal Power Act or otherwise.

Billing Month

The billing month for power sold under this schedule shall end at 12 midnight on the last day of each calendar month.

Wholesale Power Rate Schedule VA–3–B

Availability

This rate schedule shall be available to public bodies and cooperatives (any one of whom is hereinafter called the Customer) in Virginia and North Carolina to whom power may be scheduled pursuant to contracts between the Government, Virginia Electric and Power Company (hereinafter called the Company), the Company's Transmission Operator, currently PJM Interconnection LLC (hereinafter called PJM), and the Customer. The Government is responsible for providing the scheduling. The Customer is responsible for providing a transmission arrangement. Nothing in this rate schedule shall preclude modifications to the aforementioned contracts to allow an eligible customer to elect service under another rate schedule.

Applicability

This rate schedule shall be applicable to the sale at wholesale of power and accompanying energy generated at the John H. Kerr and Philpott Projects (hereinafter called the Projects) and sold under appropriate contracts between the Government and the Customer.

Character of Service

The electric capacity and energy supplied hereunder will be delivered at the Projects.

Monthly Rate

The initial base monthly rate for capacity, energy, and generation services provided under this rate schedule for the period specified shall be:

Initial Base Capacity Charge

$3.65 Per kilowatt of total contract demand per month.

Initial Base Energy Charge

14.63 Mills per kilowatt-hour.

The Base Capacity Charge and the Base Energy Charge will be subject to annual adjustment on April 1 of each year based on transfers to plant in service for the preceding Fiscal Year that are not included in the proposed repayment study. The adjustment will be for each increase of $1,000,000 to plant in service an increase of $0.013 per kilowatt per month added to the capacity charge and 0.052 mills per kilowatt-hour added to the energy charge.

The rates are based on a repayment study that projects that the Kerr-Philpott System will produce the following net revenue available for repayment by fiscal year:

FY 2010	$578,000
FY 2011	2,030,000
FY 2012	1,032,000
FY 2013	825,000
FY 2014	863,000
FY 2015	908,000

The rates include a true-up of the capacity and energy rates based on the variance of the actual net revenue available for repayment from the planned net revenue available for repayment in the table above. For every $100,000 under-recovery of the planned net revenue available for repayment, Southeastern will increase the base capacity charge by $0.02 per kilowatt per month, up to a maximum of $0.75 per kilowatt per month, and increase the base energy charge by 0.10 mills per kilowatt-hour, up to a maximum of 3.0 mills per kilowatt per hour, to be implemented April 1 of the next fiscal year. For every $100,000 of over-recovery of the planned net revenue available for repayment, Southeastern will reduce the base capacity charge by $0.02 per kilowatt per month, up to a maximum of $0.75 per kilowatt per month, and reduce the base energy charge by 0.10 mills per kilowatt-hour, up to a maximum of 3.0 mills per kilowatt per hour, to be implemented April 1 of the next fiscal year. Southeastern will give written notice to the customers of the amount of the true-up to the capacity and energy rates by February 1 of the next fiscal year.

Additional rates for Transmission and Ancillary Services provided under this rate schedule shall be the rates charged Southeastern Power Administration by the Company or PJM. Future adjustments to these rates will become effective upon acceptance for filing by the Federal Energy Regulatory Commission (FERC) of the Company's rate.

Ancillary Services

1.46 Mills per kilowatt-hour of energy as of December 2009, is presented for illustrative purposes.

The initial charge for transmission and ancillary services will be the Customer's ratable share of the charges for transmission, distribution, and ancillary services paid by the Government. The charges for transmission and ancillary services are governed by and subject to refund based upon the determination in proceedings before the FERC involving the Company's or PJM's Open Access Transmission Tariff (OATT).

Proceedings before FERC involving the OATT or the Distribution charge may result in the separation of charges currently included in the transmission rate. In this event, the Government may charge the Customer for any and all separate transmission, ancillary services, and distribution charges paid by the Government in behalf of the Customer. These charges could be recovered through a capacity charge or an energy charge, as determined by the Government.

Tandem Transmission Charge

$2.14 Per kilowatt of total contract demand per month, as an estimated cost as of December 2009.

The tandem transmission charge will recover the cost of transmitting power from a project to the border of another transmitting system. This rate will be a formulary rate based on the cost to the Government for transmission of power from the Philpott project to the border of the Virginia Electric and Power Company System and the cost to the Government for transmission of power from the John H. Kerr Project to the border of the Carolina Power & Light System. These charges could be recovered through a capacity charge or an energy charge, as determined by the Government.

Transmission and Ancillary Services

The charges for transmission and ancillary services shall be governed by and subject to refund based upon the determination in the proceeding involving the Company's or PJM's OATT.

Contract Demand

The contract demand is the amount of capacity in kilowatts stated in the contract which the Government is obligated to supply and the Customer is entitled to receive.

Energy To Be Furnished by the Government

The Government will sell to the Customer and the Customer will purchase from the Government energy each billing month equivalent to a percentage specified by contract of the energy made available to the Company (less applicable losses). The Customer's contract demand and accompanying energy will be allocated proportionately to its individual delivery points served from the Company's system. The applicable energy loss factor for transmission is specified in the OATT.

These losses shall be effective until modified by the Federal Energy Regulatory Commission, pursuant to application by the Company or PJM under Section 205 of the Federal Power Act or Southeastern Power Administration under Section 206 of the Federal Power Act or otherwise.

Billing Month

The billing month for power sold under this schedule shall end at 12 midnight on the last day of each calendar month.

Wholesale Power Rate Schedule VA–4–B

Availability

This rate schedule shall be available to public bodies and cooperatives (any one of whom is hereinafter called the Customer) in Virginia and North Carolina served through the transmission facilities of Virginia Electric and Power Company (hereinafter called the Company) and PJM Interconnection LLC (hereinafter called PJM). The Customer has chosen to self-schedule and does not receive Government power under an arrangement where the Company schedules the power and provides a credit on the Customer's bill for Government power. The Customer is responsible for providing a scheduling arrangement with the Government and for providing a transmission arrangement. Nothing in this rate schedule shall preclude modifications to the aforementioned contracts to allow an eligible customer to elect service under another rate schedule.

Applicability

This rate schedule shall be applicable to the sale at wholesale of power and

accompanying energy generated at the John H. Kerr and Philpott Projects (hereinafter called the Projects) and sold under appropriate contracts between the Government and the Customer.

Character of Service

The electric capacity and energy supplied hereunder will be delivered at the Projects.

Monthly Rate

The initial base monthly rate for capacity, energy, and generation services provided under this rate schedule for the period specified shall be:

Initial Base Capacity Charge

$3.65 Per kilowatt of total contract demand per month.

Initial Base Energy Charge

14.63 Mills per kilowatt-hour.

The Base Capacity Charge and the Base Energy Charge will be subject to annual adjustment on April 1 of each year based on transfers to plant in service for the preceding Fiscal Year that are not included in the proposed repayment study. The adjustment will be for each increase of $1,000,000 to plant in service an increase of $0.013 per kilowatt per month added to the capacity charge and 0.052 mills per kilowatt-hour added to the energy charge.

The rates are based on a repayment study that projects that the Kerr-Philpott System will produce the following net revenue available for repayment by fiscal year:

FY 2010	$578,000
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FY 2012	1,032,000
FY 2013	825,000
FY 2014	863,000
FY 2015	908,000

The rates include a true-up of the capacity and energy rates based on the variance of the actual net revenue available for repayment from the planned net revenue available for repayment in the table above. For every $100,000 under-recovery of the planned net revenue available for repayment, Southeastern will increase the base capacity charge by $0.02 per kilowatt per month, up to a maximum of $0.75 per kilowatt per month, and increase the base energy charge by 0.10 mills per kilowatt-hour, up to a maximum of 3.0 mills per kilowatt per hour, to be implemented April 1 of the next fiscal year. For every $100,000 of over-recovery of the planned net revenue available for repayment, Southeastern will reduce the base capacity charge by $0.02 per kilowatt per month, up to a maximum of $0.75 per kilowatt per month, and reduce the base energy charge by 0.10 mills per kilowatt-hour, up to a maximum of 3.0 mills per kilowatt per hour, to be implemented April 1 of the next fiscal year. Southeastern will give written notice to the customers of the amount of the true-up to the capacity and energy rates by February 1 of the next fiscal year.

Additional rates for transmission and ancillary services provided under this rate schedule shall be the rates charged Southeastern Power Administration by the Company or PJM. Future adjustments to these rates will become effective upon acceptance for filing by the Federal Energy Regulatory Commission (FERC) of the Company's rate.

Ancillary Services

1.46 Mills per kilowatt-hour of energy as of December 2009, is presented for illustrative purposes.

The initial charge for transmission and ancillary services will be the Customer's ratable share of the charges for transmission, distribution, and ancillary services paid by the Government. The charges for transmission and ancillary services are governed by and subject to refund based upon the determination in proceedings before the FERC involving the Company's or PJM's Open Access Transmission Tariff (OATT).

Proceedings before FERC involving the OATT or the Distribution charge may result in the separation of charges currently included in the transmission rate. In this event, the Government may charge the Customer for any and all separate transmission, ancillary services, and distribution charges paid by the Government on behalf of the Customer. These charges could be recovered through a capacity charge or an energy charge, as determined by the Government.

Tandem Transmission Charge

$2.14 Per kilowatt of total contract demand per month, as an estimated cost as of December 2009.

The tandem transmission charge will recover the cost of transmitting power from a project to the border of another transmitting system. This rate will be a formulary rate based on the cost to the Government for transmission of power from the Philpott project to the border of the Virginia Electric and Power Company System and the cost to the Government for transmission of power from the John H. Kerr Project to the border of the Carolina Power & Light System. These charges could be recovered through a capacity charge or an energy charge, as determined by the Government.

Transmission and Ancillary Services

The charges for transmission and ancillary services shall be governed by and subject to refund based upon the determination in the proceeding involving the Company's or PJM's OATT.

Contract Demand

The contract demand is the amount of capacity in kilowatts stated in the contract which the Government is obligated to supply and the Customer is entitled to receive.

Energy To Be Furnished by the Government

The Government will sell to the Customer and the Customer will purchase from the Government energy each billing month equivalent to a percentage specified by contract of the energy made available to the Company (less applicable losses). The Customer's contract demand and accompanying energy will be allocated proportionately to its individual delivery points served from the Company's system. The applicable energy loss factor for transmission is specified in the OATT.

These losses shall be effective until modified by the FERC, pursuant to application by the Company or PJM under Section 205 of the Federal Power Act or Southeastern Power Administration under Section 206 of the Federal Power Act or otherwise.

Billing Month

The billing month for power sold under this schedule shall end at 12 midnight on the last day of each calendar month.

Wholesale Power Rate Schedule CP&L–1–B

Availability

This rate schedule shall be available to public bodies and cooperatives (any one of whom is hereinafter called the Customer) in North Carolina and South Carolina to whom power may be transmitted and scheduled pursuant to contracts between the Government and Carolina Power & Light Company (hereinafter called the Company) and the Customer. This rate schedule is applicable to customers receiving power from the Government on an arrangement where the Company schedules the power and provides the Customer a credit on their bill for Government power. Nothing in this rate schedule shall preclude modifications to the aforementioned contracts to allow an

eligible customer to elect service under another rate schedule.

Applicability

This rate schedule shall be applicable to the sale at wholesale of power and accompanying energy generated at the John H. Kerr and Philpott Projects and sold under appropriate contracts between the Government and the Customer.

Character of Service

The electric capacity and energy supplied hereunder will be delivered at the delivery points of the Customer on the Company's transmission and distribution system.

Monthly Rate

The initial base monthly rate for capacity, energy, and generation services provided under this rate schedule for the period specified shall be:

Initial Base Capacity Charge

$3.65 Per kilowatt of total contract demand per month.

Initial Base Energy Charge

14.63 Mills per kilowatt-hour.

The Base Capacity Charge and the Base Energy Charge will be subject to annual adjustment on April 1 of each year based on transfers to plant in service for the preceding Fiscal Year that are not included in the proposed repayment study. The adjustment will be for each increase of $1,000,000 to plant in service an increase of $0.013 per kilowatt per month added to the capacity charge and 0.052 mills per kilowatt-hour added to the energy charge.

The rates are based on a repayment study that projects that the Kerr-Philpott System will produce the following net revenue available for repayment by fiscal year:

FY 2010	$ 578,000
FY 2011	2,030,000
FY 2012	1,032,000
FY 2013	825,000
FY 2014	863,000
FY 2015	908,000

The rates include a true-up of the capacity and energy rates based on the variance of the actual net revenue available for repayment from the planned net revenue available for repayment in the table above. For every $100,000 under-recovery of the planned net revenue available for repayment, Southeastern will increase the base capacity charge by $0.02 per kilowatt per month, up to a maximum of $0.75 per kilowatt per month, and increase the base energy charge by 0.10 mills per kilowatt-hour, up to a maximum of 3.0 mills per kilowatt per hour, to be implemented April 1 of the next fiscal year. For every $100,000 of over-recovery of the planned net revenue available for repayment, Southeastern will reduce the base capacity charge by $0.02 per kilowatt per month, up to a maximum of $0.75 per kilowatt per month, and reduce the base energy charge by 0.10 mills per kilowatt-hour, up to a maximum of 3.0 mills per kilowatt per hour, to be implemented April 1 of the next fiscal year. Southeastern will give written notice to the customers of the amount of the true-up to the capacity and energy rates by February 1 of the next fiscal year.

Additional rates for transmission and ancillary services provided under this rate schedule shall be the rates charged Southeastern Power Administration by the Company. Future adjustments to these rates will become effective upon acceptance for filing by the Federal Energy Regulatory Commission (FERC) of the Company's rate.

Transmission

$1.1453 Per kilowatt of total contract demand per month as of December 2009, is presented for illustrative purposes.

The initial transmission charge will be the Customer's ratable share of the transmission and distribution charges paid by the Government. The rate is subject to periodic adjustment and will be computed in accordance with the terms of the Government-Company contract.

Proceedings before FERC involving the Company's Open Access Transmission Tariff (OATT) or the distribution charge may result in the separation of charges currently included in the transmission rate. In this event, the Government may charge the Customer for any and all separate transmission and distribution charges paid by the Government in behalf of the Customer. These charges could be recovered through a capacity charge or an energy charge, as determined by the Government.

Tandem Transmission Charge

$2.14 Per kilowatt of total contract demand per month, as an estimated cost as of December 2009.

The tandem transmission charge will recover the cost of transmitting power from a project to the border of another transmitting system. This rate will be a formulary rate based on the cost to the Government for transmission of power from the Philpott project to the border of the Virginia Electric and Power Company System and the cost to the Government for transmission of power from the John H. Kerr Project to the border of the Carolina Power & Light System. These charges could be recovered through a capacity charge or an energy charge, as determined by the Government.

Transmission and Ancillary Services

The charges for transmission and ancillary services shall be governed by and subject to refund based upon the terms of the Government-Company contract.

Contract Demand

The contract demand is the amount of capacity in kilowatts stated in the contract which the Government is obligated to supply and the Customer is entitled to receive.

Energy To Be Furnished by the Government

The Government will sell to the Customer and the Customer will purchase from the Government energy each billing month equivalent to a percentage specified by contract of the energy made available to the Company (less applicable losses). The Customer's contract demand and accompanying energy will be allocated proportionately to its individual delivery points served from the Company's system. The applicable energy loss factor for transmission, in accordance with the Government-Company contract, is six (6) per cent. This loss factor will be governed by the terms of the Government-Company contract.

Billing Month

The billing month for power sold under this schedule shall end at 12 midnight on the last day of each calendar month.

Wholesale Power Rate Schedule CP&L–2–B

Availability

This rate schedule shall be available to public bodies and cooperatives (any one of whom is hereinafter called the Customer) in North Carolina and South Carolina to whom power may be transmitted pursuant to contracts between the Government and Carolina Power & Light Company (hereinafter called the Company) and the Customer. The Customer has chosen to self-schedule and does not receive Government power under an arrangement where the Company schedules the power and provides a credit on the Customer's bill for Government power. The Customer is responsible for providing a scheduling

arrangement with the Government. The Government is responsible for arranging transmission with the Company. Nothing in this rate schedule shall preclude modifications to the aforementioned contracts to allow an eligible customer to elect service under another rate schedule.

Applicability

This rate schedule shall be applicable to the sale at wholesale of power and accompanying energy generated at the John H. Kerr and Philpott Projects and sold under appropriate contracts between the Government and the Customer.

Character of Service

The electric capacity and energy supplied hereunder will be delivered at the delivery points of the Customer on the Company's transmission and distribution system.

Monthly Rate

The initial base monthly rate for capacity, energy, and generation services provided under this rate schedule for the period specified shall be:

Initial Base Capacity Charge

$3.65 Per kilowatt of total contract demand per month.

Initial Base Energy Charge

14.63 Mills per kilowatt-hour.

The Base Capacity Charge and the Base Energy Charge will be subject to annual adjustment on April 1 of each year based on transfers to plant in service for the preceding Fiscal Year that are not included in the proposed repayment study. The adjustment will be for each increase of $1,000,000 to plant in service an increase of $0.013 per kilowatt per month added to the capacity charge and 0.052 mills per kilowatt-hour added to the energy charge.

The rates are based on a repayment study that projects that the Kerr-Philpott System will produce the following net revenue available for repayment by fiscal year:

FY 2010	$578,000
FY 2011	2,030,000
FY 2012	1,032,000
FY 2013	825,000
FY 2014	863,000
FY 2015	908,000

The rates include a true-up of the capacity and energy rates based on the variance of the actual net revenue available for repayment from the planned net revenue available for repayment in the table above. For every $100,000 under-recovery of the planned net revenue available for repayment, Southeastern will increase the base capacity charge by $0.02 per kilowatt per month, up to a maximum of $0.75 per kilowatt per month, and increase the base energy charge by 0.10 mills per kilowatt-hour, up to a maximum of 3.0 mills per kilowatt per hour, to be implemented April 1 of the next fiscal year. For every $100,000 of over-recovery of the planned net revenue available for repayment, Southeastern will reduce the base capacity charge by $0.02 per kilowatt per month, up to a maximum of $0.75 per kilowatt per month, and reduce the base energy charge by 0.10 mills per kilowatt-hour, up to a maximum of 3.0 mills per kilowatt per hour, to be implemented April 1 of the next fiscal year. Southeastern will give written notice to the customers of the amount of the true-up to the capacity and energy rates by February 1 of the next fiscal year.

Additional rates for transmission and ancillary services provided under this rate schedule shall be the rates charged Southeastern Power Administration by the Company. Future adjustments to these rates will become effective upon acceptance for filing by the Federal Energy Regulatory Commission (FERC) of the Company's rate.

Transmission

$1.1453 Per kilowatt of total contract demand per month as of December 2009, is presented for illustrative purposes.

The initial transmission charge will be the Customer's ratable share of the transmission and distribution charges paid by the Government. The rate is subject to periodic adjustment and will be computed in accordance with the terms of the Government-Company contract.

Proceedings before FERC involving the Company's Open Access Transmission Tariff (OATT) or the distribution charge may result in the separation of charges currently included in the transmission rate. In this event, the Government may charge the Customer for any and all separate transmission and distribution charges paid by the Government in behalf of the Customer. These charges could be recovered through a capacity charge or an energy charge, as determined by the Government.

Tandem Transmission Charge

$2.14 Per kilowatt of total contract demand per month, as an estimated cost as of December 2009.

The tandem transmission charge will recover the cost of transmitting power from a project to the border of another transmitting system. This rate will be a formulary rate based on the cost to the Government for transmission of power from the Philpott project to the border of the Virginia Electric and Power Company System and the cost to the Government for transmission of power from the John H. Kerr Project to the border of the Carolina Power & Light System. These charges could be recovered through a capacity charge or an energy charge, as determined by the Government.

Transmission and Ancillary Services

The charges for transmission and ancillary services shall be governed by and subject to refund based upon the terms of the Government-Company contract.

Contract Demand

The contract demand is the amount of capacity in kilowatts stated in the contract which the Government is obligated to supply and the Customer is entitled to receive.

Energy To Be Furnished by the Government

The Government will sell to the Customer and the Customer will purchase from the Government energy each billing month equivalent to a percentage specified by contract of the energy made available to the Company (less applicable losses). The Customer's contract demand and accompanying energy will be allocated proportionately to its individual delivery points served from the Company's system. The applicable energy loss factor for transmission, in accordance with the Government-Company contract, is six (6) per cent. This loss factor will be governed by the terms of the Government-Company contract.

Billing Month

The billing month for power sold under this schedule shall end at 12 midnight on the last day of each calendar month.

Wholesale Power Rate Schedule CP&L–3–B

Availability

This rate schedule shall be available to public bodies and cooperatives (any one of whom is hereinafter called the Customer) in North Carolina and South Carolina to whom power may be scheduled pursuant to contracts between the Government and Carolina Power & Light Company (hereinafter called the Company) and the Customer. The Government is responsible for providing the scheduling. The Customer

is responsible for providing a transmission arrangement. Nothing in this rate schedule shall preclude modifications to the aforementioned contracts to allow an eligible customer to elect service under another rate schedule.

Applicability

This rate schedule shall be applicable to the sale at wholesale of power and accompanying energy generated at the John H. Kerr and Philpott Projects (hereinafter called the Projects) and sold under appropriate contracts between the Government and the Customer.

Character of Service

The electric capacity and energy supplied hereunder will be delivered at the Projects.

Monthly Rate

The initial base monthly rate for capacity, energy, and generation services provided under this rate schedule for the period specified shall be:

Initial Base Capacity Charge

$3.65 Per kilowatt of total contract demand per month.

Initial Base Energy Charge

14.63 Mills per kilowatt-hour.

The Base Capacity Charge and the Base Energy Charge will be subject to annual adjustment on April 1 of each year based on transfers to plant in service for the preceding Fiscal Year that are not included in the proposed repayment study. The adjustment will be for each increase of $1,000,000 to plant in service an increase of $0.013 per kilowatt per month added to the capacity charge and 0.052 mills per kilowatt-hour added to the energy charge.

The rates are based on a repayment study that projects that the Kerr-Philpott System will produce the following net revenue available for repayment by fiscal year:

FY 2010	$578,000
FY 2011	2,030,000
FY 2012	1,032,000
FY 2013	825,000
FY 2014	863,000
FY 2015	908,000

The rates include a true-up of the capacity and energy rates based on the variance of the actual net revenue available for repayment from the planned net revenue available for repayment in the table above. For every $100,000 under-recovery of the planned net revenue available for repayment, Southeastern will increase the base capacity charge by $0.02 per kilowatt per month, up to a maximum of $0.75 per kilowatt per month, and increase the base energy charge by 0.10 mills per kilowatt-hour, up to a maximum of 3.0 mills per kilowatt per hour, to be implemented April 1 of the next fiscal year. For every $100,000 of over-recovery of the planned net revenue available for repayment, Southeastern will reduce the base capacity charge by $0.02 per kilowatt per month, up to a maximum of $0.75 per kilowatt per month, and reduce the base energy charge by 0.10 mills per kilowatt-hour, up to a maximum of 3.0 mills per kilowatt per hour, to be implemented April 1 of the next fiscal year. Southeastern will give written notice to the customers of the amount of the true-up to the capacity and energy rates by February 1 of the next fiscal year.

Additional rates for transmission and ancillary services provided under this rate schedule shall be the rates charged Southeastern Power Administration by the Company. Future adjustments to these rates will become effective upon acceptance for filing by the Federal Energy Regulatory Commission (FERC) of the Company's rate.

Proceedings before FERC involving the Company's Open Access Transmission Tariff (OATT) or the distribution charge may result in the separation of charges currently included in the transmission rate. In this event, the Government may charge the Customer for any and all separate transmission and distribution charges paid by the Government in behalf of the Customer.

Tandem Transmission Charge

$2.14 Per kilowatt of total contract demand per month, as an estimated cost as of December 2009.

The tandem transmission charge will recover the cost of transmitting power from a project to the border of another transmitting system. This rate will be a formulary rate based on the cost to the Government for transmission of power from the Philpott project to the border of the Virginia Electric and Power Company System and the cost to the Government for transmission of power from the John H. Kerr Project to the border of the Carolina Power & Light System. These charges could be recovered through a capacity charge or an energy charge, as determined by the Government.

Transmission and Ancillary Services

The charges for transmission and ancillary services shall be governed by and subject to refund based upon the terms of the Government-Company contract.

Contract Demand

The contract demand is the amount of capacity in kilowatts stated in the contract which the Government is obligated to supply and the Customer is entitled to receive.

Energy To Be Furnished by the Government

The Government will sell to the Customer and the Customer will purchase from the Government energy each billing month equivalent to a percentage specified by contract of the energy made available to the Company (less applicable losses). The Customer's contract demand and accompanying energy will be allocated proportionately to its individual delivery points served from the Company's system. The applicable energy loss factor for transmission, in accordance with the Government-Company contract, is six (6) per cent. This loss factor will be governed by the terms of the Government-Company contract.

Billing Month

The billing month for power sold under this schedule shall end at 12 midnight on the last day of each calendar month.

Wholesale Power Rate Schedule CP&L–4–B

Availability

This rate schedule shall be available to public bodies and cooperatives (any one of whom is hereinafter called the Customer) in North Carolina and South Carolina served through the transmission facilities of Carolina Power & Light Company (hereinafter called the Company). The Customer has chosen to self-schedule and does not receive Government power under an arrangement where the Company schedules the power and provides a credit on the Customer's bill for Government power. The Customer is responsible for providing a scheduling arrangement with the Government and for providing a transmission arrangement. Nothing in this rate schedule shall preclude modifications to the aforementioned contracts to allow an eligible customer to elect service under another rate schedule.

Applicability

This rate schedule shall be applicable to the sale at wholesale of power and accompanying energy generated at the John H. Kerr and Philpott Projects (hereinafter called the Projects) and sold

under appropriate contracts between the Government and the Customer.

Character of Service

The electric capacity and energy supplied hereunder will be delivered at the Projects.

Monthly Rate

The initial base monthly rate for capacity, energy, and generation services provided under this rate schedule for the period specified shall be:

Initial Base Capacity Charge

$3.65 Per kilowatt of total contract demand per month.

Initial Base Energy Charge

14.63 Mills per kilowatt-hour.

The Base Capacity Charge and the Base Energy Charge will be subject to annual adjustment on April 1 of each year based on transfers to plant in service for the preceding Fiscal Year that are not included in the proposed repayment study. The adjustment will be for each increase of $1,000,000 to plant in service an increase of $0.013 per kilowatt per month added to the capacity charge and 0.052 mills per kilowatt-hour added to the energy charge.

The rates are based on a repayment study that projects that the Kerr-Philpott System will produce the following net revenue available for repayment by fiscal year:

FY 2010	$578,000
FY 2011	2,030,000
FY 2012	1,032,000
FY 2013	825,000
FY 2014	863,000
FY 2015	908,000

The rates include a true-up of the capacity and energy rates based on the variance of the actual net revenue available for repayment from the planned net revenue available for repayment in the table above. For every $100,000 under-recovery of the planned net revenue available for repayment, Southeastern will increase the base capacity charge by $0.02 per kilowatt per month, up to a maximum of $0.75 per kilowatt per month, and increase the base energy charge by 0.10 mills per kilowatt-hour, up to a maximum of 3.0 mills per kilowatt per hour, to be implemented April 1 of the next fiscal year. For every $100,000 of over-recovery of the planned net revenue available for repayment, Southeastern will reduce the base capacity charge by $0.02 per kilowatt per month, up to a maximum of $0.75 per kilowatt per month, and reduce the base energy charge by 0.10 mills per kilowatt-hour, up to a maximum of 3.0 mills per kilowatt per hour, to be implemented April 1 of the next fiscal year. Southeastern will give written notice to the customers of the amount of the true-up to the capacity and energy rates by February 1 of the next fiscal year.

Additional rates for transmission and ancillary services provided under this rate schedule shall be the rates charged Southeastern Power Administration by the Company. Future adjustments to these rates will become effective upon acceptance for filing by the Federal Energy Regulatory Commission (FERC) of the Company's rate.

Tandem Transmission Charge

$2.14 Per kilowatt of total contract demand per month, as an estimated cost as of December 2009.

The tandem transmission charge will recover the cost of transmitting power from a project to the border of another transmitting system. This rate will be a formulary rate based on the cost to the Government for transmission of power from the Philpott project to the border of the Virginia Electric and Power Company System and the cost to the Government for transmission of power from the John H. Kerr Project to the border of the Carolina Power & Light System. These charges could be recovered through a capacity charge or an energy charge, as determined by the Government.

Transmission and Ancillary Services

The charges for transmission and ancillary services shall be governed by and subject to refund based upon the terms of the Government-Company contract.

Contract Demand

The contract demand is the amount of capacity in kilowatts stated in the contract which the Government is obligated to supply and the Customer is entitled to receive.

Energy To Be Furnished by the Government

The Government will sell to the Customer and the Customer will purchase from the Government energy each billing month equivalent to a percentage specified by contract of the energy made available to the Company (less applicable losses). The Customer's contract demand and accompanying energy will be allocated proportionately to its individual delivery points served from the Company's system. The applicable energy loss factor for transmission, in accordance with the Government-Company contract, is six (6) per cent. This loss factor will be governed by the terms of the Government-Company contract.

Billing Month

The billing month for power sold under this schedule shall end at 12 midnight on the last day of each calendar month.

Wholesale Power Rate Schedule AP–1–B

Availability

This rate schedule shall be available to public bodies and cooperatives (any one of whom is hereinafter called the Customer) in Virginia to whom power may be transmitted and scheduled pursuant to contracts between the Government, American Electric Power Service Corporation (hereinafter called the Company), the Company's Transmission Operator, currently PJM Interconnection LLC (hereinafter called PJM), and the Customer. This rate schedule is applicable to customers receiving power from the Government on an arrangement where the Company schedules the power and provides the Customer a credit on their bill for Government power. Nothing in this rate schedule shall preclude modifications to the aforementioned contracts to allow an eligible customer to elect service under another rate schedule.

Applicability

This rate schedule shall be applicable to the sale at wholesale of power and accompanying energy generated at the John H. Kerr and Philpott Projects and sold under appropriate contracts between the Government and the Customer.

Character of Service

The electric capacity and energy supplied hereunder will be delivered at the delivery points of the Customer on the Company's transmission and distribution system.

Monthly Rate

The initial base monthly rate for capacity, energy, and generation services provided under this rate schedule for the period specified shall be:

Initial Base Capacity Charge

$3.65 Per kilowatt of total contract demand per month.

Initial Base Energy Charge

14.63 Mills per kilowatt-hour.

The Base Capacity Charge and the Base Energy Charge will be subject to annual adjustment on April 1 of each year based on transfers to plant in

service for the preceding Fiscal Year that are not included in the proposed repayment study. The adjustment will be for each increase of $1,000,000 to plant in service an increase of $0.013 per kilowatt per month added to the capacity charge and 0.052 mills per kilowatt-hour added to the energy charge.

The rates are based on a repayment study that projects that the Kerr-Philpott System will produce the following net revenue available for repayment by fiscal year:

FY 2010	$578,000
FY 2011	2,030,000
FY 2012	1,032,000
FY 2013	825,000
FY 2014	863,000
FY 2015	908,000

The rates include a true-up of the capacity and energy rates based on the variance of the actual net revenue available for repayment from the planned net revenue available for repayment in the table above. For every $100,000 under-recovery of the planned net revenue available for repayment, Southeastern will increase the base capacity charge by $0.02 per kilowatt per month, up to a maximum of $0.75 per kilowatt per month, and increase the base energy charge by 0.10 mills per kilowatt-hour, up to a maximum of 3.0 mills per kilowatt per hour, to be implemented April 1 of the next fiscal year. For every $100,000 of over-recovery of the planned net revenue available for repayment, Southeastern will reduce the base capacity charge by $0.02 per kilowatt per month, up to a maximum of $0.75 per kilowatt per month, and reduce the base energy charge by 0.10 mills per kilowatt-hour, up to a maximum of 3.0 mills per kilowatt per hour, to be implemented April 1 of the next fiscal year. Southeastern will give written notice to the customers of the amount of the true-up to the capacity and energy rates by February 1 of the next fiscal year.

Additional rates for transmission and ancillary services provided under this rate schedule shall be the rates charged Southeastern Power Administration by the Company. Future adjustments to these rates will become effective upon acceptance for filing by the Federal Energy Regulatory Commission (FERC) of the Company's rate.

Transmission

$ − 0.91 Per kilowatt of total contract demand per month as of December 2009, is presented for illustrative purposes.

Ancillary Services

1.46 Mills per kilowatt-hour of energy as of December 2009, is presented for illustrative purposes.

The initial charge for transmission and ancillary services will be the Customer's ratable share of the charges for transmission, distribution, and ancillary services paid by the Government. The charges for transmission and ancillary services are governed by and subject to refund based upon the determination in proceedings before the FERC involving the Company's or PJM's Open Access Transmission Tariff (OATT).

Proceedings before FERC involving the OATT or the Distribution charge may result in the separation of charges currently included in the transmission rate. In this event, the Government may charge the Customer for any and all separate transmission, ancillary services, and distribution charges paid by the Government in behalf of the Customer. These charges could be recovered through a capacity charge or an energy charge, as determined by the Government.

Tandem Transmission Charge

$2.14 Per kilowatt of total contract demand per month, as an estimated cost as of December 2009.

The tandem transmission charge will recover the cost of transmitting power from a project to the border of another transmitting system. This rate will be a formulary rate based on the cost to the Government for transmission of power from the Philpott project to the border of the Virginia Electric and Power Company System and the cost to the Government for transmission of power from the John H. Kerr Project to the border of the Carolina Power & Light System. These charges could be recovered through a capacity charge or an energy charge, as determined by the Government.

Transmission and Ancillary Services

The charges for transmission and ancillary services shall be governed by and subject to refund based upon the determination in the proceeding involving the Company's or PJM's OATT.

Contract Demand

The contract demand is the amount of capacity in kilowatts stated in the contract which the Government is obligated to supply and the Customer is entitled to receive.

Energy To Be Furnished by the Government

The Government will sell to the Customer and the Customer will purchase from the Government energy each billing month equivalent to a percentage specified by contract of the energy made available to the Company (less applicable losses). The Customer's contract demand and accompanying energy will be allocated proportionately to its individual delivery points served from the Company's system. The applicable energy loss factor for transmission is specified in the OATT.

These losses shall be effective until modified by the Federal Energy Regulatory Commission, pursuant to application by the Company or PJM under Section 205 of the Federal Power Act or Southeastern Power Administration under Section 206 of the Federal Power Act or otherwise.

Billing Month

The billing month for power sold under this schedule shall end at 12 midnight on the last day of each calendar month.

Wholesale Power Rate Schedule AP–2–B

Availability

This rate schedule shall be available to public bodies and cooperatives (any one of whom is hereinafter called the Customer) in Virginia to whom power may be transmitted pursuant to contracts between the Government, American Electric Power Service Corporation (hereinafter called the Company), the Company's Transmission Operator, currently PJM Interconnection LLC (hereinafter called PJM), and the Customer. The Customer has chosen to self-schedule and does not receive Government power under an arrangement where the Company schedules the power and provides a credit on the Customer's bill for Government power. The Customer is responsible for providing a scheduling arrangement with the Government. The Government is responsible for arranging transmission with the Company. Nothing in this rate schedule shall preclude modifications to the aforementioned contracts to allow an eligible customer to elect service under another rate schedule.

Applicability

This rate schedule shall be applicable to the sale at wholesale of power and accompanying energy generated at the John H. Kerr and Philpott Projects and sold under appropriate contracts

between the Government and the Customer.

Character of Service

The electric capacity and energy supplied hereunder will be delivered at the delivery points of the Customer on the Company's transmission and distribution system.

Monthly Rate

The initial base monthly rate for capacity, energy, and generation services provided under this rate schedule for the period specified shall be:

Initial Base Capacity Charge

$3.65 Per kilowatt of total contract demand per month.

Initial Base Energy Charge

14.63 Mills per kilowatt-hour.

The Base Capacity Charge and the Base Energy Charge will be subject to annual adjustment on April 1 of each year based on transfers to plant in service for the preceding Fiscal Year that are not included in the proposed repayment study. The adjustment will be for each increase of $1,000,000 to plant in service an increase of $0.013 per kilowatt per month added to the capacity charge and 0.052 mills per kilowatt-hour added to the energy charge.

The rates are based on a repayment study that projects that the Kerr-Philpott System will produce the following net revenue available for repayment by fiscal year:

FY 2010	$578,000
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FY 2012	1,032,000
FY 2013	825,000
FY 2014	863,000
FY 2015	908,000

The rates include a true-up of the capacity and energy rates based on the variance of the actual net revenue available for repayment from the planned net revenue available for repayment in the table above. For every $100,000 under-recovery of the planned net revenue available for repayment, Southeastern will increase the base capacity charge by $0.02 per kilowatt per month, up to a maximum of $0.75 per kilowatt per month, and increase the base energy charge by 0.10 mills per kilowatt-hour, up to a maximum of 3.0 mills per kilowatt per hour, to be implemented April 1 of the next fiscal year. For every $100,000 of over-recovery of the planned net revenue available for repayment, Southeastern will reduce the base capacity charge by $0.02 per kilowatt per month, up to a maximum of $0.75 per kilowatt per month, and reduce the base energy charge by 0.10 mills per kilowatt-hour, up to a maximum of 3.0 mills per kilowatt per hour, to be implemented April 1 of the next fiscal year. Southeastern will give written notice to the customers of the amount of the true-up to the capacity and energy rates by February 1 of the next fiscal year.

Additional rates for transmission and ancillary services provided under this rate schedule shall be the rates charged Southeastern Power Administration by the Company. Future adjustments to these rates will become effective upon acceptance for filing by the Federal Energy Regulatory Commission (FERC) of the Company's rate.

Transmission

$ − 0.91 Per kilowatt of total contract demand per month as of December 2009, is presented for illustrative purposes.

Ancillary Services

1.46 Mills per kilowatt-hour of energy as of December 2009, is presented for illustrative purposes.

The initial charge for transmission and ancillary services will be the Customer's ratable share of the charges for transmission, distribution, and ancillary services paid by the Government. The charges for transmission and ancillary services are governed by and subject to refund based upon the determination in proceedings before the FERC involving the Company's or PJM's Open Access Transmission Tariff (OATT).

Proceedings before FERC involving the OATT or the Distribution charge may result in the separation of charges currently included in the transmission rate. In this event, the Government may charge the Customer for any and all separate transmission, ancillary services, and distribution charges paid by the Government in behalf of the Customer. These charges could be recovered through a capacity charge or an energy charge, as determined by the Government.

Tandem Transmission Charge

$2.14 Per kilowatt of total contract demand per month, as an estimated cost as of December 2009.

The tandem transmission charge will recover the cost of transmitting power from a project to the border of another transmitting system. This rate will be a formulary rate based on the cost to the Government for transmission of power from the Philpott project to the border of the Virginia Electric and Power Company System and the cost to the Government for transmission of power from the John H. Kerr Project to the border of the Carolina Power & Light System. These charges could be recovered through a capacity charge or an energy charge, as determined by the Government.

Transmission and Ancillary Services

The charges for transmission and ancillary services shall be governed by and subject to refund based upon the determination in the proceeding involving the Company's or PJM's OATT.

Contract Demand

The contract demand is the amount of capacity in kilowatts stated in the contract which the Government is obligated to supply and the Customer is entitled to receive.

Energy To Be Furnished by the Government

The Government will sell to the Customer and the Customer will purchase from the Government energy each billing month equivalent to a percentage specified by contract of the energy made available to the Company (less applicable losses). The Customer's contract demand and accompanying energy will be allocated proportionately to its individual delivery points served from the Company's system. The applicable energy loss factor for transmission is specified in the OATT.

These losses shall be effective until modified by the Federal Energy Regulatory Commission, pursuant to application by American Electric Power Service Corporation under Section 205 of the Federal Power Act or Southeastern Power Administration under Section 206 of the Federal Power Act or otherwise.

Billing Month

The billing month for power sold under this schedule shall end at 12 midnight on the last day of each calendar month.

Wholesale Power Rate Schedule AP–3–B

Availability

This rate schedule shall be available to public bodies and cooperatives (any one of whom is hereinafter called the Customer) in Virginia to whom power may be scheduled pursuant to contracts between the Government, American Electric Power Service Corporation (hereinafter called the Company), PJM Interconnection LLC (hereinafter called PJM), and the Customer. The Government is responsible for providing the scheduling. The Customer is

responsible for providing a transmission arrangement. Nothing in this rate schedule shall preclude modifications to the aforementioned contracts to allow an eligible customer to elect service under another rate schedule.

Applicability

This rate schedule shall be applicable to the sale at wholesale of power and accompanying energy generated at the John H. Kerr and Philpott Projects (hereinafter called the Projects) and sold under appropriate contracts between the Government and the Customer.

Character of Service

The electric capacity and energy supplied hereunder will be delivered at the Projects.

Monthly Rate

The initial base monthly rate for capacity, energy, and generation services provided under this rate schedule for the period specified shall be:

Initial Base Capacity Charge

$3.65 Per kilowatt of total contract demand per month.

Initial Base Energy Charge

14.63 Mills per kilowatt-hour.

The Base Capacity Charge and the Base Energy Charge will be subject to annual adjustment on April 1 of each year based on transfers to plant in service for the preceding Fiscal Year that are not included in the proposed repayment study. The adjustment will be for each increase of $1,000,000 to plant in service an increase of $0.013 per kilowatt per month added to the capacity charge and 0.052 mills per kilowatt-hour added to the energy charge.

The rates are based on a repayment study that projects that the Kerr-Philpott System will produce the following net revenue available for repayment by fiscal year:

FY 2010	$578,000
FY 2011	2,030,000
FY 2012	1,032,000
FY 2013	825,000
FY 2014	863,000
FY 2015	908,000

The rates include a true-up of the capacity and energy rates based on the variance of the actual net revenue available for repayment from the planned net revenue available for repayment in the table above. For every $100,000 under-recovery of the planned net revenue available for repayment, Southeastern will increase the base capacity charge by $0.02 per kilowatt per month, up to a maximum of $0.75 per kilowatt per month, and increase the base energy charge by 0.10 mills per kilowatt-hour, up to a maximum of 3.0 mills per kilowatt per hour, to be implemented April 1 of the next fiscal year. For every $100,000 of over-recovery of the planned net revenue available for repayment, Southeastern will reduce the base capacity charge by $0.02 per kilowatt per month, up to a maximum of $0.75 per kilowatt per month, and reduce the base energy charge by 0.10 mills per kilowatt-hour, up to a maximum of 3.0 mills per kilowatt per hour, to be implemented April 1 of the next fiscal year. Southeastern will give written notice to the customers of the amount of the true-up to the capacity and energy rates by February 1 of the next fiscal year.

Additional rates for transmission and ancillary services provided under this rate schedule shall be the rates charged Southeastern Power Administration by the Company. Future adjustments to these rates will become effective upon acceptance for filing by the Federal Energy Regulatory Commission (FERC) of the Company's rate.

Ancillary Services

1.46 Mills per kilowatt-hour of energy as of December 2009, is presented for illustrative purposes.

The initial charge for transmission and ancillary services will be the Customer's ratable share of the charges for transmission, distribution, and ancillary services paid by the Government. The charges for transmission and ancillary services are governed by and subject to refund based upon the determination in proceedings before the FERC involving the Company's or PJM's Open Access Transmission Tariff (OATT).

Proceedings before FERC involving the OATT or the Distribution charge may result in the separation of charges currently included in the transmission rate. In this event, the Government may charge the Customer for any and all separate transmission, ancillary services, and distribution charges paid by the Government in behalf of the Customer. These charges could be recovered through a capacity charge or an energy charge, as determined by the Government.

Tandem Transmission Charge

$2.14 Per kilowatt of total contract demand per month, as an estimated cost as of December 2009.

The tandem transmission charge will recover the cost of transmitting power from a project to the border of another transmitting system. This rate will be a formulary rate based on the cost to the Government for transmission of power from the Philpott project to the border of the Virginia Electric and Power Company System and the cost to the Government for transmission of power from the John H. Kerr Project to the border of the Carolina Power & Light System. These charges could be recovered through a capacity charge or an energy charge, as determined by the Government.

Transmission and Ancillary Services

The charges for transmission and ancillary services shall be governed by and subject to refund based upon the determination in the proceeding involving the Company's or PJM's OATT.

Contract Demand

The contract demand is the amount of capacity in kilowatts stated in the contract which the Government is obligated to supply and the Customer is entitled to receive.

Energy To Be Furnished by the Government

The Government will sell to the Customer and the Customer will purchase from the Government energy each billing month equivalent to a percentage specified by contract of the energy made available to the Company (less applicable losses). The Customer's contract demand and accompanying energy will be allocated proportionately to its individual delivery points served from the Company's system. The applicable energy loss factor for transmission is specified in the OATT.

These losses shall be effective until modified by the FERC, pursuant to application by the Company or PJM under Section 205 of the Federal Power Act or Southeastern Power Administration under Section 206 of the Federal Power Act or otherwise.

Billing Month

The billing month for power sold under this schedule shall end at 12 midnight on the last day of each calendar month.

Wholesale Power Rate Schedule AP–4–B

Availability

This rate schedule shall be available to public bodies and cooperatives (any one of whom is hereinafter called the Customer) in Virginia served through the facilities of American Electric Power Service Corporation (hereinafter called the Company) and PJM Interconnection LLC (hereinafter called PJM). The Customer has chosen to self-schedule

and does not receive Government power under an arrangement where the Company schedules the power and provides a credit on the Customer's bill for Government power. The Customer is responsible for providing a scheduling arrangement with the Government and for providing a transmission arrangement. Nothing in this rate schedule shall preclude modifications to the aforementioned contracts to allow an eligible customer to elect service under another rate schedule.

Applicability

This rate schedule shall be applicable to the sale at wholesale of power and accompanying energy generated at the John H. Kerr and Philpott Projects (hereinafter called the Projects) and sold under appropriate contracts between the Government and the Customer.

Character of Service

The electric capacity and energy supplied hereunder will be delivered at the Projects.

Monthly Rate

The initial base monthly rate for capacity, energy, and generation services provided under this rate schedule for the period specified shall be:

Initial Base Capacity Charge

$3.65 Per kilowatt of total contract demand per month.

Initial Base Energy Charge

14.63 Mills per kilowatt-hour.

The Base Capacity Charge and the Base Energy Charge will be subject to annual adjustment on April 1 of each year based on transfers to plant in service for the preceding Fiscal Year that are not included in the proposed repayment study. The adjustment will be for each increase of $1,000,000 to plant in service an increase of $0.013 per kilowatt per month added to the capacity charge and 0.052 mills per kilowatt-hour added to the energy charge.

The rates are based on a repayment study that projects that the Kerr-Philpott System will produce the following net revenue available for repayment by fiscal year:

FY 2010	$ 578,000
FY 2011	2,030,000
FY 2012	1,032,000
FY 2013	825,000
FY 2014	863,000
FY 2015	908,000

The rates include a true-up of the capacity and energy rates based on the variance of the actual net revenue available for repayment from the planned net revenue available for repayment in the table above. For every $100,000 under-recovery of the planned net revenue available for repayment, Southeastern will increase the base capacity charge by $0.02 per kilowatt per month, up to a maximum of $0.75 per kilowatt per month, and increase the base energy charge by 0.10 mills per kilowatt-hour, up to a maximum of 3.0 mills per kilowatt per hour, to be implemented April 1 of the next fiscal year. For every $100,000 of over-recovery of the planned net revenue available for repayment, Southeastern will reduce the base capacity charge by $0.02 per kilowatt per month, up to a maximum of $0.75 per kilowatt per month, and reduce the base energy charge by 0.10 mills per kilowatt-hour, up to a maximum of 3.0 mills per kilowatt per hour, to be implemented April 1 of the next fiscal year. Southeastern will give written notice to the customers of the amount of the true-up to the capacity and energy rates by February 1 of the next fiscal year.

Additional rates for Transmission and Ancillary Services provided under this rate schedule shall be the rates charged Southeastern Power Administration by the Company. Future adjustments to these rates will become effective upon acceptance for filing by the Federal Energy Regulatory Commission (FERC) of the Company's rate.

Ancillary Services

1.46 Mills per kilowatt-hour of energy as of December 2009, is presented for illustrative purposes.

The initial charge for transmission and ancillary services will be the Customer's ratable share of the charges for transmission, distribution, and ancillary services paid by the Government. The charges for transmission and ancillary services are governed by and subject to refund based upon the determination in proceedings before the FERC involving the Company's or PJM's Open Access Transmission Tariff (OATT).

Proceedings before FERC involving the OATT or the Distribution charge may result in the separation of charges currently included in the transmission rate. In this event, the Government may charge the Customer for any and all separate transmission, ancillary services, and distribution charges paid by the Government in behalf of the Customer. These charges could be recovered through a capacity charge or an energy charge, as determined by the Government.

Tandem Transmission Charge

$2.14 Per kilowatt of total contract demand per month, as an estimated cost as of December 2009.

The tandem transmission charge will recover the cost of transmitting power from a project to the border of another transmitting system. This rate will be a formulary rate based on the cost to the Government for transmission of power from the Philpott project to the border of the Virginia Electric and Power Company System and the cost to the Government for transmission of power from the John H. Kerr Project to the border of the Carolina Power & Light System. These charges could be recovered through a capacity charge or an energy charge, as determined by the Government.

Transmission and Ancillary Services

The charges for transmission and ancillary services shall be governed by and subject to refund based upon the determination in the proceeding involving the Company's or PJM's OATT.

Contract Demand

The contract demand is the amount of capacity in kilowatts stated in the contract which the Government is obligated to supply and the Customer is entitled to receive.

Energy To Be Furnished by the Government

The Government will sell to the Customer and the Customer will purchase from the Government energy each billing month equivalent to a percentage specified by contract of the energy made available to the Company (less applicable losses). The Customer's contract demand and accompanying energy will be allocated proportionately to its individual delivery points served from the Company's system. The applicable energy loss factor for transmission is specified in the OATT.

These losses shall be effective until modified by the Federal Energy Regulatory Commission, pursuant to application by the Company or PJM under Section 205 of the Federal Power Act or Southeastern Power Administration under Section 206 of the Federal Power Act or otherwise.

Billing Month

The billing month for power sold under this schedule shall end at 12 midnight on the last day of each calendar month.

Wholesale Power Rate Schedule NC–1–B

Availability

This rate schedule shall be available to public bodies and cooperatives (any one of whom is hereinafter called the Customer) in Virginia and North Carolina to whom power may be transmitted pursuant to a contract between the Government and Virginia Electric and Power Company (hereinafter called the Virginia Power) and PJM Interconnection LLC (hereinafter called PJM), scheduled pursuant to a contract between the Government and Carolina Power & Light Company (hereinafter called CP&L), and billed pursuant to contracts between the Government and the Customer. Nothing in this rate schedule shall preclude modifications to the aforementioned contracts to allow an eligible customer to elect service under another rate schedule.

Applicability

This rate schedule shall be applicable to the sale at wholesale of power and accompanying energy generated at the John H. Kerr and Philpott Projects and sold under appropriate contracts between the Government and the Customer.

Character of Service

The electric capacity and energy supplied hereunder will be delivered at the delivery points of the Customer on the Virginia Power's transmission and distribution system.

Monthly Rate

The initial base monthly rate for capacity, energy, and generation services provided under this rate schedule for the period specified shall be:

Initial Base Capacity Charge

$3.65 Per kilowatt of total contract demand per month.

Initial Base Energy Charge

14.63 Mills per kilowatt-hour.

The Base Capacity Charge and the Base Energy Charge will be subject to annual adjustment on April 1 of each year based on transfers to plant in service for the preceding Fiscal Year that are not included in the proposed repayment study. The adjustment will be for each increase of $1,000,000 to plant in service an increase of $0.013 per kilowatt per month added to the capacity charge and 0.052 mills per kilowatt-hour added to the energy charge.

The rates are based on a repayment study that projects that the Kerr-Philpott System will produce the following net revenue available for repayment by fiscal year:

FY 2010	$578,000
FY 2011	2,030,000
FY 2012	1,032,000
FY 2013	825,000
FY 2014	863,000
FY 2015	908,000

The rates include a true-up of the capacity and energy rates based on the variance of the actual net revenue available for repayment from the planned net revenue available for repayment in the table above. For every $100,000 under-recovery of the planned net revenue available for repayment, Southeastern will increase the base capacity charge by $0.02 per kilowatt per month, up to a maximum of $0.75 per kilowatt per month, and increase the base energy charge by 0.10 mills per kilowatt-hour, up to a maximum of 3.0 mills per kilowatt per hour, to be implemented April 1 of the next fiscal year. For every $100,000 of over-recovery of the planned net revenue available for repayment, Southeastern will reduce the base capacity charge by $0.02 per kilowatt per month, up to a maximum of $0.75 per kilowatt per month, and reduce the base energy charge by 0.10 mills per kilowatt-hour, up to a maximum of 3.0 mills per kilowatt per hour, to be implemented April 1 of the next fiscal year. Southeastern will give written notice to the customers of the amount of the true-up to the capacity and energy rates by February 1 of the next fiscal year.

Additional rates for transmission and ancillary services provided under this rate schedule shall be the rates charged Southeastern Power Administration by the Virginia Power and CP&L. Future adjustments to these rates will become effective upon acceptance for filing by the Federal Energy Regulatory Commission (FERC) of Virginia Power's or CP&L's rate.

Transmission

$ − 0.91 Per kilowatt of total contract demand per month as of December 2009, is presented for illustrative purposes.

Ancillary Services

1.46 Mills per kilowatt-hour of energy as of December 2009, is presented for illustrative purposes.

The initial charge for transmission and ancillary services will be the Customer's ratable share of the charges for transmission, distribution, and ancillary services paid by the Government. The charges for transmission and ancillary services are governed by and subject to refund based upon the determination in proceedings before the FERC involving CP&L's or PJM's Open Access Transmission Tariff (OATT).

Proceedings before FERC involving the OATT or the distribution charge may result in the separation of charges currently included in the transmission rate. In this event, the Government may charge the Customer for any and all separate transmission, ancillary services, and distribution charges paid by the Government in behalf of the Customer. These charges could be recovered through a capacity charge or an energy charge, as determined by the Government.

Tandem Transmission Charge

$2.14 Per kilowatt of total contract demand per month, as an estimated cost as of December 2009.

The tandem transmission charge will recover the cost of transmitting power from a project to the border of another transmitting system. This rate will be a formulary rate based on the cost to the Government for transmission of power from the Philpott project to the border of the Virginia Electric and Power Company System and the cost to the Government for transmission of power from the John H. Kerr Project to the border of the Carolina Power & Light System.

Transmission, System Control, Reactive, and Regulation Services

The charges for transmission and ancillary services shall be governed by and subject to refund based upon the determination in the proceeding involving CP&L's or PJM's OATT.

Contract Demand

The contract demand is the amount of capacity in kilowatts stated in the contract which the Government is obligated to supply and the Customer is entitled to receive.

Energy To Be Furnished by the Government

The Government will sell to the Customer and the Customer will purchase from the Government energy each billing month equivalent to a percentage specified by contract of the energy made available to the Company (less applicable losses). The Customer's contract demand and accompanying energy will be allocated proportionately to its individual delivery points served from the Company's system. The applicable energy loss factor for transmission is specified in the OATT.

These losses shall be effective until modified by the FERC, pursuant to

application by the Company or PJM under Section 205 of the Federal Power Act or Southeastern Power Administration under Section 206 of the Federal Power Act or otherwise.

Billing Month

The billing month for power sold under this schedule shall end at 12 midnight on the last day of each calendar month.

Wholesale Power Rate Schedule Replacement–2–A

Availability

This rate schedule shall be available to public bodies and cooperatives (any one of whom is hereinafter called the Customer) in North Carolina and Virginia to whom power is provided pursuant to contracts between the Government and the customer from the John H. Kerr and Philpott Projects (or Kerr-Philpott System).

Applicability

This rate schedule shall be applicable to the sale of wholesale energy purchased to meet contract minimum energy and sold under appropriate contracts between the Government and the Customer.

Character of Service

The energy supplied hereunder will be delivered at the delivery points provided for under appropriate contracts between the Government and the Customer.

Monthly Charge

The customer will pay its ratable share of Southeastern's monthly cost for replacement energy. The ratable share will be the cost allocation factor for the customer listed in the table below times Southeastern's monthly cost for replacement energy purchased for the Kerr-Philpott System, rounded to the nearest $0.01.

Contract No. 89–00–1501–	Customer	Capacity allocation	Average energy	Cost allocation factor (percent)
1230	Albemarle EMC	2,593	6,950,707	1.565921
1221	B–A–R–C EC	3,740	10,060,472	2.266518
853	Brunswick EMC	3,515	10,468,686	2.358485
854	Carteret-Craven EMC	2,679	7,978,836	1.797548
869	Carteret-Craven EMC	56	42,281	0.009525
855	Central EMC	1,239	3,690,100	0.831341
1220	Central Virginia EC	7,956	21,534,960	4.851599
1203	City of Bedford	1,200	906,166	0.204150
1204	City of Danville	5,600	4,228,775	0.952698
895	City of Elizabeth City	2,073	1,565,205	0.352624
1215	City of Franklin	1,003	754,359	0.169949
878	City of Kinston	1,466	1,106,893	0.249371
880	City of Laurinburg	415	313,343	0.070593
881	City of Lumberton	895	675,764	0.152242
1205	City of Martinsville	1,600	1,208,222	0.272200
882	City of New Bern	1,204	909,072	0.204804
1206	City of Radford	1,300	981,575	0.221138
885	City of Rocky Mount	2,538	1,916,300	0.431722
1208	City of Salem	2,200	1,661,127	0.374234
892	City of Washington	2,703	2,040,882	0.459789
889	City of Wilson	2,950	2,227,377	0.501805
1222	Community EC	4,230	11,394,466	2.567053
1211	Craig-Botetourt EC	1,692	4,575,816	1.030883
1231	Edgecombe-Martin County EMC	4,155	11,275,547	2.540262
875	Fayetteville Public Works Commission	5,431	4,100,640	0.923831
856	Four County EMC	4,198	12,502,857	2.816762
891	Greenville Utilities Commission	7,534	5,688,496	1.281558
857	Halifax EMC	585	1,742,299	0.392522
1232	Halifax EMC	2,021	5,478,308	1.234205
1216	Harrisonburg Electric Commission	2,691	2,050,360	0.461924
858	Jones-Onslow EMC	5,184	15,439,450	3.478345
859	Lumbee River EMC	3,729	11,106,040	2.502074
1223	Mecklenburg EMC	11,344	30,806,162	6.940303
1224	Northern Neck EC	3,944	10,572,278	2.381823
1225	Northern Virginia EC	3,268	8,875,341	1.999521
860	Pee Dee EMC	2,968	8,839,562	1.991460
861	Piedmont EMC	1,086	3,234,540	0.728708
862	Pitt & Greene EMC	1,580	4,705,697	1.060144
1226	Prince George EC	2,530	6,781,913	1.527893
863	Randolph EMC	3,608	10,745,666	2.420885
1227	Rappahannock EC	22,427	60,450,624	13.618889
1233	Roanoke EMC	5,528	14,904,403	3.357805
1228	Shenandoah Valley EMC	9,938	26,943,520	6.070091
864	South River EMC	6,119	18,224,150	4.105709
1229	Southside EC	14,575	39,381,017	8.872128
865	Tideland EMC	680	2,025,236	0.456264
1234	Tideland EMC	2,418	6,554,050	1.476558
870	Town of Apex	145	109,482	0.024665
871	Town of Ayden	208	157,049	0.035381
893	Town of Belhaven	182	137,418	0.030959
872	Town of Benson	120	90,605	0.020412
1212	Town of Blackstone	389	292,568	0.065912

Contract No. 89–00–1501–	Customer	Capacity allocation	Average energy	Cost allocation factor (percent)
873	Town of Clayton	161	121,562	0.027387
1213	Town of Culpepper	391	297,916	0.067117
894	Town of Edenton	775	585,159	0.131830
1214	Town of Elkton	171	128,609	0.028974
1218	Town of Enfield	259	194,810	0.043889
874	Town of Farmville	237	178,946	0.040315
876	Town of Fremont	60	45,303	0.010206
896	Town of Hamilton	40	30,202	0.006804
897	Town of Hertford	203	153,274	0.034531
898	Town of Hobgood	46	34,732	0.007825
877	Town of Hookerton	30	22,651	0.005103
879	Town of La Grange	93	70,219	0.015820
868	Town of Louisburg	857	2,552,452	0.575041
883	Town of Pikeville	40	30,202	0.006804
884	Town of Red Springs	117	88,340	0.019902
1207	Town of Richlands	500	377,569	0.085062
899	Town of Robersonville	232	175,170	0.039464
900	Town of Scotland Neck	304	229,533	0.051711
886	Town of Selma	183	138,173	0.031129
887	Town of Smithfield	378	285,407	0.064299
901	Town of Tarboro	2,145	1,619,568	0.364872
888	Town of Wake Forest	149	112,501	0.025345
1217	Town of Wakefield	106	79,723	0.017961
1219	Town of Windsor	331	248,946	0.056085
866	Tri-County EMC	3,096	9,220,782	2.077345
867	Wake EMC	2,164	6,445,017	1.451994
Total		196,500	443,873,428	

Energy To Be Furnished by the Government

The Government will sell to the Customer and the Customer will purchase from the Government energy each billing month equivalent to a percentage specified by contract of the energy made available to the Facilitator (less any losses required by the Facilitator). The customer's contract demand and accompanying energy will be allocated proportionately to its individual delivery points served from the Facilitator's system.

Billing Month

The billing month for power sold under this schedule shall lend at 12 midnight on the last day of each calendar month.

[FR Doc. 2010–23793 Filed 9–22–10; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Office of Energy Efficiency and Renewable Energy

[Case No. CW–014]

Energy Conservation Program for Consumer Products: Notice of Petition for Waiver of Samsung Electronics America, Inc. From the Department of Energy Residential Clothes Washer Test Procedure, and Grant of Interim Waiver

AGENCY: Office of Energy Efficiency and Renewable Energy, Department of Energy.

ACTION: Notice of petition for waiver, notice of grant of interim waiver, and request for comments.

SUMMARY: This notice announces receipt of and publishes the Samsung Electronics America, Inc. (Samsung) petition for waiver (hereafter, "petition") from specified portions of the U.S. Department of Energy (DOE) test procedure for determining the energy consumption of clothes washers. Today's notice also grants an interim waiver of the clothes washer test procedure. Through this notice, DOE also solicits comments with respect to the Samsung petition.

DATES: DOE will accept comments, data, and information with respect to the Samsung petition until, but no later than October 25, 2010.

ADDRESSES: You may submit comments, identified by case number CW–014, by any of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *E-mail: AS_Waiver_Requests@ee.doe.gov.* Include "Case No. CW–014" in the subject line of the message.
- *Mail:* Ms. Brenda Edwards, U.S. Department of Energy, Building Technologies Program, Mailstop EE–2J/1000 Independence Avenue, SW., Washington, DC 20585–0121. *Telephone:* (202) 586–2945. Please submit one signed original paper copy.
- *Hand Delivery/Courier:* Ms. Brenda Edwards, U.S. Department of Energy, Building Technologies Program, 950 L'Enfant Plaza, SW., Suite 600, Washington, DC 20024. Please submit one signed original paper copy.

Instructions: All submissions received should include the agency name and case number for this proceeding. Submit electronic comments in WordPerfect, Microsoft Word, Portable Document Format (PDF), or text (American Standard Code for Information Interchange (ASCII)) file format and avoid the use of special characters or any form of encryption. Wherever possible, include the electronic

signature of the author. DOE does not accept telefacsimiles (faxes).

Any person submitting written comments must also send a copy to the petitioner, pursuant to 10 CFR 430.27(d). The contact information for the petitioner is: Mr. Michael Moss, Director, Samsung Electronics America, Inc., 18600 Broadwick Street, Rancho Dominguez, CA 90220.

According to 10 CFR 1004.11, any person submitting information that he or she believes to be confidential and exempt by law from public disclosure should submit two copies to DOE: one copy of the document including all the information believed to be confidential, and one copy of the document with the information believed to be confidential deleted. DOE will make its own determination about the confidential status of the information and treat it according to its determination.

Docket: For access to the docket to review the background documents relevant to this matter, you may visit the U.S. Department of Energy, 950 L'Enfant Plaza, SW., (Resource Room of the Building Technologies Program), Washington, DC 20024; (202) 586–2945, between 9 a.m. and 4 p.m., Monday through Friday, except Federal holidays. Available documents include the following items: (1) This notice; (2) public comments received; (3) the petition for waiver and application for interim waiver; and (4) prior DOE waivers and rulemakings regarding similar clothes washer products. Please call Ms. Brenda Edwards at the above telephone number for additional information regarding visiting the Resource Room.

FOR FURTHER INFORMATION CONTACT: Dr. Michael G. Raymond, U.S. Department of Energy, Building Technologies Program, Mail Stop EE–2J, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585–0121. *Telephone:* (202) 586–9611. *E-mail: Michael.Raymond@ee.doe.gov.*

Ms. Elizabeth Kohl, U.S. Department of Energy, Office of the General Counsel, Mail Stop GC–71, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585–0103. *Telephone:* (202) 586–7796. *E-mail: Elizabeth.Kohl@hq.doe.gov.*

SUPPLEMENTARY INFORMATION:

I. Background and Authority

Title III of the Energy Policy and Conservation Act ("EPCA") sets forth a variety of provisions concerning energy efficiency. Part A of Title III provides for the "Energy Conservation Program for Consumer Products Other Than Automobiles." (42 U.S.C. 6291–6309). Part A includes definitions, test procedures, labeling provisions, energy conservation standards, and the authority to require information and reports from manufacturers. Further, Part A authorizes the Secretary of Energy to prescribe test procedures that are reasonably designed to produce results which measure energy efficiency, energy use, or estimated operating costs, and that are not unduly burdensome to conduct. (42 U.S.C. 6293(b)(3)). The test procedure for automatic and semi-automatic clothes washers is contained in 10 CFR part 430, subpart B, appendix J1.

The regulations set forth in 10 CFR 430.27 contain provisions that enable a person to seek a waiver from the test procedure requirements for covered consumer products. A waiver will be granted by the Assistant Secretary for Energy Efficiency and Renewable Energy (the Assistant Secretary) if it is determined that the basic model for which the petition for waiver was submitted contains one or more design characteristics that prevents testing of the basic model according to the prescribed test procedures, or if the prescribed test procedures may evaluate the basic model in a manner so unrepresentative of its true energy consumption characteristics as to provide materially inaccurate comparative data. 10 CFR 430.27(l). Petitioners must include in their petition any alternate test procedures known to the petitioner to evaluate the basic model in a manner representative of its energy consumption. 10 CFR 430.27(b)(1)(iii). The Assistant Secretary may grant the waiver subject to conditions, including adherence to alternate test procedures. 10 CFR 430.27(l). Waivers remain in effect pursuant to the provisions of 10 CFR 430.27(m).

The waiver process also allows the Assistant Secretary to grant an interim waiver from test procedure requirements to manufacturers that have petitioned DOE for a waiver of such prescribed test procedures. 10 CFR 430.27(a)(2). An interim waiver remains in effect for 180 days or until DOE issues its determination on the petition for waiver, whichever is sooner. An interim waiver may be extended for an additional 180 days. 10 CFR 430.27(h).

II. Application for Interim Waiver and Petition for Waiver

On July 20, 2010, Samsung filed a petition for waiver and application for interim waiver from the test procedure applicable to automatic and semi-automatic clothes washers set forth in 10 CFR part 430, subpart B, appendix J1. In particular, Samsung requested a waiver to test its clothes washers with basket volumes greater than 3.8 cubic feet on the basis of the residential test procedures contained in 10 CFR part 430, Subpart B, Appendix J1, with a revised Table 5.1 which extends the range of container volumes beyond 3.8 cubic feet.

Samsung's petition seeks a waiver from the DOE test procedure because a test load is used within the procedure, and the mass of this test load is based on the basket volume of the test specimen, which is currently not defined for the basket sizes of the basic models cited in its waiver application. In the DOE test procedure, the relation between basket volume and test load mass is defined for basket volumes between 0 and 3.8 cubic feet. Samsung has designed a series of clothes washers that contain basket volumes greater than 3.8 cubic feet.

Table 5.1 of Appendix J1 defines the test load sizes used in the test procedure as linear functions of the basket volume. Samsung has submitted a revised table to extend the maximum basket volume from 3.8 cubic feet to 6.0 cubic feet, a table is similar to one developed by the Association of Home Appliance Manufacturers (AHAM). AHAM provided calculations to extrapolate Table 5.1 of the DOE test procedure to larger container volumes. DOE believes that this is a reasonable procedure because the DOE test procedure defines test load sizes as linear functions of the basket volume AHAM's extrapolation was performed on the load weight in pounds, and AHAM seems to have used the conversion formula of 1/2.2 (or 0.45454545) to convert pounds to kilograms. Samsung used the more accurate conversion value of 0.45359237, rounding the results in kilograms to two decimal places.

An interim waiver may be granted if it is determined that the applicant will experience economic hardship if the application for interim waiver is denied, if it appears likely that the petition for waiver will be granted, and/or the Assistant Secretary determines that it would be desirable for public policy reasons to grant immediate relief pending a determination of the petition for waiver. (10 CFR 430.27(g)). DOE determined that Samsung's application for interim waiver does not provide sufficient market, equipment price, shipments, and other manufacturer impact information to permit DOE to evaluate the economic hardship Samsung might experience absent a favorable determination on its application for interim waiver. In a previous similar case, DOE granted an

interim test procedure waiver to Whirlpool for three of Whirlpool's clothes washer models with container capacities greater than 3.8 ft^3. 71 FR 48913 (August 22, 2006). This notice contained an alternate test procedure, which extended the linear relationship between maximum test load size and clothes washer container volume in Table 5.1 to include a maximum test load size of 15.4 pounds (lbs) for clothes washer container volumes of 3.8 to 3.9 ft^3. General Electric Company (GE) submitted a petition very similar to Samsung's on June 22, 2010, and DOE granted an interim waiver to GE published elsewhere in today's **Federal Register**.

DOE believes that the values in the test load size chart submitted by Samsung are appropriate, and extending the linear relationship between test load size and container capacity to larger capacities is valid. Based on this, and the interim waivers granted to Whirlpool and GE, it appears likely that the petition for waiver will be granted. As a result, the Department of Energy grants an interim waiver to Samsung for its line of clothes washers with container volumes greater than 3.8 cubic feet, pursuant to 10 CFR 430.27(g). Therefore, *it is ordered that:*

The application for interim waiver filed by Samsung is hereby granted for the specified Samsung clothes washer basic models, subject to the specifications and conditions below.

1. Samsung shall not be required to test or rate the specified clothes washer products on the basis of the test procedure under 10 CFR part 430 subpart B, appendix J1.

2. Samsung shall be required to test and rate the specified clothes washer products according to the alternate test procedure as set forth in section IV, "Alternate test procedure."

The interim waiver applies to the following basic model groups:
WA51A****
WA52A****
WA53A****
WA54A****
WA55A****
WA56A****
WF221***
WF231***
WF241***
WF251***
WF330***
WF331***
WF340***
WF350***
WF409***
WF410***
WF419***
WF421***
WF428***
WF431***
WF438***
WF441***
WF448***
WF451***
WF461***
WF471***
WF500***
WF510***
WF511***
WF512***
WF520***
where *** designates design characteristics such as color, manufactured by Samsung that are greater than 3.8 cubic feet.

DOE notes that Samsung requested a waiver and interim waiver for not only the model numbers specified above, but for "other clothes washer models manufactured by Samsung that are greater than 3.8 cubic feet". DOE makes decisions on waivers and interim waivers for only those models specifically set out in the petition, not future models that may or may not be manufactured by the petitioner. Samsung may submit a new or amended petition for waiver and request for grant of interim waiver, as appropriate, for additional models of clothes washers for which it seeks a waiver from the DOE test procedure.

III. Alternate Test Procedure

EPCA requires that manufacturers use DOE test procedures to make representations about the energy consumption and energy consumption costs of products covered by EPCA. (42 U.S.C. 6293(c)) Consistent representations are important for manufacturers to make representations about the energy efficiency of their products and to demonstrate compliance with applicable DOE energy conservation standards. Pursuant to its regulations for the grant of a waiver or interim waiver from an applicable test procedure at 10 CFR 430.27, DOE is considering setting an alternate test procedure for Samsung in the subsequent Decision and Order. This alternate procedure is intended to allow manufacturers of clothes washers with basket capacities larger than provided for in the current test procedure to make valid representations. This test procedure is based on the expanded Table 5.1 of Appendix J1 submitted by Samsung. Furthermore, if DOE specifies an alternate test procedure for Samsung, DOE may consider applying the alternate test procedure to similar waivers for residential clothes washers.

During the period of the interim waiver granted in this notice, Samsung shall test its clothes washer basic models according to the provisions of 10 CFR part 430 subpart B, appendix J1, except that the expanded Table 5.1 below shall be substituted for Table 5.1 of appendix J1.

TABLE 5.1—TEST LOAD SIZES

Container volume		Minimum load		Maximum load		Average load	
cu. ft. ≥ <	(liter) ≥ <	lb	(kg)	lb	(kg)	lb	(kg)
0–0.8	0–22.7	3.00	1.36	3.00	1.36	3.00	1.36
0.80–0.90	22.7–25.5	3.00	1.36	3.50	1.59	3.25	1.47
0.90–1.00	25.5–28.3	3.00	1.36	3.90	1.77	3.45	1.56
1.00–1.10	28.3–31.1	3.00	1.36	4.30	1.95	3.65	1.66
1.10–1.20	31.1–34.0	3.00	1.36	4.70	2.13	3.85	1.75
1.20–1.30	34.0–36.8	3.00	1.36	5.10	2.31	4.05	1.84
1.30–1.40	36.8–39.6	3.00	1.36	5.50	2.49	4.25	1.93
1.40–1.50	39.6–42.5	3.00	1.36	5.90	2.68	4.45	2.02
1.50–1.60	42.5–45.3	3.00	1.36	6.40	2.90	4.70	2.13
1.60–1.70	45.3–48.1	3.00	1.36	6.80	3.08	4.90	2.22
1.70–1.80	48.1–51.0	3.00	1.36	7.20	3.27	5.10	2.31
1.80–1.90	51.0–53.8	3.00	1.36	7.60	3.45	5.30	2.40
1.90–2.00	53.8–56.6	3.00	1.36	8.00	3.63	5.50	2.49
2.00–2.10	56.6–59.5	3.00	1.36	8.40	3.81	5.70	2.59
2.10–2.20	59.5–62.3	3.00	1.36	8.80	3.99	5.90	2.68

TABLE 5.1—TEST LOAD SIZES—Continued

Container volume		Minimum load		Maximum load		Average load	
cu. ft. ≥ <	(liter) ≥ <	lb	(kg)	lb	(kg)	lb	(kg)
2.20–2.30	62.3–65.1	3.00	1.36	9.20	4.17	6.10	2.77
2.30–2.40	65.1–68.0	3.00	1.36	9.60	4.35	6.30	2.86
2.40–2.50	68.0–70.8	3.00	1.36	10.00	4.54	6.50	2.95
2.50–2.60	70.8–73.6	3.00	1.36	10.50	4.76	6.75	3.06
2.60–2.70	73.6–76.5	3.00	1.36	10.90	4.94	6.95	3.15
2.70–2.80	76.5–79.3	3.00	1.36	11.30	5.13	7.15	3.24
2.80–2.90	79.3–82.1	3.00	1.36	11.70	5.31	7.35	3.33
2.90–3.00	82.1–85.0	3.00	1.36	12.10	5.49	7.55	3.42
3.00–3.10	85.0–87.8	3.00	1.36	12.50	5.67	7.75	3.52
3.10–3.20	87.8–90.6	3.00	1.36	12.90	5.85	7.95	3.61
3.20–3.30	90.6–93.4	3.00	1.36	13.30	6.03	8.15	3.70
3.30–3.40	93.4–96.3	3.00	1.36	13.70	6.21	8.35	3.79
3.40–3.50	96.3–99.1	3.00	1.36	14.10	6.40	8.55	3.88
3.50–3.60	99.1–101.9	3.00	1.36	14.60	6.62	8.80	3.99
3.60–3.70	101.9–104.8	3.00	1.36	15.00	6.80	9.00	4.08
3.70–3.80	104.8–107.6	3.00	1.36	15.40	6.99	9.20	4.17
3.80–3.90	107.6–110.4	3.00	1.36	15.80	7.18	9.40	4.27
3.90–4.00	110.4–113.3	3.00	1.36	16.20	7.36	9.60	4.36
4.00–4.10	113.3–116.1	3.00	1.36	16.60	7.55	9.80	4.45
4.10–4.20	116.1–118.9	3.00	1.36	17.00	7.73	10.00	4.55
4.20–4.30	118.9–121.8	3.00	1.36	17.40	7.91	10.20	4.64
4.30–4.40	121.8–124.6	3.00	1.36	17.80	8.09	10.40	4.73
4.40–4.50	124.6–127.4	3.00	1.36	18.20	8.27	10.60	4.82
4.50–4.60	127.4–130.3	3.00	1.36	18.70	8.50	10.85	4.93
4.60–4.70	130.3–133.1	3.00	1.36	19.1	8.65	11.03	5.00
4.70–4.80	133.1–135.9	3.00	1.36	19.5	8.83	11.24	5.10
4.80–4.90	135.9–138.8	3.00	1.36	19.9	9.02	11.44	5.19
4.90–5.00	138.8–141.6	3.00	1.36	20.3	9.21	11.65	5.28
5.00–5.10	141.6–144.4	3.00	1.36	20.7	9.39	11.85	5.38
5.10–5.20	144.4–147.3	3.00	1.36	21.1	9.58	12.06	5.47
5.20–5.30	147.3–150.1	3.00	1.36	21.5	9.76	12.26	5.56
5.30–5.40	150.1–152.9	3.00	1.36	21.9	9.95	12.46	5.65
5.40–5.50	152.9–155.8	3.00	1.36	22.3	10.13	12.67	5.75
5.50–5.60	155.8–158.6	3.00	1.36	22.7	10.32	12.87	5.84
5.60–5.70	158.6–161.4	3.00	1.36	23.2	10.51	13.08	5.93
5.70–5.80	161.4–164.3	3.00	1.36	23.6	10.69	13.29	6.03
5.80–5.90	164.3–167.1	3.00	1.36	24.0	10.88	13.49	6.12
5.90–6.00	167.1–169.9	3.00	1.36	24.4	11.06	13.70	6.21

Notes: (1) All test load weights are bone dry weights.
(2) Allowable tolerance on the test load weights are ±0.10 lbs (0.05 kg).

IV. Summary and Request for Comments

Through today's notice, DOE announces receipt of Samsung's petition for waiver from certain parts of the test procedure that apply to clothes washers and grants an interim waiver to Samsung. DOE is publishing Samsung's petition for waiver in its entirety pursuant to 10 CFR 430.27(b)(1)(iv). The petition contains no confidential information. The petition includes a suggested alternate test procedure which is to measure the energy consumption of clothes washers with capacities larger than the 3.8 ft^3 specified in the current DOE test procedure. DOE is interested in receiving comments from interested parties on all aspects of the petition, including the suggested alternate test procedure and any other alternate test procedure.

Pursuant to 10 CFR 430.27(b)(1)(iv), any person submitting written comments to DOE must also send a copy to the petitioner, whose contact information is included in the **ADDRESSES** section above.

Issued in Washington, DC, on September 16, 2010.

Henry Kelly,

Principal Deputy Assistant Secretary, Energy Efficiency and Renewable Energy.

July 20, 2010

Catherine Zoi
Energy Efficiency and Renewable Energy
Department of Energy
1000 Independence Avenue, SW.
Washington, DC 20585

Subject: Petition for Waiver and Application for Interim Waiver, Clothes Washers Capacity Greater than 3.8 Cubic Feet

Dear Assistant Secretary Zoi:

Samsung Electronics America, Inc., a subsidiary of Samsung Electronics Co., Ltd. (Samsung), respectfully submits this Petition for Waiver and Application for Interim Waiver to the Department of Energy (DOE) for the testing of clothes washers with capacity greater than 3.8 cubic feet.

The 10 CFR Part 430.27(a)(1) allows a person to submit a petition to waive for a particular basic model any requirements of § 430.23 upon the grounds that the basic model contains one or more design characteristics which either prevent testing of the basic model according to the prescribed test procedures, or the prescribed test procedures may evaluate the basic model in a manner so unrepresentative of its true energy consumption characteristics as to provide materially inaccurate comparative data. Additionally, 10 CFR Part 430.27(b)(2) allows an applicant to request an Interim Waiver if economic hardship and/or competitive disadvantage is likely to result absent a favorable determination on the Application for Interim Waiver.

Reasoning

In order to meet current market demands, Samsung designed and will be marketing clothes washers with capacities greater than

3.8 cubic feet. Samsung expects that the majority of Samsung clothes washers will be greater than 3.8 cubic feet in capacity. The current test procedure, Appendix J1 to Subpart B of Part 430, leaves an open gap for determining load sizes not covered by Table 5.1, preventing Samsung from appropriately testing clothes washer models with capacity greater than 3.8 cubic feet. The Department recognized this test method deficiency in the Interim Waiver granted to Whirlpool.[1]

Samsung expects that future clothes washer capacities will expand beyond 3.8 cubic feet, and through extrapolating the linear relationship between test load sizes and container volume in Table 5.1, Samsung proposes the following table for various Samsung clothes washer models WF###***, where ### designates model number and *** designates design characteristics such as color, or other clothes washer models manufactured by Samsung that are greater than 3.8 cubic feet:

Container volume		Minimum load		Maximum load		Average load	
cu. ft. ≥ <	(liter) ≥ <	lb	(kg)	lb	(kg)	lb	(kg)
3.80–3.90	107.6–110.4	3.00	1.36	15.80	7.17	9.40	4.26
3.90–4.00	110.4–113.3	3.00	1.36	16.20	7.35	9.60	4.35
4.00–4.10	113.3–116.1	3.00	1.36	16.60	7.53	9.80	4.45
4.10–4.20	116.1–118.9	3.00	1.36	17.00	7.71	10.00	4.54
4.20–4.30	118.9–121.8	3.00	1.36	17.40	7.89	10.20	4.63
4.30–4.40	121.8–124.6	3.00	1.36	17.80	8.07	10.40	4.72
4.40–4.50	124.6–127.4	3.00	1.36	18.20	8.26	10.60	4.81
4.50–4.60	127.4–130.3	3.00	1.36	18.70	8.48	10.85	4.92
4.60–4.70	130.3–133.1	3.00	1.36	19.10	8.66	11.05	5.01
4.70–4.80	133.1–135.9	3.00	1.36	19.50	8.85	11.25	5.10
4.80–4.90	135.9–138.8	3.00	1.36	19.90	9.03	11.45	5.19
4.90–5.00	138.8–141.6	3.00	1.36	20.30	9.21	11.65	5.28
5.00–5.10	141.6–144.4	3.00	1.36	20.70	9.39	11.85	5.38
5.10–5.20	144.4–147.2	3.00	1.36	21.10	9.57	12.05	5.47
5.20–5.30	147.2–150.1	3.00	1.36	21.50	9.75	12.25	5.56
5.30–5.40	150.1–152.9	3.00	1.36	21.90	9.93	12.45	5.65
5.40–5.50	152.9–155.7	3.00	1.36	22.30	10.12	12.65	5.74
5.50–5.60	155.7–158.6	3.00	1.36	22.80	10.34	12.90	5.85
5.60–5.70	158.6–161.4	3.00	1.36	23.20	10.52	13.10	5.94
5.70–5.80	161.4–164.2	3.00	1.36	23.60	10.70	13.30	6.03
5.80–5.90	164.2–167.1	3.00	1.36	24.00	10.89	13.50	6.12
5.90–6.00	167.1–169.9	3.00	1.36	24.40	11.07	13.70	6.21

The extrapolation was performed on the load weight in pounds (lb). The weight in kilograms (kg) was converted from lb, where 1 lb = 0.45359237 kg. The results in kg were rounded to two decimal places.

A similar test load size table was submitted by the Association of Home Appliance Manufacturers (AHAM) to the Department (AHAM Comments on the Framework Document for Residential Clothes Washers; EERE–2008–BT–STD–0019; RIN 1904–AB90, October, 2, 2009).

Conclusion

Without the Interim Waiver, Samsung will face economic hardship due to lost opportunity for sales, and lost investments in development and manufacturing.

On the grounds that current test methods for clothes washers will prevent Samsung from testing the majority of new clothes washer models and likelihood of economic hardship, Samsung requests that DOE grants Samsung the Interim Waiver and Waiver, to utilize the test load size table above for the testing of all Samsung clothes washers with capacity greater than 3.8 cubic feet.

Affected Persons

Primarily affected persons in the clothes washers category include Alliance Laundry Systems, LLC., BSH Home Appliances Corp., Electrolux Home Products, Equator, Fisher & Paykel Appliances, Inc., GE Appliances, Haier America Trading, L.L.C., LG Electronics Inc., Miele Appliances, Inc., and Whirlpool Corporation. Samsung will notify all these entities as required by the Department's rules and provide them with a version of this Petition. A copy was also provided to the Association of Home Appliance Manufacturers (AHAM).

Sincerely,

Michael Moss,
Director

[FR Doc. 2010–23835 Filed 9–22–10; 8:45 am]

BILLING CODE 6450–01–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OAR–2006–0947; FRL–9204–8; EPA ICR No. 1857.05; OMB Control No. 2060–0445]

Agency Information Collection Activities; Submission to OMB for Review and Approval; Comment Request; NO_X Budget Trading Program to Reduce the Regional Transport of Ozone (Renewal)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA)(44 U.S.C. 3501 *et seq.*), this document announces that an Information Collection Request (ICR) has been forwarded to the Office of Management and Budget (OMB) for review and approval. This is a request to renew an existing approved collection. The ICR, which is abstracted below, describes the nature of the information collection and its estimated burden and cost.

DATES: Additional comments may be submitted on or before October 25, 2010.

ADDRESSES: Submit your comments, referencing Docket ID No. EPA–HQ–OAR–2006–0947 to (1) EPA online using *http://www.regulations.gov* (our preferred method), by e-mail to *a-and-r-docket@epamail.epa.gov,* or by mail to: EPA Docket Center, Environmental Protection Agency, Air and Radiation Docket and Information Center, Mailcode 28221T, 1200 Pennsylvania Ave., NW., Washington, DC 20460, and (2) OMB by mail to: Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Attention: Desk Officer for EPA, 725 17th Street, NW., Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Karen VanSickle, Clean Air Markets Division, Office of Air and Radiation,

[1] 71 FR 48913.

Mailcode 6204J, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (202) 343–9220; fax number: (202) 343–2361; e-mail address: *vansickle.karen@epa.gov.*

SUPPLEMENTARY INFORMATION: EPA has submitted the following ICR to OMB for review and approval according to the procedures prescribed in 5 CFR 1320.12. On March 25, 2010 (75 FR 14439), EPA sought comments on this ICR pursuant to 5 CFR 1320.8(d). EPA received no comments. Any additional comments on this ICR should be submitted to EPA and OMB within 30 days of this notice.

EPA has established a public docket for this ICR under Docket ID No. EPA–HQ–OAR–2006–0947, which is available for online viewing at *http://www.regulations.gov,* or in person viewing at the Air and Radiation 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 8:30 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 and Radiation Docket is 202–566–1742.

Use EPA's electronic docket and comment system at *http://www.regulations.gov,* to submit or view public comments, access the index listing of the contents of the docket, and to access those documents in the docket that are available electronically. Once in the system, select "docket search," then key in the docket ID number identified above. Please note that EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing at *http://www.regulations.gov* as EPA receives them and without change, unless the comment contains copyrighted material, confidential business information (CBI), or other information whose public disclosure is restricted by statute. For further information about the electronic docket, go to *http://www.regulations.gov.*

Title: NO_X Budget Trading Program to Reduce the Regional Transport of Ozone (Renewal).

ICR numbers: EPA ICR No. 1857.05, OMB Control No. 2060–0445.

ICR Status: This ICR is scheduled to expire on September 30, 2010. Under OMB regulations, the Agency may continue to conduct or sponsor the collection of information while this submission is pending at OMB. 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, and 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: The NO_X Budget Trading Program is a market-based cap and trade program created to reduce emissions of nitrogen oxides (NO_X) from power plants and other large combustion sources in the eastern United States. NO_X is a prime ingredient in the formation of ground-level ozone (smog), a pervasive air pollution problem in many areas of the eastern United States. The NO_X Budget Trading Program was designed to reduce NO_X emissions during the warm summer months, referred to as the ozone season, when ground-level ozone concentrations are highest. In 2009 the program was replaced by the Clean Air Interstate Rule Ozone Season Trading Program (CAIROS). Although the trading program was replaced after the 2008 compliance season, this information collection is being renewed for two reasons. First, some industrial sources in certain States are still required to monitor and report emissions data to EPA under these rules, so we will account for their burden. Second, the Agency may at some future time, reinstitute the NO_X Budget Trading Program. For example, this might happen if both the Clean Air Interstate Rule (CAIR) and CAIR replacement rules were vacated by the Court. All data received by EPA will be treated as public information.

Burden Statement: The annual public reporting and recordkeeping burden for this collection of information is estimated to average 136 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.

Respondents/Affected Entities: Electric utilities, industrial sources, and other persons.

Estimated Number of Respondents: 122.

Frequency of Response: Yearly, quarterly, occasionally.

Estimated Total Annual Hour Burden: 57,586.

Estimated Total Annual Cost: $7,466,951, which includes $3,777,000 annualized capital and O&M costs.

Changes in the Estimates: There is a decrease of 414,148 hours in the total estimated burden currently identified in the OMB Inventory of Approved ICR Burdens. Previous iterations of this ICR included a larger number of affected sources and burdens associated with program implementation that are now covered under several different ICR's including the Clean Air Interstate Rule (CAIR) (OMB Control Number 2060–0570) and the Air Emissions Reporting Rule (AERR) (OMB Control Number 2060–0580).

Dated: September 17, 2010.

John Moses,

Director, Collection Strategies Division.

[FR Doc. 2010–23865 Filed 9–22–10; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPP–2010–0012; FRL–8845–4]

Notice of Receipt of Several Pesticide Petitions Filed for Residues of Pesticide Chemicals in or on Various Commodities

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces the Agency's receipt of several initial filings of pesticide petitions proposing the establishment or modification of regulations for residues of pesticide chemicals in or on various commodities.

DATES: Comments must be received on or before October 25, 2010.

ADDRESSES: Submit your comments, identified by docket identification (ID) number and the pesticide petition number (PP) of interest as shown in the body of this document, by one of the following methods:

• *Federal eRulemaking Portal*: *http://www.regulations.gov*. Follow the 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 ID number and the pesticide petition number of interest as shown in the body of this document. 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: A contact person, with telephone number and e-mail address, is listed at the end of each pesticide petition summary. You may also reach each contact person by mail at Registration Division (7505P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

You may be potentially affected by this action if you are an agricultural producer, food manufacturer, or pesticide manufacturer. Potentially affected entities may include, but are not limited to:

• Crop production (NAICS code 111).

• Animal production (NAICS code 112).

• Food manufacturing (NAICS code 311).

• Pesticide manufacturing (NAICS code 32532).

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in this unit could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether this action might apply to certain entities. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed at the end of the pesticide petition summary of interest.

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 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.

3. *Environmental justice*. EPA seeks to achieve environmental justice, the fair treatment and meaningful involvement of any group, including minority and/or low-income populations, in the development, implementation, and enforcement of environmental laws, regulations, and policies. To help address potential environmental justice issues, the Agency seeks information on any groups or segments of the population who, as a result of their location, cultural practices, or other factors, may have atypical or disproportionately high and adverse human health impacts or environmental effects from exposure to the pesticides discussed in this document, compared to the general population.

II. What Action is the Agency Taking?

EPA is announcing its receipt of several pesticide petitions filed under section 408 of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a, proposing the establishment or modification of regulations in 40 CFR part 174 or part 180 for residues of pesticide chemicals in or on various food commodities. EPA has determined

that the pesticide petitions described in this notice contain the data or information prescribed in FFDCA section 408(d)(2); however, EPA has not fully evaluated the sufficiency of the submitted data at this time or whether the data support granting of the pesticide petitions. Additional data may be needed before EPA can make a final determination on these pesticide petitions.

Pursuant to 40 CFR 180.7(f), a summary of each of the petitions that are the subject of this notice, prepared by the petitioner, is included in a docket EPA has created for each rulemaking. The docket for each of the petitions is available on-line at *http://www.regulations.gov*.

As specified in FFDCA section 408(d)(3), (21 U.S.C. 346a(d)(3)), EPA is publishing notice of the petition so that the public has an opportunity to comment on this request for the establishment or modification of regulations for residues of pesticides in or on food commodities. Further information on the petition may be obtained through the petition summary referenced in this unit.

New Tolerances

1. *PP 0E7755*. (EPA–HQ–OPP–2010–0740). Exigent, LLC, 377 S. Main Street, Yuma, AZ 85367, the U.S. agent on behalf of Quimica Agronomica de Mexico, S. de R.L. MI., Calle 18 N° 20501, Colonia Impulso, C.P. 31183, Chihuahua, Chih., Mexico, proposes to establish tolerance in 40 CFR part 180 for residues of the fungicide oxytetracycline, in or on cucurbits, crop group 9; and fruiting vegetables, crop group 8 at 0.03 parts per million (ppm). An analytical method was developed and used to quantitate residues of oxytetracycline by using liquid chromatography mass spectrometry/mass spectrometry (LC/MS/MS) detection. The limits of quantitation (LOQs), in all matrices, were 0.028 ppm for oxytetracycline (as base). The limit of detection (LOD), in all matrices, was defined as 0.0093 ppm for oxytetracycline, as base (1/3 or LOQ). This method is available for enforcement purposes with a LOD that allows monitoring of food with residues at or above the levels set in these tolerances. Contact: Heather Garvie, (703) 308–0034, e-mail address: *garvie.heather@epa.gov*.

2. *PP 0F7726*. (EPA–HQ–OPP–2010–0725). Arysta LifeScience North America, LLC, 15401 Weston Pkwy., Suite 150, Cary, NC 27513, proposes to establish a tolerance in 40 CFR part 180 for residues of the fungicide fluoxastrobin, (1E)-[2-[[6-(2-chlorophenoxy)-5-fluoro-4-pyrimydinyl]oxy]phenyl](5,6-dihydro-1,4,2-dioxazin-3-yl)methanone O-methyloxime, and its Z isomer, (1Z)-[2-[[6-(2-chlorophenoxy)-5-fluoro-4-pyrimydinyl]oxy]phenyl](5,6-dihydro-1,4,2-dioxazin-3-yl)methanone O-methyloxime, in or on raw agricultural commodities listed under crop subgroup 9B - squash/cucumber at 0.5 ppm. Adequate analytical methodology using high performance liquid chromatography/mass spectroscopy/mass spectrometry (HPLC/MS/MS) detection is available for enforcement purposes. Contact: Heather Garvie, (703) 308–0034, e-mail address: *garvie.heather@epa.gov*.

3. *PP 0F7736*. (EPA–HQ–OPP–2010–0707). Adorno and Yoss, LLP, 1225 19th Street, NW., Suite 500, Washington, DC 20036–2456 as the U.S. agent on behalf of Productos Químicos y Alimenticios OSKU S.A. (OSKU), 5212 El Guanaco, Huechuraba, Santiago, Chile, proposes to establish a tolerance in 40 CFR part 180 for residues of the fungicide sulfur dioxide (from sodium metabisulfite), in or on blueberry at 10 ppm. An adequate residue analytical method is available for enforcement purposes. The modified Monier-Williams method, which is the official method of analysis approved by the Association of Official Analytical Chemists (AOAC), is listed in 40 CFR Appendix B to part 425. Contact: Rose Mary Kearns, (703) 305–5611, e-mail address: *kearns.rosemary@epa.gov*.

4. *PP 0F7744*. (EPA–HQ–OPP–2010–0755). BASF Corporation, 26 Davis Drive, P.O. Box 13528, Research Triangle Park, NC 27709–3528, proposes to establish a tolerance in 40 CFR part 180 for the combined residues of the herbicide saflufenacil (2-chloro-5-[3,6-dihydro-3-methyl-2,6-dioxo-4-(trifluoromethyl)-1(2H)-pyrimidinyl]-4-fluoro-*N*-[[methyl(1-methylethyl)amino]sulfonyl]benzamide) and its metabolites *N*-[2-chloro-5-(2,6-dioxo-4-(trifluoromethyl)-3,6-dihydro-1(2H)-pyrimidinyl)-4-fluorobenzoyl]-*N′*-isopropylsulfamide and *N*-[4-chloro-2-fluoro-5-({[(isopropylamino) sulfonyl]amino}carbonyl)phenyl]urea, calculated as the stoichiometric equivalent of saflufenacil, in or on oilseeds, cottonseed subgroup 20C, gin by products at 3.5 ppm; oilseeds, cottonseed subgroup 20C, undelinted seed at 0.2 ppm; oilseeds, sunflower subgroup 20B, seed at 1.0 ppm; pea, vines at 8.0 ppm; soybean, aspirated grain fractions at 4.52 ppm; soybean, hulls at 0.42 ppm; soybean, seed at 0.1 ppm; vegetable, legume, subgroup 6C, beans, dry at 0.5 ppm; vegetable, legume, subgroup 6C, peas, dry at 0.1 ppm. Adequate enforcement methodology (LC/MS/MS methods D0603/02 (plants) and L0073/01 (livestock)) is available to enforce the tolerance expression. Contact: Susan Stanton, (703) 305–5218, e-mail address: *stanton.susan@epa.gov*.

5. *PP 0F7766*. (EPA–HQ–OPP–2010–0755). BASF Corporation, 26 Davis Drive, P.O. Box 13528, Research Triangle Park, NC 27709–3528, proposes to establish a tolerance in 40 CFR part 180 for the combined residues of the herbicide saflufenacil (2-chloro-5-[3,6-dihydro-3-methyl-2,6-dioxo-4-(trifluoromethyl)-1(2H)-pyrimidinyl]-4-fluoro-*N*-[[methyl(1-methylethyl)amino]sulfonyl]benzamide) and its metabolites *N*-[2-chloro-5-(2,6-dioxo-4-(trifluoromethyl)-3,6-dihydro-1(2H)-pyrimidinyl)-4-fluorobenzoyl]-*N′*-isopropylsulfamide and *N*-[4-chloro-2-fluoro-5-({l(isopropylamino)sulfonyl) amino}carbonyl)phenyl]urea, calculated as the stoichiometric equivalent of saflufenacil, in or on oilseeds, rapeseed subgroup 20A, seed at 0.8 ppm. Adequate enforcement methodology (LC/MS/MS methods D0603/02 (plants) and L0073/01 (livestock)) is available to enforce the tolerance expression. Contact: Susan Stanton, (703) 305–5218, e-mail address: *stanton.susan@epa.gov*.

New Tolerance Exemptions

1. *PP 0E7727*. (EPA–HQ–OPP–2010–0703). Interregional Research Project Number 4 (IR-4) Project Headquarters, Rutgers, The State University of New Jersey, 500 College Road East, Suite 201 W, Princeton, NJ 08450, on behalf of Koppert Biological Systems, Inc., 28465 Beverly Road, Romulus, MI 48174, proposes to establish an exemption from the requirement of a tolerance for residues of lactoperoxidase (CAS No. 9003–99–0) under 40CFR 180.920 in or on all raw agricultural commodities when used pre-harvest as a pesticide inert ingredient in pesticide formulations of the active ingredients potassium iodide and potassium thiocyanate. Since it is proposed that lactoperoxidase be exempt from the requirement for a tolerance, no analytical method is necessary. Contact: Deirdre Sunderland, (703) 603–0851, e-mail address: *sunderland.deirdre@epa.gov*.

2. *PP 0E7753*. (EPA–HQ–OPP–2010–0733). The Law Offices of Walter G. Talarek, P.C., 1008 Riva Ridge Drive, Great Falls, VA 22066–1620 as the U. S. agent on behalf of Innospec Limited, Innospec Manufacturing Park, Oil Sites Road, Ellesmere Port, Cheshire CH65 4EY, United Kingdom, proposes to establish an exemption from the requirement of a tolerance for residues

of [S,S]-ethylenediamine disuccinic acid tri-sodium salt (hereafter referred to as EDDS) (CAS No. 178949–82–1) under 40 CFR 180.910 when used in accordance with good agricultural practices as a pesticide inert ingredient in pesticide formulations applied to growing crops or to raw agricultural commodities after harvest. An analytical method has not been proposed because EDDS residues harmful to plants and animals is highly unlikely to occur when it is applied as part of the proposed pesticide formulation and according to that formulation's label directions for use. Contact: Alganesh Debesai, (703) 308–8353, e-mail address: *debesai.alganesh@epa.gov*.

List of Subjects

Environmental protection, Agricultural commodities, Feed additives, Food additives, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: September 16, 2010.

Lois Rossi,

Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 2010–23862 Filed 9–22–10; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPP–2010–0730; FRL–8844–5]

Atonik and Verbenone, 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 November 22, 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 Regulatory Action Leader 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, and 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 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?

Pursuant to 40 CFR 155.58, this notice announces the availability of EPA's proposed registration review decisions for the pesticides shown in the following table, and opens a 60–day public comment period on the proposed decisions.

Atonik, plant growth regulators (PGRs) consist of three naturally-occurring nitrophenolates: Sodium 5-nitroguaiacolate, sodium o-nitrophenolate, and sodium p-nitrophenolate. The PGRs in atonik are simple synthetic nitrophenols solubilized in sodium hydroxide. Atonik is intended for use on cotton, rice, and soybean plants.

The verbenone & 4-allyl anisole registration review case contains 2 active seperate ingredients, verbenone and 4-allyl anisole. Verbenone is a terpene that acts as an anti-aggregation pheromone in *Dendroctonus and Lps species*. Verbenone is used on pine trees in forests to control bark beetles, such as the southern pine beetle *Dendroctonus frontalis*. 4-allyl anisole is an alkenylbenzene compound that is produced by conifers during bark beetle *Dendroctonus sp.* infestations. 4-allyl anisole acts as an anti-aggregation agent by signaling the beetles that the tree has already been colonized and therefore is an unsuitable host. There is one manufacturing use product that is registered containing the active ingredient and there are no registered end use products that are being produced, sold, distributed, or used.

REGISTRATION REVIEW PROPOSED FINAL DECISIONS

Registration Review Case Name and Number	Pesticide Docket ID Number	Chemical Review Manager, Telephone Number, E-mail Address
Atonik (6067)	EPA–HQ–OPP–2008–0832	Driss Benmhend, (703) 308–9525, benmhend.driss@epa.gov
Verbenone & 4-Allyl Anisole (6031)	EPA–HQ–OPP–2009–0511	Leonard Cole, (703) 305–5412, cole.leonard@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 initial dockets described the Agency's rationales for not conducting additional risk assessments for the registration review of the pesticides included in the table in Unit II.A. These proposed registration review decisions continue to be supported by those rationales included in documents in the initial dockets.

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 effect 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.

Dated: September 16, 2010.

W. Michael McDavit,

Acting Director, Biopesticide and Pollution Prevention Division, Office of Pesticide Programs.

[FR Doc. 2010–23810 Filed 9–22–10; 8:45 am]

BILLING CODE 6560–50–S

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection(s) Being Reviewed by the Federal Communications Commission, Comments Requested

September 17, 2010.

SUMMARY: The Federal Communications Commission, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following information collection(s), as required by the Paperwork Reduction Act (PRA) of 1995, 44 U.S.C. 3501 – 3520. Comments are requested concerning: (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology, and (e) ways to further reduce the information collection burden on small business concerns with fewer than 25 employees.

The FCC may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a currently valid OMB control number.

DATES: Written Paperwork Reduction Act (PRA) comments should be submitted on or before November 22, 2010. If you anticipate that you will be submitting PRA comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the FCC contact listed below as soon as possible.

ADDRESSES: Direct all PRA comments to Nicholas A. Fraser, Office of Management and Budget, via fax at 202–395–5167 or via the Internet at Nicholas_A._Fraser@omb.eop.gov and to the Federal Communications Commission via email to PRA@fcc.gov.

FOR FURTHER INFORMATION CONTACT: Judith B. Herman, Office of Managing Director, (202) 418–0214. For additional information, contact Judith B. Herman, OMD, 202–418–0214 or email judith–b.herman@fcc.gov.

SUPPLEMENTARY INFORMATION:

OMB Control Number: 3060–1058.

Title: FCC Application or Notification for Spectrum Leasing Arrangement: Wireless Telecommunications Bureau and/or Public Safety and Homeland Security Bureau.

Form No.: FCC Form 608.

Type of Review: Revision of a currently approved collection.

Respondents: Business or other for–profit, not–for–profit institutions, and state, local or tribal government.

Number of Respondents and Responses: 991 respondents; 991 responses.

Estimated Time Per Response: 5 hours.

Frequency of Response: On occasion reporting requirement, recordkeeping requirement.

Obligation to Respond: Required to obtain or retain benefits. Statutory authority for this information collection is contained in 47 U.S.C. sections 151, 154(i), 154(j), 155, 161, 301, 303(r), 308, 309, 310, 332 and 503.

Total Annual Burden: 4,955 hours.

Total Annual Cost: $910,400.

Privacy Act Impact Assessment: N/A.

Nature and Extent of Confidentiality: In general there is no need for confidentiality. On a case–by–case basis, the Commission may be required to withhold from disclosure certain information about the location, character, or ownership of a historic property, including traditional religious sites.

Needs and Uses: The Commission will submit this revised information collection to the Office of Management and Budget (OMB) after this comment period to obtain OMB approval. The Commission is reporting a 3,200 hour burden reduction adjustment which is due to 632 fewer respondents.

The revision to the FCC Form 608 is due to rewording of data elements, adding a question inquiring if filing is the lead application on the Main Form, and changing language in the instructions.

FCC Form 608 is a multi–purpose form. It is used to provide notification or request approval for any spectrum leasing arrangement ('Leases') entered into between an existing licensee ('Licensee') in certain wireless services and a spectrum lessee ('Lessee'). This form also is required to notify or request approval for any spectrum subleasing arrangement ('Sublease').

The data collected on the form is used by the FCC to determine whether the public interest would be served by the Lease or Sublease. The form is also used to provide notification for any Private Commons Arrangement entered into between a Licensee, Lessee, or Sublessee and a class of third–party users (as defined in Section 1.9080 of the Commission's rules).

Federal Communications Commission.

Marlene H. Dortch,

Secretary,

Office of the Secretary,

Office of Managing Director.

[FR Doc. 2010–23800 Filed 9–22–10; 8:45 am]

BILLING CODE 6712–01–S

FEDERAL COMMUNICATIONS COMMISSION

[AU Docket No. 10–147; DA 10–1351]

Auction of VHF Commercial Television Station Construction Permits Scheduled for February 15, 2011; Comment Sought on Competitive Bidding Procedures for Auction 90

AGENCY: Federal Communications Commission.

ACTION: Notice.

SUMMARY: This document announces the auction of certain VHF construction permits scheduled to commence on February 15, 2011 (Auction 90). This document also seeks comment on competitive bidding procedures for Auction 90.

DATES: Comments are due on or before September 30, 2010, and reply comments are due on or before October 15, 2010.

ADDRESSES: You may submit comments, identified by AU Docket No. 10–147, by any of the following methods:

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

• *Federal Communications Commission's Web Site: http://fjallfoss.fcc.gov/ecfs2/.* Follow the instructions for submitting comments.

• *Paper Filers:* Parties who choose to file by paper must file an original and four copies of each filing. Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail. All filings must be addressed to the Commission's Secretary, Attn: WTB/ASAD, Office of the Secretary, Federal Communications Commission.

• All hand-delivered or messenger-delivered paper filings for the Commission's Secretary must be delivered to FCC Headquarters at 445 12th St., SW., Room TW–A325, Washington, DC 20554. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes must be disposed of *before* entering the building.

• Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743.

• *People with Disabilities:* Contact the FCC to request reasonable accommodations (accessible format documents, sign language interpreters, CART, *etc.*) by e-mail: *FCC504@fcc.gov* or telephone: 202–418–0530 or TTY: 202–418–0432.

• The Wireless Telecommunications Bureau requests that a copy of all comments and reply comments be submitted electronically to the following address: *auction90@fcc.gov.*

• *People with Disabilities:* Contact the FCC to request reasonable accommodations (accessible format documents, sign language interpreters, CART, *etc.*) by e-mail: *FCC504@fcc.gov* or phone: 202–418–0530 or TTY: 202–418–0432.

FOR FURTHER INFORMATION CONTACT: *Wireless Telecommunications Bureau, Auctions and Spectrum Access Division:* For auction legal questions: Howard Davenport at (202) 418–0660; for general auction questions: Jeff Crooks at (202) 418–2074 or Barbara Sibert at (717) 338–2868. *Media Bureau, Video Division:* for service rules questions: Shaun Maher or Adrienne Denysyk at (202) 418–1600.

SUPPLEMENTARY INFORMATION: This is a summary of the *Auction 90 Comment Public Notice* released on September 8, 2010. The complete text of the *Auction 90 Comment Public Notice,* including an attachment and related Commission documents, is available for public inspection and copying from 8 a.m. to 4:30 p.m. ET Monday through Thursday or from 8 a.m. to 11:30 a.m. ET on Fridays in the FCC Reference Information Center, 445 12th Street SW., Room CY–A257, Washington, DC 20554. The *Auction 90 Comment Public Notice* and related Commission documents also may be purchased from the Commission's duplicating contractor, Best Copy and Printing, Inc. (BCPI), 445 12th Street SW., Room CY–B402, Washington, DC 20554, telephone 202–488–5300, fax 202–488–5563, or you may contact BCPI at its Web site: *http://www.BCPIWEB.com.* When ordering documents from BCPI, please provide the appropriate FCC document number, for example, DA 10–1351. The *Auction 90 Comment Public Notice* and related documents also are available on the Internet at the Commission's Web site: *http://wireless.fcc.gov/auctions/90/*, or by using the search function for AU Docket No.10–147 on the ECFS Web page at *http://www.fcc.gov/cgb/ecfs/.*

I. Introduction

1. The Wireless Telecommunications and the Media Bureaus (the Bureaus) announce an auction of two digital very high frequency (VHF) commercial television station construction permits. This auction, which is designated Auction 90, is scheduled to commence on February 15, 2011.

II. Construction Permits in Auction 90

2. Auction 90 will offer construction permits for two VHF commercial television stations as follows:

MM–DTV012–4.	Atlantic City, NJ	DTV 4
MM–DTV013–5.	Seaford, DE	DTV 5

III. Due Diligence

3. Potential bidders 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. Bidders are responsible for assuring themselves that, if they win a construction permit, they will be able to build and operate facilities in accordance with the Commission's rules.

4. Applicants should perform their due diligence research and analysis before proceeding, as they would with any new business venture. In particular, potential bidders are strongly encouraged to review all underlying Commission orders. The Bureaus note that both of the permits being offered in this auction are available pursuant to allocations made pursuant to Section 331(a) of the Communications Act. Therefore, each station must remain on a VHF channel as long as the station is the only commercial VHF station in its State. Additionally, potential bidders should perform technical analyses and/or refresh any previous analyses to assure themselves that, should they be a winning bidder for any Auction 90 construction permit, they will be able to build and operate facilities that will fully comply with the Commission's current technical and legal requirements.

5. Applicants are strongly encouraged to conduct their own research prior to Auction 90 in order to determine the existence of pending administrative or judicial proceedings, including pending allocations rulemaking proceedings that might affect their decisions regarding participation in the auction.

6. Participants in Auction 90 are strongly encouraged to continue such research throughout the auction. The due diligence considerations mentioned in the *Auction 90 Comment Public Notice* does not comprise an exhaustive list of steps that should be undertaken prior to participating in this auction. As always, the burden is on the potential bidder to determine how much research to undertake, depending upon specific facts and circumstances.

IV. Bureaus Seek Comment on Auction Procedures

A. Auction Structure

i. Simultaneous Multiple-Round Auction Design

7. The Bureaus propose to auction the two construction permits included in Auction 90 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. Typically, bidding remains open on all construction permits until bidding stops on every construction permit. The Bureaus seek comment on this proposal.

ii. Bidding Rounds

8. Auction 90 will consist of sequential bidding rounds, each followed by the release of round results. The initial bidding schedule will be announced in a public notice to be released at least one week before the start of the auction. Details on viewing round results, including the location and format of downloadable round

results files, will be included in the same public notice.

9. The Commission will conduct Auction 90 over the Internet, and telephonic bidding will be available as well. The toll-free telephone number for the Auction Bidder Line will be provided to qualified bidders.

10. The Bureaus propose to retain 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. Under this proposal, the Bureaus may change 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. The Bureaus seek comment on this proposal. Commenters may wish to address the role of the bidding schedule in managing the pace of the auction and the tradeoffs in managing auction pace by bidding schedule changes, by changing the activity requirements or bid amount parameters, or by using other means.

iii. Stopping Rule

11. For Auction 90, the Bureaus propose to 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, applies a proactive waiver, or withdraws any provisionally winning bids (if bid withdrawals are permitted in this auction). Thus, unless the Bureaus announce alternative procedures, bidding will remain open on all construction permits until bidding stops on every construction permit. Consequently, it is not possible to determine in advance how long the auction will last.

12. Further, the Bureaus propose to retain the discretion to exercise any of the following options during Auction 90: (1) Use a modified version of the simultaneous stopping rule. The modified stopping rule would close the auction for all construction permits after the first round in which no bidder applies a waiver, withdraws a provisionally winning bid (if withdrawals are permitted in this auction), or places any new bids on any construction permit for which it is not the provisionally winning bidder. Thus, absent any other bidding activity, a bidder placing a new bid on a construction permit for which it is the provisionally winning bidder would not keep the auction open under this modified stopping rule; (2) Declare that the auction will end after a specified number of additional rounds. If the Bureaus invoke this special stopping rule, they will accept bids in the specified final round(s), after which the auction will close; and (3) Keep the auction open even if no bidder places any new bids, applies a waiver, or withdraws any provisionally winning bids (if withdrawals are permitted in this auction). In this event, the effect will be the same as if a bidder had applied a waiver. The activity rule will apply as usual, and a bidder with insufficient activity will either lose bidding eligibility or use a waiver.

13. The Bureaus propose to exercise these options only in certain circumstances, for example, where the auction is proceeding unusually slowly or quickly, there is minimal overall bidding activity, or it appears likely that the auction will not close within a reasonable period of time or will close prematurely. Before exercising these options, the Bureaus are likely to attempt to change the pace of the auction by, for example, changing the number of bidding rounds per day and/or changing minimum acceptable bids. The Bureaus propose to retain the discretion to exercise any of these options with or without prior announcement during the auction. The Bureaus seek comment on these proposals.

iv. Information Relating to Auction Delay, Suspension, or Cancellation

14. For Auction 90, the Bureaus propose that, 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. In such cases, the Bureaus, in their sole discretion, may elect to resume the auction starting from the beginning of the current round, resume the auction starting from some previous round, or cancel the auction in its entirety. Network interruption may cause the Bureaus to delay or suspend the auction. The Bureaus emphasize that exercise of this authority is solely within the discretion of the Bureaus, and its use is not intended to be a substitute for situations in which bidders may wish to apply their activity rule waivers. The Bureaus seek comment on this proposal.

B. Auction Procedures

i. Upfront Payments and Bidding Eligibility

15. For Auction 90, the Bureau proposes to make the upfront payments equal to the minimum opening bids. The specific upfront payments for each license are listed in Attachment A of the *Auction 90 Comment Public Notice.* The Bureau seeks comment on this proposal.

16. The Bureaus further propose that the amount of the upfront payment submitted by a bidder will determine the bidder's initial bidding eligibility in bidding units. The Bureaus propose that each construction permit be assigned a specific number of bidding units equal to the upfront payment listed in Attachment A of the *Auction 90 Comment Public Notice,* on a bidding unit per dollar basis. The number of bidding units for a given construction permit is fixed and does not change during the auction as prices change. A bidder may place bids on multiple construction permits, provided that the total number of bidding units associated with those construction permits does not exceed the bidder's current eligibility.

17. Eligibility cannot be increased during the auction; it can only remain the same or decrease. Thus, in calculating its upfront payment amount and hence its initial bidding eligibility, an applicant must determine the maximum number of bidding units on which it may wish to bid (or hold provisionally winning bids) in any single round, and submit an upfront payment amount covering that total number of bidding units. Provisionally winning bids are bids that would become final winning bids if the auction were to close in that given round. The Bureaus request comment on these proposals.

ii. Activity Rule

18. In order to ensure that the 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. A bidder's activity in a round will be the sum of the bidding units associated with any construction permits upon which it places bids during the current round and the bidding units associated with any construction permits for which it holds provisionally winning bids. 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. The Bureaus seek comment on this proposal.

iii. Activity Rule Waivers and Reducing Eligibility

19. Use of an activity rule waiver preserves the bidder's eligibility despite the bidder's activity in the current round being below the required minimum level. An activity rule waiver applies to an entire round of bidding, not to a particular construction permit. Activity rule waivers can be either proactive or automatic and are principally a mechanism for auction participants to avoid the loss of bidding eligibility in the event that exigent circumstances prevent them from bidding in a particular round.

20. The FCC Auction System assumes that a bidder that does not meet the activity requirement would prefer to use an activity rule waiver (if available) rather than lose bidding eligibility. Therefore, the system will automatically apply a waiver at the end of any bidding round in which a bidder's activity level is below the minimum required unless: (1) The bidder has no activity rule waivers remaining; or (2) the bidder overrides the automatic application of a waiver by reducing eligibility, thereby meeting the activity requirement. If a bidder has no waivers remaining and does not satisfy the required activity level, its current eligibility will be permanently reduced, possibly curtailing or eliminating the bidder's ability to place additional bids in the auction.

21. A bidder with insufficient activity may wish to reduce its bidding eligibility rather than use an activity rule waiver. If so, the bidder must affirmatively override the automatic waiver mechanism during the bidding round by using the reduce eligibility function in the FCC Auction System. In this case, the bidder's eligibility is permanently reduced to bring the bidder into compliance with the activity rule. Reducing eligibility is an irreversible action; once eligibility has been reduced, a bidder will not be permitted to regain its lost bidding eligibility, even if the round has not yet closed.

22. Under the proposed simultaneous stopping rule, a bidder may apply an activity rule waiver proactively as a means to keep the auction open without placing a bid. If a bidder proactively applies an activity rule waiver (using the apply waiver function in the FCC Auction System) during a bidding round in which no bids are placed or withdrawn (if bid withdrawals are permitted in this auction), the auction will remain open and the bidder's eligibility will be preserved. An automatic waiver applied by the FCC Auction System in a round in which there are no new bids, withdrawals (if bid withdrawals are permitted in this auction), or proactive waivers will not keep the auction open. A bidder cannot apply a proactive waiver after bidding in a round, and applying a proactive waiver will preclude a bidder from placing any bids in that round. Applying a waiver is irreversible; once a proactive waiver is submitted, that waiver cannot be unsubmitted, even if the round has not yet closed.

23. The Bureaus propose that each bidder in Auction 90 be provided with three activity rule waivers that may be used as set forth above at the bidder's discretion during the course of the auction. The Bureaus seek comment on this proposal.

iv. Reserve Price or Minimum Opening Bids

24. A reserve price is an absolute minimum price below which an item will not be sold in a given auction. Reserve prices can be either published or unpublished. A minimum opening bid, on the other hand, is the minimum bid price set at the beginning of the auction below which no bids are accepted. It is generally used to accelerate the competitive bidding process. It is possible for the minimum opening bid and the reserve price to be the same amount.

25. The Bureaus propose to establish minimum opening bid amounts for Auction 90. The Bureaus believe a minimum opening bid amount, which has been used in other broadcast auctions, is an effective bidding tool for accelerating the competitive bidding process. The Bureaus do not propose to establish a separate reserve price for the construction permits to be offered in Auction 90.

26. For Auction 90, the Bureaus propose minimum opening bid amounts determined by taking into account the type of service and class of facility offered, market size, population covered by the proposed broadcast facility, and recent broadcast transaction data. The proposed minimum opening bid amounts are $200,000 for each construction permit available in Auction 90. The Bureaus seek comment on these proposals.

27. If commenters believe that these minimum opening bid amounts will result in unsold construction permits, are not reasonable amounts, or should instead operate as reserve prices, they should explain why this is so and comment on the desirability of an alternative approach. Commenters are advised to support their claims with valuation analyses and suggested amounts or formulas for reserve prices or minimum opening bids. In establishing the minimum opening bid amounts, the Bureaus particularly seek comment on factors that could reasonably have an impact on valuation of the broadcast spectrum, including the type of service and class of facility offered, market size, population covered by the proposed VHF commercial television station and any other relevant factors.

v. Bid Amounts

28. The Bureaus propose that, in each round, eligible bidders be able to place a bid on a given construction permit in any of up to nine different amounts. Under this proposal, the FCC Auction System interface will list the acceptable bid amounts for each construction permit.

29. For Auction 90, the Bureaus propose to use a minimum acceptable bid percentage of 10 percent. This means that the minimum acceptable bid amount for a construction permit will be approximately 10 percent greater than the provisionally winning bid amount for the construction permit. To calculate the additional acceptable bid amounts, the Bureaus propose to use a bid increment percentage of 5 percent.

30. The Bureaus retain the discretion to change 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. Further, the Bureaus retain the discretion to do so on a construction permit-by-construction permit basis. The Bureaus also retain 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. For example, the Bureaus could set a $10,000 limit on increases in minimum acceptable bid amounts over provisionally winning bids. Thus, if calculating a minimum acceptable bid using the minimum acceptable bid percentage results in a minimum acceptable bid amount that is $12,000 higher than the provisionally winning bid on a construction permit, the minimum acceptable bid amount would instead be capped at $10,000 above the provisionally winning bid. The Bureaus

seek comment on the circumstances under which the Bureaus should employ such a limit, factors the Bureaus should consider when determining the dollar amount of the limit, and the tradeoffs in setting such a limit or changing other parameters, such as changing the minimum acceptable bid percentage, the bid increment percentage, or the number of acceptable bid amounts. If the Bureaus exercise this discretion, they will alert bidders by announcement in the FCC Auction System during the auction. The Bureaus seek comment on these proposals.

vi. Provisionally Winning Bids

31. Provisionally winning bids are bids that would become final winning bids if the auction were to close in that given round. At the end of a bidding round, a provisionally winning bid for each construction permit will be determined based on the highest bid amount received for the construction permit. In the event of identical high bid amounts being submitted on a construction permit in a given round (*i.e.,* tied bids), the Bureaus will use a random number generator to select a single provisionally winning bid from among the tied bids. (Each bid is assigned a random number, and the tied bid with the highest random number wins the tiebreaker.) The remaining bidders, as well as the provisionally winning bidder, can submit higher bids in subsequent rounds. However, if the auction were to end with no other bids being placed, the winning bidder would be the one that placed the provisionally winning bid. If any bids are received on the construction permit in a subsequent round, the provisionally winning bid again will be determined by the highest bid amount received for the construction permit.

32. A provisionally winning bid will remain the provisionally winning bid until there is a higher bid on the construction permit at the close of a subsequent round, unless the provisionally winning bid is withdrawn. Bidders are reminded that provisionally winning bids count toward activity for purposes of the activity rule.

vii. Bid Removal and Bid Withdrawal

33. For Auction 90, the Bureaus propose and seek comment on the following bid removal procedures. Before the close of a bidding round, a bidder has the option of removing any bid placed in that round. By removing selected bids in the FCC Auction System, a bidder may effectively undo any bid placed within that round. In contrast to the bid withdrawal provisions a bidder removing a bid placed in the same round is not subject to a withdrawal payment. Once a round closes, a bidder may no longer remove a bid.

34. The Bureaus also seek comment on whether bid withdrawals should be permitted in Auction 90. When permitted in an auction, bid withdrawals provide a bidder with the option of withdrawing bids placed in prior rounds that have become provisionally winning bids. A bidder may withdraw its provisionally winning bids using the withdraw bids function in the FCC Auction System. A bidder that withdraws its provisionally winning bid(s), if permitted, is subject to the bid withdrawal payment provisions of the Commission rules.

35. For Auction 90 the Bureaus propose to prohibit bidders from withdrawing any bids after the round in which bids were placed has closed. This proposal is made in recognition that bid withdrawals, particularly those made late in this auction, could result in delays in licensing of digital broadcast television service to the public in these two markets. The Bureaus are also mindful that the two construction permits that are the subject of this auction are being offered as a means to effectuate section 331(a)'s mandate that the Commission allot at least one VHF channel to each State, if technically feasible. The Bureaus seek comment on this approach.

C. Post-Auction Payments

i. Interim Withdrawal Payment Percentage

36. The Bureaus seek comment on the appropriate percentage of a withdrawn bid that should be assessed as an interim withdrawal payment, in the event that a final withdrawal payment cannot be determined at the close of the auction. In general, the Commission's rules provide that a bidder that withdraws a bid during an auction is subject to a withdrawal payment equal to the difference between the amount of the withdrawn bid and the amount of the winning bid in the same or a subsequent auction(s). If a construction permit for which a bid has been withdrawn does not receive a subsequent higher bid or winning bid in the same auction, the final withdrawal payment cannot be calculated until a corresponding construction permit receives a higher bid or winning bid in a subsequent auction. When that final payment cannot yet be calculated, the bidder responsible for the withdrawn bid is assessed an interim bid withdrawal payment, which will be applied toward any final bid withdrawal payment that is ultimately assessed.

37. The Commission's rules provide that, in advance of each auction, a percentage shall be established between three percent and twenty percent of the withdrawn bid to be assessed as an interim bid withdrawal payment. The Commission has indicated that the level of the interim withdrawal payment in a particular auction will be based on the nature of the service and the inventory of the construction permits being offered. The Commission noted that it may impose a higher interim withdrawal payment percentage to deter the anti-competitive use of withdrawals when, for example, there are few synergies to be captured by combining construction permits.

38. Applying the reasoning that a higher interim withdrawal payment percentage is appropriate when aggregation of construction permits is not expected, as with the construction permits subject to competitive bidding in Auction 90, if the Bureaus allow bid withdrawals in this auction, the Bureaus propose the maximum interim withdrawal payment allowed under the current rules. Specifically, the Bureaus propose to establish an interim bid withdrawal payment of twenty percent of the withdrawn bid for this auction. The Bureaus seek comment on this proposal.

ii. Additional Default Payment Percentage

39. Any winning bidder that defaults or is disqualified after the close of an 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) is liable for a default payment under 47 CFR 1.2104(g)(2). This payment consists of 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.

40. The Commission's rules provide that, in advance of each auction, a percentage shall be established between three percent and twenty percent of the applicable bid to be assessed as an additional default payment. As the Commission has indicated, the level of this payment in each case will be based on the nature of the service and the construction permits being offered.

41. For Auction 90, the Bureaus propose to establish an additional default payment of twenty percent. As previously noted by the Commission defaults weaken the integrity of the auction process and may impede the deployment of service to the public, and an additional default payment of more than the previous three percent will be more effective in deterring defaults. In light of these considerations for Auction 90, the Bureaus propose an additional default payment of twenty percent of the relevant bid. The Bureaus seek comment on this proposal.

V. Deadlines and Filing Procedures

42. Comments are due on or before September 30, 2010, and reply comments are due on or before October 15, 2010. All filings related to procedures for Auction 90 must refer to AU Docket No. 10–147. Comments may be submitted using the Commission's Electronic Comment Filing System or by filing paper copies. The Bureaus strongly encourage interested parties to file comments electronically.

43. This proceeding has been designated as a permit-but-disclose proceeding in accordance with the Commission's *ex parte* rules. Persons making oral *ex parte* presentations are reminded that memoranda summarizing the presentations must contain summaries of the substance of the presentations and not merely a listing of the subjects discussed. More than a one or two sentence description of the views and arguments presented is generally required. Other rules pertaining to oral and written *ex parte* presentations in permit-but-disclose proceedings are set forth in 47 CFR 1.1206(b).

Federal Communications Commission.

Gary D. Michaels,

Deputy Chief, Auctions and Spectrum Access Division, WTB.

[FR Doc. 2010–23825 Filed 9–22–10; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL DEPOSIT INSURANCE CORPORATION

Sunshine Act Meeting

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that the Federal Deposit Insurance Corporation's Board of Directors will meet in open session at 10:30 a.m. on Monday, September 27, 2010, to consider the following matters:

Summary Agenda: No substantive discussion of the following items is anticipated. These matters will be resolved with a single vote unless a member of the Board of Directors requests that an item be moved to the discussion agenda.

Disposition of minutes of previous Board of Directors' Meetings.

Summary reports, status reports, reports of the Office of Inspector General, and reports of actions taken pursuant to authority delegated by the Board of Directors.

Memorandum and resolution re: Joint Final Rule: Amendment to the Community Reinvestment Act Regulation.

Discussion Agenda

Memorandum and resolution re: Rule Replacing 12 CFR 360.6—Treatment by the FDIC as Conservator or Receiver of Financial Assets Transferred by an Insured Depository Institution in Connection with a Securitization after September 30, 2010.

Memorandum and resolution re: Interim Final Rule Implementing Certain Orderly Liquidation Authority Provisions of the Dodd-Frank Wall Street Reform and Consumer Protection Act.

Memorandum and resolution re: Notice of Proposed Rulemaking on Deposit Insurance of Noninterest-Bearing Transaction Accounts.

The meeting will be held in the Board Room on the sixth floor of the FDIC Building located at 550 17th Street, NW., Washington, DC.

This Board meeting will be Webcast live via the Internet and subsequently made available on-demand approximately one week after the event. Visit *http://www.vodium.com/goto/fdic/boardmeetings.asp* to view the event. If you need any technical assistance, please visit our Video Help page at: *http://www.fdic.gov/video.html.*

The FDIC will provide attendees with auxiliary aids (*e.g.,* sign language interpretation) required for this meeting. Those attendees needing such assistance should call (703) 562–6067 (Voice or TTY), to make necessary arrangements.

Requests for further information concerning the meeting may be directed to Mr. Robert E. Feldman, Executive Secretary of the Corporation, at (202) 898–7043.

Dated: September 20, 2010.

Federal Deposit Insurance Corporation.

Robert E. Feldman,

Executive Secretary.

[FR Doc. 2010–23885 Filed 9–21–10; 11:15 am]

BILLING CODE P

FEDERAL ELECTION COMMISSION

Sunshine Act Notices

AGENCY: Federal Election Commission.

DATE AND TIME: Tuesday, September 21, 2010, at 10 a.m.

PLACE: 999 E Street, NW., Washington, DC.

STATUS: This meeting will be closed to the public.

Items To Be Discussed

Compliance matters pursuant to 2 U.S.C. 437g.

Audits conducted pursuant to 2 U.S.C. 437g, 438(b), and Title 26, U.S.C.

Matters concerning participation in civil actions or proceedings or arbitration.

Internal personnel rules and procedures or matters affecting a particular employee.

PERSON TO CONTACT FOR INFORMATION: Judith Ingram, Press Officer, Telephone: (202) 694–1220.

Shawn Woodhead Werth,

Secretary and Clerk of the Commission.

[FR Doc. 2010–23779 Filed 9–22–10; 8:45 am]

BILLING CODE 6715–01–M

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 October 18, 2010.

A. Federal Reserve Bank of Dallas (E. Ann Worthy, Vice President) 2200 North Pearl Street, Dallas, Texas 75201–2272:

1. Henderson Texas Bancshares, Inc., Henderson, Texas; to acquire 85 percent of the voting shares of Prosper Bancshares, Inc., and thereby indirectly acquire voting shares of Prosper Bank, both of Prosper, Texas.

Board of Governors of the Federal Reserve System, September 20, 2010.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 2010–23816 Filed 9–22–10; 8:45 am]

BILLING CODE 6210–01–S

FEDERAL RESERVE SYSTEM

Sunshine Act Meeting

AGENCY HOLDING THE MEETING: Board of Governors of the Federal Reserve System.

TIME AND DATE: 3:00 p.m., Tuesday, September 21, 2010.

The business of the Board requires that this meeting be held with less than one week's advance notice to the public, and no earlier announcement of the meeting was practicable.

PLACE: Marriner S. Eccles Federal Reserve Board Building, 20th and C Streets, N.W., Washington, D.C. 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Implications of Dodd–Frank Reform Act for System Organization and Staffing.

FOR FURTHER INFORMATION CONTACT: Michelle Smith, Director, or Dave Skidmore, Assistant to the Board, Office of Board Members at 202–452–2955.

SUPPLEMENTARY INFORMATION: You may call 202–452–3206 beginning at approximately 5 p.m. two business days before the meeting for a recorded announcement of bank and bank holding company applications scheduled for the meeting; or you may contact the Board's Web site at *http://www.federalreserve.gov* for an electronic announcement that not only lists applications, but also indicates procedural and other information about the meeting.

Board of Governors of the Federal Reserve System, September 21, 2010.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 2010–23917 Filed 9–21–10; 11:15 am]

BILLING CODE 6210–01–S

FEDERAL TRADE COMMISSION

Agency Information Collection Activities;Submission for OMB Review; Comment Request

AGENCY: Federal Trade Commission ("FTC" or "Commission").

ACTION: Notice.

SUMMARY: The information collection requirements described below will be submitted to the Office of Management and Budget ("OMB") for review, as required by the Paperwork Reduction Act ("PRA"). The FTC seeks public comments on its proposal to extend through December 31, 2013 the current OMB clearance for information collection requirements contained in its Prescreen Opt-Out Disclosure Rule. That clearance expires on December 31, 2010.

DATES: Comments must be filed by October 25, 2010.

ADDRESSES: Interested parties are invited to submit written comments electronically or in paper form by following the instructions in the Request for Comments part of the **SUPPLEMENTARY INFORMATION** section below. Comments in electronic form should be submitted by using the following weblink: (*https://public.commentworks.com/ftc/prescreenoptoutPRA2*) (and following the instructions on the web-based form). Comments filed in paper form should be mailed or delivered to the following address: Federal Trade Commission, Office of the Secretary, Room H-135 (Annex J), 600 Pennsylvania Avenue, N.W., Washington, DC 20580, in the manner detailed in the **SUPPLEMENTARY INFORMATION** section below.

FOR FURTHER INFORMATION CONTACT: Requests for additional information should be addressed to Katherine Armstrong, Attorney, Division of Privacy and Identity Protction, Bureau of Consumer Protection, Federal Trade Commission, 600 Pennsylvania Avenue, N.W., Washington, DC 20580, (202) 326-3250.

SUPPLEMENTARY INFORMATION:

Request for Comments

On June 29, 2010, the FTC sought comment on the information collection requirements associated with the Prescreen Opt-Out Disclosure Rule, 16 CFR Part 642 (Control Number: 3084-0132). 75 FR 37436. No comments were received. Pursuant to the OMB regulations, 5 CFR Part 1320, that implement the PRA, 44 U.S.C. 3501-3521, the FTC is providing this second opportunity for public comment while seeking OMB approval to extend the existing paperwork clearance for the Rule. All comments should be filed as prescribed herein, and must be received on or before October 25, 2010.

All comments should additionally be sent to OMB. Comments may be submitted by U.S. Postal Mail to: Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Desk Officer for Federal Trade Commission, New Executive Office Building, Docket Library, Room 10102, 725 17th Street, N.W., Washington, D.C. 20503. Comments, however, should be submitted via facsimile to (202) 395-5167 because U.S. Postal Mail is subject to lengthy delays due to heightened security precautions.

Comments should refer to "Prescreen Opt-Out Disclosure Rule: FTC File No. P075417" to facilitate the organization of comments. Please note that your comment – including your name and your state – will be placed on the public record of this proceeding, including on the publicly accessible FTC website, at (*http://www.ftc.gov/os/publiccomments.shtm*).

Because comments will be made public, they should not include any sensitive personal information, such as any individual's Social Security Number; date of birth; driver's license number or other state identification number, or foreign country equivalent; passport number; financial account number; or credit or debit card number. Comments also should not include any sensitive health information, such as medical records or other individually identifiable health information. In addition, comments should not include "[t]rade secret or any commercial or financial information which is obtained from any person and which is privileged or confidential" as provided in Section 6(f) of the Federal Trade Commission Act ("FTC Act"), 15 U.S.C. 46(f), and FTC Rule 4.10(a)(2), 16 CFR 4.10(a)(2). Comments containing matter for which confidential treatment is requested must be filed in paper form, must be clearly labeled "Confidential," and must comply with FTC Rule 4.9(c).[1]

[1] The comment must be accompanied by an explicit request for confidential treatment, including the factual and legal basis for the request, and must identify the specific portions of the comment to be withheld from the public record. The request will be granted or denied by the

Continued

Because paper mail addressed to the FTC is subject to delay due to heightened security screening, please consider submitting your comments in electronic form. Comments filed in electronic form should be submitted using the following weblink (*https://public.commentworks.com/ftc/prescreenoptoutPRA2*) (and following the instructions on the web-based form). To ensure that the Commission considers an electronic comment, you must file it on the web-based form at the weblink (*https://public.commentworks.com/ftc/prescreenoptoutPRA2*).

If this Notice appears at (*www.regulations.gov/search/index.jsp*), you may also file an electronic comment through that website. The Commission will consider all comments that regulations.gov forwards to it.

The FTC Act and other laws that the Commission administers permit the collection of public comments to consider and use in this proceeding as appropriate. The Commission will consider all timely and responsive public comments that it receives, whether filed in paper or electronic form. Comments received will be available to the public on the FTC website, to the extent practicable, at (*http://www.ftc.gov/os/publiccomments.shtm*). As a matter of discretion, the FTC makes every effort to remove home contact information for individuals from the public comments it receives before placing those comments on the FTC website. More information, including routine uses permitted by the Privacy Act, may be found in the FTC's privacy policy, at (*http://www.ftc.gov/ftc/privacy.shtm*).

Background

Section 615(d) of the Fair Credit Reporting Act ("FCRA"), 15 U.S.C. 1681m(d)(1), requires that any person who uses a consumer report in order to make an unsolicited firm offer of credit or insurance to the consumer, shall provide with each written solicitation a clear and conspicuous statement that:

(A) information contained in the consumer's consumer report was used in connection with the transaction; (B) the consumer received the offer of credit or insurance because the consumer satisfied the criteria for credit worthiness or insurability under which the consumer was selected for the offer; (C) if applicable, the credit or insurance may not be extended if, after the consumer responds to the offer, the consumer does not meet the criteria used to select the consumer for the offer or any applicable criteria bearing on credit worthiness or insurability or does not furnish any required collateral; (D) the consumer has a right to prohibit information contained in the consumer's file with any consumer reporting agency from being used in connection with any credit or insurance transaction that is not initiated by the consumer; and (E) the consumer may exercise the right referred to in subparagraph (D) by notifying a notification system established under section 604(e) [of the FCRA].

Section 615(d)(1) of the FCRA [15 U.S.C. 1681m(d)(1)].

The Fair and Accurate Credit Transactions Act of 2003, Pub. L. 108-159, 117 Stat. 1952 ("FACT Act") was signed into law on December 4, 2003. Section 213(a) of the FACT Act amended FCRA Section 615(d) to require that the statement mandated by Section 615(d) "be presented in such format and in such type size and manner as to be simple and easy to understand, as established by the Commission, by rule, in consultation with the Federal banking agencies and the National Credit Union Administration." The Commission published the Final Rule in the **Federal Register** on January 31, 2005 and the Rule became effective August 1, 2005.

The Rule adopted a "layered" notice approach that requires a short, simple, and easy-to-understand statement of consumers' opt-out rights on the first page of the prescreened solicitation, along with a longer statement containing additional details elsewhere in the solicitation. Specifically, the Rule required that a short notice be placed on the front side of the first page of the principal promotional document in the solicitation, or, if provided electronically, on the same page and in close proximity to the principal marketing message. The Rule specifies that the type size be larger than the type size of the principal text on the same page, but in no event smaller than 12-point type, or if provided by electronic means, then reasonable steps shall be taken to ensure that the type size is larger than the type size of the principal text on the same page. The Rule further provides that the long notice, that appears elsewhere in the solicitation, be in a type size that is no smaller than the type size of the principal text on the same page, but in no event smaller than 8-point type. The long notice shall begin with a heading in capital letters and underlined, and identifying the long notice as the "PRESCREEN & OPT-OUT NOTICE" in a type style that is distinct from the principal type style used on the same page and be set apart from other text on the page. The Rule also includes model notices in English and Spanish.

Burden statement

Estimated total annual hours burden: 1,000 to 1,500 hours

As in the 2007 PRA burden analysis when the Commission last sought renewed clearance,[2] FTC staff estimates that between 500 and 750 entities make prescreened solicitations and will each spend approximately 2 hours to monitor compliance with the Rule. Accordingly, cumulative total annual burden is between 1,000 to 1,500 hours. Additionally, FTC staff assumes that in-house legal counsel will handle most of the compliance review, and at an estimated average hourly wage of $250/hour. Accordingly, cumulative labor cost for all affected entities would be between $250,000 and $375,000. Capital and other non-labor costs should be minimal, at most, since the Rule has been in effect several years, with covered entities now equipped to provide the required notice.

Christian S. White

Acting General Counsel.

[FR Doc. 2010–23761 Filed 9–22–10; 8:45 am]

BILLING CODE 6750–01–S

Commission's General Counsel, consistent with applicable law and the public interest. *See* FTC Rule 4.9(c), 16 CFR 4.9(c).

[2] 72 FR 60672 (Oct. 25, 2007); 72 FR 42092 (Aug. 1, 2007). No comments were received in response to those notices.

DEPARTMENT OF HEALTH AND HUMAN SERVICES

[Document Identifier: OS–0990–0275; 30-Day Notice]

Agency Information Collection Request; 30-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 collection 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) 690–5683. Send written comments and recommendations for the proposed information collections within 30 days of this notice directly to the OS OMB Desk Officer; faxed to OMB at 202–395–5806.

Proposed Project: Uniform Data Set (UDS)—Reinstatement with Change—OMB No. 0990–0275–Office of Public Health Science (OPHS)—Office of Minority Health.

Abstract: The Office of Minority Health is requesting a three year OMB approval on a revised collection, Uniform Data Set (OMB No. 0990–0275), the tool used by the Office Minority Health (OMH) to collect program management and performance data for all OMH-funded projects. Respondents for this data collection include the project directors leading OMH-funded projects. Affected public includes not-for-profit institutions and State, Local, or Tribal Governments. The clearance is also to make modifications to the UDS tool, which includes the exclusion of a large number of data elements which significantly reduces reporting burden for grantees, a change in the name of the data collection tool from the UDS to the Performance Data System (PDS), and to increase the frequency of reporting from semi-annual to quarterly reporting. The modifications are intended to evolve the UDS into a system that improves OMH's ability to comply with Federal reporting requirements and monitor and evaluate performance by enabling the efficient collection of more performance-oriented data which are tied to OMH-wide performance reporting needs.

ESTIMATED ANNUALIZED BURDEN TABLE

Forms	Type of respondent	Number of respondents	Number of responses per respondent	Average buden hours per response	Total burden hours
PDS	OMH Grantee	104	4	2.5	1,040

Seleda Perryman,

Office of the Secretary, Paperwork Reduction Act Reports Clearance Officer.

[FR Doc. 2010–23756 Filed 9–22–10; 8:45 am]

BILLING CODE 4150–05–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

[Document Identifier: OS–0990–0275; 30-day notice]

Agency Information Collection Request; 30-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 collection 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) 690–5683. Send written comments and recommendations for the proposed information collections within 30 days of this notice directly to the OS OMB Desk Officer; faxed to OMB at 202–395–5806.

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ESTIMATED ANNUALIZED BURDEN TABLE

Forms	Type of respondent	Number of respondents	Number of responses per respondent	Average burden hours per response	Total burden hours
PDS	OMH Grantee	104	4	2.5	1,040

Seleda Perryman,

Office of the Secretary, Paperwork Reduction Act Reports Clearance Officer.

[FR Doc. 2010–23767 Filed 9–22–10; 8:45 am]

BILLING CODE 4150–05–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Draft Revision of the Federalwide Assurance

AGENCY: Department of Health and Human Services, Office of the Secretary, Office of the Assistant Secretary for Health, Office for Human Research Protections.

ACTION: Notice.

SUMMARY: The Office for Human Research Protections (OHRP), Office of the Assistant Secretary for Health, is announcing the availability of the draft revised Federalwide Assurance (FWA) form and Terms of Assurance, and is seeking comment on these draft documents. OHRP is proposing several changes to simplify and shorten the FWA form and Terms of Assurance. Institutions engaged in non-exempt human subjects research conducted or supported by the Department of Health and Human Services (HHS) must hold an OHRP-approved FWA. The draft revised FWA form and Terms of Assurance, when finalized, will supersede the current FWA documents available on the OHRP Web site at *http://www.hhs.gov/ohrp/assurances/assurances_index.html.* OHRP will consider comments received before implementing any revisions to the FWA documents.

DATES: Submit written comments by October 25, 2010.

ADDRESSES: Submit written requests for single copies of the draft revised FWA form and Terms of Assurance to the Division of Policy and Assurances, Office for Human Research Protections, 1101 Wootton Parkway, Suite 200, Rockville, MD 20852. Send one self-addressed adhesive label to assist that office in processing your request, or fax your request to 301–402–2071. See the **SUPPLEMENTARY INFORMATION** section for information on electronic access to the draft revised FWA documents.

You may submit comments, identified by docket ID number HHS–OPHS–2010–0023, by one of the following methods:

- Federal eRulemaking Portal: *http://www.regulations.gov.* Enter the above docket ID number in the "Enter Keyword or ID" field and click on "Search." On the next web page, click on the "Submit a Comment" action and follow the instructions.
- Mail/Hand delivery/Courier [For paper, disk, or CD–ROM submissions]: Irene Stith-Coleman, PhD, Office for Human Research Protections, 1101 Wootton Parkway, Suite 200, Rockville, MD 20852.

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

FOR FURTHER INFORMATION CONTACT: Irene Stith-Coleman, PhD, Office for Human Research Protections, 1101 Wootton Parkway, Suite 200, Rockville, MD 20852, 240–453–6900; e-mail *Irene.StithColeman@hhs.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

OHRP is announcing the availability of the draft revised FWA form and Terms of Assurance, and is seeking comment on these draft documents. Institutions engaged in non-exempt human subjects research conducted or supported by HHS must hold an OHRP-approved FWA. The draft revised FWA form and Terms of Assurance, when finalized, will supersede the current FWA documents available on the OHRP Web site at *http://www.hhs.gov/ohrp/assurances/assurances_index.html.* The current FWA form has been approved by the Office of Management and Budget for use through May 31, 2011.

The draft revised FWA form and Terms of Assurance have the following key changes in comparison to the current FWA documents:

(1) The current separate FWA forms for U.S. and non-U.S. institutions have been combined into a single form that will still collect the same basic information previously requested in the current separate forms, except as noted in items (3) and (4) below.

(2) The Terms of Assurance document has been shortened and simplified. In the current version, some portions of the text appear twice; those duplications have been eliminated by re-organizing portions of the document. In addition, there are several items covered in the current version that are either not required by the regulations to be part of an assurance, or which are addressed in the FWA form itself. These items have been eliminated from the Terms of Assurance document.

(3) The revised FWA form would replace the current requirement that all IRBs (both internal and external IRBs) relied upon by the institution be specifically designated with the requirement that only internal IRBs be specifically designated or that, if an institution does not have an internal IRB, only one external IRB be specifically designated. This change to the FWA form is being proposed in response to the recommendation from the Secretary's Advisory Committee on Human Research Protections (SACHRP) that the FWA be modified to remove the current requirement to designate specific IRBs within the assurance document itself, replacing this with a commitment by the institution to rely only on registered IRBs (see SACHRP's July 15, 2009 letter to the Secretary on the OHRP Web site at *http://www.hhs.gov/ohrp/sachrp/documents/20090715LettertoHHSSecretary.pdf*).

(4) The revised FWA form would no longer request submission of the HHS Institution Profile code or the Federal Entity Identification number.

(5) The revised FWA form would allow the FWA to be signed by the institution's signatory official electronically and eliminate the need for submission of a hard-copy signature page by mail or facsimile. Upon implementation of this change, OHRP intends to require that institutions submit all FWAs (including new submissions, updates, and renewals) using the electronic submission system available through the OHRP Web site at *http://ohrp.cit.nih.gov/efile/,* unless an institution lacks the ability to do so electronically. Such electronic submission currently is required for IRB registration. If an institution believed it lacked the ability to submit its FWA electronically, it would be required to contact OHRP by telephone or email and explain why it was unable to submit its FWA electronically.

(6) The standard period of approval for an FWA would be increased from the current 3-year period to a 5-year period.

II. Electronic Access

The draft revised FWA form and Terms of Assurance are available on OHRP's Web site at *http://www.hhs.gov/ohrp/requests/.*

III. Request for Comments

OHRP requests comments on the draft revised FWA form and Terms of Assurance. OHRP will consider all comments before implementing any revisions to the FWA documents.

Dated: September 16, 2010.

Jerry Menikoff,

Director, Office for Human Research Protections.

[FR Doc. 2010–23759 Filed 9–22–10; 8:45 am]

BILLING CODE 4150–36–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Call for Comments on the Existing National Standards for the Culturally and Linguistically Appropriate Services in Health Care

AGENCY: Department of Health and Human Services, Office of the Secretary, Office of the Assistant Secretary for Health, Office of Minority Health.

ACTION: Notice.

SUMMARY: The HHS Office of Minority Health (OMH) announces the launch of an enhancement initiative of the existing National Standards for Culturally and Linguistically Appropriate Services in Health Care (CLAS Standards). The public comment period will begin September 20, 2010 and conclude December 31, 2010. During this time three regional meetings on the standards will be held throughout the country. Individuals and organizations are encouraged to submit their comments on the 14 standards and their current application and use. The enhanced national standards, as revised in accordance with public comment and subject matter expertise, will be published for review in spring of 2011 with the final versions being published in fall of 2011.

DATES: The initial comment and submission period is September 20 through December 31, 2010.

ADDRESSES: (1) Electronically through the public comment site *http://clasenhancements.thinkculturalhealth.org.*

(2) By mail, comments postmarked no later than December 31, 2010, can be submitted to: CLAS Standards c/o HHS Office of Minority Health, 1101 Wootton Parkway, Suite 600, Rockville, Maryland 20852. Comments sent by courier will be accepted until 5 p.m. EST on December 31.

(3) Individuals may register for one of the regional meetings by using the online registration form at *http://clasenhancements.thinkculturalhealth.org.* To request a registration form by mail, write to CLAS Standards Enhancement Initiative meeting, c/o SRA International, Inc., 6003 Executive Blvd, Suite 400, Rockville, MD 20852.

FOR FURTHER INFORMATION CONTACT: Guadalupe Pacheco, Office of Minority Health, 1101 Wootton Parkway, Suite 600, Rockville, MD 20852, Attn: CLAS, Telephone: (240) 453–6174; Fax: (240) 453–2883; E-mail: *Guadalupe.Pacheco@hhs.gov.*

Background: To help achieve its mission of "improving the health of racial and ethnic minority populations through the development of effective health policies and programs that help to eliminate disparities in health," the OMH published the National Standards for Culturally and Linguistically Appropriate Services in Health Care (CLAS Standards) in 2001. The CLAS Standards were developed on the basis of an analytical review of key laws, regulations, contracts, and standards used by Federal and State agencies and other national organizations, with input from a national advisory committee of policymakers, health care providers, and researchers. Open public hearings were held to obtain input from communities throughout the nation. The CLAS Standards represent the first national standards for cultural competence in health care and offer comprehensive guidance on what constitutes culturally competent service delivery. They consist of 14 guidelines, recommendations, and mandates that serve to inform, guide, and facilitate implementation of culturally and linguistically appropriate services in health care. The CLAS Standards are organized by three themes: Culturally Competent Care, Language Access Services, and Organizational Supports. They recognize that culture and language are central to the delivery of health services.

Disparities in health care have been documented in a number of groundbreaking reports: Findings of the Supplement to Mental Health: A Report of the Surgeon General (CMHS, 2001a) reveal that "racial and ethnic minorities bear a greater burden from unmet mental health needs and thus suffer a greater loss to their overall health and productivity." Findings from the 2000 Surgeon General's Report Oral Health in America: A Report of the Surgeon General indicated significant disparities "between racial and socioeconomic groups in regards to oral health and ensuing overall health issues" (DHHS, 2000). The 2003 report from the Institute of Medicine, Unequal Treatment: Confronting Racial and Ethnic Disparities in Healthcare (Smedley, Stith & Nelson, 2003), and its supplementary paper contributions such as Racial and Ethnic Disparities in Diagnosis and Treatment: A Review of the Evidence and a Consideration of Causes (Geiger, 2003) and The Civil Rights Dimension of Racial and Ethnic Disparities in Health Status (Perez, 2003), brought to the forefront that minorities receive lower quality health care even when socioeconomic and access-related factors are controlled. The report also showed that bias, stereotyping, prejudice, and clinical uncertainty may contribute to racial and ethnic disparities in health care (Smedley *et al.,* 2003).

A significant body of research released since the 2003 IOM report corroborates these findings. The National Healthcare Disparities Report prepared by the Agency for Healthcare Research and Quality states that "although varying in magnitude by condition and population, disparities are observed in almost all aspects of health care" (The Agency for Healthcare Research and Quality, 2006). Inspired by the CLAS Standards, national organizations including the American Medical Association (AMA), American Association of Medical Colleges (AAMC), the Joint Commission, the National Committee for Quality Assurance (NCQA), the National Quality Forum (NQF) and others have released standards to help support the provision of culturally and linguistically appropriate care. Many of these standards promote the education and training of health care providers in culturally appropriate care.

Increasingly, national experts are looking to cultural competency training as a means to reduce disparities in health care. Evidence suggests that the most effective cultural competence training helps providers develop new knowledge, skills, and attitudes in order to effectively treat minority and immigrant populations (Smedley *et al.,* 2003). The concepts of cultural and linguistic competency as well as health disparities are featured prominently in the health care reform legislation enacted and signed by President Barack Obama in March 2010. References to the concepts of cultural and linguistic competency illustrate how pervasive and important the constructs have become.

Public comment period: It has been nearly ten years since the release of the landmark report regarding the CLAS Standards. In the report, the HHS, OMH provided the framework for all health care organizations to establish services and policies to best serve our increasingly diverse communities. In the decade following the release of the CLAS Standards, the field of cultural and linguistic competency has seen tremendous growth. It has evolved from a fledgling concept to a recognized intervention in the quest for health equity. The field of cultural and linguistic competency is dynamic and as such requires routine enhancement and nurturing. With this in mind, HHS, OMH has begun to revisit the National CLAS Standards.

The OMH has determined that the appropriate next step is for the CLAS

Standards to undergo a national process of public comment that will result in a broader awareness of HHS interest in CLAS, significant input from stakeholder groups on the existing CLAS Standards, as well as a final revision of the CLAS Standards and accompanying commentary supported by the expertise of a National Project Advisory Committee. The final revisions will be published in the **Federal Register** as recommended national standards for adoption or adaptation by stakeholder organizations and agencies.

The publication of the CLAS Standards in the **Federal Register**, and publicizing the availability of the complete report with commentary on the Internet and through local, regional, and national organizations will facilitate reaching as wide an audience of stakeholders as possible. This period of dissemination and awareness-raising will include three regional meetings to gather and solicit detailed input from interested individuals and organizations that will complement and enhance the public comments received by OMH through electronic and written means.

Individuals and organizations desiring to provide input on the standards are encouraged to send comments during the public comment period which is from September 20 through December 31, 2010. Individuals mailing comments are requested to include the following information: Name, position, organization, mail, and e-mail addresses and to identify specifically those portions of their comments that pertain to: The wording or the content of individual standards, the purpose of the standards and/or the intended audience for the national standards.

Dates and locations of the meetings are as follows:

Baltimore, Maryland, Friday, October 22, 2010, The Hyatt Regency, 300 Light Street, Baltimore, MD 21202.

San Francisco, California, Thursday, November 4, 2010, The Stanford Court, A Renaissance Hotel, 905 California Street, San Francisco, CA 94108.

Chicago, Illinois, Monday, November 15, 2010, The James Hotel, 55 East Ontario Street, Chicago, IL 60611–2727.

All meetings will convene at 9 a.m. and conclude at 3 p.m. On-site registration will be available starting at 7:30 a.m.

Information about the CLAS Standards Enhancement Initiative is available electronically at *http://clasenhancements.thinkculturalhealth.org.*

Dated: September 2, 2010.

Garth N. Graham,

Deputy Assistant Secretary for Minority Health.

[FR Doc. 2010–23760 Filed 9–22–10; 8:45 am]

BILLING CODE 4150–29–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Solicitation of Written Comments on Draft Tier 2 Strategies/Modules for Inclusion in the "HHS Action Plan to Prevent Healthcare-Associated Infections"

AGENCY: Department of Health and Human Services, Office of the Assistant Secretary for Health, Office of Healthcare Quality.

ACTION: Notice.

SUMMARY: The Office of Healthcare Quality is soliciting public comment on three new strategies or modules of the "HHS Action Plan to Prevent Healthcare-Associated Infections." To further the HHS mission to protect the health and well-being of the nation, the HHS Steering Committee for the Prevention of Healthcare-Associated Infections has developed draft comprehensive strategies for preventing and reducing healthcare-associated infections in ambulatory surgical centers and end-stage renal disease facilities, as well as a strategy to increase influenza vaccination coverage among healthcare personnel. These Tier 2 modules build upon and are to be included in the existing "HHS Action Plan to Prevent Healthcare-Associated Infections" that focuses on reducing hospital-acquired infections (Tier 1).

DATES: Comments on the draft Tier 2 modules should be received no later than 5 p.m. on October 11, 2010.

ADDRESSES: The draft Tier 2 modules can be found at *http://www.hhs.gov/ophs/initiatives/hai/actionplan/index.html#tier2*. Comments are preferred electronically and may be addressed to *OHQ@hhs.gov*. Written responses should be addressed to the Department of Health and Human Services, 200 Independence Ave, SW., Room 719B, Washington, DC 20201, Attention: Draft Tier 2 Modules.

FOR FURTHER INFORMATION CONTACT: Danielle Doughman, (202) 690–6476 or *OHQ@hhs.gov*.

SUPPLEMENTARY INFORMATION

I. Background

Healthcare-associated infections are among the leading causes of morbidity and mortality in the United States and the most common type of adverse event in the field of healthcare today. They are defined as localized or systemic adverse events, resulting from the presence of an infectious agent or toxin, occurring to a patient in a healthcare setting. An epidemiologic study by the Centers for Disease Control and Prevention (CDC) revealed that the subset of HAIs with hospital-onset accounted for 1.7 million infections annually and were associated with 99,000 deaths in 2002. The fiscal cost is steep as well. Healthcare-associated infections contribute to an additional $28 to $33 billion dollars in healthcare expenditures annually.

For these reasons, the prevention and reduction of healthcare-associated infections is a top priority for the U.S. Department of Health and Human Services (HHS). Multiple agencies within HHS have been working to reduce the incidence and prevalence of healthcare-associated infections for decades. To further efforts, the HHS Steering Committee for the Prevention of Healthcare-Associated Infections was established in July 2008 and charged with developing a comprehensive strategy to progress toward the elimination of healthcare-associated infections.

In 2009, the Steering Committee issued the initial version of the "HHS Action Plan to Prevent Healthcare-Associated Infections." The initial strategy (Tier 1) focused on the prevention of infections in the acute care hospital setting and includes a prioritized research agenda; an integrated information systems strategy; policy options for linking payment incentives or disincentives to quality of care and enhancing regulatory oversight of hospitals; and a national messaging plan to raise awareness of HAIs among the general public, providers, and other stakeholder groups. The Action Plan also delineates specific measures and five-year goals to focus efforts and track national progress in reducing the most prevalent infections. In addition, the plan intended to enhance collaboration with non-government stakeholders and partners at the national, regional, state, and local levels to strengthen coordination and impact of efforts.

Recognizing the need to coordinate prevention efforts across healthcare facilities, HHS began to transition into the second phase (Tier 2) of the Action Plan in late 2009. Tier 2 expands efforts outside of the acute care setting into outpatient facilities (e.g., ambulatory surgical centers, end-stage renal disease facilities). The healthcare and public health communities are increasingly challenged to identify, respond to, and prevent healthcare-associated infections across the continuum of settings where

healthcare is delivered. The public health model's population-based perspective can be deployed to enhance healthcare-associated infection prevention, particularly given the shifts in healthcare delivery from the acute care (Tier 1) to ambulatory (Tier 2) and other settings.

Also, influenza transmission to patients by healthcare personnel is well documented. Healthcare personnel can acquire and transmit influenza from patients or transmit influenza to patients and other staff. Higher vaccination coverage among healthcare personnel has been associated with a lower incidence of healthcare-associated influenza cases. In addition, the proportion of healthcare-associated cases among hospitalized patients decreases as well, suggesting that increased staff vaccination can contribute to the decline in the number of healthcare-associated influenza cases.

The Steering Committee has drafted two strategies or modules that address healthcare-associated infection prevention in ambulatory surgical centers and end-stage renal disease facilities. An additional module addresses influenza vaccination of healthcare personnel. Similar to its Tier 1 efforts, Tier 2 healthcare-associated infection reduction strategies expect to be executed through research and guideline development, implementation of national quality improvement initiatives at the provider level, and creation of payment policies that promote infection control and reduction in healthcare facilities.

To assist the Steering Committee in obtaining broad input in the development of the three draft modules, HHS, through this request for information (RFI), is seeking comments from stakeholders and the general public on the draft Tier 2 modules. The modules can be found at *http://www.hhs.gov/ophs/initiatives/hai/actionplan/index.html#tier2.*

II. Information Request

The Office of Healthcare Quality, on behalf of the HHS Steering Committee for the Prevention of Healthcare-Associated Infections, requests input on three drafts: "Section A: Ambulatory Surgical Centers," "Section B: End-Stage Renal Disease Facilities," and "Section C: Influenza Vaccination of Healthcare Personnel." In addition to general comments, the Steering Committee is seeking input on any additional gaps not addressed in the draft strategies.

III. Potential Responders

HHS invites input from a broad range of individuals and organizations that have interests in preventing and reducing healthcare-associated infections. Some examples of these organizations include, but are not limited to the following:

—General public
—Healthcare, professional, and educational organizations/societies
—Caregivers or health system providers (e.g., physicians, physician assistants, nurses, infection preventionists)
—State and local public health agencies
—Public health organizations
—Foundations
—Medicaid- and Medicare-related organizations
—Insurers and business groups
—Collaboratives and consortia

When responding, please self-identify with any of the above or other categories (include all that apply) and your name. Anonymous submissions will not be considered. The submission of written materials in response to the RFI should not exceed 10 pages, not including appendices and supplemental documents. Responders may submit other forms of electronic materials to demonstrate or exhibit concepts of their written responses. All comments received before the close of the comment period are available for viewing by the public, including any personally identifiable or confidential business information that is included in a comment.

Dated: September 16, 2010.

Don Wright,

Deputy Assistant Secretary for Healthcare Quality.

[FR Doc. 2010–23762 Filed 9–22–10; 8:45 am]

BILLING CODE 4150–28–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[30-Day–10–10CW]

Agency Forms Undergoing Paperwork Reduction Act Review

The Centers for Disease Control and Prevention (CDC) publishes a list of information collection requests under review by the Office of Management and Budget (OMB) in compliance with the Paperwork Reduction Act (44 U.S.C. chapter 35). To request a copy of these requests, call the CDC Reports Clearance Officer at (404) 639–5960 or send an e-mail to *omb@cdc.gov.* Send written comments to CDC Desk Officer, Office of Management and Budget, Washington, DC or by fax to (202) 395–5806. Written comments should be received within 30 days of this notice.

Proposed Project

Translation and Dissemination of Promising Community Interventions for Preventing Obesity—New—Division of Nutrition, Physical Activity and Obesity (DNPAO), National Center for Chronic Disease Prevention and Health Promotion (NCCDPHP), Centers for Disease Control and Prevention (CDC).

Background and Brief Description

The need for prevention and reduction of overweight and obesity is compelling. In the U.S., 65% of adults are overweight or obese. Obesity contributes to chronic conditions such as hypertension, Type 2 diabetes, stroke, coronary heart disease, and osteoarthritis. Beyond the human costs, economic costs are extreme and are climbing. A report on prevention of childhood obesity, prepared by the Institute of Medicine in 2007, concluded that there are insufficient studies to generate recommendations for best practices in obesity prevention. Instead, the report compiles promising practices, including those set in communities.

CDC plans to apply methodology recommended by the CDC Task Force on Community Preventive Services to improve the translation and dissemination of promising practices into community-based obesity prevention programs. Information necessary to this purpose will be collected from the general public. Information will be collected concerning respondents' knowledge, attitudes, and beliefs about obesity and physical activity; the need for community leaders to encourage healthier diets and more physical activity; and opportunities for leveraging current community efforts.

Two hundred fifty respondents will be recruited to participate in a series of four, small-group discussions using Voice over Internet Protocol. In preparation for the initial discussion, respondents will be asked to review a set of briefing materials and a guide to on-line discussion groups. In addition, these respondents will complete an on-line questionnaire on two occasions. The questionnaire is designed to measure the relative importance of various proposals for policy and environmental change, and whether change has occurred in perceptions of roles and responsibilities for obesity prevention. The baseline or "pre-test" questionnaire will be administered before the initial discussion group, and the "post-test" questionnaire will be administered after all discussion groups have been completed.

Information will also be collected from a comparison group of 700 respondents who will complete pre- and post-intervention questionnaires, but will not participate in the discussion groups or review the briefing materials.

The goal is to identify key issues for community obesity prevention programs, to refine promising obesity prevention practices for targeted communities, and to facilitate the dissemination of promising practices for obesity prevention. OMB approval is requested for one year. There are no costs to respondents other than their time. The total estimated annualized burden hours are 2,034.

ESTIMATED ANNUALIZED BURDEN HOURS

Type of respondents	Form name	Number of respondents	Number of responses per respondent	Average burden per response (in hours)
General Public	Discussion Group Moderator's Guide	250	4	1
	Discussion Group Confirmation and Instructions.	250	1	10/60
	Briefing Materials	250	1	10/60
	On-Line Questionnaire: Deliberative Poll on Obesity Prevention and Control.	950	2	30/60

Dated: September 15, 2010.

Carol Walker,

Acting Reports Clearance Officer, Centers for Disease Control and Prevention.

[FR Doc. 2010–23758 Filed 9–22–10; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[30-Day–10–0783]

Agency Forms Undergoing Paperwork Reduction Act Review

The Centers for Disease Control and Prevention (CDC) publishes a list of information collection requests under review by the Office of Management and Budget (OMB) in compliance with the Paperwork Reduction Act (44 U.S.C. chapter 35). To request a copy of these requests, call the CDC Reports Clearance Officer at (404) 639–5960 or send an e-mail to *omb@cdc.gov.* Send written comments to CDC Desk Officer, Office of Management and Budget, Washington, DC or by fax to (202) 395–5806. Written comments should be received within 30 days of this notice.

Proposed Project

Evaluation of Safe Dates Project—(OMB No. 0920–0783 exp. 6/30/2011)—Revision—National Center for Injury Prevention and Control (NCIPC), Centers for Disease Control and Prevention (CDC).

Background and Brief Description

Safe Dates, a dating violence prevention curriculum for 8th and 9th grade students, has been shown to be effective at preventing victimization and perpetration of teen dating violence in one rural North Carolina school district, but appropriateness of the program with urban, high-risk adolescents is unknown. CDC has learned additional information about violence and risk factors for adolescents in urban, high-risk communities since the original OMB clearance package was submitted. Recent research also has shown that adolescents who live in urban, disadvantaged communities report significantly higher prevalence of some risky behaviors, including violence, than nationally representative U.S. adolescents (Swahn & Bossarte, 2009). To assess whether Safe Dates should be modified for urban, high-risk adolescents, CDC requests OMB approval to conduct focus groups with students and interviews with teachers at urban schools in the 2010–2011 school year. Data collection staff will use new interview guides designed for this purpose. The data collection will require participation from teachers at eight schools who delivered the Safe Dates program and students at one school who received the program. Qualitative data will be collected through student focus groups and teacher interviews. Students will complete a participant profile form to capture basic demographic information. Approximately 40 students at one school will participate in focus groups. Two focus groups will consist of 8–10 boys, and two focus groups will include 8–10 girls. Informed written consent from parents for each student's participation and informed written assent from tenth graders for their own participation will be obtained. Twenty teachers will participate in interviews. Students and teachers will be asked about their experiences with the Safe Dates program and ideas they may have about adapting the program for urban schools.

There is no cost to respondents other than their time. The total estimated annual burden hours are 14,193.

ESTIMATED ANNUALIZED BURDEN HOURS

Type of respondent	Form name	No. of respondents	No. of responses per respondent	Average burden per response (in hours)
Student	Student Effectiveness Baseline Survey	10,158	1	35/60
	1st Student mid-implementation survey	3,612	1	25/60
	2nd Student mid-implementation survey	3,612	1	25/60
	Student Effectiveness Follow-up Survey	8,126	1	35/60
Principal	Baseline principal survey	49	1	15/60
	Mid-implementation principal survey	32	1	15/60
	End-of-school-year principal survey	49	1	15/60

ESTIMATED ANNUALIZED BURDEN HOURS—Continued

Type of respondent	Form name	No. of respondents	No. of responses per respondent	Average burden per response (in hours)
Student (new instrument)	Student Focus Group Guide (student demographic data and focus group questions).	40	1	1.5
Prevention coordinator	Baseline prevention coordinator survey	49	1	15/60
	Mid-implementation prevention coordinator survey.	32	1	15/60
	End-of-school-year prevention coordinator survey.	49	1	15/60
	Follow-up prevention coordinator survey	49	1	5/60
Teacher	Baseline teacher survey	98	1	15/60
	Teacher Cost survey	49	11	20/60
	Fifth session mid-implementation survey	98	2	25/60
	Ninth session mid-implementation survey	98	2	25/60
Teacher (new instrument)	Teacher Interview Guide	20	1	1

Dated: September 17, 2010.

Maryam I. Daneshvar,

Reports Clearance Officer, Centers for Disease Control and Prevention.

[FR Doc. 2010–23872 Filed 9–22–10; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Submission for OMB Review; Comment Request

Title: Division of Unaccompanied Children's Services (DUCS) Request for Specific Consent.

OMB No.: New Collection.

Description: The William Wilberforce Trafficking Victims Protection Reauthorization Act of 2008 (TVPRA of 2008), Public Law 110–457 was enacted into law December 23, 2008. Section 235(d) directs the Secretary of HHS to grant or deny requests for specific consent for unaccompanied alien children in HHS custody who seek to invoke the jurisdiction of a state court for a dependency order and who also seek to invoke the jurisdiction of a state court to determine or alter his or her custody status or release from ORR. These requests can be extremely time sensitive since a child must ask a state court for dependency before turning 18 years old.

In developing procedures for collecting the necessary information from unaccompanied alien children, their attorneys, or other representatives to allow HHS to approve or deny consent requests, ORR/DUCS devised a form. Specifically, the form asks the requestor for his/her identifying information, basic identifying information on the unaccompanied alien child, the name of the HHS-funded facility where the child is in HHS custody and care, the name of the court and its location, and the kind of request (e.g., for a change in custody, etc.). The form also asks that the unaccompanied alien child's attorney or authorized representative attach a Notice of Representation, which is an approved federal government agency form used for immigration procedures that authorizes the attorney to act on behalf of the child (*i.e.,* G–28, EOIR–28, EOIR–29), or any other form of authorization to act on behalf of the unaccompanied alien child.

Respondents: Attorneys, accredited legal representatives, or others authorized to act on behalf of a unaccompanied alien child.

ANNUAL BURDEN ESTIMATES

Instrument	Number of respondents	Number of responses per respondent	Average burden hours per response	Total burden hours
ORR–0132	72	1	0.33	23.76
Estimated Total Annual Burden Hours				23.76

Additional Information:

Copies of the proposed collection may be obtained by writing to the Administration for Children and Families, Office of Administration, Office of Information Services, 370 L'Enfant Promenade, SW., Washington, DC 20447, Attn: ACF Reports Clearance Officer. All requests should be identified by the title of the information collection. E-mail address: *infocollection@acf.hhs.gov.*

OMB Comment:

OMB is required to make a decision concerning the collection of information between 30 and 60 days after publication of this document in the **Federal Register**. Therefore, a comment is best assured of having its full effect if OMB receives it within 30 days of publication. Written comments and recommendations for the proposed information collection should be sent directly to the following: Office of Management and Budget, Paperwork Reduction Project, *Fax:* 202–395–7285, *E-mail:* *OIRA_SUBMISSION@OMB.EOP.GOV, Attn:* Desk Officer for the Administration for Children and Families.

Dated: September 20, 2010.

Robert Sargis,

Reports Clearance Officer.

[FR Doc. 2010–23782 Filed 9–22–10; 8:45 am]

BILLING CODE 4184–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Proposed Information Collection Activity; Comment Request

Proposed Projects

Title: Child Care and Development Fund Tribal Plan Preprint—ACF–118–A.

OMB No.: 0970–0198.

Description: The Child Care and Development Fund (CCDF) Tribal Plan serves as the agreement between the applicant (Indian Tribes, Tribal consortia and Tribal organizations) and the Federal government that describes how Tribal applicants will operate CCDF Block Grant programs. The Tribal Plan provides assurances that the CCDF funds will be administered in conformance with legislative requirements, Federal regulations at 45 CFR parts 98 and 99 and other applicable instructions or guidelines issued by the Administration for Children and Families ACF). Tribes must submit a new CCDF Tribal Plan every two years in accordance with 45 CFR 98.17.

Respondents: Tribal CCDF programs (259 total).

ANNUAL BURDEN ESTIMATES

Instrument	Number of respondents	Number of responses per respondent	Average burden hours per response	Total burden hours
CCDF Tribal Plan	259	1	17.50	4,532.50
CCDF Tribal Plan Amendments	259	1	1.50	388.50
Estimated Total Annual Burden Hours:				4,921

In compliance with the requirements of Section 506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Administration for Children and Families is soliciting public comment on the specific aspects of the information collection described above. Copies of the proposed collection of information can be obtained and comments may be forwarded by writing to the Administration for Children and Families, Office of Administration, Office of Information Services, 370 L'Enfant Promenade, SW., Washington, DC 20447, Attn: ACF Reports Clearance Officer. E-mail address: *infocollection@acf.hhs.gov.* All requests should be identified by the title of the information collection.

The Department specifically requests comments on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted within 60 days of this publication.

Dated: September 20, 2010.

Robert Sargis,

Reports Clearance Officer.

[FR Doc. 2010–23826 Filed 9–22–10; 8:45 am]

BILLING CODE 4184–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2010–N–0357]

Agency Information Collection Activities; Submission for Office of Management and Budget Review; Comment Request; Hazard Analysis and Critical Control Point Procedures for the Safe and Sanitary Processing and Importing of Juice

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 October 25, 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 emailed to *oira_submission@omb.eop.gov*. All comments should be identified with the OMB control number 0910–0466. 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 (HFA–710), Food and Drug Administration, 1350 Piccard Dr., 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.

Hazard Analysis and Critical Control Point (HACCP) Procedures for the Safe and Sanitary Processing and Importing of Juice—(OMB Control Number 0910–0466)—Extension

FDA's regulations in part 120 (21 CFR part 120) mandate the application of HACCP procedures to fruit and vegetable juice processing. HACCP is a preventative system of hazard control that can be used by all food processors to ensure the safety of their products to consumers. A HACCP system of preventive controls is the most effective and efficient way to ensure that these food products are safe. FDA's mandate to ensure the safety of the Nation's food supply is derived principally from the Federal Food, Drug, and Cosmetic Act (the FD&C Act) (21 U.S.C. 321, *et seq.*). Under the FD&C Act, FDA has authority to ensure that all foods in interstate commerce, or that have been shipped in interstate commerce, are not contaminated or otherwise adulterated, are produced and held under sanitary conditions, and are not misbranded or deceptively packaged; under section 701 (21 U.S.C. 371), the FD&C Act authorizes the Agency to issue regulations for its efficient enforcement. The Agency also has authority under section 361 of the Public Health Service Act (42 U.S.C. 264) to issue and enforce regulations to prevent the introduction, transmission, or spread of

communicable diseases from one State to another State. Information development and recordkeeping are essential parts of any HACCP system. The information collection requirements are narrowly tailored to focus on the development of appropriate controls and document those aspects of processing that are critical to food safety. Through these regulations, FDA is implementing its authority under section 402(a)(4) of the FD&C Act (21 U.S.C. 342(a)(4)).

In the **Federal Register** of July 14, 2010 (75 FR 40839), 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]

21 CFR Section	No of Recordkeepers	Annual Frequency per Recordkeeping	Total Annual Records	Hours Per Record	Total Hours
120.6(c) and 120.12(a)(1) and (b)	1,875	365	684,375	0.1	68,437.5
120.7; 120.10(a); and 120.12(a)(2), (b), and (c)	2,300	1.1	2,530	20	50,600
120.8(b)(7) and 120.12(a)(4)(i) and (b)	1,450	14,600	21,170,000	0.01	211,700
120.10(c) and 120.12(a)(4)(ii) and (b)	1,840	12	22,080	0.1	2,208
120.11(a)(1)(iv) and (a)(2) and 120.12(a)(5)	1,840	52	95,680	0.1	9,568
120.11(b) and 120.12(a)(5) and (b)	1,840	1	1,840	4	7,360
120.11(c) and 120.12(a)(5) and (b)	1,840	1	1,840	4	7,360
120.14(a)(2), (c), and (d)	308	1	308	4	1,232
Total					358,466

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

Table 1 of this document provides a breakdown of the total estimated annual recordkeeping burden. FDA bases this hour burden estimate on its experience with the application of HACCP principles in food processing.

The burden estimates in table 1 of this document are based on an estimate of the total number of juice manufacturing plants (i.e., 2,300) affected by the regulations. Included in this total are 850 plants currently identified in FDA's official establishment inventory plus 1,220 very small apple juice manufacturers and 230 very small orange juice manufacturers. The total burden hours are derived by estimating the number of plants affected by each portion of the final rule and multiplying the corresponding number by the number of records required annually and the hours needed to complete the record. These numbers were obtained from the Agency's final regulatory impact analysis prepared for these regulations.

Moreover, these estimates assume that every processor will prepare sanitary standard operating procedures and a HACCP plan and maintain the associated monitoring records and that every importer will require product safety specifications. In fact, there are likely to be some small number of juice processors that, based upon their hazard analysis, determine that they are not required to have a HACCP plan under the regulations.

Dated: September 20, 2010.

Leslie Kux,

Acting Assistant Commissioner for Policy.

[FR Doc. 2010–23824 Filed 9–22–10; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2010–D–0459]

Draft Guidance for Industry and Food and Drug Administration Staff; Establishing the Performance Characteristics of *In Vitro* Diagnostic Devices for the Detection of *Helicobacter pylori*; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of the draft guidance entitled "Establishing the Performance Characteristics of *In Vitro* Diagnostic Devices for the Detection of *Helicobacter pylori*." This draft guidance document provides industry and agency staff with updated recommendations concerning 510(k) submissions for various types of *in vitro* diagnostic devices (IVDs) intended to be used for detecting *Helicobacter pylori* (*H. pylori*). This draft guidance is not final nor is it in effect at this time.

DATES: Although you can comment on any guidance at any time (see 21 CFR 10.115(g)(5)), to ensure that the agency considers your comment of this draft guidance before it begins work on the final version of the guidance, submit either electronic or written comments on the draft guidance by December 22, 2010.

ADDRESSES: Submit written requests for single copies of the draft guidance document entitled "Establishing the Performance Characteristics of *In Vitro* Diagnostic Devices for the Detection of *Helicobacter pylori*" to the Division of

Small Manufacturers, International, and Consumer Assistance, Center for Devices and Radiological Health, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 66, rm. 4613, Silver Spring, MD 20993–0002. Send one self-addressed adhesive label to assist that office in processing your request, or fax your request to 301–847–8149. See the **SUPPLEMENTARY INFORMATION** section for information on electronic access to the guidance.

Submit electronic comments on the draft guidance to *http://www.regulations.gov*. Submit written comments to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Identify comments with the docket number found in brackets in the heading of this document.

FOR FURTHER INFORMATION CONTACT: Freddie M. Poole, Center for Devices and Radiological Health, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 66, rm. 5520, Silver Spring, MD 20993–0002, 301–796–5457.

SUPPLEMENTARY INFORMATION:

I. Background

This draft guidance document provides recommendations on developing studies for establishing the performance characteristics of *in vitro* diagnostic devices for the direct or indirect detection of *H. pylori* bacteria in human blood, serum, urine, stool, or breath specimens. FDA believes these recommended studies will be relevant for premarket notification (510(k)) submissions for these device types. Detection methods listed in this guidance include blood and urine antibody tests, stool antigen test, carbon-13 (^{13}C) urea breath and blood tests, and the urease test. This draft guidance has been updated since the 1992 guidance document entitled "Review Criteria for Assessment of Laboratory Tests for the Detection of Antibodies to *Helicobacter pylori*," to suggest information that submitters provide that is more appropriate given changes in understanding of the science of detection of *H. pylori* and to include technologies outside the scope of the old guidance, such as *H. pylori* urea breath tests and *H. pylori* antigen detection tests.

II. Significance of Guidance

This draft guidance is being issued consistent with FDA's good guidance practices regulation (21 CFR 10.115). The draft guidance, when finalized, will represent the agency's current thinking on establishing the performance characteristics of *in vitro* diagnostic devices for the detection of *H. pylori*. 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 statute and regulations.

III. Electronic Access

Persons interested in obtaining a copy of the draft guidance may do so by using the Internet. To receive "Establishing the Performance Characteristics of *In Vitro* Diagnostic Devices for the Detection of *Helicobacter pylori*" you may either send an email request to *dsmica@fda.hhs.gov* to receive an electronic copy of the document or send a fax request to 301–847–8149 to receive a hard copy. Please use the document number 1712 to identify the draft guidance you are requesting. A search capability for all CDRH guidance documents is available at *http://www.fda.gov/MedicalDevices/DeviceRegulationandGuidance/GuidanceDocuments/default.htm*. Guidance documents are also available at *http://www.regulations.gov*.

IV. Paperwork Reduction Act of 1995

This draft guidance refers to previously approved collections of information found in FDA regulations and guidance documents. These collections of information are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520). The collections of information in 21 CFR part 812 have been approved under OMB control number 0910–0078; the collections of information in 21 CFR part 807, subpart E have been approved under OMB control number 0910–0120; the collections of information in 42 CFR 493.17 have been approved under OMB control number 0910–0607; and the collections of information in 21 CFR 56.115 have been approved under OMB control number 0910–0130.

V. Comments

Interested persons may submit to the Division of Dockets Management (see **ADDRESSES**), either electronic or written comments regarding this document. It is only necessary to send one set of comments. It is no longer necessary to send two copies of mailed comments. Identify comments with the docket number found in brackets in the heading of this document. Received comments may be seen in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday.

Dated: September 16, 2010.

Leslie Kux,

Acting Assistant Commissioner for Policy.

[FR Doc. 2010–23644 Filed 9–22–10; 8:45 am]

BILLING CODE 4160–01–S

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: Ethical, Legal, and Social Research.

Date: September 27, 2010.

Time: 10 a.m. to 12 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: Richard A. Currie, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 1108, MSC 7890, Bethesda, MD 20892, (301) 435–1219, *currieri@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: September 16, 2010.

Jennifer S. Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2010–23849 Filed 9–22–10; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Aging; 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: National Institute on Aging Special Emphasis Panel, Member Conflict SEP.

Date: October 4, 2010.

Time: 3 p.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: Doubletree Hotel Bethesda, 8120 Wisconsin Avenue, Bethesda, MD 20892.

Contact Person: Ramesh Vemuri, PhD, Chief, Scientific Review Branch, National Institute on Aging, National Institutes of Health, 7201 Wisconsin Avenue, Suite 2C–212, Bethesda, MD 20892, 301–402–7700, *rv23r@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: National Institute on Aging Special Emphasis Panel, Autophagy, Inflammaging and Immunosenescence.

Date: October 14, 2010.

Time: 1 p.m. to 5 p.m.

Agen To review and evaluate grant applications.

Place: National Institute on Aging, Gateway Building, 7201 Wisconsin Avenue, Suite 2C212, Bethesda, MD 20892. (Telephone Conference Call)

Contact Person: Elaine Lewis, PhD, Scientific Review Branch, National Institute on Aging, Gateway Building, Suite 2C212, MSC–9205, 7201 Wisconsin Avenue, Bethesda, MD 20892, 301–402–7700, *elainelewis@nia.nih.gov*.

Name of Committee: National Institute on Aging Special Emphasis Panel, Peri-menopause and Aging.

Date: November 4, 2010.

Time: 12 p.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institute on Aging, Gateway Building, 7201 Wisconsin Avenue, Suite 2C212, Bethesda, MD 20892. (Telephone Conference Call)

Contact Person: Alicja L. Markowska, PhD, DSC., Scientific Review Branch, National Institute on Aging, 7201 Wisconsin Avenue, Suite 2C212, Bethesda, MD 20892, 301–496–9666, *markowsa@nia.nih.gov*.

(Catalogue of Federal Domestic Assistance Program Nos. 93.866, Aging Research, National Institutes of Health, HHS)

Dated: September 16, 2010.

Jennifer S. Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2010–23848 Filed 9–22–10; 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 Musculoskeletal Rehabilitation Sciences Study Section, October 8, 2010, 8 a.m. to October 8, 2010, 6 p.m., Hilton Alexandria Old Town, 1767 King Street, Alexandria, VA, 22314 which was published in the **Federal Register** on September 1, 2010, 75 FR 53702–53703.

The meeting will be held October 7, 2010 to October 8, 2010. The meeting time and location remain the same. The meeting is closed to the public.

Dated: September 16, 2010.

Jennifer S. Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2010–23847 Filed 9–22–10; 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; Macromolecular Structure and Function C.

Date: October 7, 2010.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Melrose Hotel, 2430 Pennsylvania Avenue, NW., Washington, DC 20037.

Contact Person: Nitsa Rosenzweig, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 1102, MSC 7760, Bethesda, MD 20892, (301) 435–1747, *rosenzweign@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: Drug Discovery.

Date: October 12, 2010.

Time: 1 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: Syed M. Quadri, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6210, MSC 7804, Bethesda, MD 20892, 301–435–1211, *quadris@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; RFA Panel: Drug Discovery for the Nervous System.

Date: October 14–15, 2010.

Time: 8 a.m. to 12 p.m.

Agenda: To review and evaluate grant applications.

Place: InterContinental Chicago Hotel, 505 North Michigan Avenue, Chicago, IL 60611.

Contact Person: Mary Custer, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4148, MSC 7850, Bethesda, MD 20892, (301) 435–1164, *custerm@csr.nih.gova.*

Name of Committee: Endocrinology, Metabolism, Nutrition and Reproductive Sciences Integrated Review Group; Cellular Aspects of Diabetes and Obesity Study Section.

Date: October 14–15, 2010.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Hotel Nikko San Francisco, 222 Mason Street, San Francisco, CA 94102.

Contact Person: Robert Garofalo, PhD, Scientific Review Officer, Center for Scientific Review, National Institute of Health, 6701 Rockledge Drive, Room 6156, MSC 7892, Bethesda, MD 20892, 301–435–1043, *garofalors@csr.nih.gov*.

Name of Committee: Molecular, Cellular and Developmental Neuroscience Integrated Review Group; Neurotransporters, Receptors, and Calcium Signaling Study Section.

Date: October 14–15, 2010.

Time: 8:30 a.m. to 12 p.m.

Agenda: To review and evaluate grant applications.

Place: Melrose Hotel, 2430 Pennsylvania Avenue, NW., Washington, DC 20037.

Contact Person: Peter B. Guthrie, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4182, MSC 7850, Bethesda, MD 20892, (301) 435–1239, *guthriep@csr.nih.gov*.

Name of Committee: Center for Scientific Review Special Emphasis Panel; RFA Panel: Drug Discovery for the Nervous System.

Date: October 15, 2010.

Time: 12 p.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: InterContinental Chicago Hotel, 505 North Michigan Avenue, Chicago, IL 60611.

Contact Person: Mary Custer, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4148, MSC 7850, Bethesda, MD 20892, (301) 435–1164, *custerm@csr.nih.gov*.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Member Conflicts: Bioengineering Sciences and Technologies.

Date: October 25, 2010.

Time: 1 p.m. to 2:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Raymond Jacobson, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5858, MSC 7849, Bethesda, MD 20892, 301–996–7702, *jacobsonrh@csr.nih.gov*.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Neuronal Injury and Eye Disease.

Date: October 26, 2010.

Time: 10 a.m. to 9 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Kevin Walton, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5200, MSC 7846, Bethesda, MD 20892, 301–435–1785, *kevin.walton@nih.hhs.gov*.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Small Business: Visual Systems.

Date: October 28, 2010.

Time: 8 a.m. to 6 p.m.

Agenda: To review and evaluate grant applications.

Place: St. Gregory Luxury Hotel & Suites, 2033 M Street, NW., Washington, DC 20036.

Contact Person: George Ann McKie, DVM, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5192, MSC 7846, Bethesda, MD 20892, 301–996–0993, *mckiegeo@csr.nih.gov*.

Name of Committee: Center for Scientific Review Special Emphasis Panel; PAR–10–134: Understanding and Promoting Health Literacy.

Date: October 28, 2010.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Embassy Suites at the Chevy Chase Pavilion, 4300 Military Road, NW., Washington, DC 20015.

Contact Person: Michael Micklin, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3136, MSC 7759, Bethesda, MD 20892, (301) 435–1258, *micklinm@csr.nih.gov*.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Small Business: Non-HIV Anti-Infective Therapeutics.

Date: October 28–29, 2010.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Renaissance Harborplace Hotel, 202 East Pratt Street, Baltimore, MD 21202.

Contact Person: Rossana Berti, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3191, MSC 7846, Bethesda, MD 20892, 301–402–6411, *bertiros@csr.nih.gov*.

Name of Committee: Center for Scientific Review Special Emphasis Panel; TW 09–002: International Collaborative Trauma and Injury Research. Training Program.

Date: October 28–30, 2010.

Time: 8 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: Inese Z. Beitins, MD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3218, MSC 7808, Bethesda, MD 20892, 301–435–1034, *beitinsi@csr.nih.gov*.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Fellowship: F07 Immunology Fellowship AREA.

Date: October 28–29, 2010.

Time: 8:30 a.m. to 12:30 p.m.

Agenda: To review and evaluate grant applications.

Place: Residence Inn Bethesda, 7335 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Calbert A Laing, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4210, MSC 7812, Bethesda, MD 20892, 301–435–1221, *laingc@csr.nih.gov*.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Small Business: Diabetes, Obesity and Reproductive Science.

Date: October 28–29, 2010.

Time: 11 a.m. to 3 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Krish Krishnan, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6164, MSC 7892, Bethesda, MD 20892, (301) 435–1041, *krishnak@csr.nih.gov*.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Vision Sciences and Technology.

Date: October 29, 2010.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: St. Gregory Luxury Hotel & Suites, 2033 M Street, NW., Washington, DC 20036.

Contact Person: George Ann McKie, DVM, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5192, MSC 7846, Bethesda, MD 20892, 301–996–0993, *mckiegeo@csr.nih.gov*.

Name of Committee: Center for Scientific Review Special Emphasis Panel; PAR10–141: Transforming Biomedicine at Interface of the Life and Physical Sciences.

Date: October 29, 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: Malgorzata Klosek, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4188, MSC 7849, Bethesda, MD 20892, (301) 435–2211, *klosekm@csr.nih.gov*.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Member Conflict: Cellular and Molecular Immunology.

Date: October 29, 2010.

Time: 10 a.m. to 2 p.m.

Agenda: To review and evaluate grant applications.

Place: Residence Inn Bethesda, 7335 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Stephen M. Nigida, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4212, MSC 7812, Bethesda, MD 20892, 301–435–1222, *nigidas@csr.nih.gov*.

Name of Committee: Center for Scientific Review Special Emphasis Panel; RFA10–014: Strengthening Behavioral and Social Science in Medical School Education (R25).

Date: October 29, 2010.

Time: 2 p.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Dana Jeffrey Plude, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3176, MSC 7848, Bethesda, MD 20892, 301–435–2309, *pluded@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: September 16, 2010.

Jennifer S. Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2010–23846 Filed 9–22–10; 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: Biology of Development and Aging Integrated Review Group; Aging Systems and Geriatrics Study Section.

Date: October 4, 2010.

Time: 8 a.m. to 6 p.m.

Agenda: To review and evaluate grant applications.

Place: Courtyard by Marriot, 5520 Wisconsin Avenue, Chevy Chase, MD 20815.

Contact Person: James P Harwood, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5168, MSC 7840, Bethesda, MD 20892, 301–435–1256, *harwoodj@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; RFA Panel: Scientific Models to Improve Health.

Date: October 20, 2010.

Time: 8 a.m. to 6 p.m.

Agenda: To review and evaluate grant applications.

Place: Washington Marriott Wardman Park Hotel, 2660 Woodley Road, NW., Washington, DC 20008.

Contact Person: Hilary D Sigmon, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5216, MSC 7852, Bethesda, MD 20892, (301) 594–6377, *sigmonh@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: September 16, 2010.

Jennifer S. Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2010–23844 Filed 9–22–10; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2010–N–0001]

Science Advisory Board to the National Center for Toxicological Research Notice of Meeting

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

This notice announces a forthcoming meeting of a public advisory committee of the Food and Drug Administration (FDA). At least one portion of the meeting will be closed to the public.

Name of Committee: Science Advisory Board (SAB) to the National Center for Toxicological Research (NCTR).

General Function of the Committee: To provide advice and recommendations to the agency on FDA's regulatory issues.

Date and Time: The meeting will be held on October 19, 2010, from 8:15 a.m. to 5:30 p.m. and on October 20, 2010, from 8:30 a.m. to 1 p.m.

Location: National Center for Toxicological Research, 3900 NCTR Dr., Jefferson, AR 72079, Conference Room B–12.

Contact Person: Margaret Miller, NCTR, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 32, rm. 2208, Silver Spring, MD, 20993–0002, 301–796–8890, or FDA Advisory Committee Information Line, 1–800–741–8138 (301–443–0572 in the Washington, DC area), code 301–451–2559. Please call the Information Line for up-to-date information on this meeting. A notice in the **Federal Register** about last minute modifications that impact a previously announced advisory committee meeting cannot always be published quickly enough to provide timely notice. Therefore, you should always check the agency's Web site and call the appropriate advisory committee hot line/phone line to learn about possible modifications before coming to the meeting.

Agenda: On October 19, 2010, NCTR Director will provide a Center-wide update on scientific endeavors and discuss prioritization, alignment, and the strategic focus of NCTR. The SAB will be presented with updates from each of the NCTR divisions on their individual accomplishments and future research plans based on the major items identified in the last subcommittee review. The report of the subcommittee review of the Division of Neurotoxicology will be presented for discussion and adoption by the full Board. On October 20, 2010, the SAB will be presented with and discuss the NCTR Strategic Focus and future direction, and the need for research and potential collaborations. A discussion will be conducted on the organization of the SAB, site visits and SAB assignments.

FDA intends to make background material available to the public no later than 2 business days before the meeting. If FDA is unable to post the background material on its Web site prior to the meeting, the background material will be made publicly available at the location of the advisory committee meeting, and the background material will be posted on FDA's Web site after the meeting. Background material is available at *http://www.fda.gov/AdvisoryCommittees/Calendar/default.htm.* Scroll down to the appropriate advisory committee link.

Procedure: On October 19, 2010, from 8:15 a.m. to 5:30 p.m., the meeting is open to the public. Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Written submissions may be made to the contact person on or before October 18, 2010. Oral presentations from the public will be scheduled between approximately 12 p.m. to 1 p.m. Those desiring to make formal oral presentations should notify the contact person and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time requested to make their presentation on or before October 8, 2010. Time allotted for each presentation may be limited. If the number of registrants requesting to speak is greater than can be reasonably accommodated during the scheduled open public hearing session, FDA may conduct a lottery to determine the speakers for the scheduled open public hearing session. The contact person will notify interested persons regarding their request to speak by October 11, 2010.

Closed Committee Deliberations: On October 20, 2010, from 12 p.m. to 1 p.m., the meeting will be closed to permit discussion where disclosure would constitute a clearly unwarranted

invasion of personal privacy (5 U.S.C. 552b(c)(6)). This portion of the meeting will be closed to permit discussion of information concerning individuals associated with the research programs at NCTR.

Persons attending FDA's advisory committee meetings are advised that the agency is not responsible for providing access to electrical outlets.

FDA welcomes the attendance of the public at its advisory committee meetings and will make every effort to accommodate persons with physical disabilities or special needs. If you require special accommodations due to a disability, please contact Margaret Miller at least 7 days in advance of the meeting.

FDA is committed to the orderly conduct of its advisory committee meetings. Please visit our Web site at: *http://www.fda.gov/AdvisoryCommittees/AboutAdvisoryCommittees/ucm111462.htm* for procedures on public conduct during advisory committee meetings.

Notice of this meeting is given under the Federal Advisory Committee Act (5 U.S.C. app. 2).

Dated: September 17, 2010.

Jill Hartzler Warner,

Acting Associate Commissioner for Special Medical Programs.

[FR Doc. 2010–23843 Filed 9–22–10; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2010–N–0001]

Gastroenterology and Urology Devices Panel of the Medical Devices Advisory Committee; Notice of Meeting

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

This notice announces a forthcoming meeting of a public advisory committee of the Food and Drug Administration (FDA). The meeting will be open to the public.

Name of Committee: Gastroenterology and Urology Devices Panel of the Medical Devices Advisory Committee.

General Function of the Committee: To provide advice and recommendations to the agency on FDA's regulatory issues.

Date and Time: The meeting will be held on December 2 and 3, 2010, from 8 a.m. to 6 p.m.

Location: Hilton Washington DC North/Gaithersburg, Ballroom, 620 Perry Pkwy., Gaithersburg, MD.

Contact Person: Margaret McCabe-Janicki, Food and Drug Administration, Center for Devices and Radiological Health, 10903 New Hampshire Ave., Bldg. 66, rm. 1535, Silver Spring, MD 20993–0002, 301–796–7029, or FDA Advisory Committee Information Line, 1–800–741–8138 (301–443–0572 in the Washington, DC area), code 3014512523. Please call the Information Line for up-to-date information on this meeting. A notice in the **Federal Register** about last minute modifications that impact a previously announced advisory committee meeting cannot always be published quickly enough to provide timely notice. Therefore, you should always check the agency's Web site and call the appropriate advisory committee hot line/phone line to learn about possible modifications before coming to the meeting.

Agenda: On December 2, 2010, the committee will discuss, make recommendations, and vote on information related to the premarket approval application (PMA) for SOLESTA, sponsored by Oceana Therapeutics, Inc. SOLESTA is indicated for the treatment of fecal incontinence in patients who have failed conservative therapy. On December 3, 2010, the committee will discuss, make recommendations, and vote on information related to the PMA for the LAP-BAND Adjustable Gastric Banding System, sponsored by Allergan. The sponsor is requesting an expanded Indication for Use for their LAP-BAND Adjustable Gastric Banding System to include weight reduction in patients with a Body Mass Index (BMI) of at least 35 kg/m^2 or a BMI of at least 30 kg/m^2 with one or more comorbid conditions.

FDA intends to make background material available to the public no later than 2 business days before the meeting. If FDA is unable to post the background material on its Web site prior to the meeting, the background material will be made publicly available at the location of the advisory committee meeting, and the background material will be posted on FDA's Web site after the meeting. Background material is available at *http://www.fda.gov/AdvisoryCommittees/Calendar/default.htm*. Scroll down to the appropriate advisory committee link.

Procedure: Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Written submissions may be made to the contact person on or before November 18, 2010. Oral presentations from the public will be scheduled between approximately 1 p.m. and 2 p.m. on December 2 and 3, 2010. Those desiring to make formal oral presentations should notify the contact person and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time requested to make their presentation on or before November 10, 2010. Time allotted for each presentation may be limited. If the number of registrants requesting to speak is greater than can be reasonably accommodated during the scheduled open public hearing session, FDA may conduct a lottery to determine the speakers for the scheduled open public hearing session. The contact person will notify interested persons regarding their request to speak by November 11, 2010.

Persons attending FDA's advisory committee meetings are advised that the agency is not responsible for providing access to electrical outlets.

FDA welcomes the attendance of the public at its advisory committee meetings and will make every effort to accommodate persons with physical disabilities or special needs. If you require special accommodations due to a disability, please contact AnnMarie Williams, Conference Management Staff, 301–796–5966, at least 7 days in advance of the meeting.

FDA is committed to the orderly conduct of its advisory committee meetings. Please visit our Web site at *http://www.fda.gov/AdvisoryCommittees/AboutAdvisoryCommittees/ucm111462.htm* for procedures on public conduct during advisory committee meetings.

Notice of this meeting is given under the Federal Advisory Committee Act (5 U.S.C. app. 2).

Dated: September 17, 2010.

Jill Hartzler Warner,

Acting Associate Commissioner for Special Medical Programs.

[FR Doc. 2010–23842 Filed 9–22–10; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Eye Institute; 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 section 552b(c)(6), Title 5 U.S.C., as amended, for the review, discussion, and evaluation of individual intramural programs and projects conducted by the National Eye Institute, including consideration of personnel qualifications and performance, and the competence of individual investigators, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Board of Scientific Counselors, National Eye Institute.

Date: October 24–25, 2010.

Time: 7 p.m. to 5 p.m.

Agenda: To review and evaluate personal qualifications and performance, and competence of individual investigators.

Place: National Institutes of Health, Building 31, 31 Center Drive, Bethesda, MD 20892.

Contact Person: Sheldon S. Miller, PhD, Scientific Director, National Institutes of Health, National Eye Institute, Bethesda, MD 20892, (301) 451–6763.

In the interest of security, NIH has instituted stringent procedures for entrance onto the NIH campus. All visitor vehicles, including taxicabs, hotel, and airport shuttles will be inspected before being allowed on campus. Visitors will be asked to show one form of identification (for example, a government-issued photo ID, driver's license, or passport) and to state the purpose of their visit.

Information is also available on the Institute's/Center's home page: *http://www.nei.nih.gov,* where an agenda and any additional information will be posted when available.

(Catalogue of Federal Domestic Assistance Program Nos. 93.867, Vision Research, National Institutes of Health, HHS)

Dated: September 17, 2010.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2010–23868 Filed 9–22–10; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Biomedical Imaging and Bioengineering; 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 Biomedical Imaging and Bioengineering Special Emphasis Panel; ZEB1 OSR–D(J1)S TrainingandK K Award Grant Review 2011/.

Date: November 18, 2010.

Time: 8 p.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Gaylord National Hotel & Convention Center, 201 Waterfront Street, National Harbor, MD 20745.

Contact Person: John K. Hayes, PhD, Scientific Review Officer, 6707 Democracy Boulevard, Suite 959, Bethesda, MD 20892, 301–451–3398, *hayesj@mail.nih.gov*.

Dated: September 17, 2010.

Jennifer S. Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2010–23867 Filed 9–22–10; 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; Small Business: Immunology.

Date: October 22, 2010.

Time: 8:30 a.m. to 6 p.m.

Agenda: To review and evaluate grant applications.

Place: The River Inn, 924 25th Street, NW., Washington, DC 20037.

Contact Person: Stephen M Nigida, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4212, MSC 7812, Bethesda, MD 20892, 301–435–1222, *nigidas@csr.nih.gov*.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Bone Biology and Imaging.

Date: October 26–27, 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: Rajiv Kumar, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4122, MSC 7802, Bethesda, MD 20892, 301–435–1212, *kumarra@csr.nih.gov*.

Name of Committee: Center for Scientific Review Special Emphasis Panel; PAR–10–146: Social Network Analysis and Health.

Date: November 1–2, 2010.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Courtyard by Marriott, 5520 Wisconsin Avenue, Chevy Chase, MD 20815.

Contact Person: Michael Micklin, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3136, MSC 7759, Bethesda, MD 20892, (301) 435–1258, *micklinm@csr.nih.gov*.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Fellowships: Behavioral Neuroscience.

Date: November 1–2, 2010.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: The Ritz-Carlton Hotel, 1150 22nd Street, NW., Washington, DC 20037.

Contact Person: Kristin Kramer, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5205, MSC 7846, Bethesda, MD 20892, (301) 437–0911, *kramerkm@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Member Conflict: Lung Development, Imaging and COPD.

Date: November 2–3, 2010.

Time: 9 a.m. to 6 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: George M. Barnas, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4220, MSC 7818, Bethesda, MD 20892, 301–435–0696, *barnasg@csr.nih.gov*.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Small Business: Computational Biology, Image Processing and Data Mining.

Date: November 2, 2010.

Time: 10 a.m. to 7 p.m.

Agenda: To review and evaluate grant applications.

Place: JW Marriott San Francisco Union Square, 500 Post Street, San Francisco, CA 94102.

Contact Person: Allen Richon, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6181, MSC 7892, Bethesda, MD 20892, 301–435–2902, *allen.richon@nih.hhs.gov*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Fellowships: Brain Disorders and Related Neuroscience.

Date: November 3–4, 2010.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: St. Gregory Hotel, 2033 M Street, NW., Washington, DC 20036.

Contact Person: Yvonne Bennett, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5199, MSC 7846, Bethesda, MD 20892, 301–435–1121, *bennetty@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, Small Business: Cell Biology and Molecular Imaging.

Date: November 3, 2010.

Time: 8 a.m. to 6 p.m.

Agenda: To review and evaluate grant applications.

Place: Villa Florence Hotel, 225 Powell Street, San Francisco, CA 94102.

Contact Person: Maria DeBernardi, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6158, MSC 7892, Bethesda, MD 20892, 301–435–1355, *debernardima@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Member Conflict: Cancer Biomarkers.

Date: November 3, 2010.

Time: 11 a.m. to 1 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: Sally A. Mulhern, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6214, MSC 7804, Bethesda, MD 20892, (301) 435–5877, *mulherns@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; PAR10–082: Shared Instrumentation: Musculoskeletal.

Date: November 3, 2010.

Time: 1 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: Jean D. Sipe, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4106, MSC 7814, Bethesda, MD 20892, 301/435–1743, *sipej@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Fellowship: Chemical and Bioanalytical Sciences.

Date: November 4, 2010.

Time: 8 a.m. to 8 p.m.

Agenda: To review and evaluate grant applications.

Place: Doubletree Hotel Bethesda, 8120 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Sergei Ruvinov, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4158, MSC 7806, Bethesda, MD 20892, 301–435–1180, *ruvinser@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; PAR10–182: Assay Development HTS.

Date: November 4–5, 2010.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications,

Place: Baltimore Marriott Waterfront, 700 Aliceanna Street, Baltimore, MD 21202.

Contact Person: Joseph D. Mosca, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5158, MSC 7808, Bethesda, MD 20892, (301) 435–2344, *moscajos@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Small Business: Cardiovascular Sciences.

Date: November 4–5, 2010.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: InterContinental Mark Hopkins Hotel, 999 California Street, San Francisco, CA 94108.

Contact Person: Lawrence E. Boerboom, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4130, MSC 7814, Bethesda, MD 20892, (301) 435–8367, *boerboom@nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Small Business: Drug Discovery and Development.

Date: November 4–5, 2010.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Hotel Monaco San Francisco, 501 Geary Street, San Francisco, CA 94102.

Contact Person: Allen Richon, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6181, MSC 7892, Bethesda, MD 20892, 301–435–2902, *allen.richon@nih.hhs.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Fellowship: Cell Biology and Development.

Date: November 4–5, 2010.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Villa Florence Hotel, 225 Powell Street, San Francisco, CA 94102.

Contact Person: Alessandra M. Bini, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5142, MSC 7840, Bethesda, MD 20892, 301–435–1024, *binia@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Small Business: Non-HIV Diagnostics, Food Safety, Sterilization/Disinfection and Bioremediation.

Date: November 4–5, 2010.

Time: 8:30 a.m. to 2 p.m.

Agenda: To review and evaluate grant applications.

Place: Hilton Washington/Rockville, 1750 Rockville Pike, Rockville, MD 20852.

Contact Person: John C. Pugh, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3114, MSC 7808, Bethesda, MD 20892, (301) 435–2398, *pughjohn@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Fellowships: Risk Prevention and Health Behavior.

Date: November 5, 2010.

Time: 8 a.m. to 6 p.m.

Agenda: To review and evaluate grant applications.

Place: Courtyard by Marriott Tysons Corner Hotel, 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: Center for Scientific Review Special Emphasis Panel; Small Business: Molecular, Cellular, and Developmental Neurobiology.

Date: November 5, 2010.

Time: 8 a.m. to 6 p.m.

Agenda: To review and evaluate grant applications.

Place: Renaissance Washington, DC Dupont Circle Hotel, 1143 New Hampshire Avenue, NW., Washington, DC 20037.

Contact Person: Eugene Carstea, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5194, MSC 7846, Bethesda, MD 20892, (301) 408–9756, *carsteae@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: September 17, 2010.

Jennifer S. Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2010–23860 Filed 9–22–10; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Center for Complementary & Alternative Medicine; 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 Center for Complementary and Alternative Medicine Special Emphasis Panel, Centers of Excellence for Research on CAM (CERC) for Pain (P01).

Date: November 29–December 1, 2010.

Time: 5 p.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Bethesda Marriott, 5151 Pooks Hill Road, Bethesda, MD 20814.

Contact Person: Martina Schmidt, PhD, Scientific Review Officer, Office of Scientific Review, National Center for Complementary, & Alternative Medicine, NIH, 6707 Democracy Blvd., Suite 401, Bethesda, MD 20892, 301–594–3456, *schmidma@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.213, Research and Training in Complementary and Alternative Medicine, National Institutes of Health, HHS).

Dated: September 17, 2010.

Jennifer S. Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2010–23859 Filed 9–22–10; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Heart, Lung, and Blood Institute; 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 Heart, Lung, and Blood Institute Special Emphasis Panel; Mentored Clinical Scientist Research Career Development Awards.

Date: October 7, 2010.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Courtyard Marriott Crystal City, 2899 Jefferson Davis Highway, Arlington, VA 22202.

Contact Person: Keith A. Mintzer, PhD, Scientific Review Officer, Review Branch/DERA, National Heart, Lung, and Blood Institute, 6701 Rockledge Drive, Room 7186, Bethesda, MD 20892–7924, 301–435–0280, *mintzerk@nhlbi.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.233, National Center for Sleep Disorders Research; 93.837, Heart and Vascular Diseases Research; 93.838, Lung Diseases Research; 93.839, Blood Diseases and Resources Research, National Institutes of Health, HHS)

Dated: September 17, 2010.

Jennifer S. Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2010–23856 Filed 9–22–10; 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 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 Neurological Disorders and Stroke Initial, Review Group, Neurological Sciences and Disorders A.

Date: November 3, 2010.

Time: 8 a.m. to 6 p.m.

Agenda: To review and evaluate grant applications.

Place: Embassy Suites Hotel, 4300 Military Road, Washington, DC 20015.

Contact Person: Richard D. Crosland, PhD, Scientific Review Officer, Scientific Review Branch, NINDS/NIH/DHHS, 6001 Executive Blvd., Suite 3208, MSC 9529, Bethesda, MD 20892–9529, 301–496–9223.

(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: September 16, 2010.

Jennifer S. Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2010–23854 Filed 9–22–10; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Diabetes and Digestive and Kidney Diseases; 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 Diabetes and Digestive and Kidney Diseases Special Emphasis Panel, Central Repositories Non-Renewable Sample Access (PAR–10–90)—Liver, Kidney, Urological Sciences.

Date: October 12, 2010.

Time: 2 p.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Two Democracy Plaza, 6707 Democracy Boulevard, Bethesda, MD 20892. (Telephone Conference Call)

Contact Person: Najma Begum, PhD, Scientific Review Officer, Review Branch, DEA, NIDDK, National Institutes of Health, Room 749, 6707 Democracy Boulevard, Bethesda, MD 20892–5452, (301) 594–8894, *begumn@niddk.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. 93.847, Diabetes, Endocrinology and Metabolic Research; 93.848, Digestive Diseases and Nutrition Research; 93.849, Kidney Diseases, Urology and Hematology Research, National Institutes of Health, HHS)

Dated: September 16, 2010.

Jennifer S. Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2010–23853 Filed 9–22–10; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Center for Research Resources; 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 Center for Research Resources Special Emphasis Panel; Conference Grants.

Date: November 5, 2010.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health/Office of Review, Democracy 1, 6701 Democracy Blvd., 1078, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Lee Warren Slice, PhD, Scientific Review Officer, Office of Review, National Center for Research Resources, Bethesda, MD 20892, 301–435–0965.

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine; 93.333, Clinical Research; 93.371, Biomedical Technology; 93.389, Research Infrastructure, 93.306, 93.333; 93.702, ARRA Related Construction Awards., National Institutes of Health, HHS)

Dated: September 16, 2010.

Jennifer S. Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2010–23852 Filed 9–22–10; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Allergy and Infectious Diseases; 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 a meeting of the Division of Intramural Research Board of Scientific Counselors, NIAID.

The meeting will be closed to the public as indicated below in accordance with the provisions set forth in section 552b(c)(6), Title 5 U.S.C., as amended for the review, discussion, and evaluation of individual intramural programs and projects conducted by the National Institute of Allergy and Infectious Diseases, including consideration of personnel qualifications and performance, and the competence of individual investigators, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Division of Intramural Research Board of Scientific Counselors, NIAID.

Date: December 6–8, 2010.

Time: December 6, 2010, 7:45 a.m. to 6:30 p.m.

Agenda: To review and evaluate personal qualifications and performance, and competence of individual investigators.

Place: National Institutes of Health, Building 50, Conference Room 1227/1233, 50 Center Drive, Bethesda, MD,

Time: December 7, 2010, 7a.m. to 6:30 p.m.

Agenda: To review and evaluate personal qualifications and performance, and competence of individual investigators.

Place: National Institutes of Health., Building 50, Conference Room 1227/1233, 50 Center Drive, Bethesda, MD.

Time: December 8, 2010, 7:30 a.m. to 11:15 a.m.

Agenda: To review and evaluate personal qualifications and performance, and competence of individual investigators.

Place: National Institutes of Health, Building 50, Conference Room 1227/1233, 50 Center Drive, Bethesda, MD.

Contact Person: Kathryn C. Zoon, PhD, Director, Division of Intramural Research, National Institute of Allergy and Infectious Diseases, NIH, Building 31, Room 4A30, Bethesda, MD 20892, 301–496–3006, *kzoon@niaid.nih.gov*.

(Catalogue of Federal Domestic Assistance Program Nos. 93.855, Allergy, Immunology, and Transplantation Research; 93.856, Microbiology and Infectious Diseases Research, National Institutes of Health, HHS)

Dated: September 16, 2010.

Jennifer S. Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2010–23850 Filed 9–22–10; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Advisory Committee on Interdisciplinary, Community-Based Linkages Notice for Request for Nominations

AGENCY: Health Resources and Services Administration, HHS.

ACTION: Request for nominations.

SUMMARY: The Health Resources and Services Administration (HRSA) is requesting nominations to fill ten upcoming vacancies on the Advisory Committee on Interdisciplinary, Community-Based Linkages (ACICBL).

Authority: 42 U.S.C. 294f, section 757 of the Public Health Service (PHS) Act, as amended by the Affordable Care Act. The ACICBL is governed by the Federal Advisory Committee Act, Public Law (Pub. L.) 92–463, as amended (5 U.S.C. Appendix 2), which sets forth standards for the formation and use of advisory committees.

DATES: The Agency must receive nominations on or before October 30, 2010.

ADDRESSES: All nominations are to be submitted either by mail to Joan Weiss, PhD, RN, CRNP, Designated Federal Official, ACICBL, Division of Public Health and Interdisciplinary Education, Bureau of Health Professions (BHPr), Health Resources and Services Administration (HRSA), Parklawn Building, Room 9–36, 5600 Fishers Lane, Rockville, MD 20857 or e-mail to CAPT Norma J. Hatot at *nhatot@hrsa.gov.*

FOR FURTHER INFORMATION CONTACT: For additional information, contact CAPT Norma J. Hatot, Senior Program Officer, Division of Public Health and Interdisciplinary Education, BHPr, by e-mail at *nhatot@hrsa.gov* or telephone at (301) 443–2681. A copy of the current committee membership, charter and reports can be obtained by accessing the ACICBL Web site at *http://bhpr.hrsa.gov/interdisciplinary/ACICBL.htm.*

SUPPLEMENTARY INFORMATION: Under the authorities that established the ACICBL and the Federal Advisory Committee

Act, HRSA is requesting nominations for ten committee members. The ACICBL provides advice and recommendations to the Secretary of Health and Human Services (Secretary) concerning policy, program development and other matters of significance related to interdisciplinary, community-based training grant programs authorized under sections 750–759, Title VII, Part D of the PHS Act, as amended. The ACICBL prepares an annual report describing its activities conducted during the fiscal year, including findings and recommendations made to enhance these Title VII programs. This annual report is submitted to the Secretary and ranking members of the Senate Committee on Health, Education, Labor and Pensions, and the House of Representatives Committee on Energy and Commerce. In addition, the ACICBL: (1) Develops, publishes, and implements performance measures for programs under this part; (2) Develops and publishes guidelines for longitudinal evaluations (as described in section 761 (d)(2) of the PHS Act) for programs under this part; and (3) Recommends appropriation levels for programs under this part.

The Department of Health and Human Services is requesting a total of ten nominations for members of the ACICBL who are health professionals from schools of the following types: (1) Accredited schools of medicine or osteopathic medicine or schools of nursing that provide interdisciplinary education with a focus on underserved areas; (2) Accredited schools of medicine or schools of osteopathic medicine that engage in interdisciplinary geriatric training; (3) Accredited schools that provide interdisciplinary, training in allied health, podiatric medicine (in preventive and primary care) or chiropractic medicine; and (4) Accredited schools that provide interdisciplinary, community based training in graduate clinical psychology, clinical social work, professional counseling, or marriage and family therapy.

HRSA has a special interest in the legislative requirements of having a fair balance among the health professionals, a balance between and members from urban and rural areas, a broad geographic distribution of members, and the adequate representation of women and minorities. HRSA encourages nominations of qualified candidates from these groups as well as individuals with disabilities.

To allow the Secretary to choose from a highly qualified list of potential candidates, more than one nomination is requested per open position. Interested persons may nominate one or more qualified persons for membership. Self-nominations are also accepted. Nominations must be typewritten. The following information should be included in the package of materials submitted for each individual being nominated: (1) A letter of nomination that clearly states the name and affiliation of the nominee, the basis for the nomination (*i.e.,* specific attributes that qualify the nominee for service in this capacity), a statement that the nominee is willing to serve as a member of the ACICBL and appears to have no conflict of interest that would preclude this Committee membership. Potential candidates will be asked to provide detailed information concerning such matters as financial holdings, consultancies, research grants, and/or contracts to permit an evaluation of possible sources of conflicts of interest; and (2) the nominator's name, address, and daytime telephone number; the home/or work address, and telephone number; and e-mail address of the individual being nominated. HRSA prefers inclusion of a current copy of the nominee's curriculum vitae and a statement of interest from the nominee to support experience working with Title VII interdisciplinary, community-based training grant programs; expertise in the field; and personal desire in participating on a National Advisory Committee.

Members will receive a stipend for each official meeting day of the Committee, as well as per diem and travel expenses as authorized by section 5 U.S.C. 5703 for persons employed intermittently in Government service.

Appointments shall be made without discrimination on the basis of age, ethnicity, gender, sexual orientation, and cultural, religious, or socioeconomic status. Qualified candidates will be invited to serve a 3-year term.

Dated: September 15, 2010.

Sahira Rafiullah,

Director, Division of Policy and Information Coordination.

[FR Doc. 2010–23717 Filed 9–22–10; 8:45 am]

BILLING CODE 4165–15–P

DEPARTMENT OF HOMELAND SECURITY

[Docket No. DHS–2010–0019]

National Protection and Programs Directorate; Sector-Specific Agency Executive Management Office Meeting Registration

AGENCY: National Protection and Programs Directorate, DHS.

ACTION: 30-day notice and request for comments; New Information Collection Request: 1670–NEW.

SUMMARY: The Department of Homeland Security (DHS), National Protection and Programs Directorate/Office of Infrastructure Protection/Sector-Specific Agency Executive Management Office (NPPD/IP/SSA EMO) has submitted the following information collection request (ICR) to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. chapter 35). The NPPD/IP/SSA EMO is soliciting comments concerning New Information Collection Request, Sector-Specific Agency Executive Management Office Meeting Registration. DHS previously published this information collection request (ICR) in the **Federal Register** on May 4, 2010 at 75 FR 23783–23784, for a 60-day public comment period. DHS received no comments. The purpose of this notice is to allow an additional 30 days for public comments.

DATES: Comments are encouraged and will be accepted until October 25, 2010. This process is conducted in accordance with 5 CFR 1320.10.

ADDRESSES: Interested persons are invited to submit written comments on the proposed information collection to the Office of Information and Regulatory Affairs, (OMB). Comments should be addressed to OMB Desk Officer in the DHS Office of Civil Rights and Civil Liberties. Comments must be identified by DHS–2010–0019 and may be submitted by *one* of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.*
- *E-mail: oira_submission@omb.eop.gov.* Include the docket number in the subject line of the message.
- *Fax:* (202) 395–5806.

Instructions: All submissions received must include the words "Department of Homeland Security" and the docket number for this action. Comments received will be posted without alteration at *http://www.regulations.gov,* including any personal information provided.

OMB is particularly interested in comments which:

1. Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

2. Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

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

4. Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submissions of responses.

SUPPLEMENTARY INFORMATION: On behalf of DHS, IP manages the Department's program to protect the Nation's 18 Critical Infrastructure and Key Resources (CIKR) Sectors by implementing the National Infrastructure Protection Plan (NIPP). Pursuant to Homeland Security Presidential Directive—7 (HSPD–7) (December 2003), each sector is assigned an SSA to oversee Federal interaction with the array of sector security partners, both public and private. An SSA is responsible for leading a unified public-private sector effort to develop, coordinate, and implement a comprehensive physical, human, and cybersecurity strategy for its assigned sector. The SSA EMO, within IP, executes the SSA responsibilities for the six CIKR sectors assigned to IP: Chemical; Commercial Facilities; Critical Manufacturing; Dams; Emergency Services; and Nuclear Reactors, Materials, and Waste (Nuclear).

The mission of the SSA EMO is to enhance the resiliency of the Nation by leading the unified public-private sector effort to ensure its assigned CIKR are prepared, more secure, and safer from terrorist attacks, natural disasters, and other incidents. To achieve this mission, SSA EMO leverages the resources and knowledge of its CIKR sectors to develop and apply security initiatives that result in significant, measurable benefits to the Nation.

Each SSA EMO branch builds sustainable partnerships with its public and private sector stakeholders to enable more effective sector coordination, information sharing, and program development and implementation. These partnerships are sustained through the Sector Partnership Model, described in the 2009 NIPP, pages 18–20.

Information sharing is a key component of the NIPP Partnership Model, and DHS-sponsored conferences are one mechanism for information sharing. To facilitate conference planning and organization, the SSA EMO plans to establish an event registration tool for use by all of its branches. The information collection is voluntary and will be used by the SSAs within the SSA EMO. The six SSAs within the SSA EMO will use this information to register public and private sector stakeholders for meetings hosted by the SSA. The SSA EMO will use the information collected to reserve space at a meeting for the registrant; contact the registrant with a reminder about the event; develop meeting materials for attendees; determine key topics of interest; and efficiently generate attendee and speaker nametags. Additionally, it will allow the SSA EMO to have a better understanding of the organizations participating in the CIKR protection partnership events. By understanding who is participating, the SSA can identify portions of a sector that are underrepresented, and the SSA could then target underrepresented sector elements through outreach and awareness initiatives.

Analysis:

Agency: Department of Homeland Security, National Protection and Programs Directorate.

Title: Sector-Specific Agency Executive Management Officer Online Meeting Registration Tool.

Form: N/A.

OMB Number: 1670–NEW.

Frequency: On occasion.

Affected Public: Private sector, State, local, or tribal government.

Number of Respondents: 1,900.

Estimated Time per Respondent: 3 minutes.

Total Burden Hours: 95 annual burden hours.

Total Burden Cost (capital/startup): $0.

Total Burden Cost (operating/maintaining): $3,800.00.

Signed: September 16, 2010.

David Epperson,

Acting Chief Information Officer, National Protection and Programs Directorate, Department of Homeland Security.

[FR Doc. 2010–23797 Filed 9–22–10; 8:45 am]

BILLING CODE 9110–9P–P

DEPARTMENT OF HOMELAND SECURITY

Office of the Secretary

Senior Executive Service Performance Review Board

AGENCY: Office of the Secretary, DHS.

ACTION: Notice.

SUMMARY: This notice announces the appointment of the members of the Senior Executive Service Performance Review Boards for the Department of Homeland Security. The purpose of the Performance Review Board is to view and make recommendations concerning proposed performance appraisals, ratings, bonuses, pay adjustments, and other appropriate personnel actions for incumbents of Senior Executive Service, Senior Level and Senior Professional positions of the Department.

DATES: *Effective Dates:* This Notice is effective September 23, 2010.

FOR FURTHER INFORMATION CONTACT: Elizabeth Haefeli, Office of the Chief Human Capital Officer, telephone (202) 357–8164.

SUPPLEMENTARY INFORMATION:

Each Federal agency is required to establish one or more performance review boards (PRB) to make recommendations, as necessary, in regard to the performance of senior executives within the agency. 5 U.S.C. 4314(c). This notice announces the appointment of the members of the PRB for the Department of Homeland Security (DHS). The purpose of the PRB is to review and make recommendations concerning proposed performance appraisals, ratings, bonuses, pay adjustments, and other appropriate personnel actions for incumbents of SES positions within DHS.

The Board shall consist of at least three members. In the case of an appraisal of a career appointee, more than half of the members shall consist of career appointees. Composition of the specific PRBs will be determined on an ad hoc basis from among the individuals listed below:

Aguilar, David V.
Alexander, Barbara
Alikhan, Arif
Anderson, Audrey
Anderson, Gary L.
Armstrong, Charles R.
Ayala, Janice
Aytes, Michael L.
Bacon, Roxana
Baldwin, William D.
Baroukh, Nader
Barr, Suzanne E.
Bathurst, Donald
Beckham, Steward D.

Benda, Francis
Bertucci, Theresa C.
Bester-Markowitz, Margot
Borkowski, Mark S.
Borras, Rafael
Boyd, David
Braun, Jacob
Bray, Robert S.
Brooks, Vicki
Brundage, William
Bucella, Donna A.
Bucher, Steven P.
Buckingham, Patricia A.
Burke, Richard
Butcher, Michael
Button, Christopher
Cahill, Donna L.
Callahan, Mary Ellen
Canton, Lynn G.
Capps, Michael
Carpenter, Dea D.
Carter, Gary
Carwile III, William L.
Chaparro, James M.
Chavez, Richard
Chuang, Theodore
Cipicchio, Domenico C.
Cohn, Alan
Colburn, Christopher B.
Connor, Edward L.
Cooper, Bradford
Coyle, Robert E.
Crocetti Jr., Louis D.
Cullen, Susan M.
Cummiskey, Chris
Daitch, William
Davis, Delia P.
Dayton, Mark
de Vallance, Brian
DeVita, Charles N.
DiFalco, Frank
Dinkins, James A.
Dong, Norman S.
Doyle, Christopher
Duffy, Patricia M.
Dunlap, James L.
Duong, Anh
Durette, Paul
Durkovich, Caitlin
Elias, Richard K.
Etzel, Jean A.
Fagerholm, Eric
Falk, Scott K.
Farmer, Robert A.
Fenton, Robert J.
Finegan, Robin A.
Fitzgerald-Rogers, Debra A.
Foster, Robert
Freeman, Beth A.
Gaines, Glenn A.
Garratt, David E.
Garza, Alexander
Gaugler, Christine E.
George, Susan
Gina, Allen
Gnerlich, Jan
Gordon, Andrew S.
Gowadia, Huban
Grade, Deborah C.
Gramlick, Carl
Graves, Margaret
Griffin, Robert
Gruber, Corey D.
Guilliams, Nancy W.
Gunderson, Richard
Hanneld, Michael
Hansen, Jacob B.
Hardiman, Tara
Hewitt, Ronald T. RADM
Heyman, David
Hill, Alice
Hill, Keith
Holt, Michael A.
Holterman, Keith
Hooks, Robert
Humphrey IV, Hubert H.
Ingram, Deborah
Israel, Jerome
Jensen, Robert R.
Johnson, Bart
Jones Jr., Berl D.
Jones, Christopher T.
Jones, Franklin C.
Jones, Keith
Jones, Rendell L.
Kair, Lee R.
Kaufman, David J.
Kayyem, Juliette
Keegan, Michael J.
Keene, D. Kenneth
Kerner, Francine
Kielsmeier, Lauren M.
Kieserman, Brad J.
Kikla, Richard
Kim, Leezie
Kish, James R.
Knight, Sandra K.
Kopel, Richard
Kostelnik, Michael C.
Koumans, Marnix
Krohmer, Jon
Kroloff, Noah
Kronish, Matthew
Kruger, Mary
Lawless, Margaret E.
Lawrence, Cortez
Lederer, Calvin M.
Loiselle, Mary
López, Marco A.
Luczko, George P.
Ludtke, Meghan G.
Lute, Jane Holl
Maher, Joseph B.
Marshall, Gregory
Martin, David A.
Martin, Timothy
Martoccia, Anthony R.
Massale, John J.
May, Daniel R. RDML
May, Major P.
McAllister, Lorna
McCormack, Luke J.
McDermond, James E.
McDevitt, Steven P.
McGinnis, Roger
McMillan, Joseph A.
McNamara, Jason R.
McNamara, Philip
McQuillan, Thomas R.
Merritt, Marianna L.
Merritt, Michael
Mitchell, Andrew
Monette Jr., Theodore A.
Morrissey, Paul S.
Moynihan, Timothy N.
Muenchau, Ernest
Myers, David L.
Neal, Jeffrey R.
Neufeld, Donald W.
Nicholson, David
O'Connell, Maria L.
Olavarria, Esther
Oliver, Clifford E.
Onieal, Denis G.
Patrick, Connie
Palmer, David J.
Parent, Wayne
Peacock, Nelson
Pelowski, Gregg
Peña, Alonzo R.
Penn, Damon C.
Philbin, Patrick
Pierson, Julia A.
Prewitt, Keith L.
Ragsdale, Daniel H.
Ramanathan, Sue
Randolph, William C.
Ratliff, Gerri L.
Rausch, Sharla
Robles, Alfonso
Rosenblum, Todd
Rossides, Gale
Russell, Anthony A.
Russell, Michael D.
Sammon, John P
Sandweg, John
Saunders, Steve D.
Schaffer, Gregory
Schied, Eugene H.
Schlanger, Margo
Scialabba, Lori L.
Sekar, Radha C.
Sevier, Adrian
Shall, Darryl A.
Shelton-Waters, Karen R.
Sherry, Peggy
Shih, Stephen
Shlossman, Amy
Sligh Jr., Albert B.
Smislova, Melissa
Smith, A.T.
Smith, Douglas
Smith, Eric T.
Smith, Sean
Spires, Richard
Stenger, Michael C.
Stern, Warren
Stieber, Gregory
Stinnett, Melanie
Swain, Donald
Teets, Gregory L.
Tomsheck, James F.
Torrence, Donald
Triner, Donald
Trissell, David A.
Trotta, Nicholas
Tuttle, James

Velasquez III, Andrew
Veysey, Anne
Vincent, Peter S.
Wagner, Caryn
Walke, James A.
Walton, Kimberly H.
Ward, Nancy L.
Wareing, Tracy L.
Warrick, Thomas
Whalen, Mary Kate
Williams, Gerard
Williams, Richard
Winkowski, Thomas S.
Woodard, Steven C.
Yeager, Michael J.
Zeller, Randel
Zimmerman, Elizabeth A.

This notice does not constitute a significant regulatory action under section 3(f) of Executive Order 12866. Therefore, DHS has not submitted this notice to the Office of Management and Budget. Further, because this notice is a matter of agency organization, procedure and practice, DHS is not required to follow the rulemaking requirements under the Administrative Procedure Act (5 U.S.C. 553).

Dated: September 16, 2010.

Randolph W. Kruger,

Director, Executive Resources, Office of the Chief Human Capital Officer.

[FR Doc. 2010–23805 Filed 9–22–10; 8:45 am]

BILLING CODE 9110–9B–P

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

Notice of Proposed Information Collection for 1029–0049

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

ACTION: Notice and request for comments.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995, the Office of Surface Mining Reclamation and Enforcement (OSM) is announcing that the information collection request for 30 CFR 822—Special Permanent Program Performance Standards—Operations in Alluvial Valley Floors, has been forwarded to the Office of Management and Budget (OMB) for review and reauthorization. The information collection package was previously approved and assigned control number 1029–0049. This notice describes the nature of the information collection activity and the expected burdens.

DATES: OMB has up to 60 days to approve or disapprove the information collection, but may respond after 30 days. Therefore, public comments should be submitted to OMB by October 25, 2010, in order to be assured of consideration.

ADDRESSES: Submit comments to the Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Department of the Interior Desk Officer, by telefax at (202) 395–5806, or via e-mail to *OIRA_Docket@omb.eop.gov.* Also, please send a copy of your comments to Adrienne L. Alsop, Office of Surface Mining Reclamation and Enforcement, 1951 Constitution Ave, NW., Room 202—SIB, Washington, DC 20240, or electronically to *aalsop@smre.gov.*

FOR FURTHER INFORMATION CONTACT: To receive a copy of the information collection request, contact Adrienne Alsop at (202) 208–2818 or electronically to *aalsop@osmre.gov.* You may also review the information collection requests online at *http://www.reginfo.gov.* Follow the instructions to review Department of the Interior collections under review by OMB.

SUPPLEMENTARY INFORMATION: OMB regulations at 5 CFR 1320, which implement provisions of the Paperwork Reduction Act of 1995 (Pub. L. 104–13), require that interested members of the public and affected agencies have an opportunity to comment on information collection and recordkeeping activities [*see* 5 CFR 1320.8 (d)]. OSM has submitted a request to OMB to renew its approval for the collection of information for 30 CFR 822—Special Permanent Program Performance Standards—Operations in Alluvial Valley Floors. OSM is requesting a 3 year term of approval for this information collection.

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 number for part 822 is 1029–0049 and is referenced in § 822.10.

As required under 5 CFR 1320.8(d), a **Federal Register** notice soliciting comments on this collection of information was published on June 29, 2010 (75 FR 37458). No comments were received. This notice provides the public with an additional 30 days in which to comment on the following information collection:

Title: 30 CFR 822—Special Permanent Program Performance Standards—Operations in Alluvial Valley Floors.

OMB Control Number: 1029–0049.

Summary: Sections 510(b)(5) and 515(b)(10)(F) of the Surface Mining Control and Reclamation Act of 1977 (SMCRA) protect alluvial valley floors from the adverse effects of surface coal mining operations west of the 100th meridian. Part 822 requires the permittee to install, maintain, and operate a monitoring system in order to provide specific protection for alluvial valley floors. This information is necessary to determine whether the unique hydrologic conditions of alluvial valley floors are protected according to the Act.

Bureau Form Number: None.

Frequency of Collection: Annually.

Description of Respondents: 25 coal mining operators who operate on alluvial valley floors and the State regulatory authorities.

Total Annual Responses: 50.

Total Annual Burden Hours: 2,750.

Send comments on the need for the collection of information for the performance of the functions of the agency; the accuracy of the agency's burden estimates; ways to enhance the quality, utility and clarity of the information collection; and ways to minimize the information collection burden on respondents, such as use of automated means of collection of the information, to the addresses listed above. Please refer to OMB control number 1029–0049 in all correspondence.

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.

Dated: September 16, 2010.

John R. Craynon,

Chief.

[FR Doc. 2010–23646 Filed 9–22–10; 8:45 am]

BILLING CODE 4310–05–M

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Designation of Service Area for Confederated Tribes of the Warm Springs of Oregon

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice.

SUMMARY: This notice announces approval by the Bureau of Indian Affairs (BIA) of an expansion in service area for

the Confederated Tribes of Warm Springs of Oregon, Warm Springs, Oregon (Warm Springs Tribe) for financial assistance and social service programs.

DATES: The BIA approval was effective on July 7, 2010.

FOR FURTHER INFORMATION CONTACT: Dr. Linda K. Ketcher, Supervisory Social Worker, at (202) 513–7610.

SUPPLEMENTARY INFORMATION: The Warm Springs Tribe submitted to BIA a request with supporting documentation to modify its service area under 25 CFR 20.201. The Assistant Secretary—Indian Affairs has approved the request based on an evaluation of the information provided. This modification will expand the service area for the Warm Springs Tribe to include Hood River County (Oregon). The Tribe will provide services for eligible Indian clients in the new service area by setting up bi-weekly office hours at Hood River County.

Dated: August 26, 2010.

Larry Echo Hawk,

Assistant Secretary—Indian Affairs.

[FR Doc. 2010–23873 Filed 9–22–10; 8:45 am]

BILLING CODE 4310–4J–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS-R9-IA-2010-N204]
[96300-1671-0000-P5]

Endangered Species; Marine Mammals; Receipt of Applications for Permit

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of receipt of applications for permit.

SUMMARY: We, the U.S. Fish and Wildlife Service, invite the public to comment on the following applications to conduct certain activities with endangered species, marine mammals, or both. With some exceptions, the Endangered Species Act (ESA) and Marine Mammal Protection Act (MMPA) prohibits activities with listed species unless a Federal permit is issued that allows such activities. Both laws require that we invite public comment before issuing these permits.

DATES: We must receive comments or requests for documents or comments on or before October 25, 2010. We must receive requests for marine mammal permit public hearings, in writing, at the address shown in the **ADDRESSES** section by October 25, 2010.

ADDRESSES: Brenda Tapia, Division of Management Authority, U.S. Fish and Wildlife Service, 4401 North Fairfax Drive, Room 212, Arlington, VA 22203; fax (703) 358-2280; or e-mail *DMAFR@fws.gov*.

FOR FURTHER INFORMATION CONTACT: Brenda Tapia, (703) 358-2104 (telephone); (703) 358-2280 (fax); *DMAFR@fws.gov* (e-mail).

SUPPLEMENTARY INFORMATION:

I. Public Comment Procedures

A. How Do I Request Copies of Applications or Comment on Submitted Applications?

Send your request for copies of applications or comments and materials concerning any of the applications to the contact listed under **ADDRESSES**. Please include the **Federal Register** notice publication date, the PRT-number, and the name of the applicant in your request or submission. We will not consider requests or comments sent to an e-mail or address not listed under **ADDRESSES**. If you provide an email address in your request for copies of applications, we will attempt to respond to your request electronically.

Please make your requests or comments as specific as possible. Please confine your comments to issues for which we seek comments in this notice, and explain the basis for your comments. Include sufficient information with your comments to allow us to authenticate any scientific or commercial data you include.

The comments and recommendations that will be most useful and likely to influence agency decisions are: (1) Those supported by quantitative information or studies; and (2) Those that include citations to, and analyses of, the applicable laws and regulations. We will not consider or include in our administrative record comments we receive after the close of the comment period (see DATES) or comments delivered to an address other than those listed above (see **ADDRESSES**).

B. May I Review Comments Submitted by Others?

Comments, including names and street addresses of respondents, will be available for public review at the address listed under **ADDRESSES**. The public may review documents and other information applicants have sent in support of the application unless our allowing viewing would violate the Privacy Act or Freedom of Information Act. 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.

II. Background

To help us carry out our conservation responsibilities for affected species, the Endangered Species Act of 1973, section 10(a)(1)(A), as amended (16 U.S.C. 1531 *et seq.*), and our regulations in the Code of Federal Regulations (CFR) at 50 CFR 17, the Marine Mammal Protection Act of 1972, as amended (16 U.S.C. 1361 *et seq.*), and our regulations in the Code of Federal Regulations (CFR) at 50 CFR 18 require that we invite public comment before final action on these permit applications. Under the MMPA, you may request a hearing on any MMPA application received. If you request a hearing, give specific reasons why a hearing would be appropriate. The holding of such a hearing is at the discretion of the Service Director.

III. Permit Applications

A. Endangered Species

Applicant: University of Connecticut, Storrs, CT; PRT-14240A

The applicant requests a permit to export biological samples from captive born golden-crowned sifaka (*Propithecus tattersalli*) for the purpose of scientific research. This notification covers activities to be conducted by the applicant over a 5–year period.

Applicant: Christina Marisa Tellez, University of California Los Angeles (UCLA), Los Angeles, CA; PRT-10564A

The applicant requests a permit to import biological samples from American crocodile (*Crocodylus acutus*), and Morelet's crocodile (*Crocodylus moreletti*) from Belize for the purpose of enhancement of the species through scientific research. This notification covers activities conducted by the applicant over a 5–year period.

Multiple Applicants

The following applicants each request a permit to import the sport-hunted trophy of one male bontebok (*Damaliscus pygargus pygargus*) culled from a captive herd maintained under the management program of the Republic of South Africa, for the purpose of enhancement of the survival of the species.

Applicant: Steven Louis, Richland Center, WI; PRT-21605A

Applicant: Selmer Erickson, Park Rapids, MN; PRT-21574A

B. Endangered Marine Mammals and Marine Mammals

Applicant: U.S. Fish and Wildlife Service, Marine Mammals Management, Anchorage, AK; PRT-046081

The applicant requests amendment and renewal of the permit to take and harassment polar bears (*Ursus maritimus*) in the wild in Alaska and in waters around Alaska for the purpose of scientific research. This notification covers activities to be conducted by the applicant over a 5–year period.

Applicant: Indianapolis Zoological Society, Indianapolis, IN; PRT-19420A

The applicant requests a permit to take a Pacific walrus, (*Odobenus rosmarus divergens*), one male, found beached and abandoned as a newborn near Barrow, AK on July 4, 2003 for the purpose of public display. This notification covers activities to be conducted by the applicant over a 5–year period.

Applicant: Thomas A. Postel, Minneola, FL; PRT-19806A

The applicant requests a permit to photography Florida manatees (*Trichechus manatus*) underwater for commercial and educational purposes. This notification covers activities to be conducted by the applicant over a one-year period.

Concurrent with publishing this notice in the **Federal Register**, we are forwarding copies of the above applications to the Marine Mammal Commission and the Committee of Scientific Advisors for their review.

Dated: September 17, 2010

Brenda Tapia,

Program Analyst/Data Administrator, Branch of Permits, Division of Management Authority.

[FR Doc. 2010–23822 Filed 9–22–10; 8:45 am]

BILLING CODE S

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS–R8–WSR–2010–N162; 80213–94210–0000; ABC Code: 7B]

Notice of Intent; Request for Comments on Adoption of the National Park Service's Wetland and Creek Restoration Final Environmental Impact Statement/Environmental Impact Report, Big Lagoon, Muir Beach, Marin County, CA

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of intent; request for comments.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), give notice of our intent to adopt the National Park Service's (NPS) existing final environmental impact statement/environmental impact report (EIS/EIR) for the Wetland and Creek Restoration at Big Lagoon, Muir Beach, California (project). We are considering approving a grant application by the California State Coastal Conservancy (CSCC) to assist with implementing restoration activities that have been identified and reviewed under the NPS' existing final EIS/EIR for the project. Based on our independent evaluation, adoption of the EIS/EIR would meet Department of Interior (DOI) and Service National Environmental Policy Act (NEPA) procedures and guidelines. In order to meet our NEPA requirements for approval of CSCC's grant application, we are recirculating the EIS/EIR for written public comment via this notice, in accordance with Service adoption requirements.

DATES: We must receive any written comments on or before October 20, 2010.

ADDRESSES: Send written comments to: Susan Detwiler, Chief, Wildlife and Sport Fish Restoration Program, Region 8—Pacific Southwest, U.S. Fish and Wildlife Service, 2800 Cottage Way, Room W–1729, Sacramento, CA 95825. The EIS/EIR and other documents mentioned below are available at *http://parkplanning.nps.gov/documentsList.cfm?projectID=12126.*

FOR FURTHER INFORMATION CONTACT: Justin Cutler, Grants Management Specialist, at the Sacramento address above; (916) 414–6457 (phone); e-mail: *justin_cutler@fws.gov.*

SUPPLEMENTARY INFORMATION: We are considering approving a grant application by CSCC to assist with implementing restoration activities that have been identified and reviewed under the NPS' existing final EIS/EIR for the project. We are recirculating the EIS/EIR for written public comment via this notice, in order to meet our National Environmental Policy Act (NEPA; 40 CFR 1506.6) requirements for approval of CSCC's grant application. Based on our independent evaluation, adoption of the EIS/EIR would meet Department of Interior (DOI) and Service NEPA procedures and guidelines. We encourage interested persons to review the EIS/EIR and submit written comments.

Availability of Documents

The EIS/EIR and other documents mentioned below are available at *http://parkplanning.nps.gov/documentsList.cfm?projectID=12126.* To the extent practicable, copies of the EIS/EIR and other relevant documents will be made available for public review in alternative formats. Please reach the point of contact mentioned above to request documents in alternative formats.

Location

The 38-acre project site is located at the mouth of Redwood Creek, in Golden Gate National Recreation Area, Marin County, California, approximate Longitude: −122.57 and Latitude: 37.86. The project area encompasses the Lower Redwood Creek riparian area and wetlands extending from just downstream of Highway 1 to the beach.

Background

The NPS and the County of Marin (County) jointly prepared the following three documents to meet their Federal and State requirements:

- *December 2007, Wetland and Creek Restoration at Big Lagoon, Muir Beach, Marin County, Final Environmental Impact Statement/Environmental Impact Report,* (EIS/EIR).
- *March 2008, Amendment to the Final Environmental Impact Statement/Environmental Impact Report Wetland and Creek Restoration at Big Lagoon, Muir Beach* (amendment).
- *November 2008, Wetland and Creek Restoration at Big Lagoon, Muir Beach, Marin County Record of Decision, (ROD).*

The CSCC then partnered with the NPS and the County to assist in obtaining funding for restoration activities of the project. CSCC has submitted a grant application to the Service requesting funds under the National Coastal Wetland Conservation Grant Program for habitat restoration activities. The specific purpose of CSCC's application is to restore Lower Redwood Creek to a self-sustaining

functional ecosystem that will create habitat for populations of special status species, reduce flooding, and provide a compatible visitor experience. Other aspects of the project, such as public access and bridge construction, will be funded through other sources.

The EIS/EIR describes and evaluates four potential alternatives for improving and restoring the project area; No Action (Alternative 1), Creek Restoration (Alternative 2), Creek Restoration and Small Lagoon Restoration (Alternative 3), and Large Lagoon Restoration (Alternative 4), with Alternative 2 being the preferred alternative. Details of these alternatives and their environmental effects are described in the EIS/EIR.

The proposed Federal decision to approve and grant funds triggers the need for compliance with the NEPA. After an independent review, we find that the EIS/EIR and the ROD, adequately addresses appropriate alternatives and their environmental effects relative to the activities proposed to be funded by our grant. Based on an independent evaluation, the EIS/EIR would meet Department of Interior (DOI) and Service NEPA procedures and guidelines, and would be appropriate for adoption.

Public Review

We provide this notice under regulations implementing NEPA and invite the public to review the final EIS/EIR during the 30-day public comment period (*see* **DATES**). 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.

Conclusion

Based on the information summarized above, we intend to adopt the NPS's final EIS/EIR to fully comply with the regulations for implementing NEPA for the proposed Federal grant decision. After the close of the comment period, we anticipate the preparation and issuance of our Record of Decision to occur in the fall of 2010.

Dated: August 31, 2010.

Alexandra Pitts,

Regional Director, Region 8.

[FR Doc. 2010–23869 Filed 9–22–10; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLORO957000–L63100000–BJ000: HAG10–0389]

Filing of Plats of Survey: Oregon/Washington

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The plats of survey of the following described lands are scheduled to be officially filed in the Bureau of Land Management Oregon/Washington State Office, Portland, Oregon, 30 days from the date of this publication.

Willamette Meridian

Oregon

T. 4 S., R. 4 E., accepted July 6, 2010
T. 22 S., R. 8 W., accepted August 16, 2010
T. 19 S., R. 7 W., accepted August 18, 2010
T. 29 S., R. 9 W., accepted August 18, 2010
T. 14 S., R. 8 W., accepted August 25, 2010
T. 34 S., R. 2 E., accepted August 27, 2010

ADDRESSES: A copy of the plats may be obtained from the Land Office at the Oregon/Washington State Office, Bureau of Land Management, 333 SW. 1st Avenue, Portland, Oregon 97204, upon required payment. A person or party who wishes to protest against a survey must file a notice that they wish to protest (at the above address) with the Oregon/Washington State Director, Bureau of Land Management, Portland, Oregon.

FOR FURTHER INFORMATION CONTACT: Kyle Hensley, (503) 808–6124, Branch of Geographic Sciences, Bureau of Land Management, 333 SW. 1st Avenue, Portland, Oregon 97204.

Cathie Jensen,

Acting Chief, Branch of Land, Mineral, and Energy Resources.

[FR Doc. 2010–23747 Filed 9–22–10; 8:45 am]

BILLING CODE 4310–33–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS-R9-IA-2010-N205]

[96300-1671-0000-P5]

Endangered Species; Marine Mammals; Issuance of Permits

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of issuance of permits.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), have issued the following permits to conduct certain activities with endangered species, marine mammals, or both. We issue these permits under the Endangered Species Act (ESA) and Marine Mammal Protection Act (MMPA).

ADDRESSES: Brenda Tapia, Division of Management Authority, U.S. Fish and Wildlife Service, 4401 North Fairfax Drive, Room 212, Arlington, VA 22203; fax (703) 558-7725; or e-mail *DMAFR@fws.gov*.

FOR FURTHER INFORMATION CONTACT: Brenda Tapia, (703) 358-2104 (telephone); (703) 358-2280 (fax); *DMAFR@fws.gov* (e-mail).

SUPPLEMENTARY INFORMATION: On the dates below, as authorized by the provisions of the ESA (16 U.S.C. 1531 et seq.), as amended, and/or the MMPA, as amended (16 U.S.C. 1361 et seq.), we issued requested permits subject to certain conditions set forth therein. For each permit for an endangered species, we found that (1) The application was filed in good faith, (2) The granted permit would not operate to the disadvantage of the endangered species, and (3) The granted permit would be consistent with the purposes and policy set forth in section 2 of the ESA.

ENDANGERED SPECIES

Permit number	Applicant	Receipt of application *Federal Register* notice	Permit issuance date
00588A	Frank Pohl	75 FR 34766; June 18, 2010	August 19, 2010
10402A	Albert Spidle	75FR 44986; July 30, 2010	August 30, 2010
14519A	Alvin Filpula	75 FR 34767; June 18, 2010	August 19, 2010

MARINE MAMMALS

Permit number	Applicant	Receipt of application *Federal Register* notice	Permit issuance date
067925	U.S. Geological Survey, Alaska Science Center	75 FR 28650; May 21, 2010	July 30, 2010
134907	North Slope Borough Department of Wildlife Management	75 FR 44987; July 30, 2010	September 10, 2010
690038	U.S. Geological Survey, Alaska Science Center	75 FR 47625; August 6, 2010	September 10, 2010

Availability of Documents

Documents and other information submitted with these applications are available for review, subject to the requirements of the Privacy Act and Freedom of Information Act, by any party who submits a written request for a copy of such documents to:

Dated: September 17, 2010

Brenda Tapia,

Program Analyst/Data Administrator, Branch of Permits, Division of Management Authority.

[FR Doc. 2010–23820 Filed 9–22–10; 8:45 am]

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INTERNATIONAL TRADE COMMISSION

[Investigation No. AA1921–129 (Third Review)]

Polychloroprene Rubber From Japan

AGENCY: United States International Trade Commission.

ACTION: Termination of five-year review.

SUMMARY: The subject five-year review was initiated in July 2010 to determine whether revocation of the antidumping duty finding on polychloroprene rubber from Japan would be likely to lead to continuation or recurrence of material injury. On August 24, 2010, the Department of Commerce published notice that it was revoking the order effective August 4, 2010, "{b}ecause the domestic interested parties did not participate in this sunset review * * *." (75 FR 51981). Accordingly, pursuant to section 751(c) of the Tariff Act of 1930 (19 U.S.C. 1675(c)), the subject review is terminated.

DATES: *Effective Date:* August 4, 2010.

FOR FURTHER INFORMATION CONTACT: Mary Messer (202–205–3193), Office of Investigations, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436. Hearing-impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its Internet server (*http://www.usitc.gov*).

Authority: This review is being terminated under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to section 207.69 of the Commission's rules (19 CFR 207.69).

Issued: September 17, 2010.

By order of the Commission.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. 2010–23746 Filed 9–22–10; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

Notice of Extension of Comment Period on Proposed Consent Decree Under the Clean Water Act

Notice is hereby given that the comment period on the proposed Consent Decree ("Consent Decree") in *United States of America et al.* v. *City of Revere, Massachusetts,* Civil Action No. 1:10–cv–11460 (D.Mass), is being extended until November 1, 2010. The original notice of the proposed Consent Decree, which summarizes the settlement, was published in the **Federal Register** on August 31, 2010, Vol. 75, No. 168, Pg. 53342. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, United States Department of Justice, and either e-mailed to *pubcomment-ees.enrd@usdoj.gov* or mailed to P.O. Box 7611, United States Department of Justice, Washington, DC 20044–7611, and should refer to *United States of America et al.* v. *City of Revere, Massachusetts,* D.J. Ref. 90–5–1–1–09299.

The Consent Decree may be examined at the Office of the United States Attorney, One Courthouse Way, John Joseph Moakley Courthouse, Boston, Massachusetts 02210, and at U.S. EPA Region 1, Office of Regional Counsel, 5 Post Office Square, Suite 100, Boston, Massachusetts 02109. During the public comment period, the Consent Decree may also be examined on the following Department of Justice Web site, *http://www.usdoj.gov/enrd/Consent_Decrees.html.* A copy of the Consent Decree may also be obtained by mail from the Consent Decree Library, P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611 or by faxing or e-mailing a request to Tonia Fleetwood (*tonia.fleetwood@usdoj.gov*), fax no. (202) 514–0097, phone confirmation number (202) 514–1547. In requesting a copy from the Consent Decree Library, please enclose a check to cover the 25 cents per page reproduction costs in the amount of $16.25 (for Decree without appendix) or $71.75 (for Decree with appendix) 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 Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 2010–23736 Filed 9–22–10; 8:45 am]

BILLING CODE 4410–15–P

DEPARTMENT OF LABOR

Employment and Training Administration

Notice of Determinations Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974, as amended (19 U.S.C. 2273) the Department of Labor herein presents summaries of determinations regarding eligibility to apply for trade adjustment assistance for workers by (TA–W) number issued during the period of September 7, 2010 through September 10, 2010.

In order for an affirmative determination to be made for workers of a primary firm and a certification issued regarding eligibility to apply for worker adjustment assistance, each of the group eligibility requirements of Section 222(a) of the Act must be met.

I. Under Section 222(a)(2)(A), the following must be satisfied:

(1) A significant number or proportion of the workers in such workers' firm have become totally or partially

separated, or are threatened to become totally or partially separated;

(2) The sales or production, or both, of such firm have decreased absolutely; and

(3) One of the following must be satisfied:

(A) Imports of articles or services like or directly competitive with articles produced or services supplied by such firm have increased;

(B) Imports of articles like or directly competitive with articles into which one or more component parts produced by such firm are directly incorporated, have increased;

(C) Imports of articles directly incorporating one or more component parts produced outside the United States that are like or directly competitive with imports of articles incorporating one or more component parts produced by such firm have increased; and

(D) Imports of articles like or directly competitive with articles which are produced directly using services supplied by such firm, have increased; and

(4) The increase in imports contributed importantly to such workers' separation or threat of separation and to the decline in the sales or production of such firm; or

II. Section 222(a)(2)(B) all of the following must be satisfied:

(1) A significant number or proportion of the workers in such workers' firm have become totally or partially separated, or are threatened to become totally or partially separated;

(2) One of the following must be satisfied:

(A) There has been a shift by the workers' firm to a foreign country in the production of articles or supply of services like or directly competitive with those produced/supplied by the workers' firm; and

(B) There has been an acquisition from a foreign country by the workers' firm of articles/services that are like or directly competitive with those produced/supplied by the workers' firm; and

(3) The shift/acquisition contributed importantly to the workers' separation or threat of separation.

In order for an affirmative determination to be made for adversely affected workers in public agencies and a certification issued regarding eligibility to apply for worker adjustment assistance, each of the group eligibility requirements of Section 222(b) of the Act must be met.

(1) A significant number or proportion of the workers in the public agency have become totally or partially separated, or are threatened to become totally or partially separated;

(2) The public agency has acquired from a foreign country services like or directly competitive with services which are supplied by such agency; and

(3) The acquisition of services contributed importantly to such workers' separation or threat of separation.

In order for an affirmative determination to be made for adversely affected secondary workers of a firm and a certification issued regarding eligibility to apply for worker adjustment assistance, each of the group eligibility requirements of Section 222(c) of the Act must be met.

(1) A significant number or proportion of the workers in the workers' firm have become totally or partially separated, or are threatened to become totally or partially separated;

(2) The workers' firm is a Supplier or Downstream Producer to a firm that employed a group of workers who received a certification of eligibility under Section 222(a) of the Act, and such supply or production is related to the article or service that was the basis for such certification; and

(3) Either—

(A) The workers' firm is a supplier and the component parts it supplied to the firm described in paragraph (2) accounted for at least 20 percent of the production or sales of the workers' firm; or

(B) A loss of business by the workers' firm with the firm described in paragraph (2) contributed importantly to the workers' separation or threat of separation.

In order for an affirmative determination to be made for adversely affected workers in firms identified by the International Trade Commission and a certification issued regarding eligibility to apply for worker adjustment assistance, each of the group eligibility requirements of Section 222(f) of the Act must be met.

(1) The workers' firm is publicly identified by name by the International Trade Commission as a member of a domestic industry in an investigation resulting in—

(A) An affirmative determination of serious injury or threat thereof under section 202(b)(1);

(B) An affirmative determination of market disruption or threat thereof under section 421(b)(1); or

(C) An affirmative final determination of material injury or threat thereof under section 705(b)(1)(A) or 735(b)(1)(A) of the Tariff Act of 1930 (19 U.S.C. 1671d(b)(1)(A) and 1673d(b)(1)(A));

(2) The petition is filed during the 1-year period beginning on the date on which—

(A) A summary of the report submitted to the President by the International Trade Commission under section 202(f)(1) with respect to the affirmative determination described in paragraph (1)(A) is published in the **Federal Register** under section 202(f)(3); or

(B) Notice of an affirmative determination described in subparagraph (1) is published in the **Federal Register**; and

(3) The workers have become totally or partially separated from the workers' firm within—

(A) The 1-year period described in paragraph (2); or

(B) Notwithstanding section 223(b)(1), the 1-year period preceding the 1-year period described in paragraph (2).

Affirmative Determinations for Worker Adjustment Assistance

The following certifications have been issued. The date following the company name and location of each determination references the impact date for all workers of such determination.

The following certifications have been issued. The requirements of Section 222(a)(2)(A) (increased imports) of the Trade Act have been met.

TA–W No.	Subject firm	Location	Impact date
73,584	Analog Devices, Inc., Leased Workers from EDA, Inc. and Nstar Global Services.	Cambridge, MA	March 1, 2009.
73,651	File-EZ Folder, Inc., Leased Workers from PRO People Staffing Services.	Spokane, WA	March 5, 2009.
74,284	ITW ChronoTherm, Illinois Tool Works, Leased Workers of Flexicorp, Inc.	Elmhurst, IL	June 14, 2009.
74,378	Balzout, Inc	Nitro, WV	June 30, 2009.

The following certifications have been issued. The requirements of Section 222(a)(2)(B) (shift in production or services) of the Trade Act have been met.

TA–W No.	Subject firm	Location	Impact date
73,550	International Business Machines (IBM), Global Technology Services Delivery Division, Off-Site Teleworkers.	Charlotte, NC	February 16, 2009.
73,637	Lexmark International, Inc., Imaging Services, Printing Solutions, etc., Leased Workers, etc.	Lexington, KY	February 26, 2009.
74,318	Connectivity Solutions Manufacturing, Inc., Commscope, Inc. of North Carolina.	Omaha, NE	June 29, 2009.
74,326	Pitney Bowes, Inc., Mailing Solutions Management Division, Leased Workers of Guidant Group.	Shelton, CT	June 23, 2009.
74,350	PricewaterhouseCoopers LLP, Internal Firm Services, Client Account Administrators.	Chicago, IL	June 24, 2009.
74,429	E.J. Brooks Company, dba Tydenbrooks Security Products Group, Leased Workers, etc.	Livingston, NJ	July 1, 2009.
74,453	REA Magnet Wire Company, Inc., Algonquin Industries Division.	Osceola, AR	July 26, 2009.
74,466	Hewlett Packard Company, Enterprise Business Division, Leased Workers of QFLEX, etc.	Palo Alto, CA	June 22, 2009.
74,487	Aloecorp, Inc., Leased Workers from Link Staffing	Lyford, TX	August 4, 2009.
74,489	Warner Chilcott Pharmaceuticals, Inc	Norwich, NY	August 6, 2009.
74,494	Dyno Nobel, Inc., Power Service Group	Ulster Park, NY	July 28, 2009.
74,497	Deluxe Digital Studios, Inc., Deluxe Laboratories, Inc., Leased Workers from Adecco Staffing.	Moosic, PA	July 10, 2009.
74,509	NYK Business Systems Americas Inc., NYK Group Americas, Leased Workers Tyken, Ideaon, Comsys, TEK Systems, etc.	Seattle, WA	August 6, 2009.
74,516	Control Components Inc., A Subsidiary of IMI, PLC, Leased Workers from Mattson, Axis Technology Group, etc.	Rancho Santa Margarita, CA	August 11, 2009.
74,527	Mahle Engine Components, Leased Workers from Action Total Staffing.	Caldwell, OH	August 10, 2009.
74,532	Whaling Distributors, Inc., Aminicor, Inc	Fall River, MA	August 21, 2009.
74,536	Xerox Corporation, Inside Sales Supply Center, Leased Workers of Spherion, Superior Staffing, etc.	Lewisville, TX	July 30, 2009.
74,543	CertainTeed Corporation	Mountain Top, PA	August 12, 2009.
74,548	Propex Operating Company, LLC, Leased Workers from Ambassador Personnel.	Bainbridge, GA	August 18, 2009.
74,563	All American Sports Group Corporation, Leased Workers from Manpower Staffing Services and Kelly Services.	San Antonio, TX	August 20, 2009.

The following certifications have been issued. The requirements of Section 222(c) (supplier to a firm whose workers are certified eligible to apply for TAA) of the Trade Act have been met.

TA–W No.	Subject firm	Location	Impact date
74,265	Smith Micro Technologies, Inc	Vadnais Heights, MN	June 17, 2009.

Negative Determinations for Worker Adjustment Assistance

In the following cases, the investigation revealed that the eligibility criteria for worker adjustment assistance have not been met for the reasons specified.

The investigation revealed that the criteria under paragraphs (a)(2)(A) (increased imports) and (a)(2)(B) (shift in production or services to a foreign country) of section 222 have not been met.

TA–W No.	Subject firm	Location	Impact date
73,659	Meridian Enterprises Corporation, Call Center	Washington, MO	
73,812	Johnson Controls, Inc.	Rockwood, MI	
73,973	Scientific Games International, Inc., Scientific Games Corporation.	South Barre, VT	
73,974	Scientific Games International, Inc., Scientific Games Corporation.	Concord, NH	
74,034	MMG Corporation	St. Louis, MO	
74,104	Metalsa Structural Products, Inc., Dana Corporation Structural Products.	Pottstown, PA	
74,196	Ozark Dodge	Ozark, MO	
74,289	Caye Upholstery, LLC, Caye Home Furnishings, LLC	New Albany, MS	

TA–W No.	Subject firm	Location	Impact date
74,289A	Caye Upholstery, LLC, Caye Home Furnishings, LLC	Star, NC	
74,289B	Caye Upholstery, LLC, Caye Home Furnishings, LLC	Taylorsville, NC	
74,289C	Caye Upholstery, LLC, Caye Home Furnishings, LLC	Tampa, FL	

Determinations Terminating Investigations of Petitions for Worker Adjustment Assistance

After notice of the petitions was published in the **Federal Register** and on the Department's Web site, as required by Section 221 of the Act (19 U.S.C. 2271), the Department initiated investigations of these petitions.

The following determinations terminating investigations were issued because the petitioner has requested that the petition be withdrawn.

TA–W No.	Subject firm	Location	Impact date
73,776	Workshops of G.E. Henn Pottery	New Waterford, OH	
73,816	IUE–CWA Local Union 808, International Union of Electronic, Electrical, Salaried, etc.	Evansville, IN	

The following determinations terminating investigations were issued because the petitions are the subject of ongoing investigations under petitions filed earlier covering the same petitioners.

TA–W No.	Subject firm	Location	Impact date
74,303	AGY Holding Corporation	Huntingdon, PA	

The following determinations terminating investigations were issued because the Department issued a negative determination on petitions related to the relevant investigation period applicable to the same worker group. The duplicative petitions did not present new information or a change in circumstances that would result in a reversal of the Department's previous negative determination, and therefore, further investigation would duplicate efforts and serve no purpose.

TA–W No.	Subject firm	Location	Impact date
74,107	ATK Launch Systems, Inc., Alliant Techsystems, Inc	Brigham City, UT	

I hereby certify that the aforementioned determinations were issued during the period of *September 7, 2010 through September 10, 2010.* Copies of these determinations may be requested under the Freedom of Information Act. Requests may be submitted by fax, courier services, or mail to FOIA Disclosure Officer, Office of Trade Adjustment Assistance (ETA), U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210 or *tofoiarequest@dol.gov.* These determinations also are available on the Department's Web site at *http://www.doleta.gov/tradeact* under the searchable listing of determinations.

Dated: September 15, 2010.

Elliott S. Kushner,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 2010–23827 Filed 9–22–10; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Employment and Training Administration

Investigations Regarding Certifications of Eligibility To Apply for Worker Adjustment Assistance

Petitions have been filed with the Secretary of Labor under Section 221(a) of the Trade Act of 1974 ("the Act") and are identified in the Appendix to this notice. Upon receipt of these petitions, the Director of the Division of Trade Adjustment Assistance, Employment and Training Administration, has instituted investigations pursuant to Section 221(a) of the Act.

The purpose of each of the investigations is to determine whether the workers are eligible to apply for adjustment assistance under Title II, Chapter 2, of the Act. The investigations will further relate, as appropriate, to the determination of the date on which total or partial separations began or threatened to begin and the subdivision of the firm involved.

The petitioners or any other persons showing a substantial interest in the subject matter of the investigations may request a public hearing, provided such request is filed in writing with the Director, Division of Trade Adjustment Assistance, at the address shown below, not later than October 4, 2010.

Interested persons are invited to submit written comments regarding the subject matter of the investigations to the Director, Division of Trade Adjustment Assistance, at the address shown below, not later than October 4, 2010.

Copies of these petitions may be requested under the Freedom of Information Act. Requests may be submitted by fax, courier services, or mail, to FOIA Disclosure Officer, Office of Trade Adjustment Assistance (ETA), U.S. Department of Labor, 200

Constitution Avenue, NW., Washington, DC 20210 or to *foiarequest@dol.gov*.

Signed at Washington, DC, this 15th day of September 2010.

Elliot Kushner,

Certifying Officer, Division of Trade Adjustment Assistance.

APPENDIX

TAA PETITIONS INSTITUTED BETWEEN 8/30/10 AND 9/3/10

TA–W	Subject Firm (Petitioners)	Location	Date of Institution	Date of Petition
74569	Titus Transportation, LLC (State/One-Stop).	Denton, TX	08/30/10	08/24/10
74570	Vanity Fair Brands, LP (Company).	Monroeville, AL	08/30/10	08/24/10
74571	Alpine Custom Shutters (State/One-Stop).	Englewood, CO	08/30/10	08/16/10
74572	Metal Powder Products (Union) ..	St. Marys, PA	08/30/10	08/26/10
74573	Kok's Woodgoods (Company)	Zeeland, MI	08/30/10	08/26/10
74574	Luke Paper Company (Company)	Luke, MD	08/30/10	08/24/10
74575	International Business Machines (IBM) (Workers).	Armonk, NY	08/30/10	08/25/10
74576	ECS Electronic Cable Specialist (Workers).	Franklin, WI	08/30/10	08/27/10
74577	MedRisk, Inc. (Workers)	King of Prussia, PA	08/30/10	08/27/10
74578	Solon Manufacturing Company (Company).	Rhinelander, WI	09/03/10	08/30/10
74579	Henry River Manufacturing (Workers).	Hildebran, NC	09/03/10	08/13/10
74580	Fiskars (Company)	Madison, WI	09/03/10	08/31/10
74581	CMC Joist and Deck, Inc. (Union).	New Columbia, PA	09/03/10	09/01/10
74582	ACF Industries, LLC (Union)	Milton, PA	09/03/10	08/31/10
74583	David R. Webb Company (Company).	Williamsport, PA	09/03/10	09/01/10
74584	Sylvan Bio, Inc. (Company)	Kittanning, PA	09/03/10	09/01/10
74585	Georgia Pacific, LLC (Workers) ..	Grenada, MS	09/03/10	08/26/10
74586	Burton Snowboards (Workers)	Burlington, VT	09/03/10	08/24/10
74587	The Ripley Group, Inc. (State/One-Stop).	Los Angeles, CA	09/03/10	08/27/10
74588	Hewlett Packard (Company)	Fishers, IN	09/03/10	08/01/10
74589	Rexam Closure (Company)	Constantine, MI	09/03/10	08/27/10
74590	Quad/Graphics (Company)	Corinth, MS	09/03/10	09/02/10
74591	ProTeam, Inc. (Company)	Boise, ID	09/03/10	08/25/10
74592	L3 Communications (State/One-Stop).	Anaheim, CA	09/03/10	08/31/10
74593	Whirlpool Corporation (State/One-Stop).	Fort Smith, AR	09/03/10	09/01/10
74594	Danfoss Chatleff, LLC (Company).	Buda, TX	09/03/10	09/02/10
74595	Connect North America U.S.A., Inc. (Workers).	Presque Isle, ME	09/03/10	08/17/10

[FR Doc. 2010–23828 Filed 9–22–10; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Employment and Training Administration

Investigations Regarding Certifications of Eligibility To Apply for Worker Adjustment Assistance

Petitions have been filed with the Secretary of Labor under section 221(a) of the Trade Act of 1974 ("the Act") and are identified in the Appendix to this notice. Upon receipt of these petitions, the Director of the Division of Trade Adjustment Assistance, Employment and Training Administration, has instituted investigations pursuant to section 221(a) of the Act.

The purpose of each of the investigations is to determine whether the workers are eligible to apply for adjustment assistance under Title II, Chapter 2, of the Act. The investigations will further relate, as appropriate, to the determination of the date on which total or partial separations began or threatened to begin and the subdivision of the firm involved.

The petitioners or any other persons showing a substantial interest in the subject matter of the investigations may request a public hearing, provided such request is filed in writing with the Director, Division of Trade Adjustment Assistance, at the address shown below, not later than October 4, 2010.

Interested persons are invited to submit written comments regarding the subject matter of the investigations to the Director, Division of Trade Adjustment Assistance, at the address shown below, not later than October 4, 2010.

Copies of these petitions may be requested under the Freedom of Information Act. Requests may be submitted by fax, courier services, or

mail, to FOIA Disclosure Officer, Office of Trade Adjustment Assistance (ETA), U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210 or to *foiarequest@dol.gov.*

Signed at Washington, DC this 16th of September 2010.

Elliott S. Kushner,

Certifying Officer, Division of Trade Adjustment Assistance.

Appendix

TAA Petitions Instituted Between 9/7/10 and 9/10/10

TA–W	Subject firm (petitioners)	Location	Date of institution	Date of petition
74596	NuKote International (Union)	Connellsville, PA	09/08/10	08/31/10
74597	International Game Technology (State/One-Stop)	Corvallis, OR	09/08/10	09/07/10
74598	Resource Staffing Services (Company)	Portland, OR	09/08/10	09/03/10
74599	Glaston America (State/One-Stop)	Cinnaminson, NJ	09/08/10	09/03/10
74600	Lear Corporation (Company)	Southfield, MI	09/08/10	09/03/10
74601	Motorola Home and Networks Mobility (State/One-Stop)	Horsham, PA	09/08/10	09/03/10
74602	United Parcel Service (Workers)	Louisville, KY	09/08/10	08/08/10
74603	Thermo EGS Gauging (Company)	Wilmington, MA	09/08/10	09/01/10
74604	HCP Packaging (State/One-Stop)	Hinsdale, NH	09/08/10	09/07/10
74605	Cambridge Tool & Die (Workers)	Cambridge, OH	09/08/10	09/07/10
74606	Watson Laboratories, Inc. (Company)	Carmel, NY	09/10/10	09/03/10
74607	WellPoint, Inc. (State/One-Stop)	Camarillo, CA	09/10/10	09/07/10
74608	Harrah's Horseshoe of Southern Indiana (Workers)	Elizabeth, IN	09/10/10	09/08/10
74609	Laserwords, Madison (Workers)	Madison, WI	09/10/10	09/02/10
74610	Ocwen Loan Servicing, LLC (Workers)	North Highlands, CA	09/10/10	09/07/10
74611	Schneider Electric USA (Company)	Knightdale, NC	09/10/10	08/27/10
74612	Covidien (Company)	Mansfield, MA	09/10/10	09/08/10
74613	John Galt Temp Agency (State/One-Stop)	Burlington, MA	09/10/10	09/03/10
74614	IBM Global Services (Workers)	Denver, CO	09/10/10	09/09/10
74615	KPMG LLP (State/One-Stop)	New York, NY	09/10/10	07/20/10
74616	Orbotech, Inc. (State/One-Stop)	Billerica, MA	09/10/10	09/09/10

[FR Doc. 2010–23829 Filed 9–22–10; 8:45 am]

BILLING CODE 4510–FN–P

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

Records Schedules; Availability and Request for Comments

AGENCY: National Archives and Records Administration (NARA).

ACTION: Notice of availability of proposed records schedules; request for comments.

SUMMARY: The National Archives and Records Administration (NARA) publishes notice at least once monthly of certain Federal agency requests for records disposition authority (records schedules). Once approved by NARA, records schedules provide mandatory instructions on what happens to records when no longer needed for current Government business. They authorize the preservation of records of continuing value in the National Archives of the United States and the destruction, after a specified period, of records lacking administrative, legal, research, or other value. Notice is published for records schedules in which agencies propose to destroy records not previously authorized for disposal or reduce the retention period of records already authorized for disposal. NARA invites public comments on such records schedules, as required by 44 U.S.C. 3303a(a).

DATES: Requests for copies must be received in writing on or before October 25, 2010. Once the appraisal of the records is completed, NARA will send a copy of the schedule. NARA staff usually prepare appraisal memorandums that contain additional information concerning the records covered by a proposed schedule. These, too, may be requested and will be provided once the appraisal is completed. Requesters will be given 30 days to submit comments.

ADDRESSES: You may request a copy of any records schedule identified in this notice by contacting the Life Cycle Management Division (NWML) using one of the following means:

Mail: NARA (NWML), 8601 Adelphi Road, College Park, MD 20740–6001.

E-mail: request.schedule@nara.gov.

FAX: 301–837–3698.

Requesters must cite the control number, which appears in parentheses after the name of the agency which submitted the schedule, and must provide a mailing address. Those who desire appraisal reports should so indicate in their request.

FOR FURTHER INFORMATION CONTACT: Laurence Brewer, Director, Life Cycle Management Division (NWML), National Archives and Records Administration, 8601 Adelphi Road, College Park, MD 20740–6001. Telephone: 301–837–1539. E-mail: *records.mgt@nara.gov.*

SUPPLEMENTARY INFORMATION: Each year Federal agencies create billions of records on paper, film, magnetic tape, and other media. To control this accumulation, agency records managers prepare schedules proposing retention periods for records and submit these schedules for NARA's approval, using the Standard Form (SF) 115, Request for Records Disposition Authority. These schedules provide for the timely transfer into the National Archives of historically valuable records and authorize the disposal of all other records after the agency no longer needs them to conduct its business. Some schedules are comprehensive and cover all the records of an agency or one of its major subdivisions. Most schedules, however, cover records of only one office or program or a few series of records. Many of these update previously approved schedules, and some include records proposed as permanent.

The schedules listed in this notice are media neutral unless specified otherwise. An item in a schedule is media neutral when the disposition

instructions may be applied to records regardless of the medium in which the records are created and maintained. Items included in schedules submitted to NARA on or after December 17, 2007, are media neutral unless the item is limited to a specific medium. (*See* 36 CFR 1225.12(e).)

No Federal records are authorized for destruction without the approval of the Archivist of the United States. This approval is granted only after a thorough consideration of their administrative use by the agency of origin, the rights of the Government and of private persons directly affected by the Government's activities, and whether or not they have historical or other value.

Besides identifying the Federal agencies and any subdivisions requesting disposition authority, this public notice lists the organizational unit(s) accumulating the records or indicates agency-wide applicability in the case of schedules that cover records that may be accumulated throughout an agency. This notice provides the control number assigned to each schedule, the total number of schedule items, and the number of temporary items (the records proposed for destruction). It also includes a brief description of the temporary records. The records schedule itself contains a full description of the records at the file unit level as well as their disposition. If NARA staff has prepared an appraisal memorandum for the schedule, it too includes information about the records. Further information about the disposition process is available on request.

Schedules Pending

1. Department of Agriculture, Office of Procurement and Property Management (N1–16–09–2, 1 item, 1 temporary item). Master files of an electronic information system used to administer improvement plans for lands managed by the agency that are affected by hazardous materials.

2. Department of Agriculture, Rural Development (N1–572–09–10, 1 item, 1 temporary item). Master files of an electronic information system used to manage budgets and track the distribution of funds for loan and grant programs.

3. Department of Agriculture, Rural Development (N1–572–09–11, 1 item, 1 temporary item). Master files of an electronic information system used to administer mail handling processes.

4. Department of Agriculture, Food and Nutrition Service (N1–462–09–5, 7 items, 7 temporary items). Correspondence files relating to applications for organizations to qualify for Supplemental Nutrition Assistance Program authorization.

5. Department of the Interior, Office of the Secretary (N1–48–10–1, 72 items, 51 temporary items). Low-level staff policy development and support files, congressional and litigation document production files, Regulatory Flexibility Act files, electronic tracking system and other records relating to cyber security, Quality of Government Information files, master files and claims files relating to firefighter and law enforcement officers' retirement benefits, master files and other records relating to real property appraisal services, and planning, budget, and other files regarding Year 2000 computer conversion activities. Proposed for permanent retention are policy development and support files of the Secretary, Deputy Secretary, Inspector General, and other high-level officials, public information releases and publications, Take Pride in America program records, newsletters and advisory board decisions regarding firefighter and law enforcement officers' retirement benefits, policy and guidance files regarding real property appraisal services, historically significant audiovisual recordings and photographs, and court order and report files including Indian Fiduciary Trust records.

6. Department of Justice, Office of the Inspector General (N1–60–10–28, 2 items, 2 temporary items). Master files and outputs of an electronic information system used to collect customer feedback from Inspector General units on the adequacy of administrative support provided by the Management and Planning Office.

7. Department of Justice, Federal Bureau of Investigation (N1–65–10–8, 7 items, 4 temporary items). Records of the Office of General Counsel pertaining to intelligence activities that might be appropriate for reporting to the President's Intelligence Oversight Board. Included are administrative files, canvas and response files regarding possible incidents, and tracking databases. Proposed for permanent retention are policy files, reports and adjudications, and correspondence with the Director of National Intelligence, President's Intelligence Oversight Board, and Department of Justice.

8. Department of Justice, Federal Bureau of Investigation (N1–65–10–22, 1 item, 1 temporary item). Case files relating to identifying missing and unidentified persons using the National DNA Index System.

9. Department of Justice, Federal Bureau of Investigation (N1–65–10–25, 3 items, 3 temporary items). Master files, outputs, and audit logs of an electronic information system use to track the dissemination of intelligence reports.

10. Department of Justice, Federal Bureau of Investigation (N1–65–10–29, 7 items, 7 temporary items). Language testing and assessment records, including master sets of tests, test development files, and master files and outputs of an electronic information system used to track information about individuals under assessment.

11. Department of Justice, Federal Bureau of Investigation (N1–65–10–32, 1 item, 1 temporary item). Transmittal forms requesting the creation of an index entry in the Electronic Surveillance Recordkeeping system.

12. Department of Justice, Federal Bureau of Investigation (N1–65–10–33, 2 items, 1 temporary item). Outputs of an electronic information system used to manage congressional and executive level correspondence. Proposed for permanent retention are master files containing the correspondence and related metadata.

13. Department of Labor, Office of the Assistant Secretary for Administration and Management (N1–174–09–5, 2 items, 2 temporary items). Master files of an electronic information system used by the agency to recruit employees.

14. Department of State, All Foreign Service Posts (N1–84–09–2, 21 items, 21 temporary items). Master files of electronic information systems used to issue or refuse immigrant and non-immigrant visas. Also included are paper copies of immigrant and non-immigrant visa application forms and case files of abandoned or withdrawn visa applications.

15. Department of State, Bureau of Public Affairs (N1–59–10–1, 19 items, 9 temporary items). Records of the Office of the Historian related to the publication of *Foreign Relations of the United States,* including compilations and copies of documents to be used in published volumes, master files of an electronic information system used to track information about documents in the publication, administrative records of the Advisory Committee on Historical Diplomatic Documentation, reference materials, office Web site content, and working files. Proposed for permanent retention are clearance files, published volumes of *Foreign Relations of the United States,* master files of electronic information systems containing information about officers of the Department and the history of diplomatic relations with foreign countries, original research and educational publications, program files

of the Historian and the Advisory Committee on Historical Diplomatic Documentation, and diplomatic and consular card files.

16. Export-Import Bank of the United States, Agency-wide (N1–275–10–5, 3 items, 3 temporary items). Master files and outputs of an electronic information system used to aggregate and report data on agency financial products.

17. Office of the Director of National Intelligence, Office of the Deputy Director of National Intelligence for Analysis (N1–576–09–3, 28 items, 13 temporary items). Records include non-substantive working papers and drafts, lower-level working group and committee files, analyst telephone books and resources catalog, office copies of budget files, training materials, analytic metrics, routine briefings files, community support files, and other records of a routine or transitory nature associated with the analysis program. Proposed for permanent retention are outgoing correspondence, other program records, and appointment calendars of the Deputy Director, board and working group files, analytic mission program files, records associated with final national intelligence priorities, daily compendium of finished intelligence documents, outreach and presentation files, ombudsman final recommendation files, evaluations of intelligence products, analytic initiatives case files, analytic improvement guidance, major briefing materials, program records for analytic technology and transformation, and substantive working papers and drafts.

Dated: September 17, 2010.

Michael J. Kurtz,

Assistant Archivist for Records Services—Washington, DC.

[FR Doc. 2010–23806 Filed 9–22–10; 8:45 am]

BILLING CODE 7515–01–P

NATIONAL FOUNDATION ON THE ARTS AND HUMANITIES

SES Performance Review Board

AGENCY: National Endowment for the Arts.

ACTION: Notice.

SUMMARY: Notice is hereby given of the names of members of the Performance Review Board for the National Endowment for the Arts. This notice supersedes all previous notices of the PRB membership of the Agency.

DATES: Upon publication.

FOR FURTHER INFORMATION CONTACT: Craig McCord, Sr., Director of Human Resources, National Endowment for the Arts, 1100 Pennsylvania Avenue, NW., Room 627, Washington, DC 20506, (202) 682–5473.

SUPPLEMENTARY INFORMATION: *See* 4314 (c)(1) through (5) of Title 5, U.S.C., requires each agency to establish, in accordance with regulations prescribed by the Office of Personnel Management, one or more SES Performance Review Boards. The Board shall review and evaluate the initial appraisal of a senior executive's performance by the supervisor, along with any response by the senior executive, and make recommendations to the appointing authority relative to the performance of the senior executive.

The following persons have been selected to serve on the Performance Review Board of the National Endowment for the Arts (NEA):

Joan Shigekawa—Senior Deputy Chairman.

Larry Baden—Deputy Chairman for Management and Budget.

Michael Burke—Chief Information Officer.

Sunil Iyengar—Director, Research & Analysis.

William O'Brien—Senior Advisor for Program Innovation.

Kathleen Edwards,

Director of Administrative Services, National Endowment for the Arts.

[FR Doc. 2010–23770 Filed 9–22–10; 8:45 am]

BILLING CODE 7537–01–P

NUCLEAR REGULATORY COMMISSION

[NRC–2010–0302]

Evaluation of the Groundwater Task Force Report: Public Meeting

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of public meeting; solicitation of public comments.

SUMMARY: In response to incidents involving radioactive contamination of groundwater wells and soils at nuclear power plants, the Nuclear Regulatory Commission (NRC) convened a Groundwater Task Force (GTF) in March 2010 to determine whether past, current, and planned actions should be augmented. The GTF, in its final report dated June 2010, determined that the NRC is meeting its mission of protecting public health, safety, and the environment. However, in view of stakeholder concerns, the GTF recommended that the NRC consider changes to its oversight of licensed material outside of its designed confinement. The NRC established a senior management review group to evaluate the GTF report, identify next steps, and make recommendations to the Commission about potential policy changes. The NRC will host a meeting with the public to discuss and solicit input on the potential policy changes being considered. The meeting will serve as a forum for members of the public to provide oral comments. The NRC is also requesting written comments on the potential policy issues, particularly for those members of the public unable to attend the meeting. The potential policy issues can be found in Section C, "Topics for Discussion: Potential Policy Issues," in the **SUPPLEMENTARY INFORMATION** section of this notice.

DATES: *Public Meeting Date:* Monday, October 4, 2010, from 9 a.m. to 5 p.m.

Comment Dates: For individuals who wish to provide written comments on the potential policy issues, the comments are requested by October 15, 2010. Comments received after this date will be considered if it is practical to do so, but the NRC is able to assure consideration only for comments received on or before this date.

ADDRESSES: The public meeting will be held in the Commission Hearing Room at the NRC Headquarters building, 11555 Rockville Pike, Rockville, Maryland 20852. The NRC Headquarters building is located across the street from the White Flint metro station. For most attendees, the metro system is likely the most convenient mode of transportation, as there is very limited parking available. Please also allow time to register with building security. Individuals unable to travel to the NRC Headquarters building may participate by teleconference or observe by live Webcast. Please contact the individual listed below to get details for participating in this manner.

You may submit comments by any one of the following methods. Please include Docket ID NRC–2010–0302 in the subject line of your comments. Comments submitted in writing or in electronic form will be posted on the NRC Web site and on the Federal rulemaking Web site Regulations.gov. Because your comments will not be edited to remove any identifying or contact information, the NRC cautions you against including any information in your submission that you do not want to be publicly disclosed.

The NRC requests that any party soliciting or aggregating comments received from other persons for submission to the NRC inform those persons that the NRC will not edit their

comments to remove any identifying or contact information, and therefore, they should not include any information in their comments that they do not want publicly disclosed.

Federal Rulemaking Web site: Go to *http://www.regulations.gov* and search for documents filed under Docket ID NRC–2010–0302. Address questions about NRC dockets to Carol Gallagher 301–492–3668; e-mail *Carol.Gallagher@nrc.gov.*

Mail comments to: Cindy Bladey, Chief, Rules, Announcements and Directives Branch (RADB), Division of Administrative Services, Office of Administration, Mail Stop: TWB–05–B01M, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, or by fax to RADB at (301) 492–3446.

You can access publicly available documents related to this notice using the following methods:

NRC's Public Document Room (PDR): The public may examine and have copied for a fee publicly available documents at the NRC's PDR, Public File Area O1 F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland.

NRC's Agencywide Documents Access and Management System (ADAMS): Publicly available documents created or received at the NRC are available electronically at the NRC's Electronic Reading Room at *http://www.nrc.gov/reading-rm/adams.html.* From this page, the public can gain entry into ADAMS, which provides text and image files of NRC's public documents. If you do not have access to ADAMS or if there are problems in accessing the documents located in ADAMS, contact the NRC's PDR reference staff at 1–800–397–4209, 301–415–4737, or by e-mail to *pdr.resource@nrc.gov.* The potential policy issues are available electronically under ADAMS Accession Number ML102460172.

Federal Rulemaking Web site: Public comments and supporting materials related to this notice can be found at *http://www.regulations.gov* by searching on Docket ID: NRC–2010–0302.

FOR FURTHER INFORMATION CONTACT: Barry Miller, (301) 415–4117, e-mail address *Barry.Miller@nrc.gov.* Public meeting attendees are requested to pre-register with the meeting contact by September 30, 2010.

SUPPLEMENTARY INFORMATION:

A. Background and Purpose of the Public Meeting

The NRC convened the GTF in March 2010 (ADAMS Accession No. ML100640188) to evaluate NRC actions taken in response to recent releases of tritium into groundwater by nuclear facilities, reevaluate the recommendations made in the Liquid Radioactive Release Lessons Learned Task Force Final Report dated September 1, 2006 (ADAMS Accession No. ML062650312), and review the actions taken in SECY–09–0174 (Staff Progress in Evaluation of Buried Piping at Nuclear Reactor Facilities, ADAMS Accession No. ML093160004). The purpose of the review was to determine whether the actions taken in response to recent events need to be augmented.

The GTF completed its work in June 2010, and provided the final report to the NRC Executive Director for Operations (EDO) (ADAMS Accession No. ML101680435). The GTF final report identified four major themes that provided focus for the report's conclusions: Theme 1—Reassess NRC's Regulatory Framework for Groundwater Protection, Theme 2—Maintain Barriers as Designed to Confine Licensed Material, Theme 3—Create More Reliable NRC Response, and Theme 4—Strengthen Trust.

As a result of this report, the EDO tasked a senior management review group to evaluate the report's conclusions and recommendations and identify actions that can be taken now, in addition to issues of policy that should be raised for Commission consideration. The senior management review group has completed their evaluation and compiled a list of potential policy issues for consideration. The purpose of this meeting is to receive input on these potential policy issues from a diverse group of public and industry stakeholders to ensure we have identified and are considering the right issues on which to focus our attention as we move forward. The potential policy issues can be found in Section C, Topics for Discussion: Potential Policy Issues, of this notice. Many of the issues listed in Section C contain specific references to the GTF report, with the references provided in parentheses following the specific issue.

B. Public Meeting Agenda

A meeting notice and detailed agenda are available on the NRC public meeting schedule Web site *http://www.nrc.gov/public-involve/public-meetings/index.cfm.* The meeting will take place from 9 a.m.–5 p.m. and consist of four sessions with a short break in between each one. Each session will correspond to one of the four themes identified in the GTF final report: Theme 1, Reassess NRC's Regulatory Framework for Groundwater Protection; Theme 2, Maintain Barriers as Designed to Confine Licensed Material; Theme 3, Create More Reliable NRC Response; and Theme 4, Strengthen Trust. Each session will have a panel consisting of public and industry stakeholders, with the aim of representing an array of perspectives. Each panelist will give an approximately ten-minute presentation summarizing their views on the policy issues covered by their session topic. These presentations will be followed by a facilitated open discussion with the general attendees, thereby providing an opportunity for any attendee to provide input.

C. Topics for Discussion: Potential Policy Issues

Provided below are the potential policy issues identified by the senior management review group from the GTF final report. The parenthetical notation following many of the potential policy issues is a reference to a conclusion in the GTF final report. For example, C.3.2 is referencing conclusion C.3.2 in Appendix C of the report.

Theme 1: Reassess NRC's Regulatory Framework for Groundwater Protection

Should NRC's programs be modified to ensure harmonization of the approaches we have taken to groundwater protection that are applied to different licensees under NRC regulations? (C.3.2)

How should the NRC's programs accommodate or encourage industry initiatives that go beyond NRC requirements?

- *E.g.,* for reactors, is the industry's voluntary initiative on groundwater protection sufficiently comprehensive? Should it be taken into account in NRC's regulatory framework? (B.3.4)

How should NRC's programs address protection of the environment?

- Should requirements be promulgated to require prompt remediation of unintended releases of radioactive liquids? (C.3.3)
- Should the NRC consider modifying Part 20 to address those portions of International Commission on Radiological Protection (ICRP) 103 related to environmental protection? (E.3.4)

Should changes be made to the radiological effluent performance indicator in the Reactor Oversight Process to make it more reflective of performance in the area of plant releases, both planned and unplanned? Should the performance indicator take into account public confidence in addition to the current risk-informed approach to radiation protection that

verifies the effluent release program performance? (B.3.1)

Should a policy statement be developed based upon NRC's existing regulations and guidance to address: (1) Protection of the environment within NRC's regulatory framework, (2) NRC's expectations of licensees, (3) the relationship to other regulatory schemes, and (4) NRC's desire to work cooperatively with other Federal agencies and States in protecting the environment?

Should NRC's regulatory framework be informed by experience or guidance developed or applied by the International Atomic Energy Agency, the international community or by other U.S. agencies, *e.g.,* Department of Energy directives (DOE STD 1153) and activities?

Theme 2: Maintain Barriers as Designed To Confine Licensed Material

Should NRC's programs be modified to ensure that systems and components better contain radioactive liquids and gases?

- Are additional requirements appropriate for the design, operation and maintenance of systems and components that contain radioactive liquids and gases? (C.3.1)
- Should a more quantitative definition of the "As Low As Is Reasonably Achievable" (ALARA) concept be adopted with respect to leakage of radioactive liquids and gases?
- Is it feasible to apply the ALARA concept in 10 CFR 50.36a to "unmonitored releases" and to restricted areas as well as unrestricted areas?
- How could the principles in 10 CFR 20.1406 be applied to operating reactors?
- Do the existing General Design Criteria (GDC) (*e.g.,* GDC 60 and 64) in 10 CFR part 50, appendix A, provide a basis to require new licensee programs with respect to leakage of radioactive liquids and gases?

Theme 3: Create More Reliable NRC Response

Should NRC's programs be modified to ensure greater consistency when addressing low risk, high public interest/confidence issues?

- Should NRC's oversight programs be modified to include more specific guidance on responding to reported incidents where risk is low but there is high stakeholder interest? Should this guidance address the follow up and disposition of a licensee's immediate actions, extent of condition, root cause, corrective action, and communication with the stakeholders? (A.3.1, A.3.2, B.3.3)

How can the NRC improve communications and support to other regulatory agencies, such as the U.S. Environmental Protection Agency and the States, in understanding and exercising respective roles and responsibilities related to groundwater protection? (D.3.3)

Theme 4: Strengthen Trust

How can the NRC increase confidence in its actions and communications related to groundwater protection?

What role could third party verification or assessment play in responding to groundwater protection? (D.3.3)

What would be the benefit of using the International Nuclear Event Scale for communicating the safety significance of events at Levels 0 or 1 that attract high domestic or international public interest? Would this approach lead to confusion on the significance of the issue?

How can greater clarity be given to the interplay between NRC regulations and existing State and other Federal regulations with respect to the objectives and level of protection provided by adherence to the regulations?

D. Conduct of the Meeting.

This is a Category 3 Meeting. The public is invited to participate in this meeting by providing comments and asking questions throughout the meeting. The NRC's Policy Statement, "Enhancing Public Participation on NRC Meetings," (May 28, 2002; 67 FR 36920), applies to this meeting. The policy contains information regarding visitors and security. The NRC provides reasonable accommodation to individuals with disabilities where appropriate. If a member of the public needs a reasonable accommodation to participate in the meeting, or needs the meeting notice or the transcript or other information from the meeting in another format (*e.g.,* Braille, large print), please notify the NRC's meeting contacts. Determinations on requests for reasonable accommodations will be made on a case-by-case basis.

Dated at Rockville, Maryland, this 16th day of September 2010.

For the Nuclear Regulatory Commission.

Michael R. Johnson,

Deputy Executive Director for Reactor and Preparedness Programs, Acting Office of the Executive Director for Operations.

[FR Doc. 2010–23877 Filed 9–22–10; 8:45 am]

BILLING CODE 7590–01–P

POSTAL REGULATORY COMMISSION

[Docket No. RM2010–11; Order No. 531]

Exceptions from Periodic Reporting Rules

AGENCY: Postal Regulatory Commission.

ACTION: Notice.

SUMMARY: The Postal Service has requested semi–permanent exceptions to certain recently–adopted service performance measurement reporting requirements. This order grants most of the requested exceptions. The Commission asks the Postal Service to explore other measurement options or use of proxies for reporting purposes for the exceptions not granted. This order also addresses the question of the need to request an exception or waiver prior to the use of a proxy as a substitute for a direct measurement.

DATES: Request for waivers from the Postal Service: October 1, 2010.

FOR FURTHER INFORMATION CONTACT: Stephen L. Sharfman, General Counsel, *stephen.sharfman@prc.gov* or 202–789–6820.

SUPPLEMENTARY INFORMATION:*Regulatory History,* **75 FR 38757 (JULY 6, 2010).**

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I. Introduction

The Commission issued an Order Establishing Final Rules Concerning Periodic Reporting of Service Performance Measurements and Customer Satisfaction (Order No. 465) on May 25, 2010, bringing Docket No. RM2009–11 to a conclusion. Within this order, the Commission established a two-step process to achieve full compliance with all reporting requirements by the filing date of the FY 2011 Annual Compliance Report (ACR). *See* Order No. 465 at 18–24.

The first step in the process, and the subject matter of the instant order, consists of the Postal Service petitioning the Commission for semi-permanent exceptions from reporting pursuant to rule 3055.3. *Id.* at 21–22. The second step, and the subject matter of a future proceeding, consists of the Postal Service petitioning the Commission for temporary waivers of reporting until such time that reporting can be provided. The Commission further indicated that the Postal Service may seek a temporary waiver of reporting for

any product, or component of a product, that is denied a semi-permanent exception from reporting in the first step of the process. *Id.* at 22–24.

On June 25, 2010, the Postal Service filed a request for semi-permanent exceptions from periodic reporting of service performance measurement for various market dominant postal services, or components of postal services, pursuant to Commission Order No. 465 and 39 CFR 3055.3.[1] It seeks semi-permanent exceptions for Standard Mail High Density, Saturation, and Carrier Route parcels, Inbound International Surface Parcel Post (at UPU Rates), hard-copy Address Correction Service, various Special Services, Within County Periodicals, and various negotiated service agreements. *Id.* at 1. The Postal Service supplemented its initial comments on July 9, 2010 with material on Within County Periodicals reporting.[2] The Postal Service also filed comments in reply to the Public Representative's comments.[3]

On June 29, 2010, the Commission issued Order No. 481, which established Docket No. RM2010–11 for consideration of matters related to the proposed semi-permanent exceptions identified in the Postal Service's Request. It also appointed Emmett Rand Costich to serve as Public Representative, and reiterated the July 16, 2010 filing deadline, as previously established in Order No. 465, for interested persons to comment on the Postal Service's Request.

Comments were received from the Public Representative on July 16, 2010.[4] The comments identify products, or components of products, where semi-permanent exceptions might be warranted. The comments also identify products, or components of products, where the Public Representative believes that the Postal Service fails to justify semi-permanent exceptions. The Public Representative appropriately indicates that "[i]n some instances, direct measurement of the service performance of a product is possible and should be undertaken, while in others a proxy can be identified to satisfy service performance measurement." *Id.* at 3.

The Commission grants 27 of the 31 semi–permanent exceptions requested by the Postal Service. The granted semi–permanent exceptions are listed in the Appendix following the signature page of this order. The Commission denies the following requests for semi–permanent exceptions: High Density and Saturation Flats/Parcels (parcels only), Carrier Route (parcels only), Within County Periodicals, and Inbound Surface Parcel Post (at UPU Rates). For these services, the Commission requests that the Postal Service explore other measurement options, or the use of appropriate proxies for reporting service performance.

The Commission previously established a September 10, 2010 deadline for the Postal Service to file a request for waivers where it is unable to comply with specific reporting requirements. Order No. 465 at 22–23. This deadline will be extended until October 1, 2010 to provide the Postal Service time to incorporate the findings of this order. A new date for comments will be established once the Postal Service files its request for waivers.

This order also separately addresses an issue identified by the Postal Service concerning the need to request an exception or waiver prior to the use of a proxy as a substitute for direct measurement and reporting of that measurement. *See* section III.

II. Statutory Provisions

Section 3652(a)(2) of title 39 requires the Postal Service to include in an annual report to the Commission an analysis of the quality of service "for each market-dominant product provided in such year" by providing, in part, "(B) measures of the quality of service afforded by the Postal Service in connection with such product, including—(i) the level of service (described in terms of speed of delivery and reliability) provided...."

The Commission's Rules of Practice and Procedure, which implement this requirement, acknowledge that certain products, or components of products, should be excluded from measurement because requiring such measurements would be unnecessary, impractical, or would not further the goals and objectives of the Postal Accountability and Enhancement Act (PAEA). Rule 3055.3 provides the Postal Service the opportunity to request that a product, or component of a product, be excluded from service performance measurement reporting upon demonstration that:

(1) The cost of implementing a measurement system would be prohibitive in relation to the revenue generated by the product, or component of a product;

(2) The product, or component of a product, defies meaningful measurement; or

(3) The product, or component of a product, is in the form of a negotiated service agreement with substantially all components of the agreement included in the measurement of other products.

No product that does not satisfy one of these conditions will be granted an exception from reporting. However, a product, or component of a product, falling into one or more of these conditions does not guarantee that an exception will be granted. There may be instances of where reporting of service performance furthers the goals and objectives of the PAEA, or adds necessary transparency to a particular product, where reporting may be required notwithstanding cost, inconvenience, or redundancy.

Once granted, exceptions are semi–permanent in nature. The Postal Service is not required to reapply for exceptions on a regular basis, barring changed circumstances. However, the Postal Service is required to periodically identify the products, or components of a product, granted exceptions and certify that the rationale for originally granting the exception remains valid.

The Postal Service shall identify each product or component of a product granted an exception in each report required under subparts A or B of this part, and certify that the rationale for originally granting the exception remains valid.

Rule 3055.3(b).

III. Use of Proxies

In discussing its request that Inbound International Surface Parcel Post (at UPU Rates) be granted a semi-permanent exception, the Postal Service notes what it labels a semantic difference between its request and the Public Representative's comments which oppose the request and suggest the use of a proxy. The Postal Service interprets Order No. 465 such that the use of proxies requires an exception or a waiver from the requirement of direct measurement and reporting. Postal Service Reply Comments at 3.

The rules promulgated in Order No. 465 indicate that proxies may be used if justified. As part of each annual report the Postal Service is to provide:

(e) A description of the measurement system for each product, including: ... (5) [w]here proxies are used, a description of and justification for the use of each proxy.

Rule 3055.2(e)(5).

In Order No. 465, the Commission authorized a two–step process for the

[1] United States Postal Service Response to Order No. 465 and Request for Semi-Permanent Exceptions from Periodic Reporting of Service Performance Measurement, June 25, 2010 (Request).

[2] United States Postal Service Notice of Filing Supplemental Information, July 9, 2010 (Supplemental Information).

[3] United States Postal Service Response to Comments of the Public Representative, August 12, 2010 (Postal Service Reply Comments). A Motion for Leave to File Response to Comments of the Public Representative, August 12, 2010, accompanied the Postal Service Reply Comments. This motion is granted.

[4] Public Representative's Comments in Response to Order No. 481, July 16, 2010 (Public Representative Comments).

Postal Service to achieve full compliance with all service performance measurement reporting requirements by the filing date of the FY 2011 ACR. The first step requires the Postal Service to request semi–permanent exceptions from reporting as allowed by rule 3055.3. The exceptions provision of rule 3055.3 does not apply to the use of proxies. If a semi–permanent exception is granted pursuant to rule 3055.3, no service performance measurement reporting is required. Thus, the use of a proxy becomes irrelevant. However, if a suitable proxy exists, it should be used and a semi–permanent exception is not appropriate.

The second step requires the Postal Service to seek a temporary waiver where it cannot immediately comply with specific reporting requirements. The Commission indicated that a request for waiver must be for a specified period of time, and must include an implementation plan for achieving compliance with the specific reporting requirement. Generally, the Postal Service has indicated it cannot comply with reporting requirements where direct measurement systems currently are not available. The Commission notes that there are instances where the use of a proxy may provide some indication of service performance pending development of more direct measurement systems. Therefore, wherever the Postal Service believes that the use of a proxy is appropriate and its use can be justified, the Postal Service should request a waiver for the use of the proxy until the direct measurement system becomes operational.

IV. Disposition of Individual Requests for Exceptions

A. Standard Mail

The Postal Service seeks semi–permanent exceptions from service performance reporting for the following components of products within the Standard Mail class: High Density and Saturation Flats/Parcels (parcels only) and Carrier Route (parcels only). The Postal Service argues that the data systems do not distinguish parcel items from other Standard Mail measurement categories, nor is there a reliable start–the–clock method for parcels. Furthermore, the volume for the parcel components is very small (about 0.1 percent of the volume of regular and nonprofit Parcels/Non–Flat Machinables). Based on the above, the Postal Service contends it would be cost prohibitive to develop a reporting system for these parcels. Request at 4–6.

The Public Representative asks that a waiver not be granted for the parcels components of the High Density and Saturation Flats/Parcels and Carrier Route products. The Public Representative notes that the Postal Service has not explained why data for parcels with Delivery Confirmation cannot be used, or why a proxy cannot be used, to measure the service performance of Standard Mail parcels.[5] The Public Representative also notes that the Postal Service believes that the parcels customer base is expected to adopt the Intelligent Mail barcode in the near future. This may provide an Intelligent Mail barcode solution to the measurement problem. Public Representative Comments at 4–5.

The Commission finds that providing an exception from reporting for High Density and Saturation Flats/Parcels (parcels only) and Carrier Route (parcels only) has not been justified. The Postal Service has not explained why the originally proposed Delivery Confirmation–based system is no longer feasible, nor has it explained why it would be inappropriate to use another parcels item as a suitable proxy to measure the service performance of these Standard Mail parcels. The request for a semi–permanent exception for the specified Standard Mail parcels is denied.

B. Periodicals

The Commission's rules require separate service performance reporting for the Within County Periodicals product and the Outside County Periodicals product. The Postal Service informs the Commission of its intent to seek a temporary waiver from reporting the two products separately, as well as for Outside County Periodicals individually. It notes that upon expiration of the temporary waiver, it still does not expect to be able to report data for Within County Periodicals. Therefore, it is seeking a semi–permanent exception from reporting performance of Within County Periodicals at this time. Request at 7–10.

The Postal Service cites two problems with being able to report service performance for Within County Periodicals. First, some forms of electronic mail documentation do not require the mailer to identify whether an individual mailpiece is a Within County Periodicals mailpiece or an Outside County Periodicals mailpiece. Thus, the mailpiece cannot be distinguished for individual reporting purposes. Second, there might not be sufficient data (volume) for reporting Within County Periodicals and Outside County Periodicals individually.[6]

The Postal Service filed supplemental information regarding the difficulties in establishing a service performance measurement for Within County Periodicals. *See* Supplemental Information. The Postal Service explains that it contracted a special study to develop a baseline service performance estimate for community newspaper performance (a significant segment of Within County Periodicals).

Among other things, the study reports that:

- The Community Newspapers national result of 72.48 percent was comparable to the Periodicals result of 75.44 percent for the same period.
- It is not practical to conduct ongoing measurement.
- It would be difficult for the newspaper mailers to participate based on our experience with the baseline study; and
- Ongoing costs for subscriptions and conducting the study may outweigh value.
- Results are similar enough that Periodicals could be considered as a proxy for Community Newspapers Mail.
- Consider conducting another study in a few years to verify that results are still similar.

Supplemental Information, Attachment, slide 24. From the undertaking of the study, the Postal Service concludes that it is not feasible to establish a measurement system for Within County Periodicals and implementing a measurement system cannot be accomplished without undue burden imposed on relevant mailers.

Therefore, the Postal Service contends that Within County Periodicals is a product that "defies meaningful measurement" within the intent of the 39 CFR 3055.3(a)(2), or that "cost of implementing a measurement system would be prohibitive in relation to the revenue generated by the product...." 39 CFR 3055.3(a)(1). The Postal Service concludes by suggesting that Periodicals' performance as a class may be considered an appropriate proxy for Within County Periodicals. Request at 10.

The Commission finds that Within County Periodicals does not fall within the exception for a product that defies meaningful measurement. 39 CFR 3055.3(a)(2). Mailpiece seeding or other

[5] A Delivery Confirmation–based system originally was proposed by the Postal Service. *See* Service Performance Measurement, November 2007, at 39; *see also* United States Postal Service Comments in Response to Order No. 292, November 2, 2009, at 32–33.

[6] As an added complication, the Postal Service notes that most Within County Periodicals receive manual processing. *Id.* at 9.

methodologies could be developed and successfully implemented to measure service performance. The costs and practicality of alternative approaches still may remain an issue.

A semi–permanent exception based on the prohibitive costs of implementing a measurement system, 39 CFR 3055.3(a)(1), might have been appropriate if no measurement and reporting options were available. However, the Postal Service has presented sufficient information for the Commission to conclude that solutions may exist for Within County Periodicals. The Commission suggests that the Postal Service look into the feasibility of using all Periodicals as a proxy for reporting Within County Periodicals (as indicated by the Postal Service), along with a special study every 5 years (such as presented in Supplemental Information) to examine the veracity of the proxy. In the future, as the Intelligent Mail barcode develops and is put to new uses, the Postal Service may wish to examine the potential of developing a more appropriate direct measurement system. The request for a semi–permanent exception for Within County Periodicals is denied.

C. Parcel Post

The Postal Service explains that no measurement system exists for Inbound International Surface Parcel Post (at UPU Rates). It estimates the cost for developing a measurement system to be approximately $3 million for a product with gross revenues of $12.88 million in FY 2009. The Postal Service instead suggests using domestic Parcel Post as a proxy for Inbound International Surface Parcel Post (at UPU Rates). *Id.* at 6–7.

The Public Representative supports the use of domestic Parcel Post as a proxy for Inbound International Surface Parcel Post (at UPU Rates), and asks that the request for semi-permanent exception be denied. The Public Representative further argues that use of the proxy should be supplemented with information from the UNEX system (an RFID–based system). The supplemental data could be used to analyze time in customs. Public Representative Comments at 5–7.

The Postal Service does not believe it would be appropriate to use UNEX data to supplement the use of the proxy. First, it argues that UNEX measures performance of letters and flats, not Parcel Post items. Second, time in customs is not relevant to Postal Service performance because the Postal Service does not have control over this time. Third, UNEX does not include time in customs in its calculations of Postal Service performance. Postal Service Reply Comments at 2–4.

Because of the availability of what appears to be a reasonable proxy, one that presumably the Postal Service can more fully explain and justify, the Commission denies the request for semi–permanent exception. The use of domestic Parcel Post as a proxy will significantly reduce the costs associated with directly measuring and reporting the service performance of Surface Parcel Post (at UPU Rates). The Postal Service is further encouraged to use supplemental data to explore the veracity of any and all proxies it uses, and periodically report this information to the Commission. This could include, in this instance, an independent mail seeding study, or use of applicable data from the UNEX system, or other independent analysis that the Postal Service may deem appropriate.

D. Special Services

1. Address Correction Service (Hard–Copy)

The Postal Service explains that Address Correction Service (ACS) involves the transmission of corrected address information to a sender that subscribes to the service, when the recipient has provided a forwarding address to the Postal Service. The Postal Service requests an exception from reporting only for the hard–copy version of this service. The Postal Service states that forwarding information is accumulated into batches, data transmission times vary, and specific arrangements are made with individual subscribers. Furthermore, it contends that implementation of a measurement system would be unwarranted for a product that only produced approximately $22 million in revenue in FY 2009. The Postal Service projects that revenue from this service is likely to decrease given that it is encouraging subscribers to move to the electronic version of the service. Request at 12–14.

The Public Representative comments that given the cost of measuring service performance of Address Correction Service (hard–copy), and the stated intent of the Postal Service to switch customers to electronic or automated ACS, a semi–permanent exception should be granted. Public Representative Comments at 12.

The Commission finds that Address Correction Service (hard–copy) is a product that "defies meaningful measurement" within the intent of the 39 CFR 3055.3(a)(2) given that service standards may be tailored to individual customers. It also is a product where the "cost of implementing a measurement system would be prohibitive in relation to the revenue generated by the product," 39 CFR 3055.3(a)(1), given the historical revenue generated and the Postal Service's intent to migrate customers to the electronic version of the service. The reporting of service performance measurement shall not be required for Address Correction Service (hard–copy only).

2. Alternate Postage Payment Services

The Postal Service explains that Business Reply Mail, International Business Reply Mail, Merchandise Return Service, Bulk Parcel Return, and Shipper Paid Forwarding share the common attribute of allowing customers to establish accounts to pay postage without requiring the actual sender to affix postage. The Postal Service states that the host mailpiece utilizing any of the above services has the same delivery service standard as the applicable host mail product. In the majority of cases, "weighing and rating" is done seamlessly during automated processing, which results in no additional processing time. In a minority of cases, where "weighing and rating" is done manually, manual processing could result in an additional day of delay. Accordingly, the Postal Service contends that it is unable to justify establishing service standards for these special services independent of the host mailpiece, and that these services defy meaningful measurement. Request at 14; *see also* Postal Service Reply Comments at 7–8.

The Public Representative contends that Business Reply Mail does not have the same service performance as the underlying host product because of the weighing and rating processing that must occur with this service. Consequently, the Public Representative urges the Commission to deny a semi–permanent exception for this service. Public Representative Comments at 7–8.

The Commission understands that manually processed Business Reply Mail (and similarly International Business Reply Mail) does not always receive the same delivery service as the underlying First–Class Mail or Priority Mail piece. The Commission listened to many comments from Business Reply Mail users during MTAC meetings related to service standards who expressed concern over the time it took from when mail was delivered to the receiving mail facility, to when the mail was actually delivered to the recipient. The time between these two events allegedly is due to weighing and rating activities, which lends itself to the development of a standard and the measurement of performance. However, no affected mail user offered comments in this docket to indicate that their concerns remain valid.

Hence, based on the Postal Service's representation that the majority of weighing and rating functions now are performed seamlessly, the Commission concludes that the Business Reply Mail services more aptly may be considered merely accounting services that defy meaningful measurement. 39 CFR 3055.3(a)(2). The Commission grants the Postal Service request for a semi–permanent reporting exception for Business Reply Mail and International Business Reply Mail until such time that a problem with service performance is identified that warrants monitoring.[7]

For the remaining services, Merchandise Return Service, Bulk Parcel Return, and Shipper Paid Forwarding, the Commission finds that the services are basically accounting services. In the cases of Merchandise Return Service and Bulk Parcel Return, the services are somewhat customizable to the individual recipient, and in the case of Shipper Paid Forwarding, the Postal Service has no control over when a mailpiece will be forwarded. The Commission finds that these services "def[y] meaningful measurement" within the intent of the 39 CFR 3055.3(a)(2) exception. The reporting of service performance measurement shall not be required for Merchandise Return Service, Bulk Parcel Return, and Shipper Paid Forwarding, each of which is a component of Ancillary Services.

3. Caller Service

The Postal Service explains that Caller Service provides a means for typically higher volume mail recipients to receive mail at a postal retail window or loading dock. The mail that is received is subject to the standards for each class. Pickup times are individually arranged between the delivery office and the mail recipient. The Postal Service contends that this service is not susceptible to any meaningful measurement because of the nature of the service itself. Request at 15–16.

The Public Representative comments that Caller Service is a flexible arrangement between the delivery office and the recipient service which defies meaningful measurement within the meaning of 39 CFR 3055.3(a)(2). Public Representative Comments at 11.

The Commission finds that because Caller Service is customized to individual mail recipients, it is a product that "defies meaningful measurement" within the intent of the 39 CFR 3055.3(a)(2) exception. The reporting of service performance measurement shall not be required for this product.

4. Change of Address Credit Card Authentication

The Postal Service explains that Change of Address Credit Card Authentication provides a means of verifying a customer's identity by reference to a credit card number. The customer is paying for the identification and not the subsequent processing of the change of address. The transaction is complete upon authorization and the debiting of the fee. The Postal Service contends that it is not feasible to establish a standard for the timely completion of the authorization. Request at 16.

The Public Representative concurs that Change of Address Credit Card Authentication is a transaction–based service which defies meaningful measurement within the meaning of 39 CFR 3055.3(a)(2). Public Representative Comments at 11.

The Commission finds that this service defies meaningful measurement and falls within the parameters of 39 CFR 3055.3(a)(2) for an exception from performance measurement reporting. Change of Address Credit Card Authentication is a transaction–based service which involves an identity verification and the collection of a fee. The request for a semi–permanent exception from reporting is granted.

5. Certificate of Mailing and International Certificate of Mailing

The Postal Service explains that Certificate of Mailing and International Certificate of Mailing are part of the acceptance of a mailpiece which includes the purchase of a certificate. The services are complete upon purchase and provision of the certificate. The Postal Service argues that it sees no means or need for a standard to measure the timely completion of these services. Request at 16–17.

The Public Representative comments that Certificate of Mailing and International Certificate of Mailing are transaction–based services which defy meaningful measurement within the meaning of 39 CFR 3055.3(a)(2). Public Representative Comments at 11.

The Commission finds that these services defy meaningful measurement and fall within the parameters of 39 CFR 3055.3(a)(2) for an exception from performance measurement reporting. Certificate of Mailing and International Certificate of Mailing each only involve a window transaction. The request for a semi–permanent exception from reporting is granted.

6. Money Orders

The Postal Service explains that once a Money Order is purchased, there is nothing further for the Postal Service to do. Thus, it argues that it is difficult to conceive of a practical way to measure Money Order performance. However, the Postal Service states that it has established standards and will report the performance of Money Order "inquiries" as part of the Special Service reporting. Request at 17.

The Public Representative comments that the purchase of Money Orders is a transaction–based service which defies meaningful measurement within the meaning of 39 CFR 3055.3(a)(2). Public Representative Comments at 11.

The Commission finds that the sales aspect of this service defies meaningful measurement and falls within the parameters of 39 CFR 3055.3(a)(2) for an exception from performance measurement reporting. The sale of Money Orders only involves a window transaction. The request for a semi–nt exception from reporting is granted. The Commission expects the Postal Service to continue to measure and report the service inquiry aspect of Money Orders.

7. Parcel Airlift and Special Handling

Parcel Airlift provides air transportation of Standard Mail parcels on a space available basis to or from military post offices outside the contiguous 48 United States. Special Handling provides preferential handling to the extent practicable in dispatch and transportation of First–ail and Package Services. The Postal Service explains that each product is purchased subject to the understanding that the requested service is subject to availability, *i.e.*, it cannot be known whether the processing or transportation upgrade can be accommodated. Thus, service standards or service performance measurement is unwarranted. Request at 17–18.

The Public Representative comments that Parcel Airlift and Special Handling are provided on a space available or to the extent practical basis which defies meaningful measurement within the meaning of 39 CFR 3055.3(a)(2). Public Representative Comments at 11–12.

Because Parcel Airlift and Special Handling are provided on a space available or to the extent practical basis, the Commission finds these services defy meaningful measurement and fall within the parameters of 39 CFR 3055.3(a)(2) for an exception from performance measurement reporting. The request for a semi–nt exception from reporting is granted.

8. Restricted Delivery and International Restricted Delivery

The Postal Service explains that Restricted Delivery and International

[7] If it becomes necessary, development of a proxy for reporting International Business Reply Mail may be appropriate.

Restricted Delivery are services that permit the sender to direct that a mailpiece be delivered to a particular person (or person's agent) at a delivery address. The Postal Service states that the delivery choice is either the mailpiece is delivered to the named addressee, or the mailpiece is delivered to someone else. It contends that it is not feasible to develop a standard for measurement (without tracking the identity of all of the mail recipients). It further contends that the international version of the service has the additional complications of acceptance of the request (inbound) or fulfillment of the service (outbound) not being entirely within the Postal Service's control. Request at 18–19, *see also* Postal Service Reply Comments at 9–10.

The Public Representative contends that reporting may be based on whether or not the mailpieces were delivered to the correct recipient. Thus, the Public Representative contends that a semi–nt exception from reporting should not be granted. Public Representative Comments at 9–10.

The Commission agrees with the Postal Service that it may be impractical to develop a measurement system for either the domestic or the international versions of Restricted Delivery. The Postal Service would in effect be obliged to design a measurement system to measure whether a mailpiece was or was not delivered to a correct person. The Commission finds that International Restricted Delivery has the added difficulty of being partly dependent upon foreign postal operators, which in itself makes it difficult to design a meaningful performance measurement and reporting system. For the above reasons, Restricted Delivery and International Restricted Delivery fall within the parameters of 39 CFR 3055.3(a)(2) for an exception from performance measurement reporting. The request for a semi–nt exception from reporting is granted.

9. Stamped Envelopes, Cards, and Stationery

The Postal Service contends that Stamped Envelopes, Cards, and Stationery are incompatible with meaningful service performance measurements. Request at 19.

The Public Representative comments that Stamped Envelopes, Cards, and Stationery are transaction services which defy meaningful measurement within the meaning of 39 CFR 3055.3(a)(2). Public Representative Comments at 11.

Stamped Envelopes, Cards, and Stationery only involve a window transaction. Thus, the Commission finds that these components of Special Services defy meaningful measurement and fall within the parameters of 39 CFR 3055.3(a)(2) for an exception from performance measurement reporting. The request for a semi–permanent exception from reporting is granted.

10. Customs Clearance and Delivery Fee

The Postal Service explains that Customs Clearance and Delivery Fee involves the collection of a fee from the recipient of each inbound package on which customs duty or Internal Revenue Service tax is assessed. Request at 19–20. This is done at the direction of Customs and Border Protection and the Internal Revenue Service. The Postal Service contends that there is no customer interaction that warrants performance measurement.

The Public Representative comments that Customs Clearance and Delivery Fee is a transaction–based service which defies meaningful measurement within the meaning of 39 CFR 3055.3(a)(2). Public Representative Comments at 11.

Customs Clearance and Delivery Fee is a transaction–based service which involves the collection of a fee. The Commission finds that this service defies meaningful measurement and fall within the parameters of 39 CFR 3055.3(a)(2) for an exception from performance measurement reporting. The request for a semi-permanent exception from reporting is granted.

11. International Insurance with Inbound International Surface Parcel Post

The Postal Service explains that International Insurance is available with Inbound International Surface Parcel Post (at UPU Rates) tendered by foreign postal operators. The Universal Postal Union establishes time limits for inquiry and claims processing. The Postal Service contends that there is a relatively small number of insured mailpieces given the small volume of International Surface Parcel Post (at UPU Rates). For insurance inquiries filed with foreign posts, the Postal Service does not have control of the claims processing and information exchange response times of those foreign posts. For insurance claims filed with the Postal Service (only applicable to parcels where the foreign sender has waived the right of recovery), the Postal Service does not consider it feasible or practicable to establish an independent service standard. Request at 20–22, *see also* Postal Service Reply Comments at 4–7.

The Public Representative argues that an exception should not be granted. He contends that the processing times for claims submitted by United States recipients, or processing times for requests submitted by foreign posts, could be reported. Public Representative Comments at 8–9.

Given the small volume of insured Inbound International Surface Parcel Post (at UPU Rates), and the even smaller volume that might have claims filed by United States recipients, the Commission finds it impracticable to require the Postal Service to report service performance for the International Insurance component of the International Ancillary Services product. *See* 39 CFR 3055.3(a)(2). The request for a semi—permanent exception from reporting is granted.

12. Outbound International Registered Mail

The Postal Service explains that Outbound International Registered Mail provides added security for a mailpiece from acceptance to delivery, and indemnity in case of loss or damage. Request at 22. The Postal Service asserts that the service does not affect the in–transit service standard of the host mailpiece. Because final delivery scan information depends upon the foreign postal operator responsible for delivery, and not the Postal Service, the Postal Service contends that it is infeasible to require performance measurements comparable to that for the domestic Registered Mail or Inbound International Registered Mail.

The Public Representative concurs that Outbound International Registered Mail is dependent upon foreign postal operators and thus, defies meaningful measurement within the meaning of 39 CFR 3055.3(a)(2). Public Representative Comments at 12.

The Commission finds that Outbound International Registered Mail is partly dependent upon foreign postal operators, which makes it difficult to design a meaningful performance measurement and reporting system. Because of this, it falls within the parameters of 39 CFR 3055.3(a)(2) for an exception from performance measurement reporting. The request for a semi–permanent exception from reporting is granted.

13. International Return Receipts

The Postal Service explains that all International Return Receipts (inbound and outbound) are provided in hard–copy form. Request at 22–24. It notes that the physical return cards have the same delivery service standards as Single–Piece First–Class Mail International, which could be used as a proxy for this portion of the service. However, because part of the International Return Receipts service is provided by foreign postal operators, it is difficult to design a meaningful system to measure the pertinent features

of International Return Receipts similar to what is being proposed for domestic Return Receipts.

The Public Representative concurs that International Return Receipts (inbound and outbound) is dependent upon foreign postal operators and thus, defies meaningful measurement within the meaning of 39 CFR 3055.3(a)(2). Public Representative Comments at 12.

The Commission finds that International Return Receipts (inbound and outbound) is partly dependent upon foreign postal operators, which makes it difficult to design a meaningful performance measurement and reporting system. Because of this, it falls within the parameters of 39 CFR 3055.3(a)(2) for an exception from performance measurement reporting. The request for a semi–permanent exception from reporting is granted.

14. International Reply Coupons

The Postal Service explains that International Reply Coupon (inbound and outbound) service allows a sender to prepay a reply mailpiece by purchasing reply coupons that are exchangeable for local postage stamps by postal administrators in member countries of the Universal Postal Union. Request at 24–25. It contends that because the transaction is complete at the time of purchase, and because no additional service is required, it is difficult to conceive of a meaningful system to define or measure service performance for this product. *Id.* at 24.

The Public Representative concurs that International Reply Coupons (outbound and inbound) is a transaction–based service which defies meaningful measurement within the meaning of 39 CFR 3055.3(a)(2). Public Representative Comments at 11.

The Commission finds that International Reply Coupon (inbound and outbound) service is a transaction-based service which falls within the parameters of 39 CFR 3055.3(a)(2) for an exception from performance measurement reporting. The request for a semi–permanent exception from reporting is granted.

E. Market Dominant Negotiated Service Agreements

Three market dominant negotiated service agreement products are currently active:

- The Bradford Group Negotiated Service Agreement;
- Life Line Screening Negotiated Service Agreement; and
- Canada Post–United States Postal Service Contractual Bilateral Agreement for Inbound Market Dominant Services.

The Postal Service asserts that the mail tendered under each negotiated service agreement already is included in the measurement of other products: Standard Mail Letters for The Bradford Group; Standard Mail Letters and Flats for Life Line Screening; and Inbound Single–Piece First–Class Mail International for Canada Post. It requests that all three agreements be excluded from reporting based upon the parameters of 39 CFR 3055.3(a)(3), "[t]he product, or component of a product, is in the form of a negotiated service agreement with substantially all components of the agreement included in the measurement of other products." Request at 25.

The Public Representative concurs that the semi–permanent exceptions for the three negotiated service agreements are justified under 39 CFR 3055.3(a)(3). Public Representative Comments at 10–11.

The Commission finds that the listed negotiated service agreements fall within the parameters of 39 CFR 3055.3(a)(3) for exceptions from performance measurement reporting. The requests for semi–permanent exceptions from reporting are granted.

V. Ordering Paragraphs

It is ordered:

1. The Postal Service products, or components of products, listed following the signature page of this order are granted an exception from annual and periodic reporting of service performance achievements under 39 CFR part 3055, subparts A and B, pursuant to 39 CFR 3055.3. All other requests for exceptions are hereby denied.

2. The deadline for the Postal Service to file a request for waivers, originally established in Order No. 465, shall be extended until October 1, 2010.

3. The Motion for Leave to File Response to Comments of the Public Representative, filed August 12, 2010, is granted.

4. The Secretary shall arrange for publication of this order in the **Federal Register**.

By the Commission.

Shoshana M. Grove,

Secretary.

Appendix

The following products, or components of products, are granted an exception from annual and periodic reporting of service performance achievements under 39 CFR part 3055, subparts A and B, pursuant to 39 CFR 3055.3.

Special Services (the following listed products only)

Ancillary Services (the following listed components of the product only):
- Address Correction Service (hard–copy)
- Business Reply Mail
- Bulk Parcel Return
- Certificate of Mailing
- Merchandise Return
- Parcel Airlift (PAL)
- Restricted Delivery
- Shipper Paid Forwarding
- Special Handling
- Stamped Envelopes
- Stamped Cards
- Premium Stamped Stationary
- Premium Stamped Cards

International Ancillary Services (the following listed components of the product only)
- Internatonal Certificate of Mailing
- International Registered Mail (outbound only)
- International Return Receipt
- International Restricted Delivery
- International Insurance (with Inbound Surface Parcel Post (at UPU Rates))
- Customs Clearance and Delivery Fee

Caller Service

Change of Address Credit Card Authentication

International Reply Coupon Service

International Business Reply Mail Service

Money Orders (sales aspect of this service only)

Negotiated Service Agreements (the following listed products only):
- The Bradford Group Negotiated Service Agreement
- Life Line Screening Negotiated Service Agreement
- Canada Post–United States Postal Service Contractual Bilateral Agreement for Inbound Market Dominant Services

[FR Doc. 2010–23788 Filed 9–22–10; 8:45 am]

BILLING CODE 7710–FW–S

POSTAL REGULATORY COMMISSION

[Docket Nos. CP2010–116, CP2010–117, and CP2010–118; Order No. 541]

New Postal Product

AGENCY: Postal Regulatory Commission.

ACTION: Notice.

SUMMARY: The Commission is noticing a recently–filed Postal Service request to add three Global Expedited Package Services 3 contracts to the competitive product list. This notice addresses procedural steps associated with this filing.

ADDRESSES: Submit comments electronically via the Commission's Filing Online system at *http://www.prc.gov.* Commenters who cannot submit their views electronically should contact the person identified in **FOR FURTHER INFORMATION CONTACT** by telephone for advice on alternatives to electronic filing.

FOR FURTHER INFORMATION CONTACT: Stephen L. Sharfman, General Counsel, *stephen.sharfman@prc.gov* or 202–789–6820.

SUPPLEMENTARY INFORMATION:

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II. Notice of Filing
III. Ordering Paragraphs

I. Introduction

On September 16, 2010, the Postal Service filed a notice announcing that it has entered into three additional Global Expedited Package Services 3 (GEPS 3) contracts.[1] The Postal Service believes the instant contracts are functionally equivalent to previously submitted GEPS contracts, and are supported by Governors' Decision No. 08–7, attached to the Notice and originally filed in Docket No. CP2008–4. *Id.* at 1, Attachment 3. The Notice explains that Order No. 86, which established GEPS 1 as a product, also authorized functionally equivalent agreements to be included within the product, provided that they meet the requirements of 39 U.S.C. 3633. *Id.* at 2. In Order No. 290, the Commission approved the GEPS 2 product.[2] In Order No. 503, the Commission approved the GEPS 3 product. Additionally, the Postal Service requested to have the contract in Docket No. CP2010–71 serve as the baseline contract for future functional equivalence analyses of the GEPS 3 product.

The instant contracts. The Postal Service filed the instant contracts pursuant to 39 CFR 3015.5. In addition, the Postal Service contends that each contract is in accordance with Order No. 86. The term of each contract is one year from the date the Postal Service notifies the customer that all necessary regulatory approvals have been received. Notice at 3. In support of its Notice, the Postal Service filed four attachments as follows:

Attachment 1A, 1B and 1C—redacted copies of the three contracts and applicable annexes;

Attachment 2A, 2B and 2C—certified statements required by 39 CFR 3015.5(c)(2) for each contract;

Attachment 3—a redacted copy of Governors' Decision No. 08–7 which establishes prices and classifications for GEPS contracts, a description of applicable GEPS contracts, formulas for prices, an analysis of the formulas, and certification of the Governors' vote; and

Attachment 4—an application for non–public treatment of materials to maintain redacted portions of the contract and supporting documents under seal.

The Notice advances reasons why the instant GEPS 3 contracts fit within the Mail Classification Schedule language for the GEPS product. The Postal Service identifies customer–specific information and general contract terms that distinguish the instant contracts from the baseline GEPS 3 agreement. *Id.* at 4–5. It states that the differences, which include price variations based on updated costing information and volume commitments, do not alter the contracts' functional equivalency. *Id.* at 4. The Postal Service asserts that "[b]ecause the agreements incorporate the same cost attributes and methodology, the relevant characteristics of these three GEPS contracts are similar, if not the same, as the relevant characteristics of previously filed contracts." *Id.*

The Postal Service concludes that its filings demonstrate that each of the new GEPS 3 contracts complies with the requirements of 39 U.S.C. 3633 and is functionally equivalent to the baseline GEPS 3 contract. Therefore, it requests that the instant contracts be included within the GEPS 3 product. *Id.* at 5.

II. Notice of Filing

The Commission establishes Docket Nos. CP2010–116, CP2010–117 and CP2010–118 for consideration of matters related to the contracts identified in the Postal Service's Notice.

These dockets are addressed on a consolidated basis for purposes of this order. Filings with respect to a particular contract should be filed in that docket.

Interested persons may submit comments on whether the Postal Service's contracts are consistent with the policies of 39 U.S.C. 3632, 3633, or 3642. Comments are due no later than September 24, 2010. The public portions of these filings can be accessed via the Commission's Web site *(http://www.prc.gov).*

The Commission appoints Paul L. Harrington to serve as Public Representative in the captioned proceedings.

III. Ordering Paragraphs

It is ordered:

1. The Commission establishes Docket Nos. CP2010–116, CP2010–117 and CP2010–118 for consideration of matters raised by the Postal Service's Notice.

2. Comments by interested persons in these proceedings are due no later than September 24, 2010.

3. Pursuant to 39 U.S.C. 505, Paul L. Harrington is appointed to serve as the officer of the Commission (Public Representative) to represent the interests of the general public in these proceedings.

4. The Secretary shall arrange for publication of this order in the **Federal Register**.

By the Commission.

Shoshana M. Grove,

Secretary.

[FR Doc. 2010–23851 Filed 9–22–10; 8:45 am]

BILLING CODE 7710–FW–S

[1] Notice of United States Postal Service of Filing Three Functionally Equivalent Global Expedited Package Services 3 Negotiated Service Agreements and Application For Non-Public Treatment of Materials Filed Under Seal, September 16, 2010 (Notice).

[2] Docket No. CP2009–50, Order Granting Clarification and Adding Global Expedited Package Services 2 to the Competitive Product List, August 28, 2009 (Order No. 290).

RAILROAD RETIREMENT BOARD

Sunshine Act; Notice of Public Meeting

Notice is hereby given that the Railroad Retirement Board will hold a meeting on September 29, 2010, 10 a.m. at the Board's meeting room on the 8th floor of its headquarters building, 844 North Rush Street, Chicago, Illinois 60611. The agenda for this meeting follows:

(1) Executive Committee Reports

The entire meeting will be open to the public. The person to contact for more information is Beatrice Ezerski, Secretary to the Board, Phone No. 312–751–4920.

Dated: September 20, 2010.

Beatrice Ezerski,

Secretary to the Board.

[FR Doc. 2010–23909 Filed 9–21–10; 11:15 am]

BILLING CODE 7905–01–P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #12258 and #12259]

Iowa Disaster Number IA–00026

AGENCY: U.S. Small Business Administration.

ACTION: Amendment 4.

SUMMARY: This is an amendment of the Presidential declaration of a major disaster for Public Assistance Only for the State of Iowa (FEMA–1930–DR), dated 07/29/2010.

Incident: Severe Storms, Flooding, and Tornadoes.

Incident Period: 06/01/2010 through 08/31/2010.

DATES: *Effective Date:* 08/31/2010.

Physical Loan Application Deadline Date: 09/27/2010.

Economic Injury (EIDL) Loan Application Deadline Date: 04/29/2011.

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 Iowa, dated 07/29/2010, is hereby amended to establish the incident period for this disaster as beginning 06/01/2010 and continuing through 08/31/2010.

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. 2010–23799 Filed 9–22–10; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #12266 and #12267]

Texas Disaster Number TX–00361

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 Texas (FEMA–1931–DR), dated 08/03/2010.

Incident: Hurricane Alex.

Incident Period: 06/30/2010 through 08/14/2010.

Effective Date: 09/16/2010.

Physical Loan Application Deadline Date: 10/04/2010.

EIDL Loan Application Deadline Date: 05/03/2011.

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 Presidential disaster declaration for the State of Texas, dated 08/03/2010 is hereby amended to include the following areas as adversely affected by the disaster:

Primary Counties: (Physical Damage and Economic Injury Loans):

Lubbock.

Contiguous Counties: (Economic Injury Loans Only):

Texas: Crosby, Floyd, Garza, Hale, Hockley, Lamb, Lynn, Terry.

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. 2010–23803 Filed 9–22–10; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration # 12322 and # 12323]

Tennessee Disaster # TN–00043

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 Tennessee (FEMA–1937–DR), dated 09/15/2010.

Incident: Severe Storms and Flooding.

Incident Period: 08/17/2010 through 08/21/2010

DATES: *Effective Date:* 09/15/2010.

Physical Loan Application Deadline Date: 11/15/2010.

Economic Injury (EIDL) Loan Application Deadline Date: 06/15/2011.

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 09/15/2010, 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:

Clay, Cocke, Hardin, Jackson, Macon, Overton, Pickett, Putnam, Smith, Wayne.

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 12322B and for economic injury is 12323B.

(Catalog of Federal Domestic Assistance Numbers 59002 and 59008)

James E. Rivera,

Associate Administrator for Disaster Assistance.

[FR Doc. 2010–23804 Filed 9–22–10; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #12279 and #12280]

Iowa Disaster Number IA–00024

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 Iowa (FEMA–1930–DR), dated 08/14/2010.

Incident: Severe Storms, Flooding, and Tornadoes.

Incident Period: 06/01/2010 and continuing through 08/31/2010.

DATES: *Effective Date:* 08/31/2010.

Physical Loan Application Deadline Date: 10/13/2010.

EIDL Loan Application Deadline Date: 05/16/2011.

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 the State of IOWA, dated 08/14/2010 is hereby amended to establish the incident period for this disaster as beginning 06/01/2010 and continuing through 08/31/2010.

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. 2010–23801 Filed 9–22–10; 8:45 am]

BILLING CODE 8025–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–62935; File No. 4–613]

Program for Allocation of Regulatory Responsibilities Pursuant to Rule 17d–2; Notice of Filing of Proposed Plan for the Allocation of Regulatory Responsibilities Between the Financial Industry Regulatory Authority, Inc. and BATS–Y Exchange, Inc.

September 17, 2010.

Pursuant to Section 17(d) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 17d–2 thereunder,[2] notice is hereby given that on September 3, 2010, BATS–Y Exchange, Inc. ("BYX") and the Financial Industry Regulatory Authority, Inc. ("FINRA") (together with BYX, the "Parties") filed with the Securities and Exchange Commission ("Commission" or "SEC") a plan for the allocation of regulatory responsibilities, dated September 3, 2010 ("17d–2 Plan" or the "Plan"). The Commission is publishing this notice to solicit comments on the 17d–2 Plan from interested persons.

I. Introduction

Section 19(g)(1) of the Act,[3] among other things, requires every self-regulatory organization ("SRO") registered as either a national securities exchange or national securities association to examine for, and enforce compliance by, its members and persons associated with its members with the Act, the rules and regulations thereunder, and the SRO's own rules, unless the SRO is relieved of this responsibility pursuant to Section 17(d) or Section 19(g)(2) of the Act.[4] Without this relief, the statutory obligation of each individual SRO could result in a pattern of multiple examinations of broker-dealers that maintain memberships in more than one SRO ("common members"). Such regulatory duplication would add unnecessary expenses for common members and their SROs.

Section 17(d)(1) of the Act[5] was intended, in part, to eliminate unnecessary multiple examinations and regulatory duplication.[6] With respect to a common member, Section 17(d)(1) authorizes the Commission, by rule or order, to relieve an SRO of the responsibility to receive regulatory reports, to examine for and enforce compliance with applicable statutes, rules, and regulations, or to perform other specified regulatory functions.

To implement Section 17(d)(1), the Commission adopted two rules: Rule 17d–1 and Rule 17d–2 under the Act.[7] Rule 17d–1 authorizes the Commission to name a single SRO as the designated examining authority ("DEA") to examine common members for compliance with the financial responsibility requirements imposed by the Act, or by Commission or SRO rules.[8] When an SRO has been named as a common member's DEA, all other SROs to which the common member belongs are relieved of the responsibility to examine the firm for compliance with the applicable financial responsibility rules. On its face, Rule 17d–1 deals only with an SRO's obligations to enforce member compliance with financial responsibility requirements. Rule 17d–1 does not relieve an SRO from its obligation to examine a common member for compliance with its own rules and provisions of the federal securities laws governing matters other than financial responsibility, including sales practices and trading activities and practices.

To address regulatory duplication in these and other areas, the Commission adopted Rule 17d–2 under the Act.[9] Rule 17d–2 permits SROs to propose joint plans for the allocation of regulatory responsibilities with respect to their common members. Under paragraph (c) of Rule 17d–2, the Commission may declare such a plan effective if, after providing for appropriate notice and comment, it determines that the plan is necessary or appropriate in the public interest and for the protection of investors; to foster cooperation and coordination among the SROs; to remove impediments to, and foster the development of, a national market system and a national clearance and settlement system; and is in conformity with the factors set forth in Section 17(d) of the Act. Commission approval of a plan filed pursuant to Rule 17d–2 relieves an SRO of those regulatory responsibilities allocated by the plan to another SRO.

II. Proposed Plan

The proposed 17d–2 Plan is intended to reduce regulatory duplication for firms that are common members of both BYX and FINRA.[10] Pursuant to the proposed 17d–2 Plan, FINRA would assume certain examination and enforcement responsibilities for common members with respect to certain applicable laws, rules, and regulations.

The text of the Plan delineates the proposed regulatory responsibilities with respect to the Parties. Included in the proposed Plan is an exhibit (the "BATS–Y Exchange Rules Certification for 17d–2 Agreement with FINRA," referred to herein as the "Certification") that lists every BYX rule, and select federal securities laws, rules, and regulations, for which FINRA would bear responsibility under the Plan for overseeing and enforcing with respect to BYX members that are also members of FINRA and the associated persons therewith ("Dual Members").

Specifically, under the 17d–2 Plan, FINRA would assume examination and enforcement responsibility relating to compliance by Dual Members with the rules of BYX that are substantially similar to the applicable rules of FINRA,[11] as well as any provisions of the federal securities laws and the rules and regulations thereunder delineated in the Certification ("Common Rules"). Common Rules would not include the application of any BYX rule or FINRA rule, or any rule or regulation under the Act, to the extent that it pertains to violations of insider trading activities, because such matters are covered by a separate multiparty agreement under Rule 17d–2.[12] In the event that a Dual

[1] 15 U.S.C. 78q(d).

[2] 17 CFR 240.17d–2.

[3] 15 U.S.C. 78s(g)(1).

[4] 15 U.S.C. 78q(d) and 15 U.S.C. 78s(g)(2), respectively.

[5] 15 U.S.C. 78q(d)(1).

[6] *See* Securities Act Amendments of 1975, Report of the Senate Committee on Banking, Housing, and Urban Affairs to Accompany S. 249, S. Rep. No. 94–75, 94th Cong., 1st Session 32 (1975).

[7] 17 CFR 240.17d–1 and 17 CFR 240.17d–2, respectively.

[8] *See* Securities Exchange Act Release No. 12352 (April 20, 1976), 41 FR 18808 (May 7, 1976).

[9] *See* Securities Exchange Act Release No. 12935 (October 28, 1976), 41 FR 49091 (November 8, 1976).

[10] The proposed 17d–2 Plan refers to these common members as "Dual Members." *See* Paragraph 1(c) of the proposed 17d–2 Plan.

[11] *See* paragraph 1(b) of the proposed 17d–2 Plan (defining Common Rules). *See also* paragraph 1(f) of the proposed 17d–2 Plan (defining Regulatory Responsibilities). Paragraph 2 of the Plan provides that annually, or more frequently as required by changes in either BYX rules or FINRA rules, the parties shall review and update, if necessary, the list of Common Rules. Further, paragraph 3 of the Plan provides that BYX shall furnish FINRA with a list of Dual Members, and shall update the list no less frequently than once each calendar quarter.

[12] *See* Securities Exchange Act Release No. 58350 (August 13, 2008), 73 FR 48247 (August 18, 2008) (File No. 4–566) (notice of filing of proposed plan). *See also* Securities Exchange Act Release No. 58536 (September 12, 2008) (File No. 4–566) (order approving and declaring effective the plan). The

Member is the subject of an investigation relating to a transaction on BYX, the plan acknowledges that BYX may, in its discretion, exercise concurrent jurisdiction and responsibility for such matter.[13]

Under the Plan, BYX would retain full responsibility for surveillance and enforcement with respect to trading activities or practices involving BYX's own marketplace, including, without limitation, registration pursuant to its applicable rules of associated persons (*i.e.,* registration rules that are not Common Rules); its duties as a DEA pursuant to Rule 17d–1 under the Act; and any BYX rules that are not Common Rules, except for BYX rules for any broker-dealer subsidiary of BYX's parent company, BATS Global Markets, Inc.[14] Apparent violations of any BYX rules by any broker-dealer subsidiary of BATS Global Markets will be processed by, and enforcement proceedings in respect thereto will be conducted by, FINRA.[15]

The text of the proposed 17d–2 Plan is as follows:[16]

AGREEMENT BETWEEN FINANCIAL INDUSTRY REGULATORY AUTHORITY, INC. AND BATS Y–EXCHANGE, INC. PURSUANT TO RULE 17d–2 UNDER THE SECURITIES EXCHANGE ACT OF 1934

This Agreement, by and between the Financial Industry Regulatory Authority, Inc. ("FINRA") and BATS Y–Exchange, Inc. ("BYX"), is made this 3rd day of September, 2010 (the "Agreement"), pursuant to Section 17(d) of the Securities Exchange Act of 1934 (the "Exchange Act") and Rule 17d–2 thereunder, which permits agreements between self-regulatory organizations to allocate regulatory responsibility to eliminate regulatory duplication. FINRA and BYX may be referred to individually as a "party" and together as the "parties."

Whereas, FINRA and BYX desire to reduce duplication in the examination of their Dual Members (as defined herein) and in the filing and processing of certain registration and membership records; and

Whereas, FINRA and BYX desire to execute an agreement covering such subjects pursuant to the provisions of Rule 17d–2 under the Exchange Act and to file such agreement with the Securities and Exchange Commission (the "SEC" or "Commission") for its approval.

Now, therefore, in consideration of the mutual covenants contained hereinafter, FINRA and BYX hereby agree as follows:

1. Definitions. Unless otherwise defined in this Agreement or the context otherwise requires, the terms used in this Agreement shall have the same meaning as they have under the Exchange Act and the rules and regulations thereunder. As used in this Agreement, the following terms shall have the following meanings:

(a) "BYX Rules" or "FINRA Rules" shall mean: (i) the rules of BYX, or (ii) the rules of FINRA, respectively, as the rules of an exchange or association are defined in Exchange Act Section 3(a)(27).

(b) "Common Rules" shall mean BYX Rules that are substantially similar to the applicable FINRA Rules and certain provisions of the Exchange Act and SEC rules set forth on Exhibit 1 in that examination for compliance with such provisions and rules would not require FINRA to develop one or more new examination standards, modules, procedures, or criteria in order to analyze the application of the provision or rule, or a Dual Member's activity, conduct, or output in relation to such provision or rule; provided, however, Common Rules shall not include the application of the SEC, BYX or FINRA rules as they pertain to violations of insider trading activities, which is covered by a separate 17d–2 Agreement by and among the American Stock Exchange, LLC, BATS Exchange, Inc., Chicago Board Options Exchange, Inc., Chicago Stock Exchange, Inc., EDGA Exchange, Inc., EDGX Exchange, Inc., Financial Industry Regulatory Authority, Inc., International Securities Exchange, LLC, The NASDAQ Stock Market LLC, National Stock Exchange, Inc., New York Stock Exchange, LLC, NYSE Arca Inc., NYSE Regulation, Inc., NASDAQ OMX BX, Inc. and NASDAQ OMX PHLX, Inc. approved by the SEC on April 15, 2010 as the same may be amended from time to time.

(c) "Dual Members" shall mean those BYX members that are also members of FINRA and the associated persons therewith.

(d) "Effective Date" shall be the date this Agreement is approved by the Commission.

(e) "Enforcement Responsibilities" shall mean the conduct of appropriate proceedings, in accordance with FINRA's Code of Procedure (the Rule 9000 Series) and other applicable FINRA procedural rules, to determine whether violations of Common Rules have occurred, and if such violations are deemed to have occurred, the imposition of appropriate sanctions as specified under FINRA's Code of Procedure and sanctions guidelines.

(f) "Regulatory Responsibilities" shall mean the examination responsibilities and Enforcement Responsibilities relating to compliance by the Dual Members with the Common Rules and the provisions of the Exchange Act and the rules and regulations thereunder, and other applicable laws, rules and regulations, each as set forth on Exhibit 1 attached hereto.

2. Regulatory and Enforcement Responsibilities. FINRA shall assume Regulatory Responsibilities and Enforcement Responsibilities for Dual Members. Attached as Exhibit 1 to this Agreement and made part hereof, BYX furnished FINRA with a current list of Common Rules and certified to FINRA that such rules that are BYX Rules are substantially similar to the corresponding FINRA Rules (the "Certification"). FINRA hereby agrees that the rules listed in the Certification are Common Rules as defined in this Agreement. Each year following the Effective Date of this Agreement, or more frequently if required by changes in either the rules of BYX or FINRA, BYX shall submit an updated list of Common Rules to FINRA for review which shall add BYX Rules not included in the current list of Common Rules that qualify as Common Rules as defined in this Agreement; delete BYX Rules included in the current list of Common Rules that no longer qualify as Common Rules as defined in this Agreement; and confirm that the remaining rules on the current list of Common Rules continue to be BYX Rules that qualify as Common Rules as defined in this Agreement. Within 30 days of receipt of such updated list, FINRA shall confirm in writing whether the rules listed in any updated list are Common Rules as defined in this Agreement. Notwithstanding anything herein to the contrary, it is explicitly understood that the term "Regulatory Responsibilities" does not include, and BYX shall retain full responsibility for (unless otherwise addressed by separate agreement or rule) (collectively, the "Retained Responsibilities") the following:

(a) Surveillance, examination, investigation and enforcement with respect to trading activities or practices involving BYX's own marketplace;

(b) registration pursuant to its applicable rules of associated persons (*i.e.,* registration rules that are not Common Rules);

(c) discharge of its duties and obligations as a Designated Examining Authority pursuant to Rule 17d–1 under the Exchange Act; and

(d) any BYX Rules that are not Common Rules, except for BYX Rules for any broker-dealer subsidiary of BATS Global Markets, Inc., as provided in paragraph 6.

3. Dual Members. Prior to the Effective Date, BYX shall furnish FINRA with a current list of Dual Members, which shall be updated no less frequently than once each quarter.

4. No Charge. There shall be no charge to BYX by FINRA for performing the Regulatory Responsibilities and Enforcement Responsibilities under this Agreement except as hereinafter provided. FINRA shall provide BYX with ninety (90) days advance written notice in the event FINRA decides to impose any charges to BYX for performing the Regulatory Responsibilities under this Agreement. If FINRA determines to impose a charge, BYX shall have the right at the time of the imposition of such charge to terminate this Agreement; provided, however, that FINRA's Regulatory Responsibilities under this Agreement shall continue until the Commission approves the termination of this Agreement.

5. Applicability of Certain Laws, Rules, Regulations or Orders. Notwithstanding any provision hereof, this Agreement shall be subject to any statute, or any rule or order of the Commission. To the extent such statute, rule or order is inconsistent with this Agreement, the statute, rule or order shall supersede the provision(s) hereof to the extent necessary for them to be properly effectuated and the provision(s) hereof in that respect shall be null and void.

Certification identifies several Common Rules that may also be addressed in the context of regulating insider trading activities pursuant to the proposed separate multiparty agreement.

[13] *See* paragraph 6 of the proposed 17d–2 Plan.

[14] *See* paragraph 2 of the proposed 17d–2 Plan.

[15] *See* paragraph 6 of the proposed 17d–2 Plan.

[16] The Commission notes that the Proposed 17d–2 Plan does not contain a paragraph number 18 and skips from 17 to 19.

6. Notification of Violations.

(a) In the event that FINRA becomes aware of apparent violations of any BYX Rules, which are not listed as Common Rules, discovered pursuant to the performance of the Regulatory Responsibilities assumed hereunder, FINRA shall notify BYX of those apparent violations for such response as BYX deems appropriate.

(b) In the event that BYX becomes aware of apparent violations of any Common Rules, discovered pursuant to the performance of the Retained Responsibilities, BYX shall notify FINRA of those apparent violations and such matters shall be handled by FINRA as provided in this Agreement. With respect to apparent violations of any BYX Rules by any broker-dealer subsidiary of BYX's parent company, BATS Global Markets, Inc., FINRA shall not make referrals to BYX pursuant to this paragraph 6. Such apparent violations shall be processed by, and enforcement proceedings in respect thereto will be conducted by, FINRA as provided in this Agreement.

(c) Apparent violations of Common Rules shall be processed by, and enforcement proceedings in respect thereto shall be conducted by FINRA as provided hereinbefore; provided, however, that in the event a Dual Member is the subject of an investigation relating to a transaction on BYX, BYX may in its discretion assume concurrent jurisdiction and responsibility.

(d) Each party agrees to make available promptly all files, records and witnesses necessary to assist the other in its investigation or proceedings.

7. Continued Assistance.

(a) FINRA shall make available to BYX all information obtained by FINRA in the performance by it of the Regulatory Responsibilities hereunder with respect to the Dual Members subject to this Agreement. In particular, and not in limitation of the foregoing, FINRA shall furnish BYX any information it obtains about Dual Members which reflects adversely on their financial condition. BYX shall make available to FINRA any information coming to its attention that reflects adversely on the financial condition of Dual Members or indicates possible violations of applicable laws, rules or regulations by such firms.

(b) The parties agree that documents or information shared shall be held in confidence, and used only for the purposes of carrying out their respective regulatory obligations. Neither party shall assert regulatory or other privileges as against the other with respect to documents or information that is required to be shared pursuant to this Agreement.

(c) The sharing of documents or information between the parties pursuant to this Agreement shall not be deemed a waiver as against third parties of regulatory or other privileges relating to the discovery of documents or information.

8. Statutory Disqualifications. When FINRA becomes aware of a statutory disqualification as defined in the Exchange Act with respect to a Dual Member, FINRA shall determine pursuant to Sections 15A(g) and/or Section 6(c) of the Exchange Act the acceptability or continued applicability of the person to whom such disqualification applies and keep BYX advised of its actions in this regard for such subsequent proceedings as BYX may initiate.

9. Customer Complaints. BYX shall forward to FINRA copies of all customer complaints involving Dual Members received by BYX relating to FINRA's Regulatory Responsibilities under this Agreement. It shall be FINRA's responsibility to review and take appropriate action in respect to such complaints.

10. Advertising. FINRA shall assume responsibility to review the advertising of Dual Members subject to the Agreement, provided that such material is filed with FINRA in accordance with FINRA's filing procedures and is accompanied with any applicable filing fees set forth in FINRA Rules.

11. No Restrictions on Regulatory Action. Nothing contained in this Agreement shall restrict or in any way encumber the right of either party to conduct its own independent or concurrent investigation, examination or enforcement proceeding of or against Dual Members, as either party, in its sole discretion, shall deem appropriate or necessary.

12. Termination. This Agreement may be terminated by BYX or FINRA at any time upon the approval of the Commission after one (1) year's written notice to the other party, except as provided in paragraph 4.

13. Arbitration. In the event of a dispute between the parties as to the operation of this Agreement, BYX and FINRA hereby agree that any such dispute shall be settled by arbitration in Washington, DC in accordance with the rules of the American Arbitration Association then in effect, or such other procedures as the parties may mutually agree upon. Judgment on the award rendered by the arbitrator(s) may be entered in any court having jurisdiction. Each party acknowledges that the timely and complete performance of its obligations pursuant to this Agreement is critical to the business and operations of the other party. In the event of a dispute between the parties, the parties shall continue to perform their respective obligations under this Agreement in good faith during the resolution of such dispute unless and until this Agreement is terminated in accordance with its provisions. Nothing in this Section 13 shall interfere with a party's right to terminate this Agreement as set forth herein.

14. Notification of Members. BYX and FINRA shall notify Dual Members of this Agreement after the Effective Date by means of a uniform joint notice.

15. Amendment. This Agreement may be amended in writing duly approved by each party. All such amendments must be filed with and approved by the Commission before they become effective.

16. Limitation of Liability. Neither FINRA nor BYX nor any of their respective directors, governors, officers or employees shall be liable to the other party to this Agreement for any liability, loss or damage resulting from or claimed to have resulted from any delays, inaccuracies, errors or omissions with respect to the provision of Regulatory Responsibilities as provided hereby or for the failure to provide any such responsibility, except with respect to such liability, loss or damages as shall have been suffered by one or the other of FINRA or BYX and caused by the willful misconduct of the other party or their respective directors, governors, officers or employees. No warranties, express or implied, are made by FINRA or BYX with respect to any of the responsibilities to be performed by each of them hereunder.

17. Relief from Responsibility. Pursuant to Sections 17(d)(1)(A) and 19(g) of the Exchange Act and Rule 17d–2 thereunder, FINRA and BYX join in requesting the Commission, upon its approval of this Agreement or any part thereof, to relieve BYX of any and all responsibilities with respect to matters allocated to FINRA pursuant to this Agreement; provided, however, that this Agreement shall not be effective until the Effective Date.

19. Severability. Any term or provision of this Agreement that is invalid or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such invalidity or unenforceability without rendering invalid or unenforceable the remaining terms and provisions of this Agreement or affecting the validity or enforceability of any of the terms or provisions of this Agreement in any other jurisdiction.

20. Counterparts. This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, and such counterparts together shall constitute one and the same instrument.

In witness whereof, each party has executed or caused this Agreement to be executed on its behalf by a duly authorized officer as of the date first written above.

BATS Y–EXCHANGE, INC.

By: _____

Name: _____

Title: _____

FINANCIAL INDUSTRY REGULATORY AUTHORITY, INC.

By: _____

Name: _____

Title: _____

BATS Y–Exchange, Inc. ("BYX") Rules Certification for 17d–2 Agreement With FINRA

BYX hereby certifies that the requirements contained in the rules listed below are identical to, or substantially similar to, the comparable FINRA Rule, NASD Rule, Exchange Act provision or SEC rule identified ("Common Rules").

BYX Rule:	FINRA Rule, NASD Rule, Exchange Act Provision or SEC Rule:
Rule 2.5, Interpretation and Policy .02 Continuing Education Requirement for Authorized Traders of Members.	NASD Rule 1120(a)(1)–(4) Continuing Education Requirements
Rule 2.5, Interpretation and Policy .04 Termination of Employment	FINRA By-Laws of the Corporation, Article V, Section 3 Notification by Member to the Corporation and Associated Person of Termination; Amendments to Notification
Rule 2.6 (g) Application Procedures for Membership or to become an Associated Person of a Member.	FINRA By-Laws of the Corporation, Article IV, Section 1(c) Application for Membership
Rule 3.1 Business Conduct of Members	FINRA Rule 2010 Standards of Commercial Honor and Principles of Trade
Rule 3.2 Violations Prohibited [1]	FINRA Rule 2010 Standards of Commercial Honor and Principles of Trade and NASD Rule 3010 Supervision*
Rule 3.3 Use of Fraudulent Devices	FINRA Rule 2020 Use of Manipulative, Deceptive or Other Fraudulent Device
Rule 3.5(a) Advertising Practices	NASD Rule 2210(d)(1)(B) Communications with the Public
Rule 3.5(b) Advertising Practices	NASD Rule 2210(d)(2)(C) Communications with the Public [2]
Rule 3.5(c) Advertising Practices	NASD Rule 2210(d)(1) Communications with the Public
Rule 3.5(d) Advertising Practices	NASD Rule 2210(b)(1) Communications with the Public [3]
Rule 3.5(e) Advertising Practices	NASD Rule 2210(b)(2)(A) and 2210(c) Communications with the Public
Rule 3.5(f) Advertising Practices	NASD Rule 2210(d)(2)(A) and 2210(d)(1)(E) Communications with the Public
Rule 3.5(g) Advertising Practices	NASD Rule 2210(d)(1) Communications with the Public
Rule 3.5(h) Advertising Practices	NASD Rule 2210(d)(1) Communications with the Public
Rule 3.6 Fair Dealing with Customers	NASD Rule IM–2310–2(b)(1), (2), (4)(A)(i), (4)(A)(iii), (4)(A)(iv), and (5) Fair Dealing with Customers
Rule 3.7(a) Recommendations to Customers	NASD Rule 2310(a) and (b) Recommendations to Customers (Suitability)
Rule 3.8(a) The Prompt Receipt and Delivery of Securities	NASD Rule 3370 Purchases
Rule 3.8(b) The Prompt Receipt and Delivery of Securities	SEC Regulation SHO
Rule 3.9 Charges for Services Performed	NASD Rule 2430 Charges for Services Performed
Rule 3.10 Use of Information	FINRA Rule 2060 Use of Information Obtained in Fiduciary Capacity
Rule 3.13 Payment Designed to Influence Market Prices, Other than Paid Advertising.	FINRA Rule 5230 Payment Designed to Influence Market Prices, Other than Paid Advertising [4]
Rule 3.14 Disclosure on Confirmations	NASD Rule 2230 Confirmations and SEC Rule 10b–10 Confirmation of Transactions
Rule 3.15 Disclosure of Control	FINRA Rule 2262 Disclosure of Control Relationship With Issuer
Rule 3.16 Discretionary Accounts	NASD Rule 2510 Discretionary Accounts
Rule 3.17 Customer's Securities or Funds	FINRA Rule 2150(a) Customers' Securities or Funds—Improper Use
Rule 3.18 Prohibition Against Guarantees	FINRA Rule 2150(b) Customers' Securities or Funds—Prohibition Against Guarantees
Rule 3.19 Sharing in Accounts; Extent Permissible	FINRA Rule 2150(c) Customers' Securities or Funds—Sharing in Accounts; Extent Permissible
Rule 3.21 Customer Disclosures	FINRA Rule 2265 Extended Hours Trading Risk Disclosure
Rule 4.1 Requirements	Section 17 of the Exchange Act and the rules thereunder
Rule 5.1 Written Procedures	NASD Rule 3010(b)(1) Supervision—Written Procedures*
Rule 5.2 Responsibility of Members	NASD Rule 3010(a)(4) and (b)(4) Supervision*
Rule 5.3 Records	NASD Rule 3010(a)(1), (b) and (c) Supervision*
Rule 5.4 Review of Activities	NASD Rule 3010(c) & (d) Supervision—Internal Inspections/Review of Transactions and Correspondence*
Rule 5.6 Anti-Money Laundering Compliance Program	FINRA Rule 3310 Anti-Money Laundering Compliance Program
Rule 9.3 Predispute Arbitration Agreements	NASD Rule 3110(f) Books and Records; Requirements When Using Predispute Arbitration Agreements for Customer Accounts*
Rule 12.11 Best Execution	NASD Rule 2320 Best Execution and Interpositioning
Rule 12.13 Trading Ahead of Research Reports	FINRA Rule 5280 Trading Ahead of Research Reports

[1] FINRA shall only have Regulatory Responsibility regarding the first phrase of the BYX rule regarding prohibitions from violating the Securities Exchange Act of 1934 and the rules and regulations thereunder; responsibility for the remainder of the Rule shall remain with BYX.

[2] FINRA shall only have Regulatory Responsibility with regard to market letters and sales literature to the extent the rule requires the disclosure of the name of the Member.

[3] FINRA shall not have Regulatory Responsibility with regard to the requirement that all market letters be approved prior to use.

[4] FINRA shall not have Regulatory Responsibility with regard to the prohibitions set forth under subsection (a) of FINRA Rule 5230 to the extent subsections (b)(2) or (b)(3) of the rule apply.

* FINRA shall not have any Regulatory Responsibilities for these rules as they pertain to violations of insider trading activities, which is covered by a separate 17d–2 Agreement by and among the American Stock Exchange, LLC, BATS Exchange, Inc., Chicago Board Options Exchange, Inc., Chicago Stock Exchange, Inc., EDGA Exchange, Inc., EDGX Exchange, Inc., Financial Industry Regulatory Authority, Inc., International Securities Exchange, LLC, The NASDAQ Stock Market LLC, National Stock Exchange, Inc., New York Stock Exchange, LLC, NYSE Arca Inc., NYSE Regulation, Inc., NASDAQ OMX BX, Inc. and NASDAQ OMX PHLX, Inc. approved by the SEC on April 15, 2010, as the same may be amended from time to time.

In addition, the following provisions shall be part of this 17d–2 Agreement:

Securities Exchange Act of 1934: Section 15(f)

SEC Rules:

Rule 200 of Regulation SHO—Definition of "Short Sale" and Marking Requirements

Rule 203 of Regulation SHO—Borrowing and Delivery Requirements

Rule 606 of Regulation NMS—Disclosure of Order Routing Information

Rule 607 of Regulation NMS—Customer Account Statements

III. Date of Effectiveness of the Proposed Plan and Timing for Commission Action

Pursuant to Section 17(d)(1) of the Act[17] and Rule 17d–2 thereunder,[18] after October 8, 2010, the Commission may, by written notice, declare the plan submitted by BYX and FINRA, File No. 4–613, to be effective if the Commission finds that the plan is necessary or appropriate in the public interest and for the protection of investors, to foster cooperation and coordination among self-regulatory organizations, or to remove impediments to and foster the development of the national market system and a national system for the clearance and settlement of securities transactions and in conformity with the factors set forth in Section 17(d) of the Act.

IV. Solicitation of Comments

In order to assist the Commission in determining whether to approve the proposed 17d–2 Plan and to relieve BYX of the responsibilities which would be assigned to FINRA, interested persons are invited to submit written data, views, and arguments concerning the foregoing. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/other.shtml*); or
- Send an e-mail to *rule-comments@sec.gov*. Please include File Number 4–613 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, Station Place, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number 4–613. 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/other.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed plan that are filed with the Commission, and all written communications relating to the proposed plan between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, on official business days between the hours of 10 am and 3 pm. Copies of the plan also will be available for inspection and copying at the principal offices of BYX and FINRA. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number 4–613 and should be submitted on or before October 8, 2010.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[19]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. 2010–23772 Filed 9–22–10; 8:45 am]

BILLING CODE 8010–01–P

[17] 15 U.S.C. 78q(d)(1).

[18] 17 CFR 240.17d–2.

[19] 17 CFR 200.30–3(a)(34).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–62928; File No.SR–EDGA–2010–09]

Self-Regulatory Organizations; EDGA Exchange, Inc.; Order Approving a Proposed Rule Change Relating to a Revenue Sharing Program With Correlix, Inc.

September 17, 2010.

On July 28, 2010, EDGA Exchange, Inc. (the "Exchange" or "EDGA") filed with the Securities and Exchange Commission ("Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4 thereunder,[2] a proposed rule change to establish a revenue sharing program with Correlix, Inc. ("Correlix"). The proposed rule change was published for comment in the **Federal Register** on August 13, 2010.[3] The Commission received no comment letters on the proposal. This order approves the proposed rule change.

In its proposal, EDGA described real-time analytical tools offered by Correlix to measure the latency of orders to and from the System, and also described the terms of the pricing and the revenue sharing agreement between Correlix and the Exchange. In addition, the Exchange represented that under the agreement, EDGA will receive 30% of the total monthly subscription fees received by Correlix from parties who have contracted directly with Correlix to use their RaceTeam latency measurement service for the Exchange. According to the Exchange, EDGA will not bill or contract with any Correlix RaceTeam customer directly.

Pricing for the Correlix RaceTeam product for the Exchange varies depending on the depth of latency information requested, the number of unique MPIDs subscribed by the customer, and the number of ports available for monitoring by Correlix. For boundary-level Exchange latency information,[4] the fee will be an initial $1,500 monthly base fee for the first 25 ports associated in aggregate with any of the MPIDs selected by the Member for latency monitoring. For each additional 25 ports associated in aggregate with any of the MPIDs selected by the Member for latency monitoring, an additional monthly charge of $750 will be assessed. For match-level Exchange latency information,[5] the fee will be an initial $2,000 monthly base fee for the first 25 ports associated in aggregate with any of the MPIDs selected for latency monitoring, and an additional $1,000 per month for each additional 25 ports associated in aggregate with any of the MPIDs selected for latency monitoring.

According to the Exchange, Correlix will see an individualized unique Exchange-generated identifier that will allow Correlix RaceTeam to determine round-trip order time,[6] from the time the order reaches the Exchange extranet, through the Exchange matching engine, and back out of the Exchange extranet. In its proposal, the Exchange represented that the RaceTeam product offering does not measure latency outside of the Exchange extranet. Further, EDGA stated that the unique identifier serves as a technological information barrier so that the RaceTeam data collector will only be able to view data for Correlix RaceTeam subscriber firms related to latency. Accordingly, Correlix will not see subscriber's individual order detail such as security, price or size; individual

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 62683 (August 10, 2010), 75 FR 50017.

[4] The time that elapses from an order message's receipt by an Exchange device until the time that a matching engine acknowledgement with respect to such order message is transmitted from the Exchange device back to the user. For market data, the time measurement will be from the time that the market data engine receives a market data update until the time that the market data update is transmitted from the Exchange device back to the user.

[5] In addition to the boundary-level Exchange latency information, match level information will also provide further elapsed time detail for messaging between Exchange internal systems.

[6] According to EDGA, the product measures latency of orders regardless of whether the orders are rejected, executed, or partially executed.

RaceTeam subscribers' logins will restrict access to only their own latency data; and Correlix will not see specific information regarding the trading activity of non-subscribers.

After careful review, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.[7] In particular, the Commission finds that the proposed rule change is consistent with Section 6(b)(4) of the Act,[8] which requires that the rules of a national securities exchange provide for the equitable allocation of reasonable dues, fees and other charges among its members and issuers and other persons using its facilities, and with Section 6(b)(5) of the Act,[9] which requires, among other things, that that the rules of a national securities exchange be 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, and not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

Pursuant to the arrangement, EDGA makes the RaceTeam product uniformly available to all customers who voluntarily request it and pay the fees as detailed in the proposal, pursuant to a standard non-discriminatory pricing schedule. In addition, the Commission believes that the proposal will further the protection of investors and the public interest because: (1) Correlix will only be able to view data related to latency for Correlix RaceTeam subscriber firms; (2) Correlix will not see a subscriber's individual order detail such as security, price or size; (3) individual RaceTeam subscribers' logins will restrict access to only their own latency data; and (4) Correlix will not see specific information regarding the trading activity of non-subscribers.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[10] that the proposed rule change (SR–EDGA–2010–09) be, and hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[11]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. 2010–23753 Filed 9–22–10; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–62929; File No. SR–EDGX–2010–09]

Self-Regulatory Organizations; EDGX Exchange, Inc.; Order Approving a Proposed Rule Change Relating to a Revenue Sharing Program With Correlix, Inc.

September 17, 2010.

On July 28, 2010, EDGX Exchange, Inc. (the "Exchange" or "EDGX") filed with the Securities and Exchange Commission ("Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4 thereunder,[2] a proposed rule change to establish a revenue sharing program with Correlix, Inc. ("Correlix"). The proposed rule change was published for comment in the **Federal Register** on August 13, 2010.[3] The Commission received no comment letters on the proposal. This order approves the proposed rule change.

In its proposal, EDGX described real-time analytical tools offered by Correlix to measure the latency of orders to and from the System, and also described the terms of the pricing and the revenue sharing agreement between Correlix and the Exchange. In addition, the Exchange represented that under the agreement, EDGX will receive 30% of the total monthly subscription fees received by Correlix from parties who have contracted directly with Correlix to use their RaceTeam latency measurement service for the Exchange. According to the Exchange, EDGX will not bill or contract with any Correlix RaceTeam customer directly.

Pricing for the Correlix RaceTeam product for the Exchange varies depending on the depth of latency information requested, the number of unique MPIDs subscribed by the customer, and the number of ports available for monitoring by Correlix. For boundary-level Exchange latency information,[4] the fee will be an initial $1,500 monthly base fee for the first 25 ports associated in aggregate with any of the MPIDs selected by the Member for latency monitoring. For each additional 25 ports associated in aggregate with any of the MPIDs selected by the Member for latency monitoring, an additional monthly charge of $750 will be assessed. For match-level Exchange latency information,[5] the fee will be an initial $2,000 monthly base fee for the first 25 ports associated in aggregate with any of the MPIDs selected for latency monitoring, and an additional $1000 per month for each additional 25 ports associated in aggregate with any of the MPIDs selected for latency monitoring.

According to the Exchange, Correlix will see an individualized unique Exchange-generated identifier that will allow Correlix RaceTeam to determine round-trip order time,[6] from the time the order reaches the Exchange extranet, through the Exchange matching engine, and back out of the Exchange extranet. In its proposal, the Exchange represented that the RaceTeam product offering does not measure latency outside of the Exchange extranet. Further, EDGX stated that the unique identifier serves as a technological information barrier so that the RaceTeam data collector will only be able to view data for Correlix RaceTeam subscriber firms related to latency. Accordingly, Correlix will not see subscriber's individual order detail such as security, price or size; individual RaceTeam subscribers' logins will restrict access to only their own latency data; and Correlix will not see specific information regarding the trading activity of non-subscribers.

After careful review, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.[7] In particular, the Commission finds that the proposed rule change is consistent with Section

[7] In approving this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[8] 15 U.S.C. 78f(b)(4).

[9] 15 U.S.C. 78f(b)(5).

[10] 15 U.S.C. 78s(b)(2).

[11] 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. 62682 (August 10, 2010), 75 FR 50029.

[4] The time that elapses from an order message's receipt by an Exchange device until the time that a matching engine acknowledgement with respect to such order message is transmitted from the Exchange device back to the user. For market data, the time measurement will be from the time that the market data engine receives a market data update until the time that the market data update is transmitted from the Exchange device back to the user.

[5] In addition to the boundary-level Exchange latency information, match level information will also provide further elapsed time detail for messaging between Exchange internal systems.

[6] According to EDGX, the product measures latency of orders regardless of whether the orders are rejected, executed, or partially executed.

[7] In approving this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

6(b)(4) of the Act,[8] which requires that the rules of a national securities exchange provide for the equitable allocation of reasonable dues, fees and other charges among its members and issuers and other persons using its facilities, and with Section 6(b)(5) of the Act,[9] which requires, among other things, that that the rules of a national securities exchange be 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, and not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

Pursuant to the arrangement, EDGX makes the RaceTeam product uniformly available to all customers who voluntarily request it and pay the fees as detailed in the proposal, pursuant to a standard non-discriminatory pricing schedule. In addition, the Commission believes that the proposal will further the protection of investors and the public interest because: (1) Correlix will only be able to view data related to latency for Correlix RaceTeam subscriber firms; (2) Correlix will not see a subscriber's individual order detail such as security, price or size; (3) individual RaceTeam subscribers' logins will restrict access to only their own latency data; and (4) Correlix will not see specific information regarding the trading activity of non-subscribers.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[10] that the proposed rule change (SR–EDGX–2010–09) be, and hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[11]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. 2010–23755 Filed 9–22–10; 8:45 am]

BILLING CODE 8010–01–P

[8] 15 U.S.C. 78f(b)(4).

[9] 15 U.S.C. 78f(b)(5).

[10] 15 U.S.C. 78s(b)(2).

[11] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–62927; File No. SR–FINRA–2010–046]

Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Notice of Filing of Proposed Rule Change Relating to Exemptions from the Trading Activity Fee

September 17, 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 September 7, 2010, Financial Industry Regulatory Authority, Inc. ("FINRA") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by FINRA. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

FINRA is proposing to [sic] amend Section 1(b) of Schedule A to the FINRA By-Laws to remove the exemption from the trading activity fee ("TAF") for transactions in exchange-listed options effected by a member when FINRA is not the designated options examining authority ("DOEA") for that member.

The text of the proposed rule change is available on FINRA's Web site at *http://www.finra.org,* at the principal office of FINRA and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, FINRA included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. FINRA has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. *Purpose*

The TAF is one of three member regulatory fees FINRA uses to fund its member regulation activities, which include examinations, financial monitoring, and FINRA's policymaking, rulemaking, and enforcement activities.[3] FINRA initially adopted the TAF in 2002 as a replacement for an earlier regulatory fee based on trades reported to Nasdaq's Automated Confirmation Transaction system then in place.[4] Because the TAF funds FINRA's member regulation functions, it is intended to apply to transactions in a way that corresponds with FINRA's regulatory responsibilities.[5] In general, the TAF is assessed for the sale of all exchange registered securities wherever executed (except debt securities that are not TRACE-eligible), over-the-counter equity securities, security futures, TRACE–Eligible Securities (provided that the transaction is a Reportable TRACE Transaction), and all municipal securities subject to the reporting requirements of the Municipal Securities Rulemaking Board.[6] The TAF rules also include numerous exemptions for certain types of transactions.[7] The proposed rule change would eliminate the exemption from the TAF for transactions in exchange-listed options when FINRA is not the DOEA for that member.[8]

In 2003, FINRA exempted from the TAF "[t]ransactions in exchange listed options effected by a member when FINRA is not the designated options examining authority for that member." [9] The exemption was added to reflect the

[3] *See* FINRA By-Laws, Schedule A, § 1(b). In addition to the TAF, the other member regulatory fees are the Gross Income Assessment and the Personnel Assessment. *See id.* §§ 1(c), (d).

[4] *See* Securities Exchange Act Release No. 46416 (August 23, 2002), 67 FR 55901 (August 30, 2002) (Notice of Filing and Immediate Effectiveness of Proposed Rule Change and Amendment No. 1 by the National Association of Securities Dealers, Inc. to Eliminate the Regulatory Fee and Institute a New Transaction-Based Trading Activity Fee); *see also* NASD *Notice to Members* 02–63 (September 2002); NASD *Notice to Members* 02–41 (July 2002). The TAF was originally approved on a pilot basis; the SEC approved the TAF on a permanent basis in 2003. *See* Securities Exchange Act Release No. 47946 (May 30, 2003), 68 FR 34021 (June 6, 2003); *see also* NASD *Notice to Members* 03–30 (June 2003).

[5] *See* Securities Exchange Act Release No. 50485 (October 1, 2004), 69 FR 60445 (October 8, 2004).

[6] *See* FINRA By-Laws, Schedule A, § 1(b)(1).

[7] *See* FINRA By-Laws, Schedule A, § 1(b)(2).

[8] *See* FINRA By-Laws, Schedule A, § 1(b)(2)(K).

[9] FINRA By-Laws, Schedule A, § 1(b)(2)(K). *See* Securities Exchange Act Release No. 47946 (May 30, 2003), 68 FR 34021 (June 6, 2003).

fact that FINRA's regulatory responsibilities with respect to such activity were alleviated somewhat by its participation in a plan filed with the SEC under Rule 17d–2 of the Act [10] ("17d–2 Agreement") in which regulatory responsibilities for certain FINRA members that conducted a public options business were assumed by other self regulatory organizations ("SROs") that would act as the member's DOEA.[11] At that time, of the approximately 450 member firms covered by the 17d–2 Agreement, FINRA assumed regulatory responsibilities (i.e., was the DOEA) for about 300 firms, and the remaining firms were divided among six other SROs. Thus, in view of the fact that another SRO performed certain regulatory responsibilities with respect to the options activities of these members, FINRA decided to exempt transactions in exchange listed options by such firms from the TAF.[12]

The exemption was also based on the fact that certain other SROs were assessing or preparing to assess specific regulatory fees for acting as DOEA.[13] To the extent that other SROs assessed specific fees on firms to fund the SRO's DOEA responsibilities with respect to those firms, FINRA's TAF on options transactions appeared redundant.

Subsequent amendments to the 17d–2 Agreement have consolidated within FINRA sole regulatory responsibility for the public options activities of all of its members.[14] Consequently, FINRA assumes all regulatory responsibility for FINRA members under the 17d–2 Agreement.[15] Based on the foregoing, FINRA is proposing to delete the exemption from the TAF.[16]

Deleting this exemption also will remove any ambiguities over whether FINRA should collect the TAF on sole-FINRA members or with respect to FINRA members that conduct only a proprietary options business. The existing language exempting transactions in exchange listed options from the TAF when FINRA is not the DOEA for the member does not properly align with those situations where FINRA has regulatory responsibility over the member firm. First, the DOEA designation is established only under the 17d–2 Agreement, which by its own terms applies only with respect to firms that are members of more than one SRO. Thus, while FINRA has regulatory responsibility for the options business of its sole members, FINRA is not technically the DOEA for such firms. Second, the 17d–2 Agreement addresses only a firm's public options business. As such, a firm that conducts only a proprietary options business, irrespective of whether such firm is a member of FINRA and another SRO, would not be covered by the 17d–2 Agreement, and FINRA would not technically be the DOEA. Although FINRA's regulatory responsibilities are more limited for a firm that does not conduct a public options business, FINRA still retains regulatory responsibilities over the firm's options activities.

The effective date of the proposed rule change will be the first day of the month following Commission approval. FINRA will announce the effective date of the proposed rule change in a *Regulatory Notice* to be published no later than 30 days following Commission approval.

2. Statutory Basis

FINRA believes that the proposed rule change is consistent with the provisions of Section 15A(b)(5) of the Act,[17] which requires, among other things, that FINRA rules provide for the equitable allocation of reasonable dues, fees and other charges among members and issuers and other persons using any facility or system that FINRA operates or controls. FINRA believes that because it maintains regulatory responsibility over its members' transactions in exchange listed options, the exemption from the TAF for transactions in exchange listed options when FINRA is not the DOEA for that member is no longer necessary. Eliminating the exemption will also ensure that the TAF more accurately reflects the current allocation of regulatory responsibilities to FINRA of its members' transactions in exchange listed options.

B. Self-Regulatory Organization's Statement on Burden on Competition

FINRA does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 45 days of the date of publication of this notice in the **Federal Register** or within such longer period up to 90 days (i) as the Commission may designate if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve or disapprove such proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the 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–FINRA–2010–046 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.

[10] 17 CFR 240.17d–2.

[11] *See* Securities Exchange Act Release No. 46800 (November 8, 2002), 67 FR 69774 (November 19, 2002).

[12] Transactions in over-the-counter ("conventional") options are exempted from the TAF with respect to all FINRA members. *See* FINRA By-Laws, Schedule A, § 1(b)(2)(H).

[13] *See, e.g.,* Securities Exchange Act Release No. 47577 (March 26, 2003), 68 FR 16109 (April 2, 2003) (SR–PCX–2003–03) (PCX rule filing establishing a DOEA fee).

[14] *See* Securities Exchange Act Release No. 57987 (June 18, 2008), 73 FR 36156 (June 25, 2008) (Notice of Filing and Order Approving and Declaring Effective an Amendment to the Plan for the Allocation of Regulatory Responsibilities Among the American Stock Exchange LLC, the Boston Stock Exchange, Inc., the Chicago Board Options Exchange, Inc., the International Securities Exchange, LLC, Financial Industry Regulatory Authority, Inc., The New York Stock Exchange, LLC, the NYSE Arca, Inc., The NASDAQ Stock Market LLC, and the Philadelphia Stock Exchange, Inc.).

[15] Following the consolidation of NASD and NYSE member regulation operations in 2007, FINRA announced that it serves as the DOEA for all FINRA member firms. *See Regulatory Notice* 08–37 (July 2008). FINRA had previously published a list of firms that had a DOEA other than FINRA and, consequently, were exempt from the TAF for transactions in exchange listed options. *See* NASD *Notice to Members* 05–03 (January 2005).

[16] At the time FINRA (then NASD) proposed the exemption in Amendment No. 4 to SR–NASD–2002–148, it noted that "NASD does not believe it is precluded from seeking further amendments to the TAF with respect to the reduction or elimination of the proposed exemption * * * in the event of a change of factors surrounding its sales practice and other regulatory responsibilities."

[17] 15 U.S.C. 78*o*–3(b)(5).

All submissions should refer to File Number SR–FINRA–2010–046. 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 website viewing and printing in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of FINRA. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make publicly available. All submissions should refer to File Number SR–FINRA–2010–046 and should be submitted on or before October 14, 2010.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[18]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. 2010–23773 Filed 9–22–10; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–62933; File No. SR–CBOE–2010–082]

Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated: Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Withdraw Regulatory Circular RG01–61

September 17, 2010.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4 thereunder,[2] noitce is hereby given that on September 9, 2010, Chicago Board Options Exchange, Incorporated ("CBOE" or the "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by CBOE. 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

CBOE is proposing to withdraw Regulator Circular RG01–61 regarding transactions between related entities. The text of the proposed rule change is available on the Exchange's Web site (*http://www.cboe.org/legal*), at the Exchange's Office of the Secretary and at the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, CBOE 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. CBOE 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, Proposed Rule Change

1. Purpose

In 2001, the Securities and Exchange Commission (the "Commission") approved SR–CBOE–2000–13 regarding transactions between related entities.[3] In connection with the approval of that filing, the Exchange promulgated CBOE Regulatory Circular RG01–61 ("RG01–61") to act as guidance for such trading. At the time the Exchange adopted SR–CBOE–2000–13 and RG01–61, CBOE's restrictions on transactions between related entities were more restrictive than the rules in place at other national securities exchanges and under the Securities Exchange Act of 1934, as amended (the "Act").[4]

CBOE is proposing to eliminate RG01–61 and defer to the requirements set forth in Section 9(a)(1) of the Act,[5] which provides, in relevant part:

> It shall be unlawful for any person, directly or indirectly * * * for the purpose of creating a false or misleading appearance of active trading in any security registered on a national securities exchange, or a false or misleading appearance with respect to the market for any such security, (A) to effect any transaction in such security which involves no change in the beneficial ownership thereof, or (B) to enter an order or orders for the purchase of such security with the knowledge that an order or orders of substantially the same size, at substantially the same time, and at substantially the same price, for the sale of any such security, has been or will be entered by or for the same or different parties, or (C) to enter any order or orders for the sale of any such security with the knowledge that an order or orders of substantially the same size, at substantially the same time, and at substantially the same price, for the purchase of such security, has been or will be entered by or for the same or different parties.

This is consistent with the requirements in place at other national securities exchanges and this proposal eliminates distinctions between the Exchange's rules regarding transactions between related entities and similar requirements in place at other national securities exchanges, as well as the Commission. Notwithstanding the withdrawal of Regulatory Circular RG01–61, CBOE will continue to conduct surveillance for pre-arranged trading between related entities that violates Section 9(a) of the Exchange Act.

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with the Section 6(b) of the Act,[6] in general, and furthers the objectives of Section 6(b)(5) of the Act,[7] which requires, among other things, that the Exchange's rules be designed to remove impediments to and perfect the mechanism of a free and open market and a national market system, and protect investors and the public interest. The Exchange believes that the proposed rule change is designed to promote just and equitable principles of trade and to protect investors and the public interest by eliminating differences between the Exchange's rules regarding transactions between related entities and similar requirements in place at other national securities exchanges, as well as the Commission.

[18] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Securities Exchange Act Release No. 34–44152 (April 5, 2001), 66 FR 19262 (April 13, 2001) (SR–CBOE–2000–13).

[4] Securities Exchange Act Release No. 34–43984 (February 20, 2001), 66 FR 12574 (February 27, 2001) (SR–CBOE–2000–13).

[5] 15 U.S.C. 78i.

[6] 15 U.S.C. 78f(b).

[7] 15 U.S.C. 78f(b)(5).

B. Self-Regulatory Organization's Statement on Burden on Competition

CBOE does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of 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

Because the foregoing rule does not (i) significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest, provided that the self-regulatory organization has given 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,[8] the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act[9] and Rule 19b–4(f)(6) thereunder.[10]

Under Rule 19b–4(f)(6) of the Act,[11] a proposal does not become operative for 30 days after the date of its filing, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest. The Exchange requests that the Commission waive the 30-day operative delay of this filing. The Exchange believes that the proposed rule change does not present any novel or unique issues because the elimination of RG01–61 merely brings the Exchange's rules regarding transactions between related entities in line with the requirements in place at other national securities exchanges and the Commission. The Exchange also believes that acceleration of the operative date will allow market participants to realize the benefits of the rule change sooner. The benefits include providing a policy that is consistent with other exchanges' and Commission requirements, which will reduce unnecessary complexity and confusion. The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest. Based on the above, the Commission designates the proposal as operative upon filing.[12]

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

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–CBOE–2010–082 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.

All submissions should refer to File Number SR–CBOE–2010–082. 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 website viewing and printing in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549 on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of CBOE. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–CBOE–2010–082 and should be submitted on or before October 14, 2010.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[13]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. 2010–23775 Filed 9–22–10; 8:45 am]

BILLING CODE 8010–01–P

[8] The Exchange fulfilled this requirement.

[9] 15 U.S.C. 78s(b)(3)(A).

[10] 17 CFR 240.19b–4(f)(6).

[11] *Id.*

[12] For purposes only of waiving the operative delay of this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f). *See also* 17 CFR 200.30–3(a)(59).

[13] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–62930; File No. SR–FINRA–2010–036]

Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Notice of Filing of Proposed Rule Change to Amend the Codes of Arbitration Procedure to Permit Arbitrators to Make Mid-case Referrals

September 17, 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 July 12, 2010, the Financial Industry Regulatory Authority, Inc. ("FINRA") 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 substantially prepared by FINRA. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

FINRA is proposing to broaden an arbitrators' authority to make referrals during an arbitration proceeding by amending Rule 12104 of the Code of Arbitration Procedure for Customer Disputes ("Customer Code") and by creating new Rule 12902(e) to address the assessment of hearing session fees, costs, and expenses if an arbitrator

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

makes a referral during a case that results in panel withdrawal. Similarly, the proposal would amend Rule 13104 of the Code of Arbitration Procedure for Industry Disputes ("Industry Code") to broaden an arbitrators' authority to make referrals during an arbitration proceeding and create new Rule 13902(e) to address the assessment of hearing session fees, costs and expenses if an arbitrator makes a referral during a case that results in panel withdrawal.

The text of the proposed rule change is available on FINRA's Web site at *http://www.finra.org,* at the principal office of FINRA and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, FINRA included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. FINRA has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

Background

In light of recent well-publicized securities frauds that resulted in harm to investors, FINRA has reviewed its rule on arbitrator referrals and determined that it should be amended to permit arbitrators to make referrals during an arbitration proceeding—rather than solely at the conclusion of a matter as is currently the case—when the arbitrator has reason to believe there is a serious, ongoing, imminent threat to investors that requires immediate action.

Currently, Rule 12104(b) of the Customer Code and Rule 13104(b) of the Industry Code (together, Codes), state, in relevant part, that any arbitrator may refer to FINRA for disciplinary investigation any matter that has come to the arbitrator's attention during and in connection with the arbitration *only* at the conclusion of an arbitration (emphasis added). FINRA believes that restricting arbitrators from making referrals until the conclusion of an arbitration may hamper FINRA's efforts to uncover fraud as early as possible.

FINRA is proposing, therefore, to broaden the arbitrators' authority under the Codes to make referrals during the prehearing, discovery, or hearing phase of an arbitration. Specifically, FINRA would amend Rules 12104 and 13104 of the Codes to permit referrals to the Director[3] during the prehearing, discovery, or hearing phase of an arbitration proceeding, when the arbitrators have reason to believe that any matter or conduct poses a serious, ongoing, imminent threat to investors that requires immediate action. Further, FINRA would add new Rules 12902(e) and 13902(e) of the Codes to address the assessment of hearing session fees, costs, and expenses when an arbitrator referral during a case results in the withdrawal of the panel.

Explanation of the Proposed Rule Change

Changes to the Customer Code

Rule 12104—Effect of Arbitration on FINRA Regulatory Activities

First, FINRA proposes to add the phrase "Arbitrator Referral During or at Conclusion of Case" to the title of Rule 12104 so that it reflects accurately the proposed changes. The new title would read: "Effect of Arbitration on FINRA Regulatory Activities; Arbitrator Referral During or at Conclusion of Case."

Second, the current rule would be rearranged to reflect the order in which an arbitrator may make a referral in an arbitration case. Subparagraph (a) would remain unchanged. The provision in current subparagraph (b) of the rule, which addresses arbitrator referrals made only at the conclusion of the case (hereinafter, "the post-case referral provision"), would be amended and moved to new subparagraph (e). In its place, FINRA would insert new rule language in subparagraph (b) to address arbitrator referrals made during the prehearing, discovery, or hearing phase of an arbitration (hereinafter, "the mid-case referral provision"). New subparagraph (c) would require arbitrator disclosure of a mid-case referral and withdrawal of the panel upon a party's request. New subparagraph (d) would address the administration of the case using a new panel. And finally, new subparagraph (e) would contain the rule language in current subparagraph (b) with some amendments to address post-case referrals.

[3] The term Director means the Director of FINRA Dispute Resolution, and includes FINRA staff to whom the Director has delegated authority. *See* Rule 12100(k) of the Customer Code and Rule 13100(k) of the Industry Code.

Rule 12104(b)—Mid-case Referral Provision

Rule 12104(b) would be amended to state that any arbitrator may refer to FINRA any matter or conduct that has come to the arbitrator's attention during the prehearing, discovery, or hearing phase of a case, which the arbitrator has reason to believe poses a serious, ongoing, imminent threat to investors that requires immediate action. The proposed rule would state further that arbitrators should not make mid-case referrals based solely on allegations in the statement of claim, counterclaim, cross claim, or third party claim.

The new language of Rule 12104(b) would provide arbitrators with the express authority to alert the Director during a case when they learn of what they believe to be fraudulent activity that requires immediate action. This aspect of the rule would provide FINRA with a vital tool for detecting and minimizing the effects of potentially fraudulent activity as early as possible.[4]

Specifically, under the new rule language, arbitrators would be authorized to make mid-case referrals based on what they learn during the prehearing, discovery, or hearing phase of a case. Moreover, arbitrators could not make mid-case referrals based solely on allegations in the statement of claim, counterclaim, cross claim, or third party claim. This means that the mid-case referral would not be based solely on the parties' pleadings.[5] Because Dispute Resolution routinely provides copies of the arbitration claims to FINRA's Enforcement division, mid-case referrals based only on the pleadings are not necessary to apprise Enforcement of possible wrongdoing.[6] But if arbitrators learn of information relating to a serious, ongoing, imminent threat during the pre-hearing, discovery or hearing phase of a case, the new rule would permit any arbitrator to make a mid-case referral to FINRA. This rule would ensure that arbitrators have the discretion to make a mid-case referral at the time they become aware of evidence or other information that they believe poses a serious, ongoing, imminent

[4] The proposed rule would not preclude an arbitrator from notifying other departments of FINRA of its findings, as appropriate.

[5] A pleading is a statement describing a party's causes of action or defenses. Documents that are considered pleadings are: A statement of claim, an answer, a counterclaim, a cross claim, a third party claim, and any replies. Rule 12100(s) of the Customer Code and Rule 13100(s) of the Industry Code.

[6] Dispute Resolution provides copies of all statement of claims to Enforcement. Staff also provides to Enforcement copies of answers in disputes involving promissory notes, or responses to third party claims, counterclaims or cross claims.

threat to investors. Moreover, by providing that the arbitrators could not make a mid-case referral based solely on the pleadings, the rule would help avoid unnecessary mid-case referrals and the consequent disruption to an ongoing case.

The new language of Rule 12104(b) would also require that the matter or conduct that would be the subject of the mid-case referral should pose a serious, ongoing, imminent threat to investors that requires immediate action. Arbitrators should use their judgment in determining whether the matter or conduct poses such a threat before making a mid-case referral.

Rule 12104(c)—Arbitrator Disclosure and Withdrawal

If any arbitrator makes a mid-case referral under proposed Rule 12104(b), the Director will disclose to the parties the act of making such referral. Further, if a party requests that a referring arbitrator withdraw, the entire panel, at the time of the referral, must withdraw. A party must make the withdrawal request within 10 days of receipt of notice of the referral disclosure.

First, after an arbitrator makes a mid-case referral, the Director would notify the parties of the referral. The Director will notify the parties of the referral because a referral of a potentially serious, ongoing, imminent threat to investors could cause a party to question the neutrality of the arbitrators going forward. After receiving this notification, any party may request that the panel,[7] at the time of the referral, withdraw from the case upon the Director's disclosure of a mid-case referral.

Second, the proposed rule would require that a party make the withdrawal request within 10 days[8] of receipt of notice of the disclosure. Once the parties learn of the mid-case referral, they should decide promptly whether to keep the panel or request its withdrawal.

Rule 12104(d)—Continuing the Arbitration Case With a New Panel

Proposed Rule 12104(d) would address how FINRA would administer the arbitration case if a panel withdraws from the case and a new panel is selected by the parties.

FINRA recognizes that the time required to select a new panel after the initial panel makes a mid-case referral could delay the resolution of the claimants' case. To minimize potential delays in continuing the case, FINRA Dispute Resolution staff (staff) will endeavor to complete the arbitrator selection process for the new panel, schedule the subsequent Initial Prehearing Conference, and serve the award on an expedited basis.[9] In addition, while staff cannot shorten the time requirements set forth in the Codes, parties may agree to modify a provision of the Codes by written agreement of all named parties.[10]

If the case moves forward, FINRA would administer the case as follows. First, FINRA would not close the case, but instead, would keep the original pleadings (*i.e.,* the statement of claim, answer, and any other pleadings) and proceed with the case after party selection of a new panel under the Neutral List Selection System rules.

Second, the new panel would schedule an Initial Prehearing Conference to set discovery, briefing, and motions deadlines, schedule subsequent hearing sessions, and address other preliminary matters.[11] At this time, the new panel would also determine whether any orders or rulings from the original panel were still in effect, and these decisions would be final and binding on the parties.[12]

Third, the new panel would determine whether to permit the introduction of evidence and the record of proceedings from prior hearing sessions in subsequent hearing sessions, pursuant to Rule 12604(a).[13] This would provide arbitrators with the discretion to permit access to and use of the record of proceedings from the hearing record, based on the needs of the parties and the relevance of the information in the hearing record. FINRA notes that parties would be permitted to object to the admissibility of this information, but the determination on admissibility would be within the panel's discretion.

The record of proceedings,[14] hereinafter referred to as the hearing record, from the first case would not contain references to panel discussions about a mid-case referral. Such arbitrator deliberations are not contained in the hearing record because arbitrators discuss these types of issues in an executive session which is not recorded or made a part of the hearing record. As a result, the new arbitrators would not learn of the mid-case referral or its rationale from the hearing record of the prior hearing sessions.

FINRA's Assessment of the Mid-case Referral Provision and its Potential Effects on an Arbitration Case

The proposed rule would provide an additional tool to strengthen FINRA's regulation of its members. Though mid-case referrals likely would be rare, FINRA recognizes that such a referral would have an impact on an investor's[15] arbitration case. If an arbitrator makes a mid-case referral and the panel withdraws, the customer's arbitration case would be delayed until the parties settle, continue, or begin the case anew, as discussed under Rule 12104(d). Further, a customer could incur additional costs as a result of a mid-case referral, such as attorney's fees. To minimize some of the additional expense that a customer could incur, FINRA is proposing to waive certain fees for the customer.[16]

Moreover, FINRA understands that the impact would be greatest on those customers whose hearings were almost completed. Thus, FINRA will caution arbitrators, in those instances, to weigh carefully the imminence of a possible threat to investors and the markets against the harm to the customer whose case would be disrupted. In close cases, FINRA suggests that arbitrators consider whether any time saved or harm averted by a mid-case referral warrants disrupting a customer's arbitration case. If the arbitrators conclude that disruption of the investor's case is not warranted, a referral at the end of the case may be more appropriate.

Rule 12104(e)—Post-case Referral Provision

The language in current subparagraph (b) of the Rule 12104, which addresses arbitrator referrals made only at the conclusion of the case, would be amended and moved to new subparagraph (e).

The current rule states that "only at the conclusion of an arbitration, any arbitrator may refer to FINRA for disciplinary investigation any matter that has come to the arbitrator's attention during and in connection with the arbitration, either from the record of the proceeding or from material or

[7] Under Rules 12101(g) and 13101(g) of the Codes, the term "panel" means the arbitration panel, whether it consists of one or more arbitrators.

[8] Under Rules 12100(j) and 13100(j) of the Codes, the term "day" means calendar day.

[9] FINRA launched a voluntary national program in June 2004 to expedite arbitration proceedings in matters involving senior or seriously ill parties. Thus, staff has considerable experience in expediting arbitration cases when necessary. *See* Notice to Parties—Expedited Proceedings for Senior or Seriously Ill Parties, available at *http://www.finra.org/ArbitrationMediation/Parties/ArbitrationProcess/NoticesToParties/P009636.*

[10] *See* Rules 12105(a) and 13105(a) of the Codes.

[11] *See* Rules 12500(b) and 13500(b) of the Codes.

[12] *See* Rules 12413 and 13413 of the Codes.

[13] *See also* Rule 13604(a) of the Industry Code.

[14] *See* Rules 12606 and 13606 of the Codes.

[15] In intra-industry cases, the impact could be on an associated person or on a member that is not the subject of the referral.

[16] *See infra* discussion under Rules 12902(e) and 13902(e).

communications related to the arbitration, which the arbitrator has reason to believe may constitute a violation of NASD or FINRA rules, the federal securities laws, or other applicable rules or laws."

The proposal would permit arbitrators to continue making post-case referrals. However, FINRA would amend the rule to permit arbitrators to make a post-case referral to the Director, rather than to FINRA,[17] so that the provisions of Rule 12104 are consistent. Further, FINRA would delete the term "disciplinary" to ensure that the scope of potential referrals is not limited to disciplinary findings, and would add the phrase "or conduct," so that the subject-matter of Rule 12104 is consistent throughout the rule. The rule also would be amended to replace the reference to violations of "NASD or FINRA rules" with "the rules of FINRA" because the current FINRA rulebook consists of FINRA Rules, NASD Rules, and incorporated NYSE Rules.

Rule 12902—Assessment of Hearing Session Fees, Costs, and Expenses if an Arbitrator Referral During a Case Results in Panel Withdrawal

FINRA is proposing to adopt new Rule 12902(e) to address the assessment of hearing session fees, costs, and expenses if an arbitrator makes a referral during a case that results in panel withdrawal.

First, FINRA recognizes the potential impact that the panel's withdrawal during the course of a hearing would have on the customer. Thus, FINRA is proposing new Rule 12902(e)(1) that would waive the customer's hearing session fees for the sessions conducted prior to the referral in an effort to reduce the potential financial impact.

Second, under proposed new Rule 12902(e)(2), FINRA may waive any hearing session fees assessed against a member for hearing sessions conducted prior to the mid-case referral, if the member is not the subject of the referral. The proposed rule would provide FINRA with discretion to waive any hearing session fees assessed against a member that is named in the arbitration, but is not the subject of the mid-case referral.

Last, under proposed new Rule 12902(e)(3), FINRA would postpone any scheduled hearing sessions if a mid-case referral results in the withdrawal of the panel, so that a new panel would have flexibility to schedule new hearing sessions based on its availability. Thus, if any scheduled hearing sessions are postponed, FINRA would waive the postponement fees that would otherwise accrue.

Changes to the Industry Code

Rule 13104—Effect of Arbitration on FINRA Regulatory Activities

FINRA also is proposing to amend Rule 13104 of the Industry Code to broaden the arbitrators' authority to make referrals during an arbitration proceeding in intra-industry cases. The reasons for the proposed changes to Rule 13104 are the same as those for Rule 12104 of the Customer Code discussed above.

Rule 13902—Assessment of Hearing Session Fees, Costs, and Expenses if an Arbitrator Referral During a Case Results in Panel Withdrawal

FINRA also is proposing to adopt new Rule 13902(e) to address the assessment of hearing session fees, costs, and expenses on member firms and associated persons if an arbitrator makes a referral during a case that results in panel withdrawal.

Under proposed new Rule 13902(e)(1), FINRA would waive the hearing session fees for sessions conducted prior to the referral for associated persons [18] who are not the subject of the referral in order to reduce the potential financial impact on these parties.

Further, under proposed new Rule 13902(e)(2), FINRA may waive any hearing session fees assessed against a member for hearing sessions conducted prior to the mid-case referral, if the member is not the subject of the referral. The proposed rule would provide FINRA with discretion to waive any hearing session fees assessed against a member that is named in the arbitration, but is not the subject of the mid-case referral.

Finally, under proposed new Rule 13902(e)(3), FINRA would postpone any scheduled hearing sessions if a mid-case referral results in the withdrawal of the panel, so that a new panel would have flexibility to schedule new hearing sessions based on its availability. Thus, if any scheduled hearing sessions are postponed, FINRA would waive the postponement fees that would otherwise accrue.

Benefits of the Proposed Rule Change

FINRA believes that the benefits of the proposal outweigh the potential burden that a mid-case referral could present to the individual investor. For example, if the proposed rule is invoked and arbitrators make a mid-case referral, the proposal would mitigate somewhat the harm to these investors by waiving the hearing session fees for sessions conducted prior to the referral. Moreover, FINRA believes that if arbitrators make a mid-case referral and a serious, ongoing fraud is exposed, it is likely that either the arbitration would cease because of regulatory intervention or the party who is the subject of the referral would attempt to settle, rather than risk continuing with the case.

FINRA anticipates that given the rigorous criteria for making a referral under the proposed rule change, mid-case referrals will be extremely rare. FINRA notes that arbitrators make a relatively small number of referrals under the current rule, which permits post-case referrals only. However, regardless of the number of mid-case referrals that the proposal may generate, FINRA believes that the consequences of one widespread fraud, which could prove to be financially devastating to many investors, outweigh the potential harm to an individual investor whose arbitration is interrupted.

In addition to the benefits of the proposal, FINRA believes that its mission of investor protection and market integrity requires that it review continually its rules with the goal of improving their effectiveness and relevance. As such, FINRA believes that the Codes should not contain a rule that, on its face, requires an arbitrator who has reason to believe that there is a serious, ongoing, imminent threat to investors to wait until a case is concluded before making a referral. In light of the recent well-publicized fraudulent schemes, FINRA believes inaction is antithetical to its mission and is, therefore, proposing this rule to prevent potential harm to investors and the markets. Moreover, FINRA's effectiveness as a regulator would be enhanced if it could be alerted earlier to a situation indicating the existence of a market manipulation scheme or other ongoing fraud, and it could take earlier action.

FINRA believes the proposal would strengthen its regulation of its members and would provide an additional layer of protection to investors and the markets from fraudulent securities market schemes.

2. Statutory Basis

FINRA believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act,[19] which

[17] *See* notes 2 and 3.

[18] Under the Industry Code, a dispute must be arbitrated if it arises out of the business activities of a member or an associated person and is between or among members; members and associated persons; or associated persons. Rule 13200(a) of the Industry Code.

[19] 15 U.S.C. 78o–3(b)(6).

requires, among other things, that FINRA rules must be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest. The proposed rule change is consistent with FINRA's statutory obligations under the Act to protect investors and the public interest because the proposal would help FINRA detect potential market manipulation or fraud at an earlier stage, which could minimize the financial losses of investors as well as the effects fraudulent schemes could have on the securities markets. Thus, the proposed rule change would strengthen FINRA's ability to carry out its regulatory mission and provide another layer of protection to investors and the markets against fraud.

B. Self-Regulatory Organization's Statement on Burden on Competition

FINRA does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve such proposed rule change, or

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Interested persons are also invited to submit written data, views and arguments concerning an arbitration panel's withdrawal. 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–FINRA–2010–036 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–FINRA–2010–036. 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*). Comments are also available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of FINRA. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–FINRA–2010–036 and should be submitted on or before October 14, 2010.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[20]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. 2010–23776 Filed 9–22–10; 8:45 am]

BILLING CODE 8010–01–P

[20] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–62924; File No. 10–198]

Self-Regulatory Organizations; BATS Y-Exchange, Inc.; Notice of Filing of Proposed Minor Rule Violation Plan

September 16, 2010.

Pursuant to Section 19(d)(1) of the Securities Exchange Act of 1934 (the "Act")[1] and Rule 19d–1(c)(2) thereunder,[2] notice is hereby given that on September 10, 2010, the BATS Y-Exchange, Inc. ("BATS Y-Exchange" or "Exchange"), filed with the Securities and Exchange Commission (the "Commission") copies of a proposed minor rule violations plan with sanctions not exceeding $2,500 which would not be subject to the provisions of Rule 19d–1(c)(1) of the Act[3] requiring that a self-regulatory organization promptly file notice with the Commission of any final disciplinary action taken with respect to any person or organization.[4] In accordance with Rule 19d–1(c)(2) under the Act, the Exchange proposed to designate certain specified rule violations as minor rule violations, and requests that it be relieved of the reporting requirements regarding such violations, provided it gives notice of such violations to the Commission on a quarterly basis.

BATS Y-Exchange proposes to include in its proposed MRVP the policies and procedures currently included in BATS Y-Exchange Rule 8.15 ("Imposition of Fines for Minor Violation(s) of Rules").[5]

According to the Exchange's proposed MRVP, under Rule 8.15, the Exchange may impose a fine (not to exceed $2,500) on a member or an associated person with respect to any rule listed in Rule 8.15.01. The Exchange shall serve the person against whom a fine is imposed with a written statement setting forth the rule or rules violated, the act or omission constituting each such violation, the fine imposed, and the date by which such determination becomes final or by which such determination must be contested. If the person against whom the fine is imposed pays the fine, such payment shall be deemed to be a waiver of such person's right to a disciplinary proceeding and any review of the matter

[1] 15 U.S.C. 78s(d)(1).

[2] 17 CFR 240.19d–1(c)(2).

[3] 17 CFR 240.19d–1(c)(1).

[4] The Commission adopted amendments to paragraph (c) of Rule 19d–1 to allow self-regulatory organizations ("SROs") to submit for Commission approval plans for the abbreviated reporting of minor disciplinary infractions. *See* Securities Exchange Act Release No. 21013 (June 1, 1984), 49 FR 23828 (June 8, 1984). Any disciplinary action taken by an SRO against any person for violation of a rule of the SRO which has been designated as a minor rule violation pursuant to such a plan filed with the Commission shall not be considered "final" for purposes of Section 19(d)(1) of the Act if the sanction imposed consists of a fine not exceeding $2,500 and the sanctioned person has not sought an adjudication, including a hearing, or otherwise exhausted his administrative remedies.

[5] On August 13, 2010, the Exchange's application for registration as a national securities exchange, including the rules governing the BATS Y-Exchange, was approved. *See* Securities Exchange Act Release No. 62716 (August 13, 2010), 75 FR 51295 (August 19, 2010) (File No. 10–198).

under BATS Y-Exchange rules. Any person against whom a fine is imposed may contest the Exchange's determination by filing with the Exchange a written response, at which point the matter shall become a disciplinary proceeding.

Under Rule 8.15.01, violations of the following rules would be appropriate for disposition under the minor rule violations plan: Rule 4.2 and Interpretations, thereunder, requiring the submission of responses to Exchange requests for trading data within specified time period; Rule 4.2 and Interpretations thereunder related to the requirement to furnish Exchange-related order, market and transaction data, as well as financial or regulatory records and information; Rule 11.8(a)(1) requirement for Market Makers to maintain continuous two-sided limit orders; Rule 11.19 requirement to identify short sale orders as such; and Rule 11.20 requirement to comply with locked and crossed market rules.

BATS Y-Exchange proposed to include the rule violations listed in Rule 8.15.01 in its minor rule violation plan. Upon approval of the plan, the Exchange will provide the Commission a quarterly report of actions taken on minor rule violations under the plan. The quarterly report will include: The Exchange's internal file number for the case, the name of the individual and/or organization, the nature of the violation, the specific rule provision violated, the sanction imposed, the number of times the rule violation has occurred, and the date of disposition.[6]

I. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning BATS Y-Exchange's proposed Minor Rule Violation Plan, including whether the proposed plan 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. 10–198 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, Station Place, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File No. 10–198. 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 MRVP that are filed with the Commission, and all written communications relating to the proposed Minor MRVP 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 No. 10–198 and should be submitted on or before October 14, 2010.

II. Date of Effectiveness of the Proposed Minor Rule Violation Plan and Timing for Commission Action

Pursuant to Section 19d–1 of the Act and Rule 19d–1(c)(2) thereunder,[7] after October 14, 2010, the Commission may, by order, declare BATS Y-Exchange's proposed MRVP effective if the plan is consistent with the public interest, the protection of investors, or otherwise in furtherance of the purposes of the Act. The Commission in its order may restrict the categories of violations to be designated as minor rule violations and may impose any other terms or conditions to the proposed MRVP, File No. 10–198, and to the period of its effectiveness which the Commission deems necessary or appropriate in the public interest, for the protection of investors or otherwise in furtherance of the purposes of this Act.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[8]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. 2010–23765 Filed 9–22–10; 8:45 am]

BILLING CODE 8010–01–P

[6] BATS Y-Exchange attached a sample form of the quarterly report with its submission to the Commission.

[7] 15 U.S.C. 78s(d)(1); 17 CFR 240.19d-1(c)(2).

[8] 17 CFR 200.30–3(a)(44).

DEPARTMENT OF STATE

[Public Notice: 7183; OMB Control Number 1405–0101]

30-Day Notice of Proposed Information Collection: DS–156E Nonimmigrant Treaty Trader/Investor Application

ACTION: Notice of request for public comment and submission to OMB of proposed collection of information.

SUMMARY: The Department of State has submitted the following information collection request to the Office of Management and Budget (OMB) for approval in accordance with the Paperwork Reduction Act of 1995.

- *Title of Information Collection:* Nonimmigrant Treaty Trader/Investor Application.
- *OMB Control Number:* 1405–0101.
- *Type of Request:* Extension of a Currently Approved Collection.
- *Originating Office:* Bureau of Consular Affairs, Department of State (CA/VO).
- *Form Number:* DS–156E.
- *Respondents:* Nonimmigrant treaty trader/investor visa applicants.
- *Estimated Number of Respondents:* 17,000.
- *Estimated Number of Responses:* 17,000.
- *Average Hours per Response:* 4 hours.
- *Total Estimated Burden:* 68,000 hours per year.
- *Frequency:* Once per respondent.
- *Obligation to Respond:* Required to Obtain or Retain a Benefit.

DATES: Submit comments to the Office of Management and Budget (OMB) for up to 30 days from September 23, 2010.

ADDRESSES: Direct comments to the Department of State Desk Officer in the Office of Information and Regulatory Affairs at the Office of Management and Budget (OMB). You may submit comments by the following methods:

- *E-mail: oira_submission@omb.eop.gov.* You must include the DS form number, information collection title, and OMB control number in the subject line of your message.
- *Fax:* 202–395–5806. Attention: Desk Officer for Department of State.

FOR FURTHER INFORMATION CONTACT: You may obtain copies of the proposed information collection and supporting documents from Stefanie Claus of the Office of Visa Services, U.S. Department of State, 2401 E Street, NW., L–603, Washington, DC 20522, who may be reached at (202) 663–2910.

SUPPLEMENTARY INFORMATION:

We are soliciting public comments to permit the Department to:

- Evaluate whether the proposed information collection is necessary to properly perform our functions.
- Evaluate the accuracy of our estimate of the burden of the proposed collection, including the validity of the methodology and assumptions used.
- Enhance the quality, utility, and clarity of the information to be collected.
- Minimize the reporting burden on those who are to respond.

Abstract of proposed collection: Form DS–156E is completed by aliens seeking nonimmigrant treaty trader/investor visas to the U.S. The Department will use the DS–156E to elicit information necessary to determine an applicant's visa eligibility.

Methodology: The DS–156E is submitted to consular posts abroad.

Dated: September 13, 2010.

David E. Donahue,

Deputy Assistant Secretary, Bureau of Consular Affairs, Department of State.

[FR Doc. 2010–23811 Filed 9–22–10; 8:45 am]

BILLING CODE 4710–06–P

DEPARTMENT OF STATE

[Public Notice: 7185]

30-Day Notice of Proposed Information Collection: Form DS–117, Application to Determine Returning Resident Status, OMB Control Number 1405–0091

ACTION: Notice of request for public comment and submission to OMB of proposed collection of information.

SUMMARY: The Department of State is seeking Office of Management and Budget (OMB) approval for the information collection described below. The purpose of this notice is to allow 30 days for public comment in the **Federal Register** preceding submission to OMB. We are conducting this process in accordance with the Paperwork Reduction Act of 1995.

- *Title of Information Collection:* Application to Determine Returning Resident Status.
- *OMB Control Number:* 1405–0091.
- *Type of Request:* Extension of a Currently Approved Collection.
- *Originating Office:* Bureau of Consular Affairs, Department of State (CA/VO).
- *Form Number:* DS–117.
- *Respondents:* Aliens applying for special immigrant classification as a returning resident.
- *Estimated Number of Respondents:* 875 per year.
- *Estimated Number of Responses:* 875.
- *Average Hours Per Response:* 30 minutes.
- *Total Estimated Burden:* 438 hours per year.
- *Frequency:* Once per respondent.
- *Obligation to Respond:* Required to Obtain or Retain a Benefit.

DATES: The Department will accept comments from the public up to 30 days from September 23, 2010.

ADDRESSES: Direct comments to the Department of State Desk Officer in the Office of Information and Regulatory Affairs at the Office of Management and Budget (OMB). You may submit comments by the following methods:

- *E-mail: oira_submission@omb.eop.gov.* You must include the DS form number, information collection title, and OMB control number in the subject line of your message.
- *Fax:* 202–395–5806. Attention: Desk Officer for Department of State.

FOR FURTHER INFORMATION CONTACT: You may obtain copies of the proposed information collection and supporting documents from Stefanie Claus of the Office of Visa Services, U.S. Department of State, 2401 E. Street, NW., L–603, Washington, DC 20522, who may be reached at (202) 663–2910.

SUPPLEMENTARY INFORMATION: We are soliciting public comments to permit the Department to:

- Evaluate whether the proposed information collection is necessary for the proper performance of our functions.
- Evaluate the accuracy of our estimate of the burden of the proposed collection, including the validity of the methodology and assumptions used.
- Enhance the quality, utility, and clarity of the information to be collected.
- Minimize the reporting burden on those who are to respond, including the use of automated collection techniques or other forms of technology.

Abstract of Proposed Collection

Form DS–117 is used by consular officers to determine the eligibility of an alien applicant for special immigrant status as a returning resident.

Methodology

Information will be collected by mail.

Dated: September 15, 2010.

David T. Donahue,

Deputy Assistant Secretary, Bureau of Consular Affairs, Department of State.

[FR Doc. 2010–23813 Filed 9–22–10; 8:45 am]

BILLING CODE 4710–06–P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

Application of Dynamic Airways, LLC d/b/a Dynamic Aviation for Certificate Authority

AGENCY: Department of Transportation.

ACTION: Notice of Order to Show Cause (Order 2010–9–17); Docket DOT–OST–2010–0058.

SUMMARY: The Department of Transportation is directing all interested persons to show cause why it should not issue an order finding Dynamic Airways, LLC d/b/a Dynamic Aviation, fit, willing, and able, and awarding it a certificate of public convenience and necessity to engage in interstate charter air transportation of persons, property and mail.

DATES: Persons wishing to file objections should do so no later than October 1, 2010.

ADDRESSES: Objections and answers to objections should be filed in Docket DOT–OST–2010–0058 and addressed to U.S. Department of Transportation, Docket Operations, (M–30, Room W12–140), 1200 New Jersey Avenue, SE., West Building Ground Floor, Washington, DC 20590, and should be served upon the parties listed in Attachment A to the order.

FOR FURTHER INFORMATION CONTACT: Scott A. Faulk, Air Carrier Fitness Division (X–56, Room W86–487), U.S. Department of Transportation, 1200 New Jersey Avenue, SE., Washington, DC 20590, (202) 366–9721.

Dated: September 17, 2010.

Susan L. Kurland,

Assistant Secretary for Aviation and International Affairs.

[FR Doc. 2010–23787 Filed 9–22–10; 8:45 am]

BILLING CODE P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Agency Information Collection Activities: Requests for Comments; Clearance of Renewed Approval of Information Collection: Performance and Handling Requirements for Rotorcraft

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, FAA invites public comments about our intention to request from the Office of Management and Budget (OMB) approval to renew an information collection. The FAA requires that certain performance information be provided in the Rotorcraft Flight Manual in order to show compliance to the regulatory requirements. The flight manual, by regulation, must be furnished with each aircraft.

DATES: Written comments should be submitted by November 22, 2010.

FOR FURTHER INFORMATION CONTACT: Carla Scott on (202) 267–9895, or by e-mail at: *Carla.Scott@faa.gov.*

SUPPLEMENTARY INFORMATION:

OMB Control Number: 2120–0726.

Title: Performance and Handling Requirements for Rotorcraft.

Form Numbers: There are no FAA forms associated with this collection.

Type of Review: Renewal of an information collection.

Background: In order to determine that a rotorcraft is a safe vehicle, an applicant for a type certificate must show compliance to specific minimum requirements. In order to show compliance, an applicant must substantiate the type design through analysis, testing, design limitations, and other acceptable means. This substantiation requires that certain performance information for safe operation of the rotorcraft be presented, in the form of tables, diagrams, or charts, in the flight manual. FAA engineers and designated engineers review the required data submittals to determine that the rotorcraft complies with the applicable minimum safety requirements for rotorcraft performance and that the rotorcraft has no unsafe features.

Respondents: Approximately 4 normal or transport category rotorcraft certification applicants.

Frequency: Information is collected on occasion.

Estimated Average Burden per Response: 5.5 hours.

Estimated Total Annual Burden: 22 hours.

Send comments to the FAA at the following address: Ms. Carla Scott, Room 712, Federal Aviation Administration, IT Enterprises Business Services Division, AES–200, 800 Independence Ave., SW., Washington, DC 20591.

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 FAA's performance; (b) the accuracy of the estimated burden; (c) ways for FAA 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.

Issued in Washington, DC, on September 17, 2010.

Carla Scott,

FAA Information Collection Clearance Officer, IT Enterprises Business Services Division, AES–200.

[FR Doc. 2010–23732 Filed 9–22–10; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Pipeline and Hazardous Materials Safety Administration

[Docket No. PHMSA–2010–0193]

Pipeline Safety: Information Collection Activity; Request for Comments

AGENCY: Pipeline and Hazardous Materials Safety Administration (PHMSA), DOT.

ACTION: Notice and request for comments.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), this notice announces that the Information Collection Request (ICR) abstracted below is being forwarded to the Office of Management and Budget (OMB) for review and comment. The ICR describes the nature of the information collection and its expected burden. A **Federal Register** Notice with a 60-day period for commenting on the following information collection was published on July 14, 2010 (75 FR 40863). No comments were received.

DATES: Comments must be submitted on or before October 25, 2010.

ADDRESSES: Send comments regarding the burden estimate, including suggestions for reducing the burden, to OMB, Attention: Desk Officer for PHMSA, 725 17th Street, NW., Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Cameron Satterthwaite by telephone at 202–366–1319, by fax at 202–366–4566, or by mail at U.S. Department of Transportation, Pipeline and Hazardous Materials Safety Administration, 1200 New Jersey Avenue, SE., PHP–30, Washington, DC 20590–0001.

SUPPLEMENTARY INFORMATION: *Title:* Incorporation by Reference of Industry Standard on Leak Detection.

OMB Control Number: 2137–0598.

Type of Request: Renewal of a currently-approved information collection.

Abstract: Under 49 CFR 195.444 of the Federal pipeline safety regulations, operators of single-phase hazardous liquid pipeline facilities that use computational pipeline monitoring (CPM) leak detection systems must comply with the standards set out in American Petroleum Institute (API) publication API 1130. API 1130 requires operators to record and retain certain information regarding the operation and testing of CPM systems. Compliance with API 1130, including its recordkeeping requirements, supports pipeline safety by ensuring the proper functioning of CPM leak detection systems.

Affected Public: Operators of hazardous liquid pipelines.

Estimated Number of Responses: 50.

Annual Estimated Burden Hours: 100.

Frequency of Collection: On occasion.

Comments are invited on the following: Whether the proposed collection of information is necessary for the proper performance of the functions of the Department, including whether the information collected will have practical utility; the accuracy of the Department's estimate of the burden of the proposed information collection; ways to enhance the quality, utility and clarity of the information to be collected; and ways to minimize the burden of the collection of information on respondents, including the use of automated collection techniques or other forms of information technology. A comment to OMB is most effective if OMB receives it within 30 days of publication.

Issued in Washington, DC, on September 17, 2010.

Linda Daugherty,

Deputy Associate Administrator for Policy and Programs.

[FR Doc. 2010–23739 Filed 9–22–10; 8:45 am]

BILLING CODE 4910–60–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Agency Information Collection Activities: Requests for Comments; Clearance of Renewed Approval of Information Collection: Mitsubishi MU–2B Series Airplane Special Training, Experience, and Operating Procedures

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, FAA invites public comments about our intention to request the Office of Management and Budget (OMB) approval to renew an information collection. This collection of information request is for Mitsubishi MU–2B Series Airplane Special Training, Experience, and Operating Requirements Special Federal Aviation Regulation. The pilot training requires a logbook endorsement and documentation of a training-course completion record.

DATES: Written comments should be submitted by November 22, 2010.

FOR FURTHER INFORMATION CONTACT: Carla Scott on (202) 267–9895, or by e-mail at: *Carla.Scott@faa.gov.*

SUPPLEMENTARY INFORMATION:

OMB Control Number: 2120–0725.

Title: Mitsubishi MU–2B Series Airplane Special Training, Experience, and Operating Procedures.

Form Numbers: There are no FAA forms associated with this collection.

Type of Review: Renewal of an information collection.

Background: In response to the increasing number of accidents and incidents involving the Mitsubishi MU–2B series airplane, the Federal Aviation Administration (FAA) began a safety evaluation of the MU–2B in July of 2005. As a result of this safety evaluation, the FAA published a Special Federal Aviation Regulation (SFAR) on February 6, 2008 (73 FR 7033) that established a standardized pilot training program. The collection of information is necessary to document participation, completion, and compliance with the pilot training program.

Respondents: Approximately 600 MU–2B pilots.

Frequency: Information is collected on occasion.

Estimated Average Burden per Response: 3 minutes.

Estimated Total Annual Burden: 100 hours.

ADDRESSES: Send comments to the FAA at the following address: Ms. Carla Scott, Room 712, Federal Aviation Administration, IT Enterprises Business Services Division, AES–200, 800 Independence Ave., SW., Washington, DC 20591.

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 FAA's performance; (b) the accuracy of the estimated burden; (c) ways for FAA 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.

Issued in Washington, DC, on September 17, 2010.

Carla Scott,

FAA Information Collection Clearance Officer, IT Enterprises Business Services Division, AES–200.

[FR Doc. 2010–23734 Filed 9–22–10; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Agency Information Collection Activities: Requests for Comments; Clearance of Renewed Approval of Information Collection: Criteria for Internet Communications of Aviation Weather, NOTAM, and Aeronautical Data

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, FAA invites public comments about our intention to request the Office of Management and Budget (OMB) approval to renew an information collection. An Advisory Circular (AC) establishes criteria for Qualified Internet Communications Providers (ICP), who provide access to aviation weather, Notices to Airmen (NOTAM), and aeronautical data via the Public Internet. The AC describes procedures for a provider to become and remain an FAA approved QICP, and the information collected is used to determine the provider's eligibility.

DATES: Written comments should be submitted by November 22, 2010.

FOR FURTHER INFORMATION CONTACT: Carla Scott on (202) 267–9895, or by e-mail at: *Carla.Scott@faa.gov.*

SUPPLEMENTARY INFORMATION:

OMB Control Number: 2120–0672.

Title: Criteria for Internet Communications of Aviation Weather, NOTAM, and Aeronautical Data.

Form Numbers: There are no FAA forms associated with this collection of information.

Type of Review: Renewal of an information collection.

Background: Any interested person or organization desiring to become a QICP shall provide the FAA Aviation Weather and Policy Requirements, AJP–B1 with a written application documenting their capability to meet the QICP criteria. The purpose of the information is to ensure the reliability, accessibility and security of aviation weather data, NOTAM and aeronautical data accessed via the Internet as well as to encourage data providers to identify the approval status (*e.g.,* experimental or operational) of aviation weather products.

Respondents: Approximately 6 applicants.

Frequency: Information is collected on occasion.

Estimated Average Burden per Response: 40 hours.

Estimated Total Annual Burden: 2,740 hours.

ADDRESSES: Send comments to the FAA at the following address: Ms. Carla Scott, Room 712, Federal Aviation Administration, IT Enterprises Business Services Division, AES–200, 800 Independence Ave., SW., Washington, DC 20591.

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 FAA's performance; (b) the accuracy of the estimated burden; (c) ways for FAA 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.

Issued in Washington, DC, on September 17, 2010.

Carla Scott,

FAA Information Collection Clearance Officer, IT Enterprises Business Services Division, AES–200.

[FR Doc. 2010–23730 Filed 9–22–10; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Consensus Standards, Standard Practice for Design, Alteration, and Certification of Airplane Electrical Wiring Systems

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of availability; request for comments.

SUMMARY: This notice announces the availability of consensus standards and the Federal Aviation Administration (FAA) intention to accept the ASTM International's F2639–07 Standard Practice for Design, Alteration, and Certification of Airplane Electrical Wiring Systems (Standard Practice) as an acceptable means of compliance to 14 CFR part 23 sections concerning electrical wiring systems. By this notice, the FAA finds the standards to be acceptable methods and procedures for design, alteration, and certification of electrical wiring systems for normal, utility, acrobatic, and commuter category airplanes.

DATES: Comments must be received on or before October 25, 2010.

ADDRESSES: Comments may be mailed to: Federal Aviation Administration, Small Airplane Directorate, Regulations and Policy, ACE–111, Attention: James Brady, Room 301, 901 Locust, Kansas City, Missouri 64106 or by e-mail to: *james.brady@faa.gov.* All comments must be marked: Consensus Standards Comments and must specify the standard being addressed by ASTM F2639–07 Standard Practice for Design, Alteration, and Certification of Airplane Electrical Wiring Systems.

FOR FURTHER INFORMATION CONTACT: James Brady, Aerospace Engineer, Regulations and Policy Office (ACE–111), Small Airplane Directorate, Aircraft Certification Service, Federal Aviation Administration, 901 Locust, Room 301, Kansas City, Missouri 64106; telephone (816) 329–4132; e-mail: *james.brady@faa.gov*.

SUPPLEMENTARY INFORMATION: This notice announces the availability of consensus standards. The FAA expects a suitable consensus standard to be reviewed at least every two years. The two-year review cycle will result in a standard revision or reapproval. A standard is issued under a fixed designation (*i.e.,* F2639–07); the number immediately following the designation indicates the year of original adoption or, in the case of revision, the year of last revision. A number in parentheses indicates the year of last reapproval. A reapproval indicates a two-year review cycle completed with no technical changes. A superscript epsilon (ε) indicates an editorial changes since the last revision or reapproval. A notice of availability (NOA) will only be issued for new or revised standards. Reapproved standards issued with no technical changes or standards issued with editorial changes only (*i.e.,* superscript epsilon (ε)) are considered accepted by the FAA without need for an NOA.

Comments Invited: Interested persons are invited to submit such written data, views, or arguments, as they may desire. Communications should identify the consensus standard number and be submitted to the address specified above. All communications received on or before the closing date for comments will be forwarded to ASTM International Committee F39 for consideration. The standard may be changed in light of the comments received. The FAA will address all comments received during the recurring review of the consensus standard and will participate in the consensus standard revision process.

Background: Under the provisions of the revised Office of Management and Budget (OMB) Circular A–119, "Federal Participation in the Development and Use of Voluntary Consensus Standards and in Conformity Assessment Activities," dated February 10, 1998, industry and the FAA have been working with ASTM International to develop consensus standards for the design, fabrication, modification, inspection, and maintenance of electrical systems installed on normal and utility category airplanes.

These consensus standards satisfy the FAA's goal for airworthiness certification and a verifiable minimum safety level for normal, utility, acrobatic, and commuter category airplanes. Instead of developing airworthiness standards through the rulemaking process, the FAA participates as a member of Committee F39 in developing these standards. The use of the consensus standard process assures government and industry discussion and agreement on appropriate standards for the required level of safety.

The Consensus Standards in This Notice of Availability

The FAA has reviewed the standards presented in this NOA for compliance with the regulatory requirements of the rule. Any normal, utility, acrobatic, and commuter aircraft issued an airworthiness certificate, which has been designed, manufactured, operated, and maintained, in accordance with this and previously accepted ASTM consensus standards provides the public with the appropriate level of safety established under the regulations. The FAA maintains a listing of all accepted standards on the FAA Web site.

The FAA finds the following new consensus standards acceptable for certification of the specified aircraft. The consensus standard listed below may be used unless the FAA publishes a specific notification otherwise.

ASTM Designation F 2639–07, titled: Standard Practice for Design, Alteration, and Certification of Airplane Electrical Wiring Systems.

Availability

These consensus standards are copyrighted by ASTM International, 100 Barr Harbor Drive, Post Office Box C700, West Conshohocken, PA 19428–2959. Individual reprints of this standard (single or multiple copies, or special compilations and other related technical information) may be obtained by contacting ASTM at this address, or at (610) 832–9585 (phone), (610) 832–9555 (fax), through *service@astm.org* (e-mail), or through the ASTM Web site at *http://www.astm.org.* To inquire about standard content and/or membership or about ASTM International Offices abroad, contact Daniel Schultz, Staff Manager for Committee F39 on Normal and Utility Category Airplane Electrical Wiring Systems: (610) 832–9716, *dschultz@astm.org.*

Issued in Kansas City, Missouri, on September 15, 2010.

William J. Timberlake,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2010–23737 Filed 9–22–10; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Notice of Final Federal Agency Actions on Proposed Highway in California

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of limitation on claims for judicial review of actions by Caltrans.

SUMMARY: This notice announces actions taken by the California Department of Transportation (Caltrans) pursuant to its assigned responsibilities under 23 U.S.C. 327 that are final within the meaning of 23 U.S.C. 139(*l*)(1). The actions relate to a proposed highway project, Antonio Parkway Widening

Project, Unincorporated Orange County, in the County of Orange, State of California. Those actions grant licenses, permits, and approvals for the project.

DATES: By this notice, Caltrans is advising the public of final agency actions subject to 23 U.S.C. § 139(l)(1). A claim seeking judicial review of the Federal agency actions on the highway project will be barred unless the claim is filed on or before March 22, 2011. If the Federal law that authorizes judicial review of a claim provides a time period of less than 180 days for filing such claim, then that shorter time period still applies.

FOR FURTHER INFORMATION CONTACT: Charles Baker, Senior Environmental Planner, California Department of Transportation, 3347 Michelson Drive, Suite 100, Irvine, CA 92612–1692; office hours Monday through Friday, 8 a.m. to 5 p.m., (949) 724–2552; and *Charles_Baker@dot.ca.gov.*

SUPPLEMENTARY INFORMATION: Notice is hereby given that the California Department of Transportation (Caltrans) pursuant to its assigned responsibilities under 23 U.S.C. 327 has taken final agency actions subject to 23 U.S.C. 139(*l*)(1) by approving the following highway project in the State of California: The project proposes to widen the existing Antonio Parkway for an approximate 1.4-mile segment within unincorporated Orange County. The Project limits begin at approximately 2,000 feet south of the intersection at Covenant Hills Drive (the southern boundary of the Ladera Ranch Planned Community) and extend to approximately 900 feet south of the intersection with State Route 74 (SR–74), which is known locally as Ortega Highway. The improvements would utilize the existing roadway centerline, profile, and standard super-elevation rates. The improvements are consistent with the local and regional long-range planning programs. FHWA Project Reference No. 12–932073L. The actions by Caltrans, and the laws under which such actions were taken, are described in the Final Environmental Assessment (FEA) and Finding of No Significant Impact (FONSI) for the project, both approved on July 30, 2010, and in other documents in Caltrans project records. The FEA, and other project records are available by contacting the California Department of Transportation at the address provided above. The FEA can be viewed and downloaded from the project Web site at *http://www.dot.ca.gov/dist12/files/antonio/index.htm.*

This notice applies to all agency decisions as of the issuance date of this notice and all laws under which such actions were taken, including but not limited to:

1. The National Environmental Policy Act.
2. Clean Water Act.
3. Federal Endangered Species Act.
4. Clean Air Act.
5. The National Historic Preservation Act.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program.)

Authority: 23 U.S.C. 139(*l*)(1).

Issued on September 16, 2010.

Karen Bobo,

Director, Local Programs, Federal Highway Administration, Sacramento, California.

[FR Doc. 2010–23748 Filed 9–22–10; 8:45 am]

BILLING CODE 4910–RY–P

DEPARTMENT OF TRANSPORTATION

Federal Transit Administration

Notice of Limitation on Claims Against Proposed Public Transportation Projects

AGENCY: Federal Transit Administration (FTA), DOT.

ACTION: Notice of limitation on claims.

SUMMARY: This notice announces final environmental actions taken by the Federal Transit Administration (FTA) for the following projects: (1) Colorado Department of Transportation, U.S. 36 Corridor, Boulder, CO; (2) Ames Transit Agency, Intermodal Transit Facility, Ames, IA; (3) Seldovia Village Tribe, Seldovia Bay Ferry Homer Dock and Pier Project, Seldovia, AK; (4) Santa Clara Valley Transportation Authority, Silicon Valley Rapid Transit Corridor Project, Santa Clara County, CA; (5) Metropolitan Transit Authority of Harris County, Texas, University Corridor Fixed Guideway Transit Project, Houston, TX; (6) Massachusetts Bay Transportation Authority, Science Park/West End Station, Boston, MA; (7) Ramsey County Regional Railroad Authority, Saint Paul Union Depot, Saint Paul, MN; (8) Florida Department of Transportation, Central Florida Commuter Rail Transit, Orlando, FL; and (9) Lehigh and Northampton Transportation Authority, Easton Intermodal Transportation Center, Easton, PA. The purpose of this notice is to announce publicly the environmental decisions by FTA on the subject projects and to activate the limitation on any claims that may challenge these final environmental actions.

DATES: By this notice, FTA is advising the public of final agency actions subject to Section 139(l) of Title 23, United States Code (U.S.C.). A claim seeking judicial review of the FTA actions announced herein for the listed public transportation projects will be barred unless the claim is filed on or before March 22, 2011.

FOR FURTHER INFORMATION CONTACT: Katie Grasty, Environmental Protection Specialist, Office of Planning and Environment, 202–366–9139, or Christopher Van Wyk, Attorney-Advisor, Office of Chief Counsel, 202–366–1733. FTA is located at 1200 New Jersey Avenue, SE., Washington, DC 20590.

Office hours are from 9 a.m. to 5:30 p.m., EST, Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION: Notice is hereby given that FTA has taken final agency actions by issuing certain approvals for the public transportation projects listed below. The actions on these projects, as well as the laws under which such actions were taken, are described in the documentation issued in connection with each project to comply with the National Environmental Policy Act (NEPA) and in other documents in the FTA administrative record for the project. Interested parties may contact either the project sponsor or the relevant FTA Regional Office for more information on these projects. Contact information for FTA's Regional Offices may be found at *http://www.fta.dot.gov.*

This notice applies to all FTA decisions on the listed projects as of the issuance date of this notice and all laws under which such actions were taken, including, but not limited to, NEPA [42 U.S.C. 4321–4375], section 4(f) of the Department of Transportation Act of 1966 [49 U.S.C. 303], section 106 of the National Historic Preservation Act [16 U.S.C. 470f], and the Clean Air Act [42 U.S.C. 7401–7671q]. This notice does not, however, alter or extend the limitation period of 180 days for challenges of project decisions subject to previous notices published in the **Federal Register**. For example, this notice does not extend the limitation on claims announced for earlier decisions on the U.S. 36 Corridor Project or the Central Florida Commuter Rail Transit project.

The projects and actions that are the subject of this notice are:

1. *Project name and location:* U.S. 36 Corridor, Boulder, CO. *Project sponsor:*

Colorado Department of Transportation. *Project description:* The project's purpose is to improve mobility along the U.S. 36 corridor from Interstate 25 in Adams County to Foothills Parkway/Table Mesa Drive in Boulder. The project includes the reconstruction of U.S. 36 road surface, one buffer-separated managed lane, bus rapid transit (BRT) ramp stations, auxiliary lanes between most interchanges, a bikeway the entire length of the project, and alternative transportation strategies. *Final agency actions:* Section 106 Memorandum of Agreement dated December 2009; project-level air quality conformity determination; Section 4(f) *de minimis* impact determination; and a ROD dated December 2009. *Supporting documentation:* FEIS U.S. 36 Corridor dated October 2009.

2. *Project name and location:* Ames Intermodal Transit Facility, Ames, IA. *Project sponsor:* Ames Transit Agency. *Project description:* The project will provide multiple transportation uses on a five-acre site, including bus bays, taxi stands, and bike paths. *Final agency actions:* Documented Categorical Exclusion designation; Section 106 finding of no adverse effect. *Supporting documentation:* Documented Categorical Exclusion dated March 2010.

3. *Project name and location:* Seldovia Bay Ferry Homer Dock and Pier Project, Seldovia, AK. *Project sponsor:* Seldovia Village Tribe. *Project description:* The project will retrofit the City of Homer Small Boat Harbor docks to provide ADA access and facilitate light-freight service for passengers on the Seldovia Bay Ferry vessel. The improvements include the construction of a new passenger pier, a gangway, and light-freight pier. *Final agency actions:* Section 106 finding of no adverse effect; Section 4(f) no use determination; and a Finding of No Significant Impact (FONSI) signed June 2010. *Supporting documentation:* Environmental Assessment dated April 2010.

4. *Project name and location:* Silicon Valley Rapid Transit Corridor Project, Santa Clara County, CA. *Project sponsor:* Santa Clara Valley Transportation Authority. *Project description:* The project includes the design and construction of a 9.9 mile extension of the Bay Area Rapid Transit (BART) system from the Warm Spring station in Fremont to new stations in Milipitas and San Jose. *Final agency actions:* Section 106 Programmatic Agreement dated March 2010; project-level air quality conformity determination; Section 4(f) determination; and a Record of Decision dated June 2010. *Supporting documentation:* FEIS dated April 2010.

5. *Project name and location:* University Corridor Fixed Guideway Transit Project, Houston, TX. *Project sponsor:* Metropolitan Transit Authority of Harris County, Texas. *Project description:* The project is an 11.36 mile light rail transit corridor that connects Hillcroft Transit Center and the Eastwood Transit Center. *Final agency actions:* Section 106 finding of no adverse effect; project-level air quality conformity determination; Section 4(f) *de minimis* impact determination; and a Record of Decision dated July 2010. *Supporting documentation:* FEIS dated January 2010.

6. *Project name and location:* Science Park/West End Station, Boston, MA. *Project sponsor:* Massachusetts Bay Transportation Authority. *Project description:* The project will renovate the existing Science Park/West End Station to comply with ADA. The renovations include the construction of two elevator towers and lobbies, an elevator connecting bridge, new grade level stairs, new station platforms, and rehabilitation of stairway enclosures. *Final agency actions:* Section 106 Memorandum of Agreement; Section 4(f) determination; and a Finding of No Significant Impact (FONSI) signed July 2010. *Supporting documentation:* Environmental Assessment dated June 2009.

7. *Project name and location:* Saint Paul Union Depot, St. Paul, MN. *Project sponsor:* Ramsey County Regional Railroad Authority. *Project description:* The project is a rehabilitation and reuse of Saint Paul's historic Union Depot as a multi-modal transit hub. Union Depot will be restored as a passenger transportation terminal by providing services for Amtrak, Greyhound, and Jefferson Line buses, Metro buses, taxi service, bicycle services, and pedestrian connections. *Final agency actions:* Section 106 Programmatic Agreement; Section 4(f) determination; and a Finding of No Significant Impact (FONSI) signed April 2010. *Supporting documentation:* Environmental Assessment dated August 2009.

8. *Project name and location:* Central Florida Commuter Rail Transit, Orlando, FL. *Project sponsor:* Florida Department of Transportation (FDOT). *Project description:* FDOT is proposing to operate a commuter rail project on approximately 61 miles of existing freight rail tracks that traverse Orange, Seminole, Volusia, and Osceola counties in the greater metropolitan area of Orlando, Florida. The project will involve the construction of 17 stations and a new vehicle storage and maintenance facility. This action is on the second Supplemental Environmental Assessment (SEA) and related supporting documentation for the Central Florida Commuter Rail Transit (CFCRT) project. The revisions made in the second SEA include changes to seven stations and a change in vehicle technology. This SEA was performed subsequent to the Finding of No Significant Impact (FONSI) issued by FTA on April 27, 2007, and first Addendum to the FONSI issued on July 22, 2008. *Final agency actions:* Finding of No Significant Impact (FONSI) signed September 2010. *Supporting documentation:* Second Supplemental Environmental Assessment dated April 2010.

9. *Project name and location:* Easton Intermodal Transportation Center, Easton, PA. *Project sponsor:* The project is a 2.4-acre intermodal transportation center. The center will consist of a bus transfer center, an elevated parking structure, an at-grade parking area, three access points, a three-story commercial building, and a park. *Final agency actions:* Section 106 finding of no adverse effect; project-level air quality conformity determination; Section 4(f) no use determination; and a Finding of No Significant Impact (FONSI) signed September 2010. *Supporting documentation:* Environmental Assessment dated July 2010.

Issued on: September 15, 2010.

Susan Borinsky,

Associate Administrator for Planning and Environment, Washington, DC.

[FR Doc. 2010–23733 Filed 9–22–10; 8:45 am]

BILLING CODE P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Summary Notice No. PE–2010–38]

Petition for Exemption; Reopening of Comment Period

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of petitions for exemption received; Reopening of Comment Period

SUMMARY: In accordance with 14 CFR 11.47(c), the FAA has received a request to extend the comment period due to the temporary removal of the original petition. The FAA will reopen the comment period for 20 days after the date of publication.

DATE: Comments on this petition must identify the petition docket number involved and must be received on or before October 13, 2010.

ADDRESSES: You may send comments identified by Docket Number FAA–2010–0496 using any of the following methods:

• *Government-wide rulemaking Web site:* Go to *http://www.regulations.gov* and follow the instructions for sending your comments electronically.

• *Mail:* Send comments to the Docket Management Facility; U.S. Department of Transportation, 1200 New Jersey Avenue, SE., West Building Ground Floor, Room W12–140, Washington, DC 20590.

• *Fax:* Fax comments to the Docket Management Facility at 202–493–2251.

• *Hand Delivery:* Bring comments to the Docket Management Facility in Room W12–140 of the West Building Ground Floor at 1200 New Jersey Avenue, SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

Privacy: We will post all comments we receive, without change, to *http://www.regulations.gov*, including any personal information you provide. Using the search function of our docket Web site, anyone can find and read the comments received into any of our dockets, including the name of the individual sending the comment (or signing the comment for an association, business, labor union, *etc.*). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477–78).

Docket: To read background documents or comments received, go to *http://www.regulations.gov* at any time or to the Docket Management Facility in Room W12–140 of the West Building Ground Floor at 1200 New Jersey Avenue, SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Mark Forseth, ANM–113, (425) 227–2796, Federal Aviation Administration, 1601 Lind Avenue, SW., Renton, WA 98057–3356, or Katherine Haley, (202) 493–5708, Office of Rulemaking (ARM–203), Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591. This notice is published pursuant to 14 CFR 11.85.

Issued in Washington, DC, on September 17, 2010.

Dennis Pratte,

Acting Director, Office of Rulemaking.

Petition for Exemption

Docket No.: FAA–2010–0496.
Petitioner: The Boeing Company.

Section of 14 CFR Affected

14 CFR part 25, Appendix K, § K25.1.4(a)(3).

Description of Relief Sought

The comment period for the Summary of Petition Received published on September 1, 2010 (75 FR 53736) and closes on September 21, 2010. The FAA temporarily removed the petition from the docket due to proprietary content. This notice reopens the comment period.

[FR Doc. 2010–23812 Filed 9–22–10; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[Docket No. EP 290 (Sub-No. 5) (2010–4)]

Quarterly Rail Cost Adjustment Factor

AGENCY: Surface Transportation Board, DOT.

ACTION: Approval of rail cost adjustment factor.

SUMMARY: The Board has approved the fourth quarter 2010 Rail Cost Adjustment Factor (RCAF) and cost index filed by the Association of American Railroads. The fourth quarter 2010 RCAF (Unadjusted) is 1.104. The fourth quarter 2010 RCAF (Adjusted) is 0.494. The fourth quarter 2010 RCAF–5 is 0.468.

DATES: *Effective Date:* October 1, 2010.

FOR FURTHER INFORMATION CONTACT: Pedro Ramirez, (202) 245–0333. Federal Information Relay Service (FIRS) for the hearing impaired: (800) 877–8339.

SUPPLEMENTARY INFORMATION: Additional information is contained in the Board's decision, which is available on our Web site, *http://www.stb.dot.gov.* Copies of the decision may be purchased by contacting the office of Public Assistance, Governmental Affairs, and Compliance at (202) 245–0235. Assistance for the hearing impaired is available through FIRS at (800) 877–8339.

This action will not significantly affect either the quality of the human environment or energy conservation.

Decided: September 20, 2010.

By the Board, Chairman Elliot, Vice Chairman Mulvey, and Commissioner Nottingham.

Kulunie L. Cannon,

Clearance Clerk.

[FR Doc. 2010–23814 Filed 9–22–10; 8:45 am]

BILLING CODE 4915–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Intent to Rule on Request to Release Airport Property at the Kearney Municipal Airport, Kearney, NE

AGENCY: Federal Aviation Administration, (FAA), DOT.

ACTION: Notice of Request to Release Airport Property.

SUMMARY: The FAA proposes to rule and invites public comment on the release of land at the Keamey Municipal Airport under the provisions of Section 125 of the Wendell H. Ford Aviation Investment Reform Act for the 21st Century (AIR 21).

DATES: Comments must be received on or before October 25, 2010.

ADDRESSES: Comments on this application may be mailed or delivered to the FAA at the following address: Federal Aviation Administration, Central Region, Airports Division, 901 Locust, Kansas City, Missouri 64106–2325.

In addition, one copy of any comments submitted to the FAA must be mailed or delivered to Michael J. Tye, City Attorney, City of Kearney, 1419 Central Avenue, P.O. Box 636, Kearney, NE. 68848–0636.

FOR FURTHER INFORMATION CONTACT: Nicoletta Oliver, Airports Compliance Specialist, FAA, Central Region, 901 Locust, Kansas City, MO 64106–2325, (816) 329–2642. The request to release property may be reviewed in person at this same location.

SUPPLEMENTARY INFORMATION: The FAA proposes to rule and invites public comment on the request to release property at the Kearney Municipal Airport under the provisions of AIR21.

On September 9, 2010, the FAA determined that the request to release property at the Kearney Municipal Airport, submitted by the City of Kearney, met the procedural requirements of the Federal Aviation Administration. The FAA will approve or disapprove the request, in whole or in part, no later than November 9, 2010.

The following is a brief overview of the request: The City of Kearney requests the release of approximately 7.09 acres of airport property, as well as structures located on this property. The land is currently not being used for aeronautical purposes. The purpose of this release is to sell the land to Delux Manufacturing Co. Inc. for use as a manufacturing facility.

Any person may inspect the request in person at the FAA office listed above

under **FOR FURTHER INFORMATION CONTACT**.

In addition, any person may, upon request, inspect the application, notice and other documents that are relevant to the request, in person at the City of Kearney, Keamey, Nebraska.

Issued in Kansas City, Missouri, on September 9, 2010.

Jim A. Johnson,

Manager, Airports Division, Central Region.

[FR Doc. 2010–23750 Filed 9–22–10; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Submission Deadline for Schedule Information for O'Hare International Airport, John F. Kennedy International Airport, and Newark Liberty International Airport for the Summer 2011 Scheduling Season

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

ACTION: Notice of submission deadline.

SUMMARY: Under this notice, the FAA announces the submission deadline of October 14, 2010, for Summer 2011 flight schedules at Chicago's O'Hare International Airport (ORD), New York's John F. Kennedy International Airport (JFK), and Newark Liberty International Airport (EWR) in accordance with the International Air Transport Association (IATA) Worldwide Scheduling Guidelines. The deadline coincides with the schedule submission deadline for the IATA Schedules Conference for the Summer 2011 scheduling season.

SUPPLEMENTARY INFORMATION: The FAA has designated ORD as an IATA Level 2, Schedules Facilitated Airport, and JFK and EWR as Level 3, Coordinated Airports. Scheduled operations at JFK and EWR are currently limited by the FAA by orders until October 29, 2011.[1]

The FAA is primarily concerned about planned passenger and cargo operations during peak hours but carriers may submit schedule plans for the entire day. At ORD, the peak hours are 7 a.m. to 9 p.m. Central Time (1200–0200 UTC) and at EWR and JFK from 6 a.m. to 11 p.m. Eastern Time (1000–0300 UTC). Carriers should submit schedule information in sufficient detail including, at minimum, the operating carrier, flight number, scheduled time of operation, frequency, and effective dates. IATA standard schedule information format and data elements (Standard Schedules Information Manual) may be used.

The U.S. summer scheduling season for these airports is from March 27, 2011, through October 29, 2011, in recognition of the IATA scheduling season dates. The FAA understands there may be differences in schedule times due to different U.S. daylight saving time dates, and these will be accommodated to the extent possible.

DATES: Schedules must be submitted no later than October 14, 2010.

ADDRESSES: Schedules may be submitted by mail to the Slot Administration Office, AGC–200, Office of the Chief Counsel, 800 Independence Ave., SW., Washington, DC 20591; facsimile: 202–267–7277; ARINC: DCAYAXD; or by e-mail to: *7–AWA-slotadmin@faa.gov.*

FOR FURTHER INFORMATION CONTACT: Robert Hawks, Office of the Chief Counsel, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone number: 202–267–7143; fax number: 202–267–7971; e-mail: *rob.hawks@faa.gov.*

Issued in Washington, DC, on September 16, 2010.

Rebecca B. MacPherson,

Assistant Chief Counsel for Regulations.

[FR Doc. 2010–23735 Filed 9–22–10; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF VETERANS AFFAIRS

Privacy Act of 1974; Report of Matching Program

AGENCY: Department of Veterans Affairs.

ACTION: Notice of Computer Matching Program.

SUMMARY: Notice is hereby given that the Department of Veterans Affairs (VA) intends to conduct a recurring computer matching program matching Department of Justice, Bureau of Prison (BOP), inmate records with VA pension, compensation, and dependency and indemnity compensation (DIC) records. The goal of this match is to identify incarcerated veterans and beneficiaries who are receiving VA benefits, and to reduce or terminate benefits, if appropriate. The match will include records of current VA beneficiaries.

DATES: Comments on the matching agreement must be received no later than October 25, 2010. If no public comment is received, the amended system will become effective October 25, 2010.

The match will start no sooner than 30 days after publication of this notice in the **Federal Register**, or 40 days after copies of this notice and the agreement of the parties is submitted to Congress and the Office of Management and Budget, whichever is later, and end not more than 18 months after the agreement is properly implemented by the parties. The involved agencies' data integrity boards (DIBs) may extend this match for 12 months provided the agencies certify to their DIBs, within three months of the ending date of the original match, that the matching program will be conducted without change and that the matching program has been conducted in compliance with the original matching program.

ADDRESSES: Written comments may be submitted through *http://www.Regulations.gov;* by mail or hand-delivery to the Director, Regulations Management (02REG), Department of Veterans Affairs, 810 Vermont Ave., NW., Room 1068, Washington, DC 20420; or by fax to 202–273–9026. Copies of comments received will be available for public inspection in the Office of Regulation Policy and Management, Room 1063B, between the hours of 8 a.m. and 4:30 p.m., Monday through Friday (except holidays). Please call 202–461–4902 for an appointment. In addition, during the comment period, comments may be viewed online through the Federal Docket Management System (FDMS) at *http://www.Regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Pamela Burd (212B), 202–461–9149.

SUPPLEMENTARY INFORMATION: VA will use this information to verify incarceration and adjust VA benefit payments as prescribed by law. The proposed matching program will enable VA to accurately identify beneficiaries who are incarcerated for a felony or a misdemeanor in a Federal penal facility.

The legal authority to conduct this match is 38 U.S.C. 1505, 5106, and 5313. Section 5106 requires any Federal department or agency to provide VA such information as VA requests for the purposes of determining eligibility for, or the amount of VA benefits, or verifying other information with respect thereto. Section 1505 provides that no VA pension benefits shall be paid to or for any person eligible for such benefits, during the period of that person's incarceration as the result of conviction of a felony or misdemeanor, beginning on the sixty-first day of incarceration. Section 5313 provides that VA compensation or dependency and

[1] Operating Limitations at John F. Kennedy International Airport. 73 FR 3,510 (Jan. 18, 2008). 74 FR 51650 (Oct. 7, 2009). Operating Limitations at Newark Liberty International Airport. 73 FR 29,550 (May 21, 2008). 74 FR 51648 (Oct. 7, 2009).

indemnity compensation above a specified amount shall not be paid to any person eligible for such benefits, during the period of that person's incarceration as the result of conviction of a felony, beginning on the sixty-first day of incarceration.

The VA records involved in the match are the VA system of records, Compensation, Pension, Education, and Vocational Rehabilitation and Employment Records—VA (58 VA 21/22/28), published at 74 FR 29275, June 19, 2009. The BOP records consist of information from the system of records identified as Inmate Central Records System, BOP #005 published on June 7, 1984 (48 FR 23711), and last amended at 67 FR 31371 (May 9, 2002).

In accordance with Title 5 U.S.C., subsection 552a(o)(2) and (r), copies of the agreement are being sent to both Houses of Congress and to the Office of Management and Budget. This notice is provided in accordance with the provisions of Privacy Act of 1974 as amended by Public Law 100–503.

Approved: August 30, 2010.

John R. Gingrich,

Chief of Staff, Department of Veterans Affairs.

[FR Doc. 2010–23786 Filed 9–22–10; 8:45 am]

BILLING CODE 8320–01–P

Federal Register

Thursday,
September 23, 2010

Part II

Environmental Protection Agency

40 CFR Parts 136, 260, 423, et al.
Guidelines Establishing Test Procedures for the Analysis of Pollutants Under the Clean Water Act; Analysis and Sampling Procedures; Proposed Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 136, 260, 423, 430, and 435

[EPA–HQ–OW–2010–0192; FRL–9189–4]

RIN 2040–AF09

Guidelines Establishing Test Procedures for the Analysis of Pollutants Under the Clean Water Act; Analysis and Sampling Procedures

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing changes to analysis and sampling test procedures in wastewater regulations. These changes will provide increased flexibility to the regulated community and laboratories in their selection of analytical methods (test procedures) for use in Clean Water Act programs. The changes include proposal of EPA methods and methods published by voluntary consensus standard bodies, such as ASTM International and the Standard Methods Committee and updated versions of currently approved methods. EPA is also proposing to add certain methods reviewed under the alternate test procedures program. Further, EPA is proposing changes to the current regulations to clarify the process for EPA approval for use of alternate procedures for nationwide and Regional use. In addition, EPA is proposing minimum quality control requirements to improve consistency across method versions; corrections to previously approved methods; and changes to sample collection, preservation, and holding time requirements. Finally, EPA is proposing changes to how EPA cites methods in three effluent guideline regulations.

DATES: EPA must receive your comments on this proposal on or before November 22, 2010.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–HQ–OW–2010–0192, by one of the following methods:

- *http://www.regulations.gov:* Follow the on-line instructions for submitting comments.
- *E-mail: OW-Docket@epa.gov,* Attention Docket ID No. EPA–HQ–OW–2010–0192.
- *Mail:* Water Docket, U.S. Environmental Protection Agency, Mailcode: 2822T, 1200 Pennsylvania Ave., NW., Washington, DC 20460. Attention Docket ID No. EPA–HQ–OW–2010–0192. Please include a total of 3 copies.
- *Hand Delivery:* Water Docket, EPA Docket Center, EPA West Building Room 3334, 1301 Constitution Ave., NW., Washington, DC, Attention Docket ID No. EPA–HQ–OW–2010–0192. Such deliveries are only accepted during the Docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information by calling 202–566–2426.

Instructions: Direct your comments to Docket ID No. EPA–HQ–OW–2010–0192. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *http://www.regulations.gov,* including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through *http://www.regulations.gov* or 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 *http://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.

Docket: All documents in the docket are listed in the *http://www.regulations.gov* index. Although listed in the index, some information is not publicly available, *e.g.,* CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available either electronically in *http://www.regulations.gov* or in hard copy at the Water Docket in the EPA Docket Center, 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 Water Docket is 202–566–2426.

FOR FURTHER INFORMATION CONTACT: Lemuel Walker, Engineering and Analysis Division (4303T), USEPA Office of Science and Technology, 1200 Pennsylvania Ave., NW., Washington, DC 20460, 202–566–1077, (*e-mail: walker.lemuel@epa.gov*), or Meghan Hessenauer, Engineering and Analysis Division (4303T), USEPA Office of Science and Technology, 1200 Pennsylvania Ave., NW., Washington, DC 20460, 202–566–1040 (*e-mail: hessenauer.meghan@epa.gov*).

SUPPLEMENTARY INFORMATION:

A. General Information

1. Does this action apply to me?

This proposed rule could affect a number of different entities. Potential regulators may include EPA Regions, as well as States, Territories and Tribes authorized to implement the National Pollutant Discharge Elimination System (NPDES) program, and issue permits with conditions designed to ensure compliance with the technology-based and water quality-based requirements of the Clean Water Act (CWA). These permits may include restrictions on the quantity of pollutants that may be discharged as well as pollutant measurement and reporting requirements. If EPA has approved a test procedure for analysis of a specific pollutant, the NPDES permitee must use an approved test procedure (or an approved alternate test procedure) for the specific pollutant when measuring the required waste constituent. Similarly, if EPA has established sampling requirements, measurements taken under an NPDES permit must comply with these requirements. Therefore, entities with NPDES permits will potentially be regulated by the actions in this rulemaking. Categories and entities that may potentially be subject to the requirements of today's rule include:

Category	Examples of potentially regulated entities
State, Territorial, and Indian Tribal Governments ...	States, Territories, and Tribes authorized to administer the NPDES permitting program; States, Territories, and Tribes providing certification under Clean Water Act section 401.
Industry	Facilities that must conduct monitoring to comply with NPDES permits.
Municipalities	POTWs that must conduct monitoring to comply with NPDES permits.

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 types of entities that EPA is now aware that could potentially be regulated by this action. Other types of entities not listed in the table could also be regulated. To determine whether your facility is regulated by this action, you should carefully examine the applicability language at 40 CFR 136.1 (NPDES permits and CWA) and 40 CFR 403.1 (Pretreatment standards purpose and applicability). If you have questions regarding the applicability of this action to a particular entity, consult the appropriate person listed in the preceding **FOR FURTHER INFORMATION CONTACT** section.

B. What should I consider as I prepare my comments for EPA?

1. *Submitting Confidential Business Information (CBI).* Do not submit this information to EPA through *http://www.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 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:

- Identify the rulemaking by docket number and other identifying information (subject heading, **Federal Register** date and page number).
- 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.
- Explain why you agree or disagree, suggest alternatives, and substitute language for your requested changes.
- Describe any assumptions and provide any technical information and/or data that you used.
- If you estimate potential costs or burdens, explain how you arrived at your estimate in sufficient detail to allow for it to be reproduced.
- Provide specific examples to illustrate your concerns, and suggest alternatives.
- Explain your views as clearly as possible, avoiding the use of profanity or personal threats.
- Make sure to submit your comments by the comment period deadline identified.

C. Abbreviations and Acronyms Used in the Preamble and Proposed Rule Text

ASTM: ASTM International
ATP: Alternate Test Procedure
CFR: Code of Federal Regulations
CWA: Clean Water Act
EPA: Environmental Protection Agency
FLAA: Flame Atomic Absorption Spectroscopy
HRGC: High Resolution Gas Chromatography
HRMS: High Resolution Mass Spectrometry
ICP/AES: Inductively Coupled Plasma-Atomic Emission Spectroscopy
ICP/MS: Inductively Coupled Plasma-Mass Spectrometry
MS: Mass Spectrometry
NPDES: National Pollutant Discharge Elimination System
QA: Quality Assurance
QC: Quality Control
SDWA: Safe Drinking Water Act
SM: Standard Methods
STGFAA: Stabilized Temperature Graphite Furnace Atomic Absorption Spectroscopy
USGS: United States Geological Survey
VCSB: Voluntary Consensus Standards Body
WET: Whole Effluent Toxicity

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I. Statutory Authority

EPA is proposing today's rule pursuant to the authority of sections 301(a), 304(h), and 501(a) of the Clean Water Act ("CWA" or the "Act"), 33 U.S.C. 1311(a), 1314(h), 1361(a). Section 301(a) of the Act prohibits the discharge of any pollutant into navigable waters unless the discharge complies with a National Pollutant Discharge Elimination System (NPDES) permit issued under section 402 of the Act. Section 304(h) of the Act requires the Administrator of the EPA to "* * * promulgate guidelines establishing test procedures for the analysis of pollutants that shall include the factors which must be provided in any certification pursuant to [section 401 of this Act] or permit application pursuant to [section 402 of this Act]." Section 501(a) of the Act authorizes the Administrator to "* * * prescribe such regulations as are necessary to carry out this function under [the Act]." EPA generally has codified its test procedure regulations (including analysis and sampling

requirements) for CWA programs at 40 CFR part 136, though some requirements are codified in other Parts (*e.g.,* 40 CFR chapter I, subchapters N and O).

II. Summary of Proposed Rule

EPA's regulations at 40 CFR part 136 identify test procedures that must be used for the analysis of pollutants in all applications and report under the CWA NPDES program as well as State certifications pursuant to section 401 of the CWA. Included among the approved test procedures are analytical methods developed by EPA as well as methods developed by voluntary standards development organizations such as ASTM International and by the joint efforts of the Standard Methods Committee which is comprised of three technical societies (American Public Health Association, American Water Works Association and the Water Environment Federation) and produce *Standard Methods for the Examination of Water and Wastewater.* EPA approves analytical methods (test procedures) for measuring regulated pollutants in wastewater. Regulated and regulatory entities use these approved methods for determining compliance with NPDES permits or other monitoring requirements. Often, these entities have a choice in deciding which approved method they will use because EPA has approved the use of more than one method. This rule proposes to add to this list of approved methods. Associated with the proposed approved methods are their regulated analytes (parameters) within the method. Some of these proposed methods introduce new technologies to the NPDES program, while others are updated versions of previously approved methods. These additions will improve data quality and provide the regulated community with greater flexibility. Further, EPA is aware that organizations sometimes republish methods to correct errors or revise the description. These changes do not affect the performance of the method. Therefore, if there are changes for methods in this proposed rule before publication of a final rule, EPA will include the updated versions. In the tables at Section 136.3, EPA lists the parameters in alphabetical order. To better identify new parameters proposed in this rule EPA added some of these parameters, such as bisphenol A and nonylphenol, at the end of these lists. In the final rule, EPA may choose to reorder the listings to arrange all parameters alphabetically.

A. Changes to 40 CFR 136.3 To Include New EPA Methods and New Versions of Previously Approved EPA Methods

EPA is proposing to add new EPA methods that require new technologies to its Part 136 test procedures. EPA also is proposing new versions of already approved EPA methods with technologies that have been in use for many years. The new EPA methods and new versions of EPA approved methods are described in the following paragraphs.

1. EPA is proposing a new version of EPA Method 1664, 1664B: N-Hexane Extractable Material (HEM; Oil and Grease) and Silica Gel Treated N-Hexane Extractable Material (SGT–HEM; Non-polar Material) by Extraction and Gravimetry for use in CWA programs. In addition, EPA is proposing to amend the RCRA regulations at 40 CFR 260.11, which currently specify use of method 1664A, to additionally specify the revised version, 1664B.

Currently, Method 1664A is used as a required testing method to determine eligibility of materials for certain conditional exclusions from RCRA regulations under 40 CFR 260.20 and 260.22. These exclusions are known as "delistings." These delistings provide that certain wastes generated at particular facilities are no longer classified as hazardous wastes under RCRA. When delistings are granted by EPA, the Agency describes them, along with applicable conditions, in appendix IX to 40 CFR part 261.

A number of delistings specify, among other things, the following test method: "Method 9070A (uses EPA Method 1664, Rev. A)." This testing method must be used by waste generators to determine if their wastes are an oily waste for delisting purposes. The language used in Appendix IX reads this way because Method 9070A in SW–846 (including on the SW–846 Web site, *http://www.epa.gov/epawaste/hazard/testmethods/sw846/pdfs/9070a.pdf*) simply reads that Method 1664A is to be used. Thus, although Method 9070A is cited, it is actually Method 1664A. Method 9070A does not exist independently of Method 1664A.

Once this rule becomes final, we would encourage future delistings, if applicable, to cite the test method as "Method 9070A (uses Method EPA 1664, Rev. B)." EPA is not proposing to amend delistings granted in previous years that reference Method 1664A at this time, since it would require additional review to assess the need for such a change and an analysis of each delisting.

Oil and Grease is a method-defined parameter that measures hexane extractable material (HEM) using n-hexane (85% minimum purity, 99.0% minimum saturated C6 isomer, residue < 1mg/L.) Before the use of Freon® was banned, EPA defined oil and grease as Freon®-extractable material. To replace Freon® for oil and grease determinations (64 FR 26315, May 14, 1999) EPA conducted extensive side-by-side studies of several extracting solvents on a variety of samples to determine how the values compared to Freon®-extractable material values.

In today's proposed rule, EPA describes six oil and grease methods, and proposes only the three methods in Table IB that use n-hexane to extract the sample because the solvent-defined definition of oil and grease measurements precludes use of any other extraction solvent or extraction technique. Without extensive side-by-side testing, permit writers, permitees, and data reviewers lack a basis for comparing HEM permit limits or measurements to values obtained with other extraction solvents or techniques. EPA lacks information about whether permit writers or permitees would value having more ways to extract oil and grease samples, or about how much effort they or others would be willing to exert to determine if the alternate values were equal to HEM values or convertible to HEM values by a conversion factor.

Although solvents may not be changed, EPA has described some allowable changes to the proposed EPA Method 1664B. This method describes (1) modifications allowable for nationwide use without prior EPA reviews (cf. documentation procedures described at 40 CFR 136.6), and (2) describes modifications not allowable including the use of any extraction solvent other than n-hexane or determination technique other than gravimetry. Although Method 1664B allows use of alternate extraction techniques, such as solid phase extraction (SPE) some discharges or waste streams may not be amenable to SPE. For these samples, 1664B should be applied as written. Conditioning of the solid-phase disk or device with solvents other than n-hexane (*e.g.,* alcohol, acetone, etc) is allowed, only if this solvent(s) is completely removed from the SPE disk or device prior to passing the sample through the SPE disk or device.

2. EPA is proposing to include in Table IB new EPA Method 200.5 and clarifying that the axial orientation of the torch is allowed for use with EPA Method 200.7. EPA Method 200.5 "Determination of Trace Elements in

Drinking Water by Axially Viewed Inductively Coupled Plasma—Atomic Emission Spectrometry" employs a plasma torch viewed in the axial orientation to measure chemical elements (metals). It also includes performance data for the axial configuration that is not in Method 200.7 because the axial technology torch results were not available when Method 200.7 was developed. For some elements the axial orientation results in greater sensitivity and lower detection limits than the radial orientation. EPA now authorizes the use of Method 200.5 in testing under its Safe Drinking Water Act Program (73 FR 31616, June 6, 2008). Approval of Method 200.5 and the flexibility within Method 200.7 will allow laboratories to use either axial instruments or radial instruments to measure metals in water samples.

3. EPA is proposing to add EPA Method 525.2, an updated version of EPA Method 525.1, in Table IG (Test Methods for Pesticide Active Ingredients) as an additional approved method for all parameters for which EPA has previously approved Method 525.1. Further, EPA is soliciting comment on whether EPA should substitute Method 525.2 for Method 525.1.

EPA is proposing to include Pesticide Methods from Table IG in Table ID (Test Procedures for Pesticides). Specifically, EPA is proposing to add EPA Method 525.2 for the same pesticides for which EPA has approved Method 525.1 in Table IG. Both methods use GC/MS methodology.

EPA is proposing to add some of the Pesticide Active Ingredients methods in Table IG that have been in use for more than 10 years to Table ID for general use. These methods are:

a. EPA Method 608.1, "The Determination of Organochloride Pesticides in Municipal and Industrial Wastewater." This is a gas chromatographic (GC) method used to determine certain organochlorine pesticide compounds listed in industrial and municipal discharges. This method measures chlorobenzilate, chloroneb, chloropropylate, dibromochloropropane, etridiazole, PCNB, and propachlor.

b. EPA Method 608.2, "The Determination of Certain Organochlorine Pesticides in Municipal and Industrial Wastewater." This is a GC method used to determine certain organochlorine pesticides compounds in industrial and municipal discharges. This method measures chlorothalonil, DCPA, dichloran, methoxychlor, and permethrin.

c. EPA Method 614, "The Determination of Organophosphorus Pesticides in Municipal and Industrial Wastewater." This is a GC method used to determine organophosphorus compounds in industrial and municipal discharges. This method measures azinphos methyl, demeton, diazinon, disulfoton, ethion, malathion, parthion methyl, and parathion ethyl.

d. EPA Method 614.1, "The Determination of Organophosphorus Pesticides in Municipal and Industrial Wastewater." This is a GC method used to determine organophosphorus compounds in industrial and municipal discharges. This method measures dioxathion, EPN, ethion, and terbufos.

e. EPA Method 615, "The Determination of Chlorinated Herbicides in Municipal and Industrial Wastewater." This is a GC method used to determine chlorinated herbicides compounds in industrial and municipal discharges. This method measures 2,4-D, dalapon, 2,4-DB, dicamba, dichlorprop, dinoseb, MCPA, MCPP, 2,4,5-T, and 2,4,5-TP.

f. EPA Method 617, "The Determination of Organohalide Pesticides and PCBs in Municipal and Industrial Wastewater." This is a GC method used to determine organohalide compounds in industrial and municipal discharges. This method measures aldrin, α-BHC, β-BHC, γ-BHC (lindane), captan, carbophenothion, chlordane, 4,4′-DDD, 4,4′-DDE, 4,4′-DDT, dichloran, dicofol, dieldrin, endosulfan I, endosulfan II, endosulfan sulfate, endrin, endrin aldehyde, heptachlor, heptachlor epoxide, isodrin, methoxychlor, mirex, PCNB, perthane, strobane, toxaphene, trifluralin, PCB–1016, PCB–1221, PCB–1232, PCB–1242, PCB–1248, PCB–1254, and PCB–1260.

g. EPA Method 619, "The Determination of Triazine Pesticides in Municipal and Industrial Wastewater." This is a GC method used to determine triazine pesticides compounds in industrial and municipal discharges. This method measures ametryn, atraton, atrazine, prometon, prometryn, propazine, sec-bumeton, simetryn, simazine, terbuthylazine, terbutryn.

h. EPA Method 622, "The Determination of Organophosphorus Pesticides in Municipal and Industrial Wastewater." This is a GC method used to determine organophosphorus pesticides compounds in industrial and municipal discharges. This method measures azinphos methyl, bolstar, chlorpyrifos, chlorpyrifos methyl, coumaphos, demeton, diazinon, dichlorvos, disulfoton, ethoprop, fensulfothion, fenthion, merphos, mevinphos, naled, parathion methyl, phorate, ronnel, stirofos, tokuthion, and trichloronate.

i. EPA Method 622.1, "The Determination of Thiophosphate Pesticides in Municipal and Industrial Wastewater." This is a GC method used to determine thiophosphate pesticides compounds in municipal and industrial discharges. This method measures aspon, dichlofenthion, famphur, fenitrothion, fonophos, phosmet, and thionazin.

j. EPA Method 632, "The Determination of Carbamate and Urea Pesticides in Municipal and Industrial Wastewater." This is a high-performance liquid chromatographic (HPLC) method used to determine carbamate and urea pesticide compounds in industrial and municipal discharges. This method measures aminocarb, barban, carbaryl, carbofuran, chlorpropham, diuron, fenuron, fenuron-TCA, fluometuron, linuron, methiocarb, methomyl, mexacarbate, monuron, neburon, oxamyl, propham, propoxur, siduron, swep.

4. EPA is proposing to add in Table IC EPA Method 1614A, "Brominated Diphenyl Ethers in Water, Soil, Sediment, and Tissue by HRGC/HRMS." EPA developed this method to determine 49 polybrominated diphenyl ether (PBDE) congeners in aqueous, solid, tissue, and multi-phase matrices. These ethers are used in brominated flame retardants. This method uses isotope dilution and internal standard high resolution gas chromatography/high resolution mass spectrometry (HRGC/HRMS). This method allows use of a temperature-programmed injector/vaporizer and a short column to improve recoveries of the octa-, nona-, and decabrominated diphenyl ethers.

5. EPA is proposing to add in Table IC EPA Method 1668C, "Chlorinated Biphenyl Congeners in Water, Soil, Sediment, Biosolids, and Tissue by HRGC/HRMS." This method determines individual chlorinated biphenyl congeners in environmental samples by isotope dilution and internal standard high resolution gas chromatography/high resolution mass spectrometry (HRGC/HRMS). Current Part 136 methods only measure a mixture of congeners in seven Aroclors—PCB–1016, PCB–1221, PCB–1232, PCB–1242, PCB–1248, PCB–1254, and PCB–1260. EPA Method 1668C can measure the 209 individual PCB congeners in these mixtures. EPA developed Method 1668 for use in wastewater, surface water, soil, sediment, biosolids, and tissue matrices.

EPA first published Method 1668 in 1999 and it is being used in several environmental applications, including

NPDES permits. EPA based today's proposed version, 1668C, on the results of an interlaboratory validation study (EPA 2010a, b), peer reviews (EPA 2010c), and user experiences. In the development and subsequent multi-laboratory validation of this method, EPA has evaluated method performance characteristics, such as selectivity, calibration, bias, precision, quantitation and detection limits. For example, EPA has observed that detection limits and quantitation levels are usually dependent on the level of interferences and laboratory background levels rather than instrumental limitations. Thus, the published minimum levels of quantitation are conservative estimates of the concentrations at which a congener can be measured with laboratory contamination present (EPA 2010d).

EPA recognizes that the performance of this Method may vary among the 209 congeners, and in different matrices. This is typical of multi-analyte methods because not all chemicals respond identically to extraction and clean up techniques, or have identical instrument responses. In a study of data comparability between two laboratories on samples collected from the Passaic River in New Jersey, in which 151 PCB congeners were identified and measured, accuracy as measured by analysis of a NIST SRM was 15% or better. Recoveries of the PCB congeners ranged from 90% to 124% and averaged 105%; precision ranged from 4.2% to 23% (Passaic River 2010).

This PCB method and the polybrominated diphenyl ether (PBDE) Method 1614A are performance-based methods. This means that users have the flexibility to modify the method to adapt to the sometimes unique characteristics of the user's sample. There is flexibility to modify the sample preparation steps to remove substances that interfere with measurement of the PCB congeners. A consequence of this flexibility is that, after customizing a performance-based method for a specific sample or application, the user should continue to use the same customized procedures on these samples or applications to maintain data comparability.

EPA Method 1668C, the interlaboratory study report, and peer reviews are in the docket for today's rule and on EPA's CWA methods Web site at *http://www.epa.gov/waterscience/methods.* EPA lists Method 1668C in Table IC as the parameter, "PCBs 209 Congeners."

6. EPA is proposing to update in Table IH EPA Method 1622, "Cryptosporidium in Water by Filtration/IMS/FA" and EPA Method 1623, "Cryptosporidium and Giardia in Water by Filtration/IMS/FA" to reflect changes made in the December 2005 versions of these methods. EPA's drinking water program uses the 2005 versions of the methods. The methods allow the flexibility to choose among several types of filters, quality controls, and stains, as well as clarification on measuring sample temperatures, quality control sample requirements and use of quality control sample results, minimizing carry-over debris, analyst verification procedures and sample condition criteria upon receipt. This method substitution necessitates a change in the holding temperature (Table II) for *Cryptosporidium and Giardia* from 0–8 °C to refrigerate between 1–10 °C.

7. EPA is proposing in Table IH revised versions of EPA Methods 1103.1, 1106.1, 1600 (also in Table IA), 1603, and 1680 to correct technical errors. Specifically, for Methods 1103.1 and 1603, tryptone broth should be tryptone water (section 12.4.3). In addition, in Tables 2 and 3, respectively, of these two methods, the positive control organism for the cytochrome oxidase reagent has been changed to *P. aeruginosa* from *E. faecalis,* and the negative control organism for Simmons citrate agar has been changed to *S. flexneri* from *E. coli* for more definitive results. In section 7.5.2 of Method 1603, the formula for magnesium chloride hexahydrate should have a dot before the waters rather than an alpha sign ($MgCl_2 \cdot 6H_2O$). In Methods 1106.1 and 1600, in Tables 6 and 7, respectively, the true spiked Enterococci "T (CFU/100 mL)" in the spiked sample based on the lot mean valued provided by the manufacturer should be 32 instead of 11.2. In Method 1680, the lactose for Lauryl Tryptose Broth (LTB) should be 5.0 g, not 25.0 g (section 7.6.1), and the dipotassium hydrogen phosphate for EC medium should be 4.0 g, not 44.0 g (section 7.7.1).

8. EPA is proposing to add Method 1627, "Kinetic Test Method for the Prediction of Mine Drainage Quality." The method is a standardized simulated weathering test that provides information to predict the quality of mine drainage from coal mining operations or weathering. The method also can be a tool with which to generate data in the design and implementation of best management practices and treatment processes needed by mining operations to meet U.S. EPA discharge requirements at 40 CFR part 434. Other publications have referred to this method generically as the ADTI Weathering Procedure 2 (ADTI–WP2). EPA lists Method 1627 in Table IB as "Acid Mine Drainage." The method is suitable for determinations of probable hydrologic consequences and to develop cumulative hydrologic impact assessment data to support Surface Mining Control and Reclamation Act (SMCRA) permit application requirements. Although this method is directed toward the coal mining industry and regulatory agencies, the method may be applicable to highway and other construction involving cut and fill of potentially acid-producing rock. This method may be used to predict the water quality characteristics (*e.g.,* pH, acidity, metals) of mine site discharges using observations from sample behavior under simulated and controlled weathering conditions. The method was developed and evaluated in single, multiple and interlaboratory method validation studies in laboratories representing the mining industry, private sector, federal agencies, and academia.

9. EPA proposes to approve EPA Method 624, "Purgeables," for definitive measurements of acrolein and acrylonitrile in wastewater. Currently this method is approved only to screen samples for the presence of acrolein and acrylonitrile. Footnote 4 to Table IC requires that the analyst confirm occurrences with either EPA Method 603 or 1624 because, when EPA promulgated this method, EPA believed the confirmatory step was necessary. Commenters on a previous proposed rule to amend part 136 (69 FR 18166, April 6, 2004) requested that EPA allow use of Method 624 for definitive determination of acrolein and acrylonitrile in wastewater without a confirmatory step and provided EPA with data. EPA has considered this comment and after reviewing additional data (Test America 1, 2) is proposing to revise the listing of Method 624 in Table IC to remove footnote 4 that requires a confirmatory analysis.

B. Changes to 40 CFR 136.3 To Include New Standard Methods and New Versions of Approved Standard Methods

EPA is proposing to revise how we identify approved methods that are published by the Standard Methods Committee. Currently in the tables at 136.3(a), EPA lists these methods in one or more columns as being in the 18th, 19th, 20th printed compendiums, or in the On-line editions published by the Standard Methods Committee. EPA identifies which versions are approved by the printed edition in which the

method is published or, in the case of the electronic version of the method, by the last two digits of the year in which the method was published by the Standard Methods Committee (*e.g.,* Standard Method 2320 B–97). In some cases, EPA has approved more than one version of a Standard Method. Approval of several versions of the same Standard Method has led to inconsistencies in how laboratories conduct these analyses especially in quality assurance/quality control (QA/QC) practices. For this reason, EPA is proposing to approve only the most recent version of a method published by the Standard Methods Committee with as few exceptions as possible by listing only one version of the method with the year of publication designated by the last four digits in the method number (*e.g.,* Standard Method 2320 B–1997). This change allows use of a specific method in any edition that includes a method with the same method number and year of publication. Previously, a laboratory only could use the method that was published in the edition of *Standard Methods* listed in the tables at 136.3(a). In some cases, EPA used footnotes to designate approved Standard Methods that are no longer published in *Standard Methods.*

In addition, EPA is proposing to approve new Standard Methods, SM, new versions of currently approved SM, and the use of an already approved SM for a chemical that is not currently listed in Table IB. The new versions of currently approved SM have been revised to clarify or improve the instructions in the method, improve the quality control (QC) instructions, or make editorial corrections. The proposed new SM and new versions of SM are described in the following paragraphs.

1. EPA is proposing to add SM 5520 B–2001 and SM 5520 F–2001 for Oil and Grease determinations. These methods measure hexane extractable material (HEM). EPA is proposing these methods because they use n-hexane as the extraction solvent. EPA is not proposing SM 5520 G–2001 because it allows use of a co-solvent, such as acetone. In the preceding description of EPA's proposed Method 1664B, EPA explained that oil and grease is a measurement defined by the solvent, in this case n-hexane, used to extract oil and grease from the sample. Thus, use of any other solvent system, such as a co-solvent is precluded.

2. EPA is proposing to add SM 4500–NH_3 G–1997, Ammonia (as N) and TKN, Phenate Method, which is an automated version of the previous version of a previously approved SM 4500–NH_3 F–1997.

3. EPA is proposing to add SM 4500–B B–2000, Boron, Curcumin Method, which uses the same chemistry and instruments as Method I–3112–85.

4. EPA is proposing to add SM 4140–1997, Inorganic Ions (Bromide, Chloride, Fluoride, Orthophosphate, and Sulfate), Capillary Ion Electrophoresis with Indirect UV Detection, which uses the same technology as the EPA approved ASTM Method D6508–00.

5. EPA is proposing to add SM 3114 C–2009, Arsenic and Selenium by Continuous Hydride Generation/Atomic Absorption Spectrometry, which is an automated version of the approved manual method, and uses the same technology as Method I–2062–85.

6. EPA is proposing to add SM 3111 E–1999 for determinations of aluminum and beryllium. The method uses the same instrumental techniques as SM 3111D with an additional chelation concentration step for increased sensitivity.

7. EPA is proposing to add SM 5220 B–1997 for Chemical Oxygen Demand which is similar to EPA Method 410.3.

8. EPA is proposing to add SM 4500 N_{ORG} D–1997 for determinations of Kjeldahl Nitrogen—Total, which has a similar chemical and instrument setup as in EPA Method 351.2 in Table IB. The same chemical reaction is measured in both of these methods.

9. EPA is proposing to add SM 4500 P G–1999 and SM 4500 P H–1999, Phosphorus. Both of these methods use separate flow injection instrumentation that is the same as EPA Method 365.1.

10. EPA is proposing to add SM 4500 P E–1999 and SM 4500 P F–1999, Phosphorus. These methods, 4500 P E–1999 Manual Single Reagent and F–1999 Automated Ascorbic Acid, have been approved for drinking water analyses (73 FR 31616, June 3, 2008).

11. EPA is proposing to add SM 4500 O B, D, E and F–2001, Oxygen, Iodometric Methods. EPA is proposing these methods because Standard Methods has broken down the Winkler titration method into several sections. Sections 4500 O B, D, E and F have been added to provide a more detailed Winkler titration. Section B contains information on how to collect the sample and what pretreatment may be needed for just the Winkler titrations. Sections D, E, and F contain specific sample pretreatment for interferences. Section D (see Item 12) is for ferrous iron interferences. Section E (*see* Item 13) is for samples with a high concentration of Total Suspended Solids. Section F is for samples with large concentrations of biological solids. These sections are similar to the instructions in ASTM D888, AOAC 973.45, and USGS I–1575–78.

12. EPA is proposing to add SM 4500 O D–2001, Oxygen, Permanganate Modification. This method for determinations of dissolved oxygen contains the same permanganate pretreatment step that is specified in ASTM D 888 and AOAC 973.45.

13. EPA is proposing to add SM 4500 O E–2001, Oxygen, Alum Flocculation Modification. This method for dissolved oxygen describes a pretreatment step that removes high concentrations of suspended solids.

14. EPA is proposing to add SM 3500 K C–1997, Potassium, Selective Electrode Method. This method uses the same electrochemical procedure to measure Potassium that is used in the Standard Methods for ammonia, chloride, cyanide, and nitrate. Only the electrode construction is different.

15. EPA is proposing to add SM 2540 E–1997 for determinations of Residues—Volatile. This fixed and volatile solids method uses the same equipment and procedures to measure this method defined parameter as approved EPA Method 160.4.

16. EPA is proposing to add SM 4500 SiO_2 E–1997 and SM 4500 SiO_2 F–1997, Silica. These methods have the same instrument setup and molybdate color reagent as USGS Method I–2700, but utilize different reducing agents to produce molybdenum blue color. There are slight modifications in the chemical reaction, but the molybdenum blue final analyte is the same.

17. EPA is proposing to add SM 4500 SO_4 C–1997, D–1997, E–1997, F–1997 and G–1997, Sulfate. EPA is proposing to approve the online version of these methods because they are identical to the approved versions published in the 18th, 19th and 20th edition of Standard Methods. EPA approved the online versions for drinking water use (73 FR 31616, June 3, 2008).

18. EPA is proposing to add SM 4500 S^2- B–2000 and C–2000, Sulfide. These approved methods have been revised to describe more completely the sample collection, transportation and analysis steps.

C. Changes to 40 CFR 136.3 To Include New ASTM Methods and New Versions of Previously Approved ASTM Methods

EPA is proposing to add to the list of approved testing procedures new ASTM methods for existing pollutants in Table IB, such as cyanide, and methods for new pollutants, such as the nonylphenols in Table IC. EPA also is

proposing new versions of previously approved ASTM methods.

1. EPA is proposing to add ASTM D2036–09 Standard Test Methods for Cyanides in Water, Test Method A Total Cyanide after Distillation. In 2009, ASTM revised the version of this method currently listed in part 136. The method measures cyanides that are free, and strong-metal-cyanide complexes (*e.g.* iron cyanides) that dissociate and release free cyanide when refluxed under strongly acidic conditions. The cyanide in some cyano complexes of transition metals, for example, cobalt, gold, platinum, etc., is not determined. Samples are digested with sulfuric acid in the presence of magnesium chloride in a distillation reaction vessel that consists of a 1–L round bottom flask, with provision for an inlet tube and a condenser connected to a vacuum-type absorber. The flask is heated with an electric heater. Smaller distillation tubes such as 50-mL midi tubes or 6-mL MicroDist™ tubes described in D7284–08 can be used if the quality control requirements in D2036–09 are satisfied. After distillation, the cyanide concentration can be determined with titration, ion chromatography, colorimetric procedure (spectrophotometric), selective ion electrode, or flow injection analysis with gas diffusion separation and amperometric detection. The inclusion of ion chromatography and gas diffusion separation with amperometric detection as determinative steps (D2036–09, sections 16.5 and 16.6) will give users additional options to measure cyanide after distillation. Furthermore, these determinative steps can be used to mitigate interferences that have been associated with conventional colorimetric test methods.

2. EPA is proposing to add ASTM D6888–09 Standard Test Method for Available Cyanide with Ligand Displacement and Flow Injection Analysis (FIA) Utilizing Gas Diffusion Separation and Amperometric Detection. This method is used to determine the concentration of available inorganic cyanide in an aqueous wastewater or effluent. The method detects the cyanides that are free and metal-cyanide complexes that are easily dissociated into free cyanide ions. The method does not detect the less toxic strong metal-cyanide complexes, cyanides that are not "amenable to chlorination." Total cyanide can be determined for samples that have been distilled as described in Test Methods D2036–09, Test Method A, Total Cyanides after Distillation. Complex cyanides bound with nickel or mercury are released by ligand displacement with the addition of a ligand displacement agent prior to analysis. Other available cyanide species do not require ligand displacement under the test conditions. If samples are distilled for total cyanide, ligand exchange reagents are not required since the cyanide complexes are dissociated and absorbed into the sodium hydroxide capture solution during distillation. The treated or distilled sample is introduced into a flow injection analysis (FIA) system where it is acidified to form hydrogen cyanide. The hydrogen cyanide gas diffuses through a hydrophobic gas diffusion membrane, from the acidic donor stream into an alkaline acceptor stream. Up to 50-mg/L sulfide is removed during flow injection to mitigate sulfide interference. The captured cyanide is sent to an amperometric flow cell detector with a silver-working electrode. In the presence of cyanide, silver in the working electrode is oxidized at the applied potential. The anodic current measured is proportional to the concentration of cyanide in the standard or sample injected.

3. EPA is proposing to add ASTM D7284–08 Standard Test Method for Total Cyanide in Water by Micro Distillation followed by Flow Injection Analysis with Gas Diffusion Separation and Amperometric Detection. This method determines the concentration of total cyanide in wastewater, and detects the cyanides that are free and strong-metal-cyanide complexes (*e.g.,* iron cyanides) that dissociate and release free cyanide when refluxed under strongly acidic conditions. This method has a range of approximately 2 to 400 µg/L (parts per billion) total cyanide. Higher concentrations can be measured with sample dilution or lower injection volume. The determinative step of this method utilizes flow injection with amperometric detection based on ASTM D6888–09. Sample distillation is based on Lachat QuikChem Method 10–204–00–1–X. Prior to analysis, samples must be distilled with a micro-distillation apparatus described in the test method or with a suitable cyanide distillation apparatus specified in Test Methods D 2036–09. The samples are distilled with a strong acid in the presence of magnesium chloride catalyst and captured in sodium hydroxide absorber solution. The absorber solution from the distillation is introduced into a flow injection analysis (FIA) system where it is acidified to form hydrogen cyanide. The hydrogen cyanide gas diffuses through a hydrophobic gas diffusion membrane, from the acidic donor stream into an alkaline acceptor stream. The captured cyanide is sent to an amperometric flow cell detector with a silver-working electrode. In the presence of cyanide, silver in the working electrode is oxidized at the applied potential. The anodic current measured is proportional to the concentration of cyanide. This method has been shown to be less susceptible to interferences compared to conventional spectrophotometric determinations for total cyanide.

4. EPA is proposing to add ASTM D7511–09e2 Standard Test Method for Total Cyanide by Segmented Flow Injection Analysis, In-Line Ultraviolet Digestion and Amperometric Detection. This method determines the concentration of total cyanide in drinking and surface waters, as well as domestic and industrial wastes. Cyanide ion (CN-), hydrogen cyanide in water (HCN(aq)), and the cyano-complexes of zinc, copper, cadmium, mercury, nickel, silver, and iron may be determined by this method. Cyanide ions from Au(I), Co(III), Pd(II), and Ru(II) complexes are only partially determined. The applicable range of the method is 3 to 500 µg/L cyanide using a 200-µL sample loop. The range can be extended to analyze higher concentrations by sample dilution or by changing the sample loop volume. ASTM D7511–09e2 decomposes complex cyanides by narrow band, low watt UV irradiation in a continuously flowing acidic stream at room temperature. Reducing and complexing reagents, combined with the room temperature narrow band low watt UV, minimize interferences. The hydrogen cyanide generated passes through a hydrophobic membrane into a basic carrier stream. The cyanide concentration is determined by amperometry. This method operates similarly to available cyanide methods OIA1677 and ASTM D6888–09. The available cyanide methods employ a preliminary ligand addition to liberate cyanide ion from weak to moderate metal cyanide complexes. These available cyanide methods were developed because they overcome significant interferences caused by the preliminary chlorination and/or distillation processes. Instead of ligands, ASTM D7511–09e2 irradiates the sample causing strong metal cyanide complexes plus all complexes measured by the available cyanide methods to liberate cyanide and generate hydrogen cyanide. Once the sample solution passes from the UV irradiation, the measurement principle is equivalent to OIA1677 and/or ASTM D6888–09.

5. Because there were no EPA-approved methods for free cyanide when water quality criteria were

established for free cyanide EPA recommended measurement of cyanide after a "total" distillation. Analytical methods for free cyanide have been developed, and in today's rule EPA is proposing to add free cyanide as a parameter (24A in Table IB.) For determinations of this parameter, EPA is proposing to allow use of the approved available cyanide method, OIA 1677–09, and two ASTM methods (D4282–02 and D7237–10.) ASTM D4282–02 Standard Test Method for Determination of Free Cyanide in Water and Wastewater by Microdiffusion determines free cyanide as the cyanide that diffuses into a sodium hydroxide solution from a solution at pH 6. It is not applicable to cyanide complexes that resist dissociation, such as hexacyanoferrates and gold cyanide, and it does not include thiocyanate and cyanohydrin. ASTM D7237–10 Standard Test Method for Free Cyanide with Flow Injection Analysis (FIA) Utilizing Gas Diffusion Separation and Amperometric Detection determines free cyanide with the same instrumentation and technology as approved methods, ASTM D6888–09 and OIA 1677–09, but under milder (less acidic) conditions and without use of ligand replacement reagents.

6. EPA is proposing to add ASTM D888–09 Standard Test Method for Dissolved Oxygen in Water. This method determines dissolved oxygen concentrations in water using the titrimetric (Part A), polarographic (Part B) and luminescence-based (Part C) detection methods. This standard test method is applicable to the determination of dissolved oxygen between 0.05–20 ppm in influent, effluent or ambient water testing. ASTM recently updated Part C of this method to include a detailed description of the technology and to update calibration procedures to include a two-point calibration and an air saturated water calibration in addition to a water saturated air calibration. This method may be used for Biological Oxygen Demand (BOD) and Carbonaceous Oxygen Demand (CBOD.)

7. EPA is proposing to add ASTM D7573–09 Standard Test Method for Total Carbon and Organic Carbon in Water by High Temperature Catalytic Combustion and Infrared Detection. This Method has the same chemical and instrument setup as approved SM 5310 B–2000.

8. EPA is proposing to add in Table IC ASTM D7065–06: Standard Test Method for Determination of five chemicals: Nonylphenol (NP), Bisphenol A (BPA), p-tert-Octylphenol (OP), Nonylphenol Monoethoxylate (NP1EO), and Nonylphenol Diethoxylate (NP2EO) in Environmental Waters by Gas Chromatography Mass Spectrometry. These five chemicals are partitioned into an organic solvent, separated using gas chromatography and detected with mass selective detection. These chemicals or isomer mixtures are qualitatively and quantitatively determined. Although this method adheres to selected ion monitoring mass spectrometry, full scan mass spectrometry has also been shown to work well under these conditions. This method has been multi-laboratory validated for use with surface water and waste treatment effluent samples and is applicable to these matrices. It has not been investigated for use with salt water or solid sample matrices. The reporting limit for nonylphenol is 5 µg/L (ppb); the chronic Freshwater Aquatic Life Ambient Water Quality Criterion is 6.6 ppb.

9. EPA is proposing to add in Table IC ASTM D7574–09: Standard Test Method for Determination of BPA in Environmental Waters by Liquid Chromatography/Tandem Mass Spectrometry. BPA is an organic chemical produced in large quantities. BPA is soluble in water and undergoes degradation in the environment. The reporting limit for BPA is 20 ng/L which is fifty times less than the limit in D7065–06 (see preceding Item 8). The method is based on a solid phase extraction (SPE) followed by separation with liquid chromatography and tandem mass spectrometry (LC/MS/MS), which reduces the amount of sample required, solvents, the analysis time, and the reporting limits. The method has been tested in effluents from secondary and tertiary publicly owned treatment works (POTW), and fresh surface and ground water.

10. EPA is proposing to add in Table IC ASTM D7485–09: Standard Test Method for Determination of NP, OP, NP1EO, and NP2EO in Environmental Waters by Liquid Chromatography/Tandem Mass Spectrometry. The method extracts these four chemicals from water with SPE followed by LC/MS/MS separation and detection. These chemicals are qualitatively and quantitatively determined by this method. This method uses single reaction monitoring (SRM) mass spectrometry. Environmental waters tested using this method were sewage treatment plant effluent, river water, seawater, and a modified ASTM D5905 artificial wastewater. The reporting limit for nonylphenol is 100 ng/L, ppt. The Freshwater and Saltwater Aquatic Life Ambient acute criterion is 7.0 ppb, and the chronic criterion is 1.7 ppb.

11. EPA is not proposing to include in Table IB two ASTM oil and grease methods, D7066–04 and D7575–10 because neither method uses n-hexane to determine oil and grease as hexane extractable material (HEM). As previously explained in the discussion of Method 1664B, HEM is a measurement defined by the solvent (n-hexane) used to extract oil and grease from the sample. D7066–04 employs a proprietary solvent, S–316, a dimer/trimer of chlorotrifluoroethylene to measure S–316-extractable substances from an acidified sample. Method D7066 may be useful for determinations of total petroleum hydrocarbons (TPH). Although TPH has been measured in some applications, EPA has never included it as a Part 136 pollutant nor received any convincing evidence that it should do so. Although S–316 is not the same solvent as the fluorocarbon, Freon®, it is a fluorochlorohydrocarbon.

Instead of n-hexane, ASTM D7575–10 uses a different extracting process, an extracting membrane, followed by infrared measurement of the materials in the sample that can pass through the membrane. Several other steps in D7575–10 significantly differ from 1664 including: Use of 10-mL sample aliquot from sample bottle vs. entire contents of 1–L sample; homogenization of samples; and the challenge of pushing solid oil and grease samples through a membrane. The results of a multi-laboratory study (OSS 2009) that the developer conducted as part of ASTM's evaluation of D7575 are in the docket.

D. Changes to 40 CFR 136.3 To Include Alternate Test Procedures

To promote method innovation, EPA maintains a program whereby method developers may apply for an EPA review and potentially for approval of alternate test procedures. This Alternate Test Procedure (ATP) program is described for Clean Water Act applications at Parts 136.4 and 136.5. EPA has reviewed and is proposing for nationwide use eight alternate test procedures. These proposed new methods include: Hach Company's Method 10360 Luminescence Measurement of Dissolved Oxygen (LDO®) in Water, In-Situ Incorporated's Method 1002–8–2009 Dissolved Oxygen (DO) Measurement by Optical Probe, Method 1003–8–2009 Biochemical Oxygen Demand (BOD) Measurement by Optical Probe, and Method 1004–8–2009 Carbonaceous Biochemical Oxygen Demand (CBOD) Measurement by Optical Probe August 2009, Mitchell Method M5271 and M5331 for measuring turbidity in wastewater; Thermo Scientific's Orion Method

AQ4500 for measuring turbidity in wastewater; and Systea Scientific, LLC's Systea Easy (1-Reagent) Nitrate Method. Descriptions of these new methods included for approval are as follows:

1. EPA is proposing to approve Hach Company's Method 10360 Luminescence Measurement of Dissolved Oxygen (LDO®) in wastewater, Revision 1.1 dated January 4, 2006. EPA has reviewed this method and the data generated in a multi-laboratory validation study performed by Hach Company and is proposing to approve it for use in measuring dissolved oxygen. EPA is also proposing to approve the Hach method 10360 to be used for Dissolved Oxygen (DO) when determining BOD and CBOD.

This method uses an optical probe to measure the light emission characteristics from a luminescence-based reaction that takes place at the sensor-water interface. A light emitting diode (LED) provides incident light required to excite the luminophore substrate. In the presence of dissolved oxygen, the reaction is suppressed. The resulting dynamic lifetime of the excited luminophore is evaluated and equated to DO concentration.

The method involves the following steps:

- Calibration of the probe using water-saturated air, and
- Measurement of the dissolved oxygen in the sample using the probe.

Approved methods for measuring dissolved oxygen are listed at 40 CFR 136.3, Table IB. The performance characteristics of the Hach Company Method 10360 were compared to the characteristics of the methods listed at 40 CFR 136.3, Table IB for measurement of dissolved oxygen. Because the Hach Company Method 10360 is equally effective relative to the methods already promulgated in the regulations, EPA is proposing to include this method in the list of methods approved for measuring dissolved oxygen concentrations in wastewater when determining BOD and CBOD.

2. EPA is proposing to approve In-Situ Incorporated's Method 1002–8–2009 Dissolved Oxygen Measurement by Optical Probe. EPA has reviewed this method and the data generated in a multi-laboratory validation study performed by In-Situ Incorporated and is proposing to approve it for use in measuring dissolved oxygen. In-Situ Method 1002–8–2009 uses a new form of electrode based on the luminescence emission of a photoactive chemical compound and the quenching of that emission by oxygen to measure dissolved oxygen concentration.

The method involves the following steps:

- Calibration of the probe using water-saturated air, and
- Measurement of the dissolved oxygen in the sample using the probe.

Approved methods for measuring dissolved oxygen are listed at 40 CFR 136.3, Table IB. The performance characteristics of the In Situ Method 1002–8–2009 were compared to the characteristics of the methods listed at 40 CFR 136.3, Table IB for measurement of dissolved oxygen. Because the In-Situ Method 1002–8–2009 is equally effective relative to the methods already promulgated in the regulations, EPA is proposing In-Situ Method 1002–8–2009 for inclusion in the list of methods approved for measuring dissolved oxygen concentrations in wastewater.

3. EPA is proposing to approve In-Situ Incorporated's Method 1003–8–2009 Biochemical Demand (BOD) Measurement by Optical Probe. EPA has reviewed this method and the data generated in a multi-laboratory validation study performed by In-Situ Incorporated and is proposing to approve it for measuring BOD.

In-Situ Method 1003–8–2009 uses a new form of electrode based on the luminescence emission of a photoactive chemical compound and the quenching of that emission by oxygen to measure dissolved oxygen concentration when performing the 5-day BOD test.

The method involves the following steps:

- Filling a BOD bottle with diluted seeded sample,
- Measuring the dissolved oxygen in the sample using an optical DO probe,
- Sealing and incubating the bottle for five days,
- Measuring the dissolved oxygen with an optical probe after the five day incubation period, and
- Calculating the BOD from the difference between the initial and final dissolved oxygen measurements.

Approved methods for measuring BOD are listed at 40 CFR 136.3, Table IB. The performance characteristics of In-Situ Method 1003–8–2009 were compared to the characteristics of the methods listed at 40 CFR 136.3, Table IB for measurement of BOD. Because In-Situ Method 1003–8–2009 is equally effective relative to the methods already promulgated in the regulations, EPA is proposing In-Situ Method 1003–8–2009 for inclusion in the list of methods approved for measuring BOD.

4. EPA is proposing to approve In-Situ Incorporated's Method 1004–8–2009 Carbonaceous Biochemical Oxygen Demand (CBOD) Measurement by Optical Probe. EPA has reviewed this method and the data generated in a multi-laboratory validation study performed by In-Situ Incorporated and is proposing to approve it for use in measuring carbonaceous biochemical oxygen demand (CBOD). In-Situ Method 1004–8–2009 uses a new form of electrode based on the luminescence emission of a photoactive chemical compound and the quenching of that emission by oxygen to measure dissolved oxygen concentration when performing the CBOD test.

The method involves the following steps:

- Filling a BOD bottle with diluted seeded sample,
- Adding a chemical nitrification inhibitor,
- Measuring the dissolved oxygen in the sample using an optical dissolved oxygen probe,
- Sealing and incubating the bottle for five days,
- Measuring the dissolved oxygen with an optical probe after the five day incubation period, and
- Calculating the CBOD from the difference between the initial and final dissolved oxygen measurements.

Approved methods for measuring CBOD are listed at 40 CFR 136.3, Table IB. The performance characteristics of In Situ-Method 1004–8–2009 were compared to the characteristics of the methods listed for measurement of CBOD. Because In-Situ Method 1004–8–2009 is equally effective relative to the methods already promulgated in the regulations, EPA is proposing In-Situ Method 1004–8–2009 for inclusion in the list of methods approved for measuring CBOD.

5. EPA is proposing to approve the Mitchell Method M5271 dated July 31, 2008. This method uses laser based nephelometry to measure turbidity in drinking water and wastewater. The method involves the following steps for instruments other than on-line continuous models:

- Mixing the sample to thoroughly disperse the solids,
- Waiting until air bubbles disappear,
- Pouring a sample into a turbidimeter tube, and
- Reading turbidity directly from the instrument scale or from the appropriate calibration curve.

Approved methods for turbidity are listed at 40 CFR 136.3 Table 1B. The performance characteristics of Mitchell Method M5271 were compared to the performance characteristics of EPA Method 180.1 listed at 40 CFR 136.3 for measurement of turbidity. Comparisons were based on results obtained from turbidimeters placed in series which took measurements at one minute

intervals over a 20 to 30 hour time period at three different public water supply systems (in one case measurements were taken at 15 minute intervals). Testing included source water from one ground water source and two surface water sources and included at least one natural filter event (back-flush) in lieu of artificially calibrated spikes using a primary standard spiking solution. Additionally, a demonstration of performance at higher turbidities was conducted by making replicate measurements of primary standards at four levels (5 NTU, 10 NTU, 20 NTU and 40 NTU). Results showed excellent correlation between measurements made using a tungsten filament incandescent bulb as specified in EPA Method 180.1 and those made using the laser light source specified in Mitchell Method M5271. Based on the results of these studies, EPA has determined that Mitchell Method M5271 is as effective as the methods already promulgated in the regulations. EPA is proposing to add this method to the list of methods approved for measurement of turbidity in wastewater.

6. EPA is proposing Mitchell Method M5331 dated July 31, 2008. This method uses LED based nephelometry to measure turbidity. The method involves the following steps for instruments other than on-line continuous models:

- Mixing the sample to thoroughly disperse the solids,
- Waiting until air bubbles disappear,
- Pouring the sample into turbidimeter tube, and
- Reading turbidity directly from the instrument scale or from the appropriate calibration curve.

Approved methods for turbidity are listed at 40 CFR 136.1 Table 1B. The performance characteristics of Mitchell Method 5331 were compared to the performance characteristics of EPA Method 180.1 listed at 40 CFR 136.3 for measurement of turbidity. Comparisons were based on results obtained from turbidimeters placed in series, which took measurements at one minute intervals over a 20 to 30 hour time period at three different public water supply systems (in one case measurements were taken at 15 minute intervals). Testing included source water from one ground water source and two surface water sources and included at least one natural filter event (back-flush) in lieu of artificially calibrated spikes using a primary standard spiking solution. Additionally, a demonstration of performance at higher turbidities was conducted by making replicate measurements of primary standards at four levels (5 NTU, 10 NTU, 20 NTU and 40 NTU). Results showed excellent correlation between measurements made using a tungsten filament incandescent bulb as specified in EPA Method 180.1 and the LED light source specified in Mitchell Method M5331. Based on the results of these studies, EPA has determined that Mitchell Method M5331 is equally effective relative to the methods already promulgated in the regulations. EPA is proposing to add this method to the list of methods approved for measurement of turbidity in wastewater.

7. EPA is proposing to approve Thermo Scientific's Orion Method AQ4500 dated March 12, 2009. This method uses LED-based nephelometry to measure turbidity. The method involves the following steps:

- Calibration of the instrument using a primary calibration standard,
- Placing the sample into the sample chamber, and
- Reading the turbidity result displayed on the instrument.

Approved methods for turbidity are listed at 40 CFR 136.3 Table IB. The performance characteristics of Thermo Scientific's Orion Method AQ4500 were compared to the performance characteristics of EPA Method 180.1 listed at 40 CFR 136.3 for measurement of turbidity. Comparisons were based on an ASTM round robin study comparing results from analyses of 28 different samples of various types including formazin standards, styrene divinyl benzene (SDVB) co-polymer bead standards and real world samples ranging from approximately 2 NTU to over 1,000 NTU. These analyses were conducted using turbidimeters with various light sources including tungsten filament incandescent bulbs as specified in EPA Method 180.1 and white LEDs as specified in Thermo Scientific's Orion Method AQ4500. Additionally, a demonstration of performance at lower turbidities was conducted by making 20 replicate measurements of dilute formazin standards at four levels (0.2 NTU, 0.5 NTU, 1 NTU, and 2 NTU) using turbidimeters with tungsten filament incandescent bulbs as specified in EPA Method 180.1 and turbidimeters using white LEDs as specified in Thermo Scientific Orion Method AQ4500. Results showed significant correlation between measurements made using a tungsten filament incandescent bulb as specified in EPA Method 180.1 and those made using the LED light source specified in Thermo Scientific's Orion Method AQ4500. Based on the results of these studies, EPA has determined that Thermo Scientific's Orion Method AQ4500 is as effective as the methods already promulgated in the regulations. EPA is proposing to add this method to the list of methods approved for measurement of turbidity in wastewater.

8. EPA is proposing to approve Systea Scientific, LLC's Systea Easy (1-Reagent) Nitrate Method dated February 4, 2009. This is a method that uses automated discrete analysis, and spectrophotometry to determine concentrations of nitrate and nitrite combined or singly. The method involves the following steps:

- Reduction of nitrate in a sample to nitrite using a non-hazardous proprietary reagent,
- Diazotizing the nitrite originally in the sample plus the reduced nitrate with sulfanilamide followed by coupling with N-(1-napthyl) ethylenediamine dihydrochloride under acidic conditions to form a highly colored azo dye,
- Colorimetric determination in which the absorbance of color at 546 nm is directly proportional to the concentration of the nitrite plus the reduced nitrate in the sample,
- Measurement of nitrite singly, if needed, by analysis of the sample while eliminating the reduction step, and
- Subtraction of the nitrite value from that of the combined nitrate plus nitrite value to measure nitrate singly if needed.

Approved methods for nitrate, nitrite and combined nitrate/nitrite are listed at 40 CFR 136.3, Table 1B. The performance characteristics of the Systea Easy (1-Reagent) Nitrate Method were compared to the characteristics of the methods listed at 40 CFR 136.3 for nitrate and nitrite. Based on the results of the comparative studies, EPA has determined that the Systea Easy (1-Reagent) Nitrate Method is as effective as the methods already promulgated in the regulations for use in determining concentrations of nitrate and nitrite and combined nitrate/nitrite. The method is a "green" alternative to other approved methods that use cadmium, a known carcinogen, for the reduction of nitrate to nitrite. The performance of Systea Easy (1-Reagent) Nitrate Method is equivalent to other methods already approved for measurement of nitrate, nitrite and combined nitrate/nitrite in wastewater.

E. Clarifications and Corrections to Previously Approved Methods in 40 CFR 136.3

EPA is proposing a clarification to procedures for measuring orthophosphate, and is proposing to correct typographical or other citation errors in part 136.

1. EPA is clarifying the purpose of the immediate filtration requirement in

orthophosphate measurements, which is to assess the dissolved or bio-available form of orthophosphorus (*i.e.,* that which passes through a 0.45 micron filter), hence the requirement to filter the sample immediately upon collection. This filtration excludes any particulate forms of phosphorus that might hydrolyze into orthophosphorus in a slightly acidic sample during the allowed 48 hour holding time. Each grab sample must be filtered within 15 minutes of collection to prevent orthophosphate formation. Specifically, filtration may not be delayed until the final grab sample is collected; each grab sample must be filtered upon collection. However, the filtered grab samples may be held for compositing up to the 48-hour holding time.

2. EPA is proposing to correct missing citations to the table of microbiological methods for ambient water monitoring which are specified in Table IH at 40 CFR 136.3. Stakeholders asked EPA to separately specify the microbiological methods that EPA has approved for wastewater (Table IA) from those for ambient water. On August 15, 2005 (70 FR 48256), EPA proposed to move microbial (bacterial and protozoan) methods which were applicable to ambient water to a new table, Table IH. However, in the final rule of March 26, 2007 (72 FR 14220), EPA inadvertently omitted fecal coliform, total coliform, and fecal streptococcus methods from the table. EPA is proposing to add these methods to Table IH.

3. EPA is proposing to correct several other typographical or minor citation errors, such as incomplete or incorrect method citations.

F. Proposed Revisions in Table II at 40 CFR 136.3(e) to Required Containers, Preservation Techniques, and Holding Times

EPA is proposing revisions to Table II at 136.3(e) to clarify how to resolve conflicts between instructions in this table and instructions in an approved method or other source, and to amend some of the current requirements in Table II.

1. The introductory text to Table II at 136.3(e) specifies that the instructions in the table take precedence over other sources of this information. EPA publishes holding time and related instructions in Table II to provide a consistent set of instructions, and for other reasons. Not all methods contain complete instructions, and some otherwise equivalent methods (or methods for the same parameter) have conflicting instructions. For example, Table II instructions specify the 48 hour BOD holding time while some Part 136 methods recommend 24 hours. In this instance Table II instructions take precedence. EPA recognizes that there may be cases where new technologies or advancements in current technologies may produce approved methods with instructions for a specific parameter that differ from Table II instructions, and provide better results. Cyanide determinations and some automated methods may fall into this category. Therefore, EPA is proposing to revise the text at 136.3(e) to allow a party to submit documentation to their permitting or other authority that supports use of an alternative approach. EPA is proposing to revise the introductory text to the table to read as follows: "Information in this table takes precedence over instructions provided in specific methods or elsewhere unless a party documents the acceptability of an alternative to the Table II instructions. The nature, timing and extent of the required documentation (*i.e.* how to apply and review as well as the amount of supporting data) are left to the discretion of the permitting authority (State Agency or EPA Region) or other authority and may rely on instructions, such as those provided for method modifications at 136.6." Thus, an alternate sample container, preservation and/or holding time may be considered at the discretion of the permitting authority or other authority.

2. Some stakeholders have asked EPA to extend the holding time for *Escherichia coli* and *Enterococcus.* In 2006, EPA conducted a nationwide holding time study (EPA 2006) for fresh and marine ambient waters and concluded that, on a nationwide basis, the Agency was unable to justify extending the holding time for *Escherichia coli* or *Enterococcus* in these water matrices. However, EPA is proposing to provide some relief by revising footnote 22 to Table II, which applies to bacterial tests. This footnote currently reads as follows: "Sample analysis should begin immediately, preferably within 2 hours of collection. The maximum transport time to the laboratory is 6 hours, and samples should be processed (in incubator) within 2 hours of receipt at the laboratory."

Stakeholders have commented that laboratories must meet the two-hour analysis start time, even if they receive the samples early enough that they could start after two hours and still meet the overall six-hour time limit. EPA is proposing to revise the footnote to read "Sample analysis should begin as soon as possible after receipt; sample incubation must be started no later than 8 hours from time of collection."

3. EPA is proposing to revise the cyanide sample handling instructions in Footnote 5 of Table II to recommend the treatment options for samples containing oxidants described in ASTM's sample handling practice for cyanide samples, D7365–09a. This practice advises analysts to add a reducing agent only if an oxidant is present, and use of the reducing agents sodium thiosulfate ($Na_2S_2O_3$), ascorbic acid, sodium arsenite ($NaAsO_2$), or sodium borohydride ($NaBH_4$).

4. EPA is proposing to revise the cyanide sample handling instructions in Footnote 6 of Table II to describe options available when the interference mitigation instructions in D7365–09a are not effective. EPA proposes to allow use of any technique for removal or suppression of interference, provided the laboratory demonstrates and documents that the alternate technique more accurately measures cyanide through quality control measures described in the analytical test method.

5. EPA is proposing to revise footnote 16 of Table II instructions for handling Whole Effluent Toxicity (WET) samples to be consistent with the November 19, 2002 (67 FR 69951) "Guidelines for Establishing Test Procedures for the Analysis of Pollutants; Whole Effluent Toxicity Test Methods; Final Rule," as well as the three toxicity methods (Methods for Measuring the Acute Toxicity of Effluents and Receiving Waters to Freshwater and Marine Organisms (5th Edition, October 2002), Short-term Methods for Estimating the Chronic Toxicity of Effluents and Receiving Waters to Freshwater Organisms (4th Edition, October 2002), and Short-term Methods for Estimating the Chronic Toxicity of Effluents and Receiving Waters to Marine and Estuarine Organisms (3rd Edition, October 2002). In the 2002 final rule, EPA established the acceptable range for the current sampling holding temperature for aquatic toxicity tests as 0 to 6 °C based on current National Environmental Laboratory Accreditation Conference (NELAC) standards. EPA also clarified in the final rule that hand-delivered samples used on the day of collection do not need to be cooled to 0 to 6 °C prior to test initiation. Section 8.5.1 of all three WET methods listed previously states, "Unless the samples are used in an on-site toxicity test the day of collection (or hand delivered to the testing laboratory for use on the day of collection) it is recommended that they be held at 0 to 6 °C until used to inhibit microbial degradation, chemical transformation, and loss of highly volatile toxic substances." EPA is proposing to add two sentences to the

end of Footnote 16 of Table II based on this information. The two sentences are "Aqueous samples must not be frozen. Hand-delivered samples used on the day of collection do not need to be cooled to 0 to 6 °C prior to test initiation." In addition, EPA will post, on the WET Web site, corrections to errata in the "Short-term Methods for Estimating the Chronic Toxicity of Effluents and Receiving Waters to Freshwater Organisms" manual (EPA 2010e.)

6. EPA is proposing to add a sentence to footnote 4 of Table II to clarify the sample holding time for the Whole Effluent Toxicity (WET) samples for the three toxicity methods (Methods for Measuring the Acute Toxicity of Effluents and Receiving Waters to Freshwater and Marine Organisms (5th Edition, October 2002), Short-term Methods for Estimating the Chronic Toxicity of Effluents and Receiving Waters to Freshwater Organisms (4th Edition, October 2002), and Short-term Methods for Estimating the Chronic Toxicity of Effluents and Receiving Waters to Marine and Estuarine Organisms (3rd Edition, October 2002) to indicate that one sample of the minimum of three required samples may be used for the renewal of the test solutions and that the sample holding time refers to first use of each sample collected for the toxicity test. The sentence to be added is, "For static-renewal toxicity tests, each grab or composite sample may also be used to prepare test solutions for renewal at 24 h, 48 h, and/or 72 h after first use, if stored at 0–6 °C, with minimum head space."

G. Proposed Revisions to 40 CFR 136.4 and 136.5

EPA is proposing to revise §§ 136.4 and 136.5 to describe the procedures for obtaining review and EPA approval for the use of alternate test procedures (alternate methods or ATPs). The proposed changes would revise 40 CFR 136.4 to establish the procedures for obtaining approval for nationwide use of an ATP. The proposed changes would modify 40 CFR 136.5 to establish the procedures for obtaining approval for use of an ATP in a State within a particular EPA Region. It should be noted that in its ATP program, EPA considers for review only those methods for which EPA has published an ATP protocol. Presently, EPA has published protocols for chemistry, radiochemical, and culture microbiological methods. EPA does not have ATP protocols for Whole Effluent Toxicity (WET) methods or genetic methods.

In today's rule, EPA proposes to clarify that the intent of the limited use authority is to allow limited use of an alternate method for a specific application at a facility or type of discharge without requiring the same level of supporting test data that would be required for approval for nationwide use. Thus, limited use authority is not intended to be used as a means of avoiding the full examination of comparability that is required when EPA considers a method for nationwide use and decides to amend its list of approved CWA methods at 40 CFR part 136 to include alternative test procedures. In the event that EPA decides not to approve an application for approval of an alternate method for nationwide use, the Regional Alternate Test Procedures Coordinator may choose to reconsider any previous limited use approvals of the alternate method. Based on this reconsideration, the Regional Coordinator will notify the user, if the limited use approval is withdrawn.

H. Proposed Revisions to Method Modification Provisions at 40 CFR 136.6

EPA encourages regulatory authorities to allow analysts the flexibility to modify CWA methods without prior approval provided the user has documented equivalent or better performance of the method in the matrix type to which the user will apply the modified method. EPA recognizes that addressing specific matrix interferences may require modifications to approved methods that do not require the extensive review and approval process specified for an alternate test procedure at 136.4 and 136.5. Based on users' experiences with 136.6, since it was promulgated on March 12, 2007 (72 FR 11199), EPA proposes to revise this section to provide more examples of allowed and prohibited method modifications. Acceptable reasons for an analyst to modify a method include analytical practices that lower detection limits, improve precision, reduce interferences, lower laboratory costs, and promote environmental stewardship by reducing generation of laboratory wastes. Acceptable modifications may use existing or emerging analytical technologies that achieve these ends provided that they do not depart substantially from the underlying chemical principles employed in methods currently approved in 40 CFR part 136. Analysts may use the examples in this section to assess and document that their modification is acceptable and does not depart substantially from the chemical principles in the method being modified. EPA specifically invites comment on the examples of flexibility specified at 136.6 and the documentation that a method modifier must have to demonstrate the equivalency of the modified method. In particular, EPA is interested in public comment on what additional controls, if any, should be applied when changing pH, purge times, buffers, or applying the relative standard error calibration alternative.

I. Proposed New Quality Assurance and Quality Control Language at 40 CFR 136.7

EPA is proposing to specify "essential" quality control at § 136.7 for use in conducting an analysis with an approved method and when insufficient instructions are contained in an approved method. Auditors, co-regulators, laboratory personnel, and the regulated community have noted the different amounts and types of quality assurance (QA) and quality control (QC) procedures practiced by laboratories that use 40 CFR part 136 methods. Some of these methods are published by voluntary consensus standards bodies, such as the Standard Methods Committee, and ASTM International. ASTM and Standard Methods are contained in printed compendium volumes, electronic compendium volumes, or as individual online files. Each organization has its unique compendium structure. QA and QC method guidance or requirements may be listed directly in the approved consensus method, or, as is more often the case, these requirements are listed in other parts of the compendium. For example, the publisher of *Standard Methods for the Examination of Water and Wastewater* consolidates the general quality assurance and quality control requirements for all methods. Each specific Part and section can contain additional QA and QC requirements (for example, see part 2020, 3020, 6020, and 9020). ASTM specifies QA and QC requirements in the analyte method's Referenced Documents section and in the analyte method. Both organizations require the analyst to reference this additional information within the respective compendiums to achieve the QA and QC expected for valid results.

Regardless of the publisher, edition or source of an analytical method approved for CWA compliance monitoring, analysts must use suitable QA/QC procedures whether EPA or other method publishers have specified these procedures in a specific part 136 method, or referenced these procedures by other means. Consequently, EPA

expects that an analyst using these consensus body methods for reporting under the CWA will also comply with the quality assurance and quality control requirements listed in the appropriate sections in the consensus body compendium. EPA's approval of use of these voluntary consensus standard body methods contemplated that any analysis using such methods would also meet the quality assurance and quality control requirements prescribed for the particular method. Thus, not following the applicable and appropriate quality assurance and quality control requirements of the respective method means that the analysis would not comply with the requirements in EPA's NPDES regulations to monitor in accordance with the procedures of 40 CFR part 136 for analysis of pollutants.

For methods that have insufficient QA/QC requirements, analysts could refer to and follow the QC published in several public sources. Examples of these sources include the instructions in an equivalent approved EPA method or standards published by the National Environmental Laboratory Accreditation Conference (cf. Chapter 5 of the compendium published in 2003.)

In addition to and regardless of the source of the laboratory's QA and QC instructions, EPA is proposing at 136.7 to specify twelve essential quality control checks that must be in the laboratory's documented quality system unless a written rationale is provided to explain why these controls are inappropriate for a specific analytical method or application. This written rationale will be included in the laboratory's Standard Operating Procedure (SOP) for each method to which specific controls do not apply (*e.g.,* internal standards, surrogate standards or tracers do not apply to analyses of inorganic parameters) as well as being included with the monitoring data produced using each method. These twelve essential quality control checks must be clearly documented in the written SOP (or method) along with a performance specification or description for each of the twelve checks.

J. Proposed Withdrawal of Appendices at 40 CFR 136

EPA is proposing to incorporate by reference all of the methods printed in 40 CFR part 136 appendices A and C, and to remove most of the information in Appendix D. EPA is proposing to remove EPA Method numbers 601 through 613, 624, 625, 1613B, 1624B and 1625B from Appendix A. All of these methods are readily accessible from a variety of sources including EPA's CWA methods Web site *http://www.epa.gov/waterscience/methods/.* Removing this appendix would decrease the resources associated with the annual publication of 40 CFR part 136 regulations. EPA would incorporate these methods by reference in Tables IC and ID at 136.3(a).

EPA is proposing to remove Appendix C—Method 200.7 Inductively Couple Plasma—Atomic Emission Spectrometric Method for Trace Element Analysis of Water and Waste Method because this method has been superseded by Rev. 5.4 of Method 200.7, which is incorporated by reference in Table IB.

Finally, EPA is proposing to remove from Appendix D the data for all EPA methods that are no longer approved. This would result in Appendix D containing Precision and Recovery Statements only for EPA Method 279.2 for thallium and EPA Method 289.2 for zinc. EPA will correct any typographical errors in the Appendix, such as the misspelling of thallium. EPA requests comment on whether to publish and make available, at least temporarily, the current version of Appendix D online at the CWA methods Web site for historical purposes.

K. Proposed Revisions at 40 CFR 423

EPA is proposing two changes to part 423, Steam Electric Power Generating Point Source Category. First, EPA proposes to revise the definitions for *total residual chlorine* and *free available chlorine* at §§ 423.11(a) and 423.11(l), respectively. The current definitions restrict the permittee to the use of the specific amperometric titration method cited in the definitions. The revised definitions will allow the permittee flexibility to use additional approved methods. EPA proposes to revise the definitions as follows:

a. The term *total residual chlorine* (or total residual oxidants for intake water with bromides) means the value obtained using any of the "chlorine—total residual" methods in Table IB 136.3(a), or other methods approved by the permitting authority.

b. The term *free available chlorine* means the value obtained using any of the "chlorine—free available" methods in Table IB 136.3(a) where the method has the capability of measuring free available chlorine, or other methods approved by the permitting authority.

Second, EPA is proposing to move the current citations of methods from Part 423 and reference a new parameter, "chlorine-free available", in Table IB at 136.3(a). Under this parameter, EPA will list any Part 136 methods for total residual chlorine that also provide instructions for determining free chlorine. The tables at 136.3 are well known as the source of most methods that are approved for CWA programs. For this reason EPA is proposing to move the citations of specific methods from part 423 to Table IB, and as described in the following sections, also for Parts 430 and 435.

L. Proposed Revisions at 40 CFR 430

EPA is proposing several editorial changes to 40 CFR part 430, The Pulp, Paper, and Paperboard Point Source Category. Currently the complete text of EPA Methods 1650 and 1653 are published in Appendix A of part 430. EPA is proposing to cite these two methods in Table IC, at § 136.3, and to incorporate by reference the full text of these methods. EPA will list these two methods in Table IC—List of Approved Test Procedures for Non-Pesticide Organic Compounds, under adsorbable organic halides (AOX) by Method 1650 and chlorinated phenolics by Method 1653. This action would remove Appendix A at 40 CFR part 430, and organize the analytical methods for the Pulp, Paper, and Paperboard category into one part, the Part 136 CWA methods tables, of the CFR.

To help users more readily identify approved compliance monitoring methods, EPA is proposing to cite at part 430 the Part 136 methods that are approved for these pollutants: Chloroform, 2,3,7,8- tetrachlorodibenzo-p-dioxin (TCDD), and 2,3,7,8-tetrachlorodibenzo-p-furan (TCDF).

M. Proposed Revisions at 40 CFR 435

EPA is proposing several changes to Part 435, Oil and Gas Extraction Point Source Category. EPA is proposing to move, and in two cases revise, the methods from 40 CFR part 435, subpart A (Offshore Subcategory) to an EPA document ("Analytic Methods for the Oil and Gas Extraction Point Source Category," EPA–821–R–09–013), which is included in the record for this rulemaking. This proposed approach organizes the analytical methods for the Offshore Subcategory into one document and allows for easier access to the methods for this category. The following table lists the methods EPA proposes to move from Part 435 to the cited document, EPA–821–R–09–013.

EPA METHOD NUMBERS FOR OIL AND GAS EXTRACTION POINT SOURCE CATEGORY ANALYTICAL METHODS AND PRIOR CFR REFERENCES

Analytical/test method	EPA method number	Date first promulgated	Previous CFR references
Static Sheen Test	1617	1993	Subpart A, Appendix 1.
Drilling Fluids Toxicity Test	1619	1993	Subpart A, Appendix 2.
Procedure for Mixing Base Fluids With Sediments	1646	2001	Subpart A, Appendix 3.
Protocol for the Determination of Degradation of Non Aqueous Base Fluids in a Marine Closed Bottle Biodegradation Test System: Modified ISO 11734:1995.	1647	2001	Subpart A, Appendix 4.
Determination of Crude Oil Contamination in Non-Aqueous Drilling Fluids by Gas Chromatography/Mass Spectrometry (GC/MS).	1655	2001	Subpart A, Appendix 5.
Reverse Phase Extraction (RPE) Method for Detection of Oil Contamination in Non-Aqueous Drilling Fluids (NAF).	1670	2001	Subpart A, Appendix 6.
Determination of the Amount of Non-Aqueous Drilling Fluid (NAF) Base Fluid from Drill Cuttings by a Retort Chamber (Derived from API Recommended Practice 13B–2).	1674	2001	Subpart A, Appendix 7.

EPA is also proposing to incorporate additional quality assurance procedures in the marine anaerobic biodegradation analytic method (Appendix 4 of Subpart A of Part 435) and to correct some erroneous references and omissions in the method for identification of crude oil contamination (Appendix 5 of Subpart A of Part 435). EPA is proposing to include these revisions in the EPA document (EPA–821–R–09–013).

EPA promulgated the use of the marine anaerobic biodegradation analytic method (closed bottle test, ISO 11734:1995 as clarified by Appendix 4 to Subpart A of Part 435) in 2001 because it most closely modeled the ability of a drilling fluid to biodegrade anaerobically in marine environments (January 22, 2001; 66 FR 6864). Subsequent to this promulgation, EPA incorporated additional quality assurance procedures for the marine anaerobic biodegradation analytic method in the NPDES permit for the Western Gulf of Mexico (“Final NPDES General Permit for New and Existing Sources and New Dischargers in the Offshore Subcategory of the Oil and Gas Extraction Category for the Western Portion of the Outer Continental Shelf of the Gulf of Mexico,” GMG290000, Appendix B). The additional quality assurance instructions in the GMG290000 more clearly describe the sample preparation and compliance determination steps. Specifically, these additional quality assurance procedures clarify that users must only use headspace gas to determine compliance with the Part 435 effluent guidelines.

Additionally, EPA is proposing to correct some erroneous references and omissions in the method for identification of crude oil contamination (Appendix 5 of Subpart A of Part 435). Specifically, EPA is proposing to:

a. Add a schematic flow for qualitative identification of crude oil, which was erroneously omitted in Appendix 5 to Subpart A of Part 435,

b. Correct erroneous citations in sections 9.5, 9.6, 11.3, and 11.3.1 of Appendix 5, and

c. Add a missing “<” sign for identification of crude oil contamination in the asphaltene crude discussion at Section 11.5.4.2. The asphaltene discussion now reads as follows: “Asphaltene crude oils with API gravity < 20 may not produce chromatographic peaks strong enough to show contamination at levels of the calibration. Extracted ion peaks should be easier to see than increased intensities for the C8 to C13 peaks. If a sample of asphaltene crude from the formation is available, a calibration standard shall be prepared.”

As previously noted, EPA is proposing to include these revisions to these two methods in the EPA document (EPA–821–R–09–013), which is included in the record for this rulemaking.

III. Statutory and Executive Order Reviews

A. Executive Order 12866: Regulatory Planning and Review

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

B. Paperwork Reduction Act

This action does not impose an information collection burden under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq*. Burden is defined at 5 CFR 1320.3(b). This rule does not impose any information collection, reporting, or recordkeeping requirements. This rule merely adds new and updated versions of testing procedures, and sample preservation requirements.

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 for methods under the Clean Water Act, small entity is defined as: (1) A small business that meets RFA default definitions (based on SBA size standards) found in 13 CFR 121.201; (2) a small governmental jurisdiction that is a government of a city, county, town, school district or special district with a population less than 50,000; and (3) a small organization that is any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.

After considering the economic impacts of today’s proposed rule on small entities, I certify that this action will not have a significant economic impact on a substantial number of small entities. This action approves new and updated versions of testing procedures. Generally, these changes will have a positive impact on small entities by increasing method flexibility, thereby allowing entities to reduce costs by choosing more cost-effective methods. In some cases, analytical costs may increase slightly due to the additional QC requirements included in the methods that are being approved to replace older EPA methods. However, most laboratories that analyze samples

for EPA compliance monitoring have already instituted QC requirements as part of their laboratory practices.

We continue to be interested in the potential impacts of the proposed rule on small entities and welcome comments on issues related to such impacts.

D. Unfunded Mandates Reform Act

This action contains no Federal mandates under the provisions of Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), 2 U.S.C. 1531–1538 for State, local, or tribal governments, or the private sector.

EPA has determined that this rule contains no regulatory requirements that might significantly or uniquely affect small governments. Generally, this action will have a positive impact by increasing method flexibility, thereby allowing method users to reduce costs by choosing more cost effective methods. In some cases, analytical costs may increase slightly due to changes in methods, but these increases are neither significant nor unique to small governments. This rule merely approves new and updated versions of testing procedures. Thus, the proposed rule is not subject to the requirements of Section 203 of UMRA.

E. Executive Order 13132: Federalism

This proposed rule does not have federalism implications. It will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, Aug. 10, 1999). This proposed rule merely approves new and updated versions of testing procedures. The costs to State and local governments will be minimal (in fact, governments may see a cost savings), and the rule does not preempt State law. Thus, Executive Order 13132 does not apply to this rule.

In the spirit of Executive Order 13132, and consistent with EPA policy to promote communications between EPA and State and local governments, EPA specifically solicits comment on this proposed action from State and local officials.

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

This proposed rule does not have tribal implications, as specified in Executive Order 13175, (65 FR 67249, Nov. 9, 2000). It will not have substantial direct effects on Tribal governments, on the relationship between the Federal government and Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes. This rule merely approves new and updated versions of testing procedures. The costs to Tribal governments will be minimal (in fact, governments may see a cost savings), and the rule does not preempt State law. Thus, Executive Order 13175 does not apply to this rule.

In the spirit of Executive Order 13175, and consistent with EPA policy to promote communications between EPA and Indian tribes, EPA specifically solicits comment on this proposed action from tribal officials.

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

EPA interprets EO 13045 (62 FR 19885, April 23, 1997) as applying only to those regulatory actions that concern health or safety risks, such that the analysis required under section 5–501 of the EO has the potential to influence the regulation. This action is not subject to EO 13045 because it does not establish an environmental standard intended to mitigate health or safety risks. This action proposes to approve new and updated versions of testing procedures.

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

This action is not subject to Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355 (May 22, 2001)) because it is not a significant regulatory action under Executive Order 12866.

I. National Technology Transfer and Advancement Act of 1995

Section 12(d) of the National Technology Transfer and Advancement Act of 1995, (NTTAA), Public Law 104–113, section 12(d) (15 U.S.C. 272 note), directs EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (*e.g.,* material specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus standard bodies. The NTTAA directs EPA to provide Congress, through the OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards.

This proposed rulemaking involves technical standards. As described throughout this document, EPA is proposing many standards developed by the Standard Methods Committee, and ASTM International. In Sections IIB, IIC of this preamble, and the tables at § 136.3, EPA specifies these proposed methods, provides information on how to obtain copies of these methods, and describes the rationale for employing these methods. EPA welcomes comments on this aspect of the proposed rulemaking and, specifically, invites the public to identify potentially applicable voluntary consensus standards and to explain why EPA should include such standards in future revisions to Part 136.

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.

This proposed rule provides additional compliance methods for use by any facility or laboratory with no disproportionate impact on minority or low-income populations because it merely proposes to approve new and updated versions of testing procedures to measure pollutants in water.

IV. References

EPA 2006, "Assessment of the Effects of Holding Time on Enterococci Concentrations in Fresh and Marine Recreational Waters and *Escherichia coli* Concentrations in Fresh Recreational Waters" (EPA–821–R–06–019, December 2006)

EPA 2010a, "Method 1668A Interlaboratory Validation Study Report" (EPA–820–R–10–004, March 2010)

EPA 2010b, "Addendum to the Method 1668A Interlaboratory Validation Study Report" (EPA–820–R–10–003, March 2010)

EPA 2010c, "Peer Review of the Method 1668A Interlaboratory Validation Study" (EPA 820–R–10–007, April 2010)

EPA 2010d, "Development of Pooled Method Detection Limits (MDLs) and Minimum Levels of Quantitation (MLs) for EPA Method 1668C (May 2010)

EPA 2010e, Errata for "Short-term Methods for Estimating the Chronic Toxicity of Effluents and Receiving Waters to Freshwater Organisms" (4th edition, October 2002) manual.

OSS 2009, ASTM D7575 "Inter-Laboratory Study to Establish Precision Statements for ASTM WK23240—Standard Test Method for Solvent-Free Membrane Recoverable Oil and Grease by Infrared Determination"
Passaic River 2010 "Summary of Passaic River Split Sample Results", EPA, April 2010
Test America 1 "Acrolein Acrylonitrile Stability Study"
Test America 2 "Acrolein Acrylonitrile Control Charts"

List of Subjects

40 CFR Part 136

Environmental protection, Test procedures, Incorporation by reference, Reporting and recordkeeping requirements, Water pollution control.

40 CFR Part 260

Environmental protection, Administrative practice and procedure, Confidential business information, Hazardous waste, Incorporation by reference, Reporting and recordkeeping requirements.

40 CFR Part 423

Environmental protection, Steam Electric Power Generating Point Source Category, Incorporation by reference, Reporting and recordkeeping requirements, Water pollution control.

40 CFR Part 430

Environmental protection, Pulp, Paper, and Paperboard Point Source Category, Incorporation by reference, Reporting and recordkeeping requirements, Water pollution control.

40 CFR Part 435

Environmental protection, Oil and Gas Extraction Point Source Category, Incorporation by reference, Reporting and recordkeeping requirements, Water pollution control.

Dated: August 6, 2010.

Lisa P. Jackson,

Administrator.

For the reasons set out in the preamble, title 40, chapter I of the Code of Federal Regulations, is proposed to be amended as follows:

PART 136—GUIDELINES ESTABLISHING TEST PROCEDURES FOR THE ANALYSIS OF POLLUTANTS

1. The authority citation for part 136 continues to read as follows:

Authority: Secs. 301, 304(h), 307, and 501(a) Pub. L. 95–217, 91 Stat. 1566, *et seq.* (33 U.S.C. 1251, *et seq.*) (The Federal Water Pollution Control Act Amendments of 1972 as amended by the Clean Water Act of 1977.)

2. Section 136.1 is amended by revising paragraph (a) to read as follows:

§ 136.1 Applicability.

(a) The procedures prescribed herein shall, except as noted in §§ 136.4, 136.5, and 136.6, be used to perform the measurements indicated whenever the waste constituent specified is required to be measured for:

(1) An application submitted to the Administrator, or to a State having an approved NPDES program for a permit under section 402 of the Clean Water Act of 1977, as amended (CWA), and/or to reports required to be submitted under NPDES permits or other requests for quantitative or qualitative effluent data under parts 122 to 125 of title 40; and

(2) Reports required to be submitted by dischargers under the NPDES established by parts 124 and 125 of this chapter; and

(3) Certifications issued by States pursuant to section 401 of the CWA, as amended.

* * * * *

3. Section 136.3 is amended:

a. By revising paragraph (a) introductory text;

b. In paragraph (a), revise Table IA, IB, IC, ID, IG, and IH;

c. By revising paragraphs (b)(1), (b)(54), (b)(55), (b)(56), (b)(59), (b)(60), (b)(61), (b)(70), and adding paragraph (b)(73);

d. By revising paragraph (e) introductory text;

e. In Table II to paragraph (e), by revising entries "Table IA—Bacterial Tests", "Table IA—Aquatic Toxicity Tests", "Table IH—Bacterial Tests", and "Table IH—Protozoan Tests, and footnote 6".

These revisions and additions read as follows:

§ 136.3 Identification of test procedures.

(a) Parameters or pollutants, for which methods are approved, are listed together with test procedure descriptions and references in Tables IA, IB, IC, ID, IE, IF, IG, and IH. In the event of a conflict between the reporting requirements of 40 CFR parts 122 and 125 and any reporting requirements associated with the methods listed in these tables, the provisions of 40 CFR Parts 122 and 125 are controlling and will determine a permittee's reporting requirements. The full text of the referenced test procedures are incorporated by reference into Tables IA, IB, IC, ID, IE, IF, IG, and IH. The incorporation by reference of these documents, as specified in paragraph (b) of this section, was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies of the documents may be obtained from the sources listed in paragraph (b) of this section. Documents may be inspected at EPA's Water Docket, EPA West, 1301 Constitution Avenue, NW., Room 3334, Washington, DC (Telephone: 202–566–2426); 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.* These test procedures are incorporated as they exist on the day of approval and a notice of any change in these test procedures will be published in the **Federal Register**. The discharge parameter values for which reports are required must be determined by one of the standard analytical test procedures incorporated by reference and described in Tables IA, IB, IC, ID, IE, IF, IG, and IH or by any alternate test procedure which has been approved by the Administrator under the provisions of paragraph (d) of this section and § 136.4. Under certain circumstances paragraph (c) of this section, § 136.5 or 40 CFR 401.13, other additional or alternate test procedures may be used.

TABLE IA—LIST OF APPROVED BIOLOGICAL METHODS FOR WASTEWATER AND SEWAGE SLUDGE

Parameter and units	Method [1]	EPA	Standard methods	AOAC, ASTM, USGS	Other
Bacteria:					
1. Coliform (fecal), number per 100 mL or number per gram dry weight.	Most Probable Number (MPN), 5 tube, 3 dilution, or	p. 132 [3] ..... 1680 [11, 13] 1681 [11, 18]	9221 C E–2006.		

TABLE IA—LIST OF APPROVED BIOLOGICAL METHODS FOR WASTEWATER AND SEWAGE SLUDGE—Continued

Parameter and units	Method [1]	EPA	Standard methods	AOAC, ASTM, USGS	Other
	Membrane filter (MF) [2], single step.	p. 124 [3]	9222 D–1997	B–0050–85.[4]	
2. Coliform (fecal) in presence of chlorine, number per 100 mL.	MPN, 5 tube, 3 dilution, or	p. 132 [3]	9221 C E–2006.		
	MF [2], single step	p. 124 [3]	9222 D–1997.		
3. Coliform (total), number per 100 mL.	MPN, 5 tube, 3 dilution, or	p. 114 [3]	9221 B–2006.		
	MF [2], single step or two step.	p. 108 [3]	9222 B–1997	B–0025–85.[4]	
4. Coliform (total), in presence of chlorine, number per 100 mL.	MPN, 5 tube, 3 dilution, or	p. 114 [3]	9221 B–2006.		
	MF [2] with enrichment	p. 111 [3]	9222 (B+B.5c) – 1997.		
5. E. coli, number per 100 mL.[19]	MPN [6, 8, 14] multiple tube/multiple well.		9223 B–2004 [12]	991.15 [10]	Colilert®[12, 16]
					Colilert-18®.[12, 15, 16]
	MF [2, 5, 6, 7, 8] single step.	1603 [20]			mColiBlue-24®.[17]
6. Fecal streptococci, number per 100 mL.	MPN, 5 tube, 3 dilution,	p. 139 [3]	9230 B–2007.		
	MF [2], or	p. 136 [3]	9230 C–2007	B–0055–85.[4]	
	Plate count	p. 143.[3]			
7. Enterococci, number per 100. mL.[19]	MPN [6 8], multiple tube/multiple well.			D6503–99 [9]	Enterolert®.[12 22]
	MF [2 5 6 7 8] single step	1600.[23]			
8. Salmonella, number per gram dry. weight.[11]	MPN multiple tube	1682.[21]			
Aquatic Toxicity:					
9. Toxicity, acute, fresh water organisms, LC_{50}, percent effluent.	*Ceriodaphnia dubia* acute.	2002.0.[24]			
	Daphnia puplex and *Daphnia magna* acute.	2021.0.[24]			
	Fathead minnow, *Pimephales promelas,* and Bannerfin shiner, *Cyprinella leedsi,* acute.	2000.0.[24]			
	Rainbow Trout, *Oncorhynchus mykiss,* and brook trout, *Salvelinus fontinalis,* acute.	2019.0.[24]			
10. Toxicity, acute, estuarine and marine organisms of the Atlantic Ocean and Gulf of Mexico, LC_{50}, percent effluent.	Mysid, *Mysidopsis bahia,* acute.	2007.0.[24]			
	Sheepshead Minnow, *Cyprinodon variegatus,* acute.	2004.0.[24]			
	Silverside, *Menidia beryllina, Menidia menidia,* and *Menidia peninsulae,* acute.	2006.0.[24]			

TABLE IA—LIST OF APPROVED BIOLOGICAL METHODS FOR WASTEWATER AND SEWAGE SLUDGE—Continued

Parameter and units	Method [1]	EPA	Standard methods	AOAC, ASTM, USGS	Other
11. Toxicity, chronic, fresh water organisms, NOEC or IC_{25}, percent effluent.	Fathead minnow, *Pimephales promelas,* larval survival and growth.	1000.0.[25]			
	Fathead minnow, *Pimephales promelas,* embryo-larval survival and teratogenicity.	1001.0.[25]			
	Daphnia, *Ceriodaphnia dubia,* survival and reproduction.	1002.0.[25]			
	Green alga, *Selenastrum capricornutum,* growth.	1003.0.[25]			
12. Toxicity, chronic, estuarine and marine organisms of the Atlantic Ocean and Gulf of Mexico, NOEC or IC_{25}, percent effluent.	Sheepshead minnow, *Cyprinodon variegatus,* larval survival and growth.	1004.0.[26]			
	Sheepshead minnow, *Cyprinodon variegatus,* embryo-larval survival and teratogenicity.	1005.0.[26]			
	Inland silverside, *Menidia beryllina,* larval survival and growth.	1006.0.[26]			
	Mysid, *Mysidopsis bahia,* survival, growth, and fecundity.	1007.0.[26]			
	Sea urchin, *Arbacia punctulata,* fertilization.	1008.0.[26]			

[1] The method must be specified when results are reported.

[2] A 0.45 μm membrane filter (MF) or other pore size certified by the manufacturer to fully retain organisms to be cultivated and to be free of extractables which could interfere with their growth.

[3] USEPA. 1978. Microbiological Methods for Monitoring the Environment, Water, and Wastes. Environmental Monitoring and Support Laboratory, U.S. Environmental Protection Agency, Cincinnati, OH, EPA/600/8–78/017.

[4] USGS. 1989. U.S. Geological Survey Techniques of Water-Resource Investigations, Book 5, Laboratory Analysis, Chapter A4, Methods for Collection and Analysis of Aquatic Biological and Microbiological Samples, U.S. Geological Survey, U.S. Department of the Interior, Reston, VA.

[5] Because the MF technique usually yields low and variable recovery from chlorinated wastewaters, the Most Probable Number method will be required to resolve any controversies.

[6] Tests must be conducted to provide organism enumeration (density). Select the appropriate configuration of tubes/filtrations and dilutions/volumes to account for the quality, character, consistency, and anticipated organism density of the water sample.

[7] When the MF method has been used previously to test waters with high turbidity, large numbers of noncoliform bacteria, or samples that may contain organisms stressed by chlorine, a parallel test should be conducted with a multiple-tube technique to demonstrate applicability and comparability of results.

[8] To assess the comparability of results obtained with individual methods, it is suggested that side-by-side tests be conducted across seasons of the year with the water samples routinely tested in accordance with the most current Standard Methods for the Examination of Water and Wastewater or EPA alternate test procedure (ATP) guidelines.

[9] ASTM. 2000, 1999, 1996. Annual Book of ASTM Standards—Water and Environmental Technology. Section 11.02. ASTM International. 100 Barr Harbor Drive, West Conshohocken, PA 19428.

[10] AOAC. 1995. Official Methods of Analysis of AOAC International, 16th Edition, Volume I, Chapter 17. Association of Official Analytical Chemists International. 481 North Frederick Avenue, Suite 500, Gaithersburg, MD 20877–2417.

[11] Recommended for enumeration of target organism in sewage sludge.

[12] These tests are collectively known as defined enzyme substrate tests, where, for example, a substrate is used to detect the enzyme β-glucuronidase produced by *E. coli*.

[13] USEPA. April 2010. Method 1680: Fecal Coliforms in Sewage Sludge (Biosolids) by Multiple-Tube Fermentation Using Lauryl-Tryptose Broth (LTB) and EC Medium. U.S. Environmental Protection Agency, Office of Water, Washington, DC, EPA–821–R–10–003.

[14] Samples shall be enumerated by the multiple-tube or multiple-well procedure. Using multiple-tube procedures, employ an appropriate tube and dilution configuration of the sample as needed and report the Most Probable Number (MPN). Samples tested with Colilert® may be enumerated with the multiple-well procedures, Quanti-Tray®, Quanti-Tray®/2000, and the MPN calculated from the table provided by the manufacturer.

[15] Colilert-18® is an optimized formulation of the Colilert® for the determination of total coliforms and *E. coli* that provides results within 18 h of incubation at 35 °C rather than the 24 h required for the Colilert® test and is recommended for marine water samples.

[16] Descriptions of the Colilert®, Colilert-18®, Quanti-Tray®, and Quanti-Tray®/2000 may be obtained from IDEXX Laboratories, Inc. 1 IDEXX Drive, Westbrook, ME 04092.

[17] A description of the mColiBlue24® test, is available from Hach Company. 100 Dayton Ave., Ames, IA 50010.
[18] USEPA. July 2006. Method 1681: Fecal Coliforms in Sewage Sludge (Biosolids) by Multiple-Tube Fermentation using A–1 Medium. U.S. Environmental Protection Agency, Office of Water, Washington, DC, EPA–821–R–06–013.
[19] Recommended for enumeration of target organism in wastewater effluent.
[20] USEPA. December 2009. Method 1603: *Escherichia coli* (*E. coli*) in Water by Membrane Filtration Using Modified membrane-Thermotolerant *Escherichia coli* Agar (modified mTEC). U.S. Environmental Protection Agency, Office of Water, Washington, DC, EPA–821–R–09–007.
[21] USEPA. July 2006. Method 1682: *Salmonella* in Sewage Sludge (Biosolids) by Modified Semisolid Rappaport-Vassiliadis (MSRV) Medium. U.S. Environmental Protection Agency, Office of Water, Washington, DC, EPA–821–R–06–014.
[22] A description of the Enterolert® test may be obtained from IDEXX Laboratories, Inc., 1 IDEXX Drive, Westbrook, ME 04092.
[23] USEPA. December 2009. Method 1600: Enterococci in Water by Membrane Filtration Using membrane-*Enterococcus* Indoxyl-β-D-Glucoside Agar (mEI). U.S. Environmental Protection Agency, Office of Water, Washington, DC, EPA–821–R–09–016.
[24] USEPA. October 2002. Methods for Measuring the Acute Toxicity of Effluents and Receiving Waters to Freshwater and Marine Organisms. Fifth Edition. U.S. Environmental Protection Agency, Office of Water, Washington, DC, EPA/821/R–02/012.
[25] USEPA. October 2002. Short-term Methods for Estimating the Chronic Toxicity of Effluents and Receiving Waters to Freshwater Organisms. Fourth Edition, U.S. Environmental Protection Agency, Office of Water, Washington, DC, EPA/821/R–02/013.
[26] USEPA. October 2002. Short-term Methods for Estimating the Chronic Toxicity of Effluents and Receiving Waters to Marine and Estuarine Organisms. Third Edition. U.S. Environmental Protection Agency, Office of Water, Washington, DC, EPA/821/R–02/014.

TABLE IB—LIST OF APPROVED INORGANIC TEST PROCEDURES

Parameter	Methodology [58]	EPA [52]	Standard methods	ASTM	USGS/AOAC/other
1. Acidity, as $CaCO_3$, mg/L.	Electrometric endpoint or phenolphthalein endpoint.	.....	2310 B–1997	D1067–06	I–1020–85.[2]
2. Alkalinity, as $CaCO_3$, mg/L.	Electrometric or Colorimetric titration to pH 4.5, Manual.	.....	2320 B–1997	D1067–06	973.43,[3] I–1030–85.[2]
	Automatic	310.2 (Rev. 1974) [1]	.....	.....	I–2030–85.[2]
3. Aluminum—Total,[4] mg/L.	Digestion [4] followed by any of the following:				
	AA direct aspiration [36].	.....	3111 D–1999 or E–1999.	.....	I–3051–85.[2]
	AA furnace	.....	3113–2004.		
	STGFAA	200.9, Rev. 2.2 (1994).			
	ICP/AES [36]	200.5, Rev. 4.2 (2003); 200.7, Rev. 4.4 (1994).	3120–1999	D1976–07	I–4471–97.[50]
	ICP/MS	200.8, Rev. 5.4 (1994).	3125–2009	D5673–05	993.14,[3] I–4471–97.[50]
	Direct Current Plasma (DCP) [36].	.....	.....	D4190–08	See footnote.[34]
	Colorimetric (Eriochrome cyanine R).	.....	3500–Al B–2001.		
4. Ammonia (as N), mg/L.	Manual distillation [6] or gas diffusion (pH > 11) followed by any of the following:	350.1, Rev. 2.0 (1993).	4500–NH_3 B–1997 ..	.....	973.49.[3]
	Nesslerization	.....	.....	D1426–08 (A)	973.49,[3] I–3520–85.[2]
	Titration	.....	4500–NH_3 C–1997.		
	Electrode	.....	4500–NH_3 D–1997 or E–1997.	D1426–08 (B).	
	Manual phenate, salicylate, or other substituted phenols in Berthelot reaction based methods.	.....	4500–NH_3 F–1997 ...	.....	See Footnote.[60]
	Automated phenate, salicylate, or other substituted phenols in Berthelot reaction based methods.	350.1,[30] Rev. 2.0 (1993).	4500–NH_3 G–1997 4500–NH_3 H–1997.	.....	I–4523–85.[2]
	Automated electrode	.....	.....	.....	See footnote 7.
	Ion Chromatography	.....	.....	D6919–09.	
5. Antimony—Total,[4] mg/L.	Digestion [4] followed by any of the following:				
	AA direct aspiration [36].	.....	3111 B–1999.		
	AA furnace	.....	3113–2004.		
	STGFAA	200.9, Rev. 2.2 (1994).			
	ICP/AES [36]	200.5, Rev. 4.2 (2003); 200.7, Rev. 4.4 (1994).	3120–1999	D1976–07	I–4471–97.[50]

TABLE IB—LIST OF APPROVED INORGANIC TEST PROCEDURES—Continued

Parameter	Methodology [58]	EPA [52]	Standard methods	ASTM	USGS/AOAC/other
	ICP/MS	200.8, Rev. 5.4 (1994).	3125–2009	D5673–05	993.14,[3] I–4471–97.[50]
6. Arsenic—Total,[4] mg/L.	Digestion [4] followed by any of the following:	206.5 (Issued 1978).[1]			
	AA gaseous hydride		3114 B–2009 or C–2009.	D2972–08 (B)	I–3062–85.[2]
	AA furnace		3113–2004	D2972–08 (C)	I–4063–98.[49]
	STGFAA	200.9, Rev. 2.2 (1994).			
	ICP/AES [36]	200.5, Rev. 4.2 (2003); 200.7, Rev. 4.4 (1994).	3120–1999	D1976–07.	
	ICP/MS	200.8, Rev. 5.4 (1994).	3125–2009	D5673–05	993.14,[3] I–4020–05.
	Colorimetric (SDDC)		3500–As B–1997	D2972–08 (A)	I–3060–85.[2]
7. Barium—Total,[4] mg/L.	Digestion [4] followed by any of the following:				
	AA direct aspiration [36].		3111 D–1999		I–3084–85.[2]
	AA furnace		3113–2004	D4382–02(07).	
	ICP/AES [36]	200.5, Rev. 4.2 (2003); 200.7, Rev. 4.4 (1994).	3120–1999		I–4471–97.[50]
	ICP/MS	200.8, Rev. 5.4 (1994).	3125–2009	D5673–05	993.14,[3] I–4471–97.[50]
	DCP [36]				See footnote.[34]
8. Beryllium—Total,[4] mg/L.	Digestion [4] followed by any of the following:				
	AA direct aspiration		3111 D–1999 or E–1999.	D3645–08 (A)	I–3095–85.[2]
	AA furnace		3113–2004	D3645–08 (B).	
	STGFAA	200.9, Rev. 2.2 (1994).			
	ICP/AES	200.5, Rev. 4.2 (2003); 200.7, Rev. 4.4 (1994).	3120–1999	D1976–07	I–4471–97.[50]
	ICP/MS	200.8, Rev. 5.4 (1994).	3125–2009	D5673–05	993.14,[3] I–4471–97.[50]
	DCP			D4190–08	See footnote.[34]
	Colorimetric (aluminon).				See footnote.[61]
9. Biochemical oxygen demand (BOD5), mg/L.	Dissolved Oxygen Depletion.		5210 B–2001	D888–09	973.44,[3] p. 17,[9] I–1578–78,[8] See footnote.[10 63]
10. Boron—Total,[37] mg/L.	Colorimetric (curcumin)		4500–B B–2000		I–3112–85.[2]
	ICP/AES	200.5, Rev. 4.2 (2003); 200.7, Rev. 4.4 (1994).	3120–1999	D1976–07	I–4471–97.[50]
	ICP/MS	200.8, Rev. 5.4 (1994).	3125–2009	D5673–05	993.14,[3] I–4471–97.[50]
	DCP			D4190–08	See footnote.[34]
11. Bromide, mg/L	Electrode			D1246–05	I–1125–85.[2]
	Ion Chromatography	300.0, Rev. 2.1 (1993) and 300.1, Rev. 1.0 (1997).	4110 B–2000, C–2000, D–2000.	D4327–03	993.30.[3]
	CIE/UV		4140–1997	D6508–00(05)	D6508, Rev. 2.[54]
12. Cadmium—Total,[4] mg/L.	Digestion [4] followed by any of the following:				
	AA direct aspiration [36].		3111 B–1999 or C–1999.	D3557–02(07) (A or B).	974.27,[3] p. 37.[9], I–3135–85 [2] or I–3136–85.[2]
	AA furnace		3113–1999	D3557–02(07) (D)	I–4138–89.[51]
	STGFAA	200.9, Rev. 2.2 (1994).			
	ICP/AES [36]	200.5, Rev. 4.2 (2003); 200.7, Rev. 4.4 (1994).	3120–1999	D1976–07	I–1472–85 [2] or I–4471–97.[50]
	ICP/MS	200.8, Rev. 5.4 (1994).	3125–2009	D5673–05	993.14,[3] I–4471–97.[50]
	DCP [36]			D4190–08	See footnote.[34]
	Voltametry [11]			D3557–02(07)(C).	

TABLE IB—LIST OF APPROVED INORGANIC TEST PROCEDURES—Continued

Parameter	Methodology [58]	EPA [52]	Standard methods	ASTM	USGS/AOAC/other
	Colorimetric (Dithizone)	.....	3500 Cd–D 1990.		
13. Calcium—Total,[4] mg/L.	Digestion [4] followed by any of the following:				
	AA direct aspiration	.....	3111 B–1999	D511–08(B)	I–3152–85.[2]
	ICP/AES	200.5, Rev. 4.2 (2003); 200.7, Rev. 4.4 (1994).	3120–1999	.....	I–4471–97.[50]
	ICP/MS	200.8, Rev. 5.4 (1994).	3125–2009	D5673–05	993.14.[3]
	DCP	.....	.....	.....	See footnote.[34]
	Titrimetric (EDTA) ...	.....	3500–Ca–1997	D511–08(A).	
	Ion Chromatography	.....	.....	D6919–09.	
14. Carbonaceous biochemical oxygen demand (CBOD5), mg/L.[12]	Dissolved Oxygen Depletion with nitrification inhibitor.	.....	5210 B–2001	D888–09	See footnote.[35 63]
15. Chemical oxygen demand (COD), mg/L.	Titrimetric	410.3 (Rev. 1978) [1]	5220 B–1997 or C–1997.	D1252–06 (A)	973.46,[3] p. 17 [9] I–3560–85.[2]
	Spectrophotometric, manual or automatic.	410.4, Rev. 2.0 (1993).	5220 D–1997	D1252–06 (B)	See footnotes.[13 14] I–3561–85.[2]
16. Chloride, mg/L	Titrimetric: (silver nitrate)	.....	4500–Cl^- B–1997 ...	D512–04 (B)	I–1183–85.[2]
	(Mercuric nitrate)	.....	4500–Cl^- C–1997 ...	D512–04 (A)	973.51,[3] I–1184–85.[2]
	Colorimetric: manual	.....	.....	.....	I–1187–85.[2]
	Automated (Ferricyanide)	.....	4500–Cl^- E–1997 ...	.....	I–2187–85.[2]
	Potentiometric Titration ..	.....	4500–Cl^- D–1997.		
	Ion Selective Electrode ..	.....	.....	D512–04 (C).	
	Ion Chromatography	300.0, Rev. 2.1 (1993) and 300.1, Rev. 1.0 (1997).	4110 B–2000 or C–2000.	D4327–03	993.30,[3] I–2057–90.[51]
	CIE/UV	.....	4140–1997	D6508–00(05)	D6508, Rev. 2.[54]
17. Chlorine—Total residual, mg/L.	Amperometric direct	.....	4500–Cl D–2000	D1253–08.	
	Amperometric direct (low level).	.....	4500–Cl E–2000.		
	Iodometric direct	.....	4500–Cl B–2000.		
	Back titration ether end–point [15].	.....	4500–Cl C–2000.		
	DPD–FAS	.....	4500–Cl F–2000.		
	Spectrophotometric, DPD	.....	4500–Cl G–2000.		
	Electrode	.....	.....	.....	See footnote.[16]
17A. Chlorine—Free Available, mg/L.	Amperometric direct	.....	4500–Cl D–2000	D1253–08.	
	Amperometric direct (low level).	.....	4500–Cl E–2000.		
	DPD–FAS	.....	4500–Cl F–2000.		
	Spectrophotometric, DPD	.....	4500–Cl G–2000.		
18. Chromium VI dissolved, mg/L.	0.45-micron Filtration followed by any of the following:				
	AA chelation-extraction.	.....	3111 C–1999	.....	I–1232–85.[2]
	Ion Chromatography	218.6, Rev. 3.3 (1994).	3500–Cr C–2009	D5257–03	993.23.
	Colorimetric (Diphenyl-carbazide).	.....	3500–Cr B–2009	D1687–02(07)(A)	I–1230–85.[2]
19. Chromium—Total,[4] mg/L.	Digestion [4] followed by any of the following:				
	AA direct aspiration [36].	.....	3111 B–1999	D1687–02(07) (B)	974.27,[3] I–3236–85.[2]
	AA chelation-extraction.	.....	3111 C–1999.		
	AA furnace	.....	3113–1999	D1687–02(07)(C)	I–3233–93.[46]
	STGFAA	200.9, Rev. 2.2 (1994).			
	ICP/AES [36]	200.5, Rev. 4.2 (2003); 200.7, Rev. 4.4 (1994).	3120–1999	D1976–07	I–4471–97.[50]
	ICP/MS	200.8, Rev. 5.4 (1994).	3125–2009	D5673–05	993.14,[3] I–4020–05.
	DCP [36]	.....	.....	D4190–08	See footnote.[34]

TABLE IB—LIST OF APPROVED INORGANIC TEST PROCEDURES—Continued

Parameter	Methodology [58]	EPA [52]	Standard methods	ASTM	USGS/AOAC/other
	Colorimetric (Diphenyl-carbazide).		3500–Cr B–2009.		
20. Cobalt—Total,[4] mg/L.	Digestion [4] followed by any of the following:				
	AA direct aspiration		3111 B–1999 or C–1999.	D3558–08 (A or B)	p. 37,[9] I–3239–85.[2]
	AA furnace		3113–2004	D3558–08 (C)	I–4243–89.[51]
	STGFAA	200.9, Rev. 2.2 (1994).			
	ICP/AES	200.7, Rev. 4.4 (1994).	3120–1999	D1976–07	I–4471–97.[50]
	ICP/MS	200.8, Rev. 5.4 (1994).	3125–2009	D5673–05	993.14,[3] I–4020–05.
	DCP			D4190–08	See footnote.[34]
21. Color, platinum cobalt units or dominant wavelength, hue, luminance purity.	Colorimetric (ADMI)				See footnote.[18]
	(Platinum cobalt) Spectrophotometric.		2120 B–2001		I–1250–85.[2]
22. Copper—Total,[4] mg/L.	Digestion [4] followed by any of the following:				
	AA direct aspiration.[36]		3111 B–1999 or C–1999.	D1688–07 (A or B)	974.27[3] p. 37[9] I–3270–85[2] or I–3271–85.[2]
	AA furnace		3113–2004	D1688–07 (C)	I–4274–89.[51]
	STGFAA	200.9, Rev. 2.2 (1994).			
	ICP/AES [36]	200.5, Rev. 4.2 (2003); 200.7, Rev. 4.4 (1994).	3120–1999	D1976–07	I–4471–97.[50]
	ICP/MS	200.8, Rev. 5.4 (1994).	3125–2009	D5673–05	993.14,[3] I–4020–05
	DCP [36]			D4190–08	See footnote.[34]
	Colorimetric (Neocuproine).		3500–Cu B–1999.		
	(Bathocuproine)		3500–Cu C–1999		See footnote.[19]
23. Cyanide—Total, mg/L.	Automated UV digestion/distillation and Colorimetry.				Kelada–01.[55]
	Segmented Flow Injection, In-Line Ultraviolet Digestion followed by gas diffusion amperometry.			D7511–09e2.	
	Manual distillation with $MgCl_2$ followed by any of the following:	335.4, Rev. 1.0 (1993) [57].	4500–CN^- B–1999 or C–1999.	D2036–09(A), D7284–08.	10–204–00–1–X.[56]
	Flow Injection, gas diffusion amperometry.			D2036–09(A) D7284–08.	
	Titrimetric		4500–CN^- D–1999	D2036–09(A)	p. 22.[9]
	Spectrophotometric, manual.		4500–CN^- E–1999	D2036–09(A)	I–3300–85.[2]
	Semi-Automated [20]	335.4, Rev. 1.0 (1993) [57].			10–204–00–1–X,[56] I–4302–85.[2]
	Ion Chromatography			D2036–09(A).	
	Ion Selective Electrode.		4500–CN^- F–1999	D2036–09(A).	
24. Cyanide-Available, mg/L.	Cyanide Amenable to Chlorination (CATC); Manual distillation with $MgCl_2$ followed by Titrimetric or Spectrophotometric.		4500–CN^- G–1999	D2036–09(B).	
	Flow injection and ligand exchange, followed by gas diffusion amperometry [59].			D6888–09	OIA–1677–09.[44]

TABLE IB—LIST OF APPROVED INORGANIC TEST PROCEDURES—Continued

Parameter	Methodology [58]	EPA [52]	Standard methods	ASTM	USGS/AOAC/other
	Automated Distillation and Colorimetry (no UV digestion).	.....	.....	.....	Kelada–01.[55]
24.A Cyanide-Free, mg/L.	Flow Injection, followed by gas diffusion amperometry.	.....	.....	D7237–10	OIA–1677–09.[44]
	Manual micro-diffusion and colorimetry.	.....	.....	D4282–02.	
25. Fluoride—Total, mg/L.	Manual distillation [6] followed by any of the following:	.....	4500–F^- B–1997.		
	Electrode, manual ...	.....	4500–F^- C–1997	D1179–04(B).	
	Electrode, automated.	.....	.....	.....	I–4327–85.[2]
	Colorimetric, (SPADNS).	.....	4500–F^- D–1997	D1179–04(A).	
	Automated complexone.	.....	4500–F^- E–1997.		
	Ion Chromatography	300.0, Rev. 2.1 (1993) and 300.1, Rev. 1.0 (1997).	4110 B–2000 or C–2000.	D4327–03	993.30.[3]
	CIE/UV	.....	4140–1997	D6508–00(05)	D6508, Rev. 2.[54]
26. Gold—Total,[4] mg/L.	Digestion [4] followed by any of the following:				
	AA direct aspiration,	.....	3111 B–1999.		
	AA furnace, ...	231.2 (Rev. 1978) [1]	3113–2004.		
	ICP/MS	200.8, Rev. 5.4 (1994).	3125–2009	D5673–05	993.14.[3]
	DCP	.....	.....	.....	See footnote.[34]
27. Hardness—Total, as CaCO3, mg/L.	Automated colorimetric, ..	130.1 (Issued 1971) [1].			
	Titrimetric (EDTA)	.....	2340 C–1997	D1126–02(07)	973.5 2B,[3] I–1338–85.[2]
	Ca plus Mg as their carbonates, by inductively coupled plasma or AA direct aspiration. (See Parameters 13 and 33).	.....	2340 B–1997.		
28. Hydrogen ion (pH), pH units.	Electrometric measurement.	.....	4500–H^+–2000	D1293–99 (A or B) ..	973.41,[3] I–1586–85.[2]
	Automated electrode	150.2 (Dec. 1982) [1]	.....	.....	See footnote,[21] I–2587–85.[2]
29. Iridium—Total,[4] mg/L.	Digestion [4] followed by any of the following:				
	AA direct aspiration	.....	3111 B–1999.		
	AA furnace	235.2 (Issued 1978).[1]			
	ICP/MS	.....	3125–2009.		
30. Iron—Total,[4] mg/L	Digestion [4] followed by any of the following:				
	AA direct aspiration [36].	.....	3111 B–1999 or C–1999.	D1068–05 (A or B) ..	974.27,[3] I–3381–85.[2]
	AA furnace	.....	3113–1999	D1068–05(C).	
	STGFAA	200.9, Rev. 2.2 (1994).			
	ICP/AES [36]	200.5, Rev. 4.2 (2003); 200.7, Rev. 4.4 (1994).	3120–1999	D1976–07	I–4471–97.[50]
	ICP/MS	200.8, Rev. 5.4 (1994).	3125–2009	D5673–05	993.14.[3]
	DCP [36]	.....	.....	D4190–08	See footnote.[34]
	Colorimetric (Phenanthroline).	.....	3500–Fe-1997	D1068–05 (D)	See footnote.[22]
31. Kjeldahl Nitrogen [5]—Total, (as N), mg/L.	Manual digestion [20] and distillation or gas diffusion followed by any of the following:	.....	4500–Norg B–1997 or C–1997 and 4500–NH_3 B–1997.	D3590–02(06)(A)	I–4515–91.[45]
	Titration	.....	4500–NH_3 C–1997 ..	.....	973.48.[3]
	Nesslerization	.....	.....	D1426–08(A).	
	Electrode	.....	4500–NH_3 D–1997 or E–1997.	D1426–08(B).	

TABLE IB—LIST OF APPROVED INORGANIC TEST PROCEDURES—Continued

Parameter	Methodology [58]	EPA [52]	Standard methods	ASTM	USGS/AOAC/other
	Semi-automated phenate.	350.1 Rev. 2.0 1993	4500–NH_3 G–1997 4500–NH_3 H–1997.		
	Manual phenate, salicylate, or other substituted phenols in Berthelot reaction based methods.	.....	4500–NH_3 F–1997 ...	.....	See Footnote.[60]
	Automated Methods for TKN that do not require manual distillation				
	Automated phenate, salicylate, or other substituted phenols in Berthelot reaction based methods colorimetric (auto digestion and distillation).	351.1, (Rev. 1978) [1]	.....	.....	I–4551–78.[8]
	Semi-automated block digestor colorimetric (distillation not required).	351.2, Rev. 2.0 (1993).	4500–Norg D–1997	D3590–02(06) (B)	I–4515–91.[45]
	Block digester, followed by Auto distillation and Titration.	.....	.....	.....	See footnote.[39]
	Block digester, followed by Auto distillation and Nesslerization.	.....	.....	.....	See footnote.[40]
	Block Digester, followed by Flow injection gas diffusion (distillation not required).	.....	.....	.....	See footnote.[41]
32. Lead—Total,[4] mg/L.	Digestion [4] followed by any of the following:				
	AA direct aspiration.[36]	.....	3111 B–1999 or C–1999.	D3559–08(A or B) ...	974.27,[3] I–3399–85.[2]
	AA furnace	.....	3113–1999	D3559–08(D)	I–4403–89.[51]
	STGFAA	200.9, Rev. 2.2 (1994).			
	ICP/AES [36]	200.5, Rev. 4.2 (2003); 200.7, Rev. 4.4 (1994).	3120–1999	D1976–07	I–4471–97.[50]
	ICP/MS	200.8, Rev. 5.4 (1994).	3125–2009	D5673–05	993.14,[3] I–4471–97.[50]
	DCP [36]	.....	.....	D4190–08	See footnote.[34]
	Voltametry [11]	.....	.....	D3559–08(C).	
	Colorimetric (Dithizone).	.....	3500–Pb B–1997.		
33. Magnesium—Total,[4] mg/L.	Digestion [4] followed by any of the following:				
	AA direct aspiration	.....	3111 B–1999	D511–08(B)	974.27,[3] I–3447–85.[2]
	ICP/AES	200.5, Rev. 4.2 (2003); 200.7, Rev. 4.4 (1994).	3120–1999	D1976–07	I–4471–97.[50]
	ICP/MS	200.8, Rev. 5.4 (1994).	3125–2009	D5673–05	993.14.[3]
	DCP	.....	.....	.....	See footnote.[34]
	Gravimetric.				
	Ion Chromatography	.....	.....	D6919–09.	
34. Manganese—Total,[4] mg/L.	Digestion [4] followed by any of the following:				
	AA direct aspiration [36].	.....	3111 B–1999	D858–07(A or B)	974.27,[3] I–3454–85.[2]
	AA furnace	.....	3113–2004	D858–07(C).	
	STGFAA	200.9, Rev. 2.2 (1994).			
	ICP/AES [36]	200.5, Rev. 4.2 (2003); 200.7, Rev. 4.4 (1994).	3120–1999	D1976–07	I–4471–97.[50]
	ICP/MS	200.8, Rev. 5.4 (1994).	3125–2009	D5673–05	993.14,[3] I–4471–97.[50]
	DCP [36]	.....	.....	D4190–08	See footnote.[34]

TABLE IB—LIST OF APPROVED INORGANIC TEST PROCEDURES—Continued

Parameter	Methodology [58]	EPA [52]	Standard methods	ASTM	USGS/AOAC/other
	Colorimetric (Persulfate).		3500–Mn B–1999		920.203.[3]
	(Periodate)				See footnote.[23]
35. Mercury—Total,[4] mg/L.	Cold vapor, Manual	245.1, Rev. 3.0 (1994).	3112–2009	D3223–07	977.22,[3] I–3462–85.[2]
	Cold vapor, Automated	245.2 (Issued 1974).			
	Cold vapor atomic fluorescence spectrometry (CVAFS).	245.7, Rev. 2.0 (2005) [17].			I–4464–01.
	Purge and Trap CVAFS	1631E.[43]			
	ICP/AES [36]	200.7, Rev. 4.4 (1994).	3120–1999		I–4471–97.[50]
	ICP/MS		3125–2009.		
36. Molybdenum—Total,[4] mg/L.	Digestion [4] followed by any of the following:				
	AA direct aspiration		3111 D–1999		I–3490–85.[2]
	AA furnace		3113–2004		I–3492–96.[47]
	ICP/AES	200.7, Rev. 4.4 (1994).	3120–1999	D1976–07	I–4471–97.[50]
	ICP/MS	200.8, Rev. 5.4 (1994).	3125–2009	D5673–05	993.14,[3] I–4471–97.[50]
	DCP				See footnote.[34]
37. Nickel—Total,[4] mg/L.	Digestion [4] followed by any of the following:				
	AA direct aspiration [36].		3111 B–1999 or C–1999.	D1886–08(A or B)	I–3499–85.[2]
	AA furnace		3113–2004	D1886–08(C)	I–4503–89.[51]
	STGFAA	200.9, Rev. 2.2 (1994).			
	ICP/AES [36]	200.5, Rev. 4.2 (2003); 200.7, Rev. 4.4 (1994).	3120–1999	D1976–07	I–4471–97.[50]
	ICP/MS	200.8, Rev. 5.4 (1994).	3125–2009	D5673–05	993.14,[3] I–4020–05.
	DCP [36]			D4190–08	See footnote.[34]
38. Nitrate (as N), mg/L.	Ion Chromatography	300.0, Rev. 2.1 (1993) and 300.1, Rev. 1.0 (1997).	4110 B–2000 or C–2000.	D4327–03	993.30.[3]
	CIE/UV		4140–1997	D6508–00(05)	D6508, Rev. 2.[54]
	Ion Selective Electrode		4500–NO_3^- D–2000.		
	Colorimetric (Brucine sulfate).	352.1 [1]			973.50,[3] 419D,[17] p. 28.[9]
	Nitrate-nitrite N minus Nitrite N (See parameters 39 and 40).				See footnote.[62]
39. Nitrate-nitrite (as N), mg/L.	Cadmium reduction, Manual.		4500–NO_3^- E–2000	D3867–04(B).	
	Cadmium reduction, Automated.	353.2, Rev. 2.0 (1993).	4500–NO_3^- F–2000	D3867–04(A)	I–2545–90.[2]
	Automated hydrazine		4500–NO_3^- H–2000.		
	Reduction/Colorimetric				See footnote.[62]
	Ion Chromatography	300.0, Rev. 2.1 (1993) and 300.1, Rev. 1.0 (1997).	4110 B–2000 or C–2000.	D4327–03	993.30.[3]
	CIE/UV		4140–1997	D6508–00(05)	D6508, Rev. 2.[54]
40. Nitrite (as N), mg/L	Spectrophotometric: Manual.		4500–NO_2^- B–2000		See footnote.[25]
	Automated (Diazotization).				I–4540–85,[2] See footnote.[62]
	Automated (*bypass cadmium reduction).	353.2, Rev. 2.0 (1993).	4500–NO_3^- F–2000	D3867–04 (A)	I–4545–85.[2]
	Manual (*bypass cadmium reduction).		4500–NO_3^- E–2000	D3867–04 (B).	
	Ion Chromatography	300.0, Rev. 2.1 (1993) and 300.1, Rev. 1.0 (1997).	4110 B–2000 or C–2000.	D4327–03	993.30.[3]
	CIE/UV		4140–1997	D6508–00(05)	D6508, Rev.2.[54]
41. Oil and grease—Total recoverable, mg/L.	Hexane extractable material (HEM): n-Hexane extraction and gravimetry.	1664B [42]	5520 B–2001.[38]		

TABLE IB—LIST OF APPROVED INORGANIC TEST PROCEDURES—Continued

Parameter	Methodology [58]	EPA [52]	Standard methods	ASTM	USGS/AOAC/other
	Silica gel treated HEM (SGT–HEM): Silica gel treatment and gravimetry.	1664B [42]	5520 B–2001 [38] and 5520 F–2001.[38]		
42. Organic carbon—Total (TOC), mg/L.	Combustion		5310 B–2000	D7573–09	973.47,[3] p. 14.[24]
	Heated persulfate or UV persulfate oxidation.		5310 C 2000 5310 D 2000.	D4839–03	973.47,[3] p. 14.[24]
43. Organic nitrogen (as N), mg/L.	Total Kjeldahl N (Parameter 31) minus ammonia N (Parameter 4).				
44. Orthophosphate (as P), mg/L.	Ascorbic acid method:				
	Automated	365.1, Rev. 2.0 (1993).	4500–P F–1999 or G–1999.		973.56,[3] I–4601–85.[2]
	Manual single reagent.		4500–P E–1999	D515–88(A)	973.55.[3]
	Manual two reagent	365.3 (Issued 1978).[1]			
	Ion Chromatography	300.0, Rev. 2.1 (1993) and 300.1, Rev. 1.0 (1997).	4110 B–2000 or C–2000.	D4327–03	993.30.[3]
	CIE/UV		4140–1997	D6508–00(05)	D6508, Rev. 2.[54]
45. Osmium—Total,[4] mg/L.	Digestion [4] followed by any of the following:				
	AA direct aspiration		3111 D–1999.		
	AA furnace	252.2 (Issued 1978) [1]			
46. Oxygen, dissolved, mg/L.	Winkler (Azide modification).		4500–O B–2001, C–2001, D–2001, E–2001, F–2001.	D888–09(A)	973.45B,[3] I–1575–78.[8]
	Electrode		4500–O G–2001	D888–09(B)	I–1576–78.[8]
	Luminescence Based Sensor.			D888–09 [68] (C)	See footnote [63 68] See footnote.[64]
47. Palladium—Total,[4] mg/L.	Digestion [4] followed by any of the following:				
	AA direct aspiration		3111 B–1999.		
	AA furnace	253.2 [1] (Issued 1978).			
	ICP/MS		3125–2009.		
	DCP				See footnote.[34]
48. Phenols, mg/L	Manual distillation [26] followed by any of the following:	420.1 [1] (Rev. 1978)	5530B–2005	D1783–01.	
	Colorimetric (4AAP) manual.	420.1 [1] (Rev. 1978)	5530D–2005 [27]	D1783–01(A or B).	
	Automated colorimetric (4AAP).	420.4, Rev. 1.0 (1993).			
49. Phosphorus (elemental), mg/L.	Gas–liquid chromatography.				See footnote.[28]
50. Phosphorus—Total, mg/L.	Persulfate digestion [20] followed by any of the following:		4500–P B(5)–1999		973.55.[3]
	Manual	365.3 [1] (Issued 1978).	4500–P E–1999	D515–88(A).	
	Automated ascorbic acid reduction.	365.1, Rev. 2.0 (1993).	4500–P F–1999, G–1999, H–1999.		973.56,[3] I–4600–85.[2]
	ICP/AES [4 36]	200.7, Rev. 4.4 (1994).	3120–1999		I–4471–97.[50]
	Semi–automated block digestor (TKP digestion).	365.4 [1] (Issued 1974).		D515–88(B)	I–4610–91.[48]
51. Platinum—Total,[4] mg/L.	Digestion [4] followed by any of the following:				
	AA direct aspiration		3111 B–1999.		
	AA furnace	255.2.[1]			
	ICP/MS		3125–2009.		
	DCP				See footnote.[34]
52. Potassium—Total,[4] mg/L.	Digestion [4] followed by any of the following:				
	AA direct aspiration		3111 B–1999		973.53,[3] I–3630–85.[2]

TABLE IB—LIST OF APPROVED INORGANIC TEST PROCEDURES—Continued

Parameter	Methodology [58]	EPA [52]	Standard methods	ASTM	USGS/AOAC/other
	ICP/AES	200.7, Rev. 4.4 (1994).	3120–1999.		
	ICP/MS	200.8, Rev. 5.4 (1994).	3125–2009	D5673–05	993.14.[3]
	Flame photometric		3500–K B–1997.		
	Electrode		3500–K C–1997.		
	Ion Chromatography			D6919–09.	
53. Residue—Total, mg/L.	Gravimetric, 103–105°		2540 B–1997		I–3750–85.[2]
54. Residue—filterable, mg/L.	Gravimetric, 180°		2540 C–1997	D5907–03	I–1750–85.[2]
55. Residue—non–filterable (TSS), mg/L.	Gravimetric, 103–105° post washing of residue.		2540 D–1997	D5907–03	I–3765–85.[2]
56. Residue—settleable, mg/L.	Volumetric, (Imhoff cone), or gravimetric.		2540 F–1997.		
57. Residue—Volatile, mg/L.	Gravimetric, 550°	160.4 [1]	2540–E–1997		I–3753–85.[2]
58. Rhodium—Total,[4] mg/L.	Digestion [4] followed by any of the following:				
	AA direct aspiration, or.		3111 B–1999.		
	AA furnace	265.2.[1]			
	ICP/MS		3125–2009.		
59. Ruthenium—Total,[4] mg/L.	Digestion [4] followed by any of the following:				
	AA direct aspiration, or.		3111 B–1999.		
	AA furnace	267.2.[1]			
	ICP/MS		3125–2009.		
60. Selenium—Total,[4] mg/L.	Digestion [4] followed by any of the following:				
	AA furnace		3113–2004	D3859–08 (B)	I–4668–98.[49]
	STGFAA	200.9, Rev. 2.2 (1994).			
	ICP/AES [36]	200.5, Rev. 4.2 (2003); 200.7, Rev. 4.4 (1994).	3120–1999	D1976–07.	
	ICP/MS	200.8, Rev. 5.4 (1994).	3125–2009	D5673–05	993.14,[3] I–4020–05
	AA gaseous hydride		3114 B–2009, or C–2009.	D3859–08 (A)	I–3667–85.[2]
61. Silica—Dissolved,[37] mg/L.	0.45 micron filtration followed by any of the following:				
	Colorimetric, Manual		4500–SiO_2 C–1997	D859–05	I–1700–85.[2]
	Automated (Molybdosilicate).		4500–SiO_2 E–1997 or F–1997.		I–2700–85.[2]
	ICP/AES	200.5, Rev. 4.2 (2003); 200.7, Rev. 4.4 (1994).	3120–1999		I–4471–97.[50]
	ICP/MS	200.8, Rev. 5.4 (1994).	3125–2009	D5673–05	993.14.[3]
62. Silver—Total,[4] [31] mg/L.	Digestion [4] [29] followed by any of the following:				
	AA direct aspiration		3111 B–1999 or C–1999.		974.27,[3] p. 37,[9] I–3720–85.[2]
	AA furnace		3113 –1999		I–4724–89.[51]
	STGFAA	200.9, Rev. 2.2 (1994).			
	ICP/AES	200.5, Rev. 4.2 (2003); 200.7, Rev. 4.4 (1994).	3120–1999	D1976–07	I–4471–97.[50]
	ICP/MS	200.8, Rev. 5.4 (1994).	3125–2009	D5673–05	993.14,[3] I–4471–97.[50]
	DCP				See footnote.[34]
63. Sodium—Total,[4] mg/L.	Digestion [4] followed by any of the following:				
	AA direct aspiration		3111 B–1999		973.54,[3] I–3735–85.[2]
	ICP/AES	200.5, Rev. 4.2 (2003); 200.7, Rev. 4.4 (1994).	3120–1999		I–4471–97.[50]

TABLE IB—LIST OF APPROVED INORGANIC TEST PROCEDURES—Continued

Parameter	Methodology [58]	EPA [52]	Standard methods	ASTM	USGS/AOAC/other
	ICP/MS	200.8, Rev. 5.4 (1994).	3125–2009	D5673–05	993.14.[3]
	DCP				See footnote.[34]
	Flame photometric		3500–Na B–1997.		
	Ion Chromatography			D6919–09.	
64. Specific conductance, micromhos/cm at 25 °C.	Wheatstone bridge	120.1 [1] (Rev. 1982)	2510 –1997	D1125–99 (A)	973.40,[3] I–2781–85.[2]
65. Sulfate (as SO_4), mg/L.	Automated colorimetric	375.2, Rev. 2.0 (1993).	4500–SO_4^{2-} F–1997 or G–1997.		
	Gravimetric		4500–SO_4^{2-} C–1997 or D–1997.		925.54.[3]
	Turbidimetric		4500–SO_4^{2-} E–1997.	D516–07.	
	Ion Chromatography	300.0, Rev. 2.1 (1993) and 300.1, Rev. 1.0 (1997).	4110 B–2000 or C–2000.	D4327–03	993.30,[3] I–4020–05.
	CIE/UV		4140–1997	D6508–00(05)	D6508, Rev. 2.[54]
66. Sulfide (as S), mg/L.	Sample Pretreatment		4500–S^{2-} B, C–2000.		
	Titrimetric (iodine)		4500–S^{2-} F–2000		I–3840–85.[2]
	Colorimetric (methylene blue).		4500–S^{2-} D–2000.		
	Ion Selective Electrode		4500–S^{2-} G–2000	D4658–08.	
67. Sulfite (as SO_3), mg/L.	Titrimetric (iodine-iodate)		4500–SO_3^{2-} B–2000.		
68. Surfactants, mg/L	Colorimetric (methylene blue).		5540 C–2000	D2330–02.	
69. Temperature, °C	Thermometric		2550 B–2000		See footnote.[32]
70. Thallium—Total,[4] mg/L.	Digestion [4] followed by any of the following:				
	AA direct aspiration		3111 B–1999.		
	AA furnace	279.2 [1] (Issued 1978).	3113–2004.		
	STGFAA	200.9, Rev. 2.2 (1994).			
	ICP/AES	200.7, Rev. 4.4 (1994).	3120–1999	D1976–07.	
	ICP/MS	200.8, Rev. 5.4 (1994).	3125–2009	D5673–05	993.14,[3] I–4471–97.[50]
71. Tin—Total,[4] mg/L	Digestion [4] followed by any of the following:				
	AA direct aspiration		3111 B–1999		I–3850–78.[8]
	AA furnace		3113–2004.		
	STGFAA	200.9, Rev. 2.2 (1994).			
	ICP/AES	200.5, Rev. 4.2 (2003); 200.7, Rev. 4.4 (1994).			
	ICP/MS	200.8, Rev. 5.4 (1994).	3125–2009	D5673–05	993.14.[3]
72. Titanium—Total,[4] mg/L.	Digestion [4] followed by any of the following:				
	AA direct aspiration		3111 D–1999.		
	AA furnace	283.2 [1](Issued 1978).			
	DCP				See footnote.[34]
	ICP/MS	200.8, Rev. 5.4 (1994).	3125–2009	D5673–05	993.14.[3]
73. Turbidity, NTU [53]	Nephelometric	180.1, Rev. 2.0 (1993).	2130–2001	D1889–00	I–3860–85.[2] See footnote.[65] See footnote.[66] See footnote.[67]
74. Vanadium—Total,[4] mg/L.	Digestion [4] followed by any of the following:				
	AA direct aspiration		3111 D–1999.		
	AA furnace		3113–2004	D3373–03(07).	
	ICP/AES	200.5, Rev. 4.2 (2003); 200.7, Rev. 4.4 (1994).	3120–1999	D1976–07	I–4471–97.[50]
	ICP/MS	200.8, Rev. 5.4 (1994).	3125–2009	D5673–05	993.14,[3] I–4020–05.
	DCP			D4190–08	See footnote.[34]

TABLE IB—LIST OF APPROVED INORGANIC TEST PROCEDURES—Continued

Parameter	Methodology [58]	EPA [52]	Standard methods	ASTM	USGS/AOAC/other
	Colorimetric (Gallic Acid).	.....	3500–V B–1997.		
75. Zinc—Total,[4] mg/L	Digestion [4] followed by any of the following:				
	AA direct aspiration [36].	.....	3111 B–1999 or C–1999.	D1691–02(07) (A or B).	974.27,[3] p. 37,[9] I–3900–85.[2]
	AA furnace	289.2[1] (Issued 1978).			
	ICP/AES [36]	200.5, Rev. 4.2 (2003); 200.7, Rev. 4.4 (1994).	3120–1999	D1976–07	I–4471–97.[50]
	ICP/MS	200.8, Rev. 5.4 (1994).	3125–2009	D5673–05	993.14,[3] I–4020–05.
	DCP [36]	.....	.....	D4190–08	See footnote.[34]
	Colorimetric (Dithizone).				
	(Zincon)	.....	3500–Zn–1997	.....	See footnote.[33]
76. Acid Mine Drainage.	.....	1627.			

Table 1B Notes:

[1] "Methods for Chemical Analysis of Water and Wastes," Environmental Protection Agency, Environmental Monitoring Systems Laboratory—Cincinnati (EMSL–CI), EPA–600/4–79–020 (NTIS PB 84–128677), Revised March 1983 and 1979 where applicable.

[2] Fishman, M. J., *et al.* "Methods for Analysis of Inorganic Substances in Water and Fluvial Sediments," U.S. Department of the Interior, Techniques of Water-Resource Investigations of the U.S. Geological Survey, Denver, CO, Revised 1989, unless otherwise stated.

[3] "Official Methods of Analysis of the Association of Official Analytical Chemists," Methods Manual, Sixteenth Edition, 4th Revision, 1998.

[4] For the determination of total metals (which are equivalent to total recoverable metals) the sample is not filtered before processing. A digestion procedure is required to solubilize analytes in suspended material and to break down organic-metal complexes (to convert the analyte to a detectable form for colorimetric analysis). For non-platform graphite furnace atomic absorption determinations a digestion using nitric acid (as specified in Section 4.1.3 of Methods for the Chemical Analysis of Water and Wastes) is required prior to analysis. The procedure used should subject the sample to gentle, acid refluxing and at no time should the sample be taken to dryness. For direct aspiration flame atomic absorption determinations (FLAA) a combination acid (nitric and hydrochloric acids) digestion is preferred prior to analysis. The approved total recoverable digestion is described as Method 200.2 in Supplement I of "Methods for the Determination of Metals in Environmental Samples" EPA/600R–94/111, May, 1994, and is reproduced in EPA Methods 200.7, 200.8, and 200.9 from the same Supplement. However, when using the gaseous hydride technique or for the determination of certain elements such as antimony, arsenic, selenium, silver, and tin by non-EPA graphite furnace atomic absorption methods, mercury by cold vapor atomic absorption, the noble metals and titanium by FLAA, a specific or modified sample digestion procedure may be required and in all cases the referenced method write-up should be consulted for specific instruction and/or cautions. For analyses using inductively coupled plasma-atomic emission spectrometry (ICP–AES), the direct current plasma (DCP) technique or the EPA spectrochemical techniques (platform furnace AA, ICP–AES, and ICP–MS) use EPA Method 200.2 or an approved alternate procedure (*e.g.,* CEM microwave digestion, which may be used with certain analytes as indicated in Table IB); the total recoverable digestion procedures in EPA Methods 200.7, 200.8, and 200.9 may be used for those respective methods. Regardless of the digestion procedure, the results of the analysis after digestion procedure are reported as "total" metals.

[5] Copper sulfate or other catalysts that have been found suitable may be used in place of mercuric sulfate.

[6] Manual distillation is not required if comparability data on representative effluent samples are on file to show that this preliminary distillation step is not necessary: however, manual distillation will be required to resolve any controversies. In general, the analytical method should be consulted regarding the need for distillation. If the method is not clear, the laboratory may compare a minimum of 9 different sample matrices to evaluate the need for distillation. For each matrix, a matrix spike and matrix spike duplicate are analyzed both with and without the distillation step. (A total of 36 samples, assuming 9 matrices). If results are comparable, the laboratory may dispense with the distillation step for future analysis. Comparable is defined as <20% RPD for all tested matrices). Alternatively the two populations of spike recovery percentages may be compared using a recognized statistical test.

[7] Ammonia, Automated Electrode Method, Industrial Method Number 379–75 WE, dated February 19, 1976, Bran & Luebbe (Technicon) Auto Analyzer II, Bran & Luebbe Analyzing Technologies, Inc., Elmsford, NY 10523.

[8] The approved method is that cited in "Methods for Determination of Inorganic Substances in Water and Fluvial Sediments", USGS TWRI, Book 5, Chapter A1 (1979).

[9] American National Standard on Photographic Processing Effluents, April 2, 1975. Available from ANSI, 25 West 43rd St., New York, NY 10036.

[10] In-Situ Method 1003–8–2009, "Biochemical Oxygen Demand (BOD) Measurement by Optical Probe". Available from In-Situ, Incorporated, 221 E. Lincoln Avenue, Ft. Collins, CO 80524, Telephone: 970–498–1500.

[11] The use of normal and differential pulse voltage ramps to increase sensitivity and resolution is acceptable.

[12] Carbonaceous biochemical oxygen demand (CBOD5) must not be confused with the traditional BOD5 test method which measures "total BOD." The addition of the nitrification inhibitor is not a procedural option, but must be included to report the CBOD5 parameter. A discharger whose permit requires reporting the traditional BOD5 may not use a nitrification inhibitor in the procedure for reporting the results. Only when a discharger's permit specifically states CBOD5 is required can the permittee report data using a nitrification inhibitor.

[13] OIC Chemical Oxygen Demand Method, Oceanography International Corporation, 1978, 151 Graham Road, P.O. Box 9010, College Station, TX 77842.

[14] Chemical Oxygen Demand, Method 8000, Hach Handbook of Water Analysis, 1979, Hach Chemical Company, P.O. Box 389, Loveland, CO 80537.

[15] The back titration method will be used to resolve controversy.

[16] Orion Research Instruction Manual, Residual Chlorine Electrode Model 97–70, 1977, Orion Research Incorporated, 840 Memorial Drive, Cambridge, MA 02138. The calibration graph for the Orion residual chlorine method must be derived using a reagent blank and three standard solutions, containing 0.2, 1.0, and 5.0 mL 0.00281 N potassium iodate/100 mL solution, respectively.

[17] Method 245.7, Rev. 2.0, "Mercury in Water by Cold Vapor Atomic Fluorescence Spectrometry," February 2005, EPA–821–R–05–001, available from the U.S. EPA Sample Control Center (operated by CSC), 6101 Stevenson Avenue, Alexandria, VA 22304, *Telephone:* 703–461–2100, Fax: 703–461–8056.

[18] National Council of the Paper Industry for Air and Stream Improvement, Inc., Technical Bulletin 253, December 1971.

[19] Copper, Biocinchoinate Method, Method 8506, Hach Handbook of Water Analysis, 1979, Hach Chemical Company, P.O. Box 389, Loveland, CO 80537.

[20] When using a method with block digestion, this treatment is not required.

[21] Hydrogen ion (pH) Automated Electrode Method, Industrial Method Number 378–75WA, October 1976, Bran & Luebbe (Technicon) Autoanalyzer II. Bran & Luebbe Analyzing Technologies, Inc., Elmsford, NY 10523.

[22] Iron, 1,10-Phenanthroline Method, Method 8008, 1980, Hach Chemical Company, P.O. Box 389, Loveland, CO 80537.

[23] Manganese, Periodate Oxidation Method, Method 8034, Hach Handbook of Wastewater Analysis, 1979, pages 2–113 and 2–117, Hach Chemical Company, Loveland, CO 80537.

[24] Wershaw, R. L., *et al.,* "Methods for Analysis of Organic Substances in Water," Techniques of Water-Resources Investigation of the U.S. Geological Survey, Book 5, Chapter A3, (1972 Revised 1987) p. 14.

[25] Nitrogen, Nitrite, Method 8507, Hach Chemical Company, P.O. Box 389, Loveland, CO 80537.

[26] Just prior to distillation, adjust the sulfuric-acid-preserved sample to pH 4 with 1 + 9 NaOH.

[27] The colorimetric reaction must be conducted at a pH of 10.0 ± 0.2.

[28] R.F. Addison and R. G. Ackman, "Direct Determination of Elemental Phosphorus by Gas-Liquid Chromatography," *Journal of Chromatography,* Vol. 47, No. 3, pp. 421–426, 1970.

[29] Approved methods for the analysis of silver in industrial wastewaters at concentrations of 1 mg/L and above are inadequate where silver exists as an inorganic halide. Silver halides such as the bromide and chloride are relatively insoluble in reagents such as nitric acid but are readily soluble in an aqueous buffer of sodium thiosulfate and sodium hydroxide to pH of 12. Therefore, for levels of silver above 1 mg/L, 20 mL of sample should be diluted to 100 mL by adding 40 mL each of 2 M $Na_2S_2O_3$ and NaOH. Standards should be prepared in the same manner. For levels of silver below 1 mg/L the approved method is satisfactory.

[30] The use of EDTA decreases method sensitivity. Analysts may omit EDTA or replace with another suitable complexing reagent provided that all method specified quality control acceptance criteria are met.

[31] For samples known or suspected to contain high levels of silver (*e.g.,* in excess of 4 mg/L), cyanogen iodide should be used to keep the silver in solution for analysis. Prepare a cyanogen iodide solution by adding 4.0 mL of concentrated NH4OH, 6.5 g of KCN, and 5.0 mL of a 1.0 N solution of I2 to 50 mL of reagent water in a volumetric flask and dilute to 100.0 mL. After digestion of the sample, adjust the pH of the digestate to >7 to prevent the formation of HCN under acidic conditions. Add 1 mL of the cyanogen iodide solution to the sample digestate and adjust the volume to 100 mL with reagent water (NOT acid). If cyanogen iodide is added to sample digestates, then silver standards must be prepared that contain cyanogen iodide as well. Prepare working standards by diluting a small volume of a silver stock solution with water and adjusting the pH >7 with NH4OH. Add 1 mL of the cyanogen iodide solution and let stand 1 hour. Transfer to a 100-mL volumetric flask and dilute to volume with water.

[32] Stevens, H. H., Ficke, J. F., and Smoot, G. F., "Water Temperature—Influential Factors, Field Measurement and Data Presentation," Techniques of Water-Resources Investigations of the U.S. Geological Survey, Book 1, Chapter D1, 1975.

[33] Zinc, Zincon Method, Method 8009, Hach Handbook of Water Analysis, 1979, pages 2–231 and 2–333, Hach Chemical Company, Loveland, CO 80537.

[34] "Direct Current Plasma (DCP) Optical Emission Spectrometric Method for Trace Elemental Analysis of Water and Wastes, Method AES0029," 1986—Revised 1991, Thermo Jarrell Ash Corporation, 27 Forge Parkway, Franklin, MA 02038.

[35] In-Situ Method 1004–8–2009, "Carbonaceous Biochemical Oxygen Demand (CBOD) Measurement by Optical Probe". Available from In-Situ, Incorporated, 221 E. Lincoln Avenue, Ft. Collins, CO 80524, Telephone: 970–498–1500.

[36] Microwave-assisted digestion may be employed for this metal, when analyzed by this methodology. "Closed Vessel Microwave Digestion of Wastewater Samples for Determination of Metals", CEM Corporation, P.O. Box 200, Matthews, NC 28106–0200, April 16, 1992. Available from the CEM Corporation.

[37] When determining boron and silica, only plastic, PTFE, or quartz laboratory ware may be used from start until completion of analysis.

[38] Only use n-hexane (n-Hexane — 85% minimum purity, 99.0% min. saturated C6 isomers, residue less than 1 mg/L) extraction solvent when determining Oil and Grease parameters—Hexane Extractable Material (HEM), or Silica Gel Treated HEM (analogous to EPA Method 1664B). Use of other extraction solvents is prohibited.

[39] Nitrogen, Total Kjeldahl, Method PAI–DK01 (Block Digestion, Steam Distillation, Titrimetric Detection), revised 12/22/94, OI Analytical/ALPKEM, P.O. Box 9010, College Station, TX 77842.

[40] Nitrogen, Total Kjeldahl, Method PAI–DK02 (Block Digestion, Steam Distillation, Colorimetric Detection), revised 12/22/94, OI Analytical/ALPKEM, P.O. Box 9010, College Station, TX 77842.

[41] Nitrogen, Total Kjeldahl, Method PAI–DK03 (Block Digestion, Automated FIA Gas Diffusion), revised 12/22/96, OI Analytical/ALPKEM, P.O. Box 9010, College Station, TX 77842.

[42] Method 1664, Revision B is the revised version of EPA Method 1664A.

[43] USEPA. 2001. Method 1631, Revision E, "Mercury in Water by Oxidation, Purge and Trap, and Cold Vapor Atomic Fluorescence Spectrometry" September 2002, Office of Water, U.S. Environmental Protection Agency (EPA–821–R–02–024). The application of clean techniques described in EPA's draft Method 1669: *Sampling Ambient Water for Trace Metals at EPA Water Quality Criteria Levels* (EPA–821–R–96–011) are recommended to preclude contamination at low-level, trace metal determinations.

[44] Available Cyanide, Method OIA–1677–09, "Available Cyanide by Flow Injection, Ligand Exchange, and Amperometry," ALPKEM, A Division of OI Analytical, P.O. Box 9010, College Station, TX 77842–9010.

[45] "Methods of Analysis by the U.S. Geological Survey National Water Quality Laboratory—Determination of Ammonia Plus Organic Nitrogen by a Kjeldahl Digestion Method," Open File Report (OFR) 00–170.

[46] "Methods of Analysis by the U.S. Geological Survey National Water Quality Laboratory—Determination of Chromium in Water by Graphite Furnace Atomic Absorption Spectrophotometry," Open File Report (OFR) 93–449.

[47] "Methods of Analysis by the U.S. Geological Survey National Water Quality Laboratory—Determination of Molybdenum by Graphite Furnace Atomic Absorption Spectrophotometry," Open File Report (OFR) 97–198.

[48] "Methods of Analysis by the U.S. Geological Survey National Water Quality Laboratory—Determination of Total Phosphorus by Kjeldahl Digestion Method and an Automated Colorimetric Finish That Includes Dialysis" Open File Report (OFR) 92–146.

[49] "Methods of Analysis by the U.S. Geological Survey National Water Quality Laboratory—Determination of Arsenic and Selenium in Water and Sediment by Graphite Furnace-Atomic Absorption Spectrometry" Open File Report (OFR) 98–639.

[50] "Methods of Analysis by the U.S. Geological Survey National Water Quality Laboratory—Determination of Elements in Whole-water Digests Using Inductively Coupled Plasma-Optical Emission Spectrometry and Inductively Coupled Plasma-Mass Spectrometry," Open File Report (OFR) 98–165.

[51] "Methods of Analysis by the U.S. Geological Survey National Water Quality Laboratory—Determination of Inorganic and Organic Constituents in Water and Fluvial Sediment," Open File Report (OFR) 93–125.

[52] Unless otherwise indicated, all EPA methods, excluding EPA Method 300.1, are published in "Methods for the Determination of Metals in Environmental Samples," Supplement I, National Exposure Risk Laboratory-Cincinnati (NERL–CI), EPA/600/R–94/111, May 1994; and "Methods for the Determination of Inorganic Substances in Environmental Samples," NERL–CI, EPA/600/R–93/100, August, 1993. EPA Method 300.1 is available from *http://www.epa.gov/safewater/methods/pdfs/met300.pdf.*

[53] Styrene divinyl benzene beads (*e.g.,* AMCO–AEPA–1 or equivalent) and stabilized formazin (e.g., Hach StablCal™ or equivalent) are acceptable substitutes for formazin.

[54] Method D6508, Rev. 2, "Test Method for Determination of Dissolved Inorganic Anions in Aqueous Matrices Using Capillary Ion Electrophoresis and Chromate Electrolyte," available from Waters Corp, 34 Maple St., Milford, MA, 01757, *Telephone:* 508/482–2131, *Fax:* 508/482–3625.

[55] Kelada-01, "Kelada Automated Test Methods for Total Cyanide, Acid Dissociable Cyanide, and Thiocyanate," EPA 821–B–01–009, Revision 1.2, August 2001, National Technical Information Service (NTIS), 5285 Port Royal Road, Springfield, VA 22161 [Order Number PB 2001–108275]. **Note:** A 450–W UV lamp may be used in this method instead of the 550–W lamp specified if it provides performance within the quality control (QC) acceptance criteria of the method in a given instrument. Similarly, modified flow cell configurations and flow conditions may be used in the method, provided that the QC acceptance criteria are met.

[56] QuikChem Method 10–204–00–1–X, "Digestion and Distillation of Total Cyanide in Drinking and Wastewaters using MICRO DIST and Determination of Cyanide by Flow Injection Analysis" is available from Lachat Instruments 6645 W. Mill Road, Milwaukee, WI 53218, *Telephone:* 414–358–4200.

[57] When using sulfide removal test procedures described in Method 335.4, reconstitute particulate that is filtered with the sample prior to distillation.

[58] Unless otherwise stated, if the language of this table specifies a sample digestion and/or distillation "followed by" analysis with a method, approved digestion and/or distillation are required prior to analysis.

[59] Samples analyzed for available cyanide using Methods OIA–1677–09 or D6888–09 that contain particulate matter may be filtered only after the ligand exchange reagents have been added to the samples, because the ligand exchange process converts complexes containing available cyanide to free cyanide, which is not removed by filtration. Analysts are further cautioned to limit the time between the addition of the ligand exchange reagents and sample filtration to no more than 30 minutes to preclude settling of materials in samples.

[60] Analysts should be aware that pH optima and chromophore absorption maxima might differ when phenol is replaced by a substituted phenol as the color reagent in Berthelot Reaction ("phenol-hypochlorite reaction") colorimetric ammonium determination methods. For example when phenol is used as the color reagent, pH optimum and wavelength of maximum absorbance are about 11.5 and 635 nm, respectively—see, C.J. Patton and S.R. Crouch, Anal. Chem. (1977) 49, 464–469. These reaction parameters increase to pH >12.6 and 665 nm when salicylate is used as the color reagent—see, M.D. Krom, Analyst (1980) 105, 305–316.

[61] If atomic absorption or ICP instrumentation is not available, the aluminon colorimetric method detailed in the 19th Edition of *Standard Methods* may be used. This method has poorer precision and bias than the methods of choice.

[62] Systea Easy (1-Reagent) Nitrate Method, February 4, 2009. Available at *http://www.nemi.gov* or from Systea Scientific, LLC., 900 Jorie Blvd., Suite 35, Oak Brook, IL 60523.

[63] Hach Method 10360, "Luminescence Measurement of Dissolved Oxygen (LDO®) in Water and Wastewater, Revision 1.1 dated January 4, 2006". Available from Hach Company, 5600 Lindbergh Drive, Loveland, CO 80539, *Telephone:* 970–669–3050.

[64] In-Situ Method 1002–8–2009, "Dissolved Oxygen (DO) Measurement by Optical Probe", 1003–8–2009. Available from In-Situ, Incorporated, 221 E. Lincoln Avenue, Ft. Collins, CO 80524, *Telephone:* 970–498–1500.

[65] Mitchell Method M5331, "Determination of Turbidity by Nephlometry", Revision 1.0, July 31, 2008. Available from Leck Mitchell, Ph.D., P.E., 656 Independence Valley Drive, Grand Junction Colorado 81507, *Phone:* 630–645–0600.

[66] Mitchell Method M5271, "Determination of Turbidity by Nephlometry", Revision 1.0, July 31, 2008. Available from Leck Mitchell, Ph.D., P.E., 656 Independence Valley Drive, Grand Junction Colorado 81507, *Phone:* 630–645–0600.

[67] Thermo Scientific's Orion Method AQ4500, Revision 5, March 12, 2009, "Determination of Turbidity by Nephlometry". Available from Thermo Scientific, 166 Cummings Center, Beverly, MA 01915, *Phone:* 1–800–225–1480, *http://www.thermo.com.*

[68] This method may be used to measure dissolved oxygen when performing methods approved in Table 1B for measurement of biochemical oxygen demand for compliance monitoring under the Clean Water Act.

TABLE IC—LIST OF APPROVED TEST PROCEDURES FOR NON-PESTICIDE ORGANIC COMPOUNDS

Parameter [1]	Method	EPA [2 7]	Standard methods	ASTM	Other
1. Acenaphthene	GC	610.			
	GC/MS	625, 1625B	6410 B–00		See footnote,[9] p. 27.
	HPLC	610	6440 B–00	D4657–92 (99).	
2. Acenaphthylene	GC	610.			
	GC/MS	625, 1625B	6410 B–00		See footnote,[9] p. 27.
	HPLC	610	6440 B–00	D4657–92 (99).	
3. Acrolein	GC	603.			
	GC/MS	624,[4] 1624B.			
4. Acrylonitrile	GC	603.			
	GC/MS	624,[4] 1624B.			
5. Anthracene	GC	610.			
	GC/MS	625, 1625B	6410 B–00		See footnote,[9] p. 27.
	HPLC	610	6440B–00	D4657–92 (99).	
6. Benzene	GC	602	6200 C–97.		
	GC/MS	624, 1624B	6200 B–97.		
7. Benzidine	Spectrophotometric.				See footnote,[3] p.1.
	GC/MS	625,[5] 1625B	6410 B–00.		
	HPLC	605.			
8. Benzo(a)anthracene	GC	610.			
	GC/MS	625, 1625B	6410 B–00		See footnote,[9] p. 27.
	HPLC	610	6440 B–00	D4657–92 (99).	
9. Benzo(a)pyrene	GC	610.			
	GC/MS	625, 1625B	6410 B–00		See footnote,[9] p. 27.
	HPLC	610	6440 B–00	D4657–92 (99).	
10. Benzo(b)fluoranthene	GC	610.			
	GC/MS	625, 1625B	6410 B–00		See footnote,[9] p. 27.
	HPLC	610	6440 B–00	D4657–92 (99).	
11. Benzo(g,h,i)perylene	GC	610.			
	GC/MS	625, 1625B	6410 B–00		See footnote,[9] p. 27.
	HPLC	610	6440 B–00	D4657–92 (99).	
12. Benzo(k)fluoranthene	GC	610.			
	GC/MS	625, 1625B	6410 B–00		See footnote,[9] p. 27.
	HPLC	610	6440 B–00	D4657–92 (99).	
13. Benzylchloride	GC				See footnote,[3] p. 130.

TABLE IC—LIST OF APPROVED TEST PROCEDURES FOR NON-PESTICIDE ORGANIC COMPOUNDS—Continued

Parameter [1]	Method	EPA [2 7]	Standard methods	ASTM	Other
	GC/MS				See footnote,[6] p. S102.
14. Butyl benzyl phthalate	GC	606.			
	GC/MS	625, 1625B	6410 B–00		See footnote,[9] p. 27.
15. Bis(2-chloroethoxy) methane	GC	611.			
	GC/MS	625, 1625B	6410 B–00		See footnote,[9] p. 27.
16. Bis(2-chloroethyl) ether	GC	611.			
	GC/MS	625, 1625B	6410 B–00		See footnote,[9] p. 27.
17. Bis(2-ethylhexyl) phthalate	GC	606.			
	GC/MS	625, 1625B	6410 B–00		See footnote,[9] p. 27.
18. Bromodichloromethane	GC	601	6200 C–97.		
	GC/MS	624, 1624B	6200 B–97.		
19. Bromoform	GC	601	6200 C–97.		
	GC/MS	624, 1624B	6200 B–97.		
20. Bromomethane	GC	601	6200 C–97.		
	GC/MS	624, 1624B	6200 B–97.		
21. 4-Bromophenyl phenyl ether	GC	611.			
	GC/MS	625, 1625B	6410 B–00		See footnote,[9] p. 27.
22. Carbon tetrachloride	GC	601	6200 C–97		See footnote,[3] p. 130.
	GC/MS	624, 1624B	6200 B–97.		
23. 4-Chloro-3-methylphenol	GC	604	6420 B–00.		
	GC/MS	625, 1625B	6410 B–00		See footnote,[9] p. 27.
24. Chlorobenzene	GC	601, 602	6200 C–97		See footnote,[3] p. 130.
	GC/MS	624, 1624B	6200 B–97.		
25. Chloroethane	GC	601	6200 C–97.		
	GC/MS	624, 1624B	6200 B–97.		
26. 2-Chloroethylvinyl ether	GC	601.			
	GC/MS	624, 1624B.			
27. Chloroform	GC	601	6200 C–97		See footnote,[3] p. 130.
	GC/MS	624, 1624B	6200 B–97.		
28. Chloromethane	GC	601	6200 C–97.		
	GC/MS	624, 1624B	6200 B–97.		
29. 2-Chloronaphthalene	GC	612	6410 B–00.		
	GC/MS	625, 1625B			See footnote,[9] p. 27.
30. 2-Chlorophenol	GC	604	6420 B–00.		
	GC/MS	625, 1625B	6410 B–00		See footnote,[9] p. 27.
31. 4-Chlorophenyl phenyl ether	GC	611.			
	GC/MS	625, 1625B	6410 B–00		See footnote,[9] p. 27.
32. Chrysene	GC	610.			
	GC/MS	625, 1625B	6410 B–00		See footnote,[9] p. 27.
	HPLC	610	6440 B–00	D4657–92 (99).	
33. Dibenzo(a,h)anthracene	GC	610.			
	GC/MS	625, 1625B	6410 B–00		See footnote,[9] p. 27.
	HPLC	610	6440 B–00	D4657–92 (99).	
34. Dibromochloromethane	GC	601	6200 C–97.		
	GC/MS	624, 1624B	6200 B–97.		
35. 1,2-Dichlorobenzene	GC	601,602	6200 C–97.		
	GC/MS	624, 1625B	6200 B–97		See footnote,[9] p. 27.
36. 1,3-Dichlorobenzene	GC	601, 602	6200 C–97.		
	GC/MS	624, 1625B	6200 B–97		See footnote,[9] p. 27.
37. 1,4-Dichlorobenzene	GC	601, 602	6200 C–97.		
	GC/MS	624, 1625B	6200 B–97		See footnote,[9] p. 27.
38. 3,3-Dichlorobenzidine	GC/MS	625, 1625B	6410 B–00.		
	HPLC	605.			

TABLE IC—LIST OF APPROVED TEST PROCEDURES FOR NON-PESTICIDE ORGANIC COMPOUNDS—Continued

Parameter [1]	Method	EPA [2 7]	Standard methods	ASTM	Other
39. Dichlorodifluoromethane	GC	601.			
	GC/MS	.....	6200 C–97.		
40. 1,1-Dichloroethane	GC	601	6200 C–97.		
	GC/MS	624, 1624B	6200 B–97.		
41. 1,2-Dichloroethane	GC	601	6200 C–97.		
	GC/MS	624, 1624B	6200 B–97.		
42. 1,1-Dichloroethene	GC	601	6200 C–97.		
	GC/MS	624, 1624B	6200 B–97.		
43. trans-1,2-Dichloroethene	GC	601	6200 C–97.		
	GC/MS	624, 1624B	6200 B–97.		
44. 2,4-Dichlorophenol	GC	604	6420 B–00.		
	GC/MS	625, 1625B	6410 B–00		See footnote,[9] p. 27.
45. 1,2-Dichloropropane	GC	601	6200 C–97.		
	GC/MS	624, 1624B	6200 B–97.		
46. cis-1,3-Dichloropropene	GC	601	6200 C–97.		
	GC/MS	624, 1624B	6200 B–97.		
47. trans-1,3-Dichloropropene	GC	601	6200 C–97.		
	GC/MS	624, 1624B	6200 B–97.		
48. Diethyl phthalate	GC	606.			
	GC/MS	625, 1625B	6410 B–00		See footnote,[9] p. 27.
49. 2,4-Dimethylphenol	GC	604	6420 B–00.		
	GC/MS	625, 1625B	6410 B–00		See footnote,[9] p. 27.
50. Dimethyl phthalate	GC	606.			
	GC/MS	625, 1625B	6410 B–00		See footnote,[9] p. 27.
51. Di-n-butyl phthalate	GC	606.			
	GC/MS	625, 1625B	6410 B–00		See footnote,[9] p. 27.
52. Di-n-octyl phthalate	GC	606.			
	GC/MS	625, 1625B	6410 B–00		See footnote,[9] p. 27.
53. 2,3-Dinitrophenol	GC	604	6420 B–00.		
	GC/MS	625, 1625B	6410 B–00.		
54. 2,4-Dinitrotoluene	GC	609.			
	GC/MS	625, 1625B	6410 B–00		See footnote,[9] p. 27.
55. 2,6-Dinitrotoluene	GC	609.			
	GC/MS	625, 1625B	6410 B–00		See footnote,[9] p. 27.
56. Epichlorohydrin	GC				See footnote,[3] p. 130.
	GC/MS				See footnote,[6] p. S102.
57. Ethylbenzene	GC	602	6200 C–97.		
	GC/MS	624, 1624B	6200 B–97.		
58. Fluoranthene	GC	610.			
	GC/MS	625, 1625B	6410 B–00		See footnote,[9] p. 27.
	HPLC	610	6440 B–00	D4657–92 (99).	
59. Fluorene	GC	610.			
	GC/MS	625, 1625B	6410 B–00		See footnote,[9] p. 27.
	HPLC	610	6440 B–00	D4657–92 (99).	
60. 1,2,3,4,6,7,8-Heptachloro-dibenzofuran	GC/MS	1613B.			
61. 1,2,3,4,7,8,9-Heptachloro-dibenzofuran	GC/MS	1613B.			
62. 1,2,3,4,6,7,8-Heptachlorodibenzo-p-dioxin	GC/MS	1613B.			
63. Hexachlorobenzene	GC	612.			
	GC/MS	625, 1625B	6410 B–00		See footnote,[9] p. 27.
64. Hexachlorobutadiene	GC	612.			
	GC/MS	625, 1625B	6410 B–00		See footnote,[9] p. 27.
65. Hexachlorocyclopentadiene	GC	612.			
	GC/MS	625,[5] 1625B	6410 B–00		See footnote,[9] p. 27.
66. 1,2,3,4,7,8-Hexachlorodibenzofuran	GC/MS	1613B.			
67. 1,2,3,6,7,8-Hexachlorodibenzofuran	GC/MS	1613B.			
68. 1,2,3,7,8,9-Hexachlorodibenzofuran	GC/MS	1613B.			

TABLE IC—LIST OF APPROVED TEST PROCEDURES FOR NON-PESTICIDE ORGANIC COMPOUNDS—Continued

Parameter [1]	Method	EPA [2 7]	Standard methods	ASTM	Other
69. 2,3,4,6,7,8-Hexachlorodibenzofuran	GC/MS	1613B.			
70. 1,2,3,4,7,8-Hexachlorodibenzo-p-dioxin	GC/MS	1613B.			
71. 1,2,3,6,7,8-Hexachlorodibenzo-p-dioxin	GC/MS	1613B.			
72. 1,2,3,7,8,9-Hexachlorodibenzo-p-dioxin	GC/MS	1613B.			
73. Hexachloroethane	GC	612.			
	GC/MS	625, 1625B	6410 B–00		See footnote,[9] p. 27.
74. Ideno(1,2,3-cd) pyrene	GC	610.			
	GC/MS	625, 1625B	6410 B–00		See footnote,[9] p. 27.
	HPLC	610	6440 B–00	D4657–92 (99).	
75. Isophorone	GC	609.			
	GC/MS	625, 1625B	6410 B–00		See footnote,[9] p. 27.
76. Methylene chloride	GC	601	6200 C–97		See footnote,[3] p. 130.
	GC/MS	624, 1624B	6200 B–97.		
77. 2-Methyl-4,6-dinitrophenol	GC	604	6420 B–00.		
	GC/MS	625, 1625B	6410 B–00		See footnote,[9] p. 27.
78. Naphthalene	GC	610.			
	GC/MS	625, 1625B	6410 B–00		See footnote,[9] p. 27.
	HPLC	610	6440 B–00.		
79. Nitrobenzene	GC	609.			
	GC/MS	625, 1625B	6410 B–00		See footnote,[9] p. 27.
	HPLC			D4657–92 (99).	
80. 2-Nitrophenol	GC	604	6420 B–00.		
	GC/MS	625, 1625B	6410 B–00		See footnote,[9] p. 27.
81. 4-Nitrophenol	GC	604	6420 B–00.		
	GC/MS	625, 1625B	6410 B–00		See footnote,[9] p. 27.
82. N-Nitrosodimethylamine	GC	607.			
	GC/MS	625[5], 1625B	6410 B–00		See footnote,[9] p. 27.
83. N-Nitrosodi-n-propylamine	GC	607.			
	GC/MS	625[5], 1625B	6410 B–00		See footnote,[9] p. 27.
84. N-Nitrosodiphenylamine	GC	607.			
	GC/MS	625[5], 1625B	6410 B–00		See footnote,[9] p. 27.
85. Octachlorodibenzofuran	GC/MS	1613B[10].			
86. Octachlorodibenzo-p-dioxin	GC/MS	1613B[10].			
87. 2,2′-Oxybis(2-chloropropane) [also known as bis(2-chloroisopropyl) ether].	GC	611.			
	GC/MS	625, 1625B	6410 B–00.		
88. PCB–1016	GC	608			See footnote,[3] p. 43; See footnote.[8]
	GC/MS	625	6410 B–00.		
89. PCB–1221	GC	608			See footnote,[3] p. 43; See footnote.[8]
	GC/MS	625	6410 B–00.		
90. PCB–1232	GC	608			See footnote,[3] p. 43; See footnote.[8]
	GC/MS	625	6410 B–00.		
91. PCB–1242	GC	608			See footnote,[3] p. 43; See footnote.[8]
	GC/MS	625	6410 B–00.		
92. PCB–1248	GC	608.			
	GC/MS	625	6410 B–00.		
93. PCB–1254	GC	608			See footnote,[3] p. 43; See footnote.[8]
	GC/MS	625	6410 B–00.		

TABLE IC—LIST OF APPROVED TEST PROCEDURES FOR NON-PESTICIDE ORGANIC COMPOUNDS—Continued

Parameter [1]	Method	EPA [2 7]	Standard methods	ASTM	Other
94. PCB–1260	GC	608			See footnote,[3] p. 43; See footnote.[8]
	GC/MS	625	6410 B–00.		
95. 1,2,3,7,8-Pentachloro-dibenzofuran	GC/MS	1613B.			
96. 2,3,4,7,8-Pentachloro-dibenzofuran	GC/MS	1613B.			
97. 1,2,3,7,8,-Pentachlorodibenzo-p-dioxin	GC/MS	1613B.			
98. Pentachlorophenol	GC	604	6420 B–00		See footnote,[3] p. 140.
	GC/MS	625, 1625B	6410 B–00		See footnote,[9] p. 27.
99. Phenanthrene	GC	610.			
	GC/MS	625, 1625B	6410 B–00		See footnote,[9] p. 27.
	HPLC	610	6440 B–00	D4657–92 (99).	
100. Phenol	GC	604	6420 B–00.		
	GC/MS	625, 1625B	6410 B–00		See footnote,[9] p. 27.
101. Pyrene	GC	610.			
	GC/MS	625, 1625B	6410 B–00		See footnote,[9] p. 27.
	HPLC	610	6440 B–00	D4657–92 (99).	
102. 2,3,7,8-Tetra-chlorodibenzofuran	GC/MS	1613B.			
103. 2,3,7,8-Tetra-chlorodibenzo-p-dioxin	GC/MS	613, 625,[5a] 1613B.			
104. 1,1,2,2-Tetra-chloro ethane	GC	601	6200 C–97		See footnote,[3] p. 130.
	GC/MS	624, 1624B	6200 B–97.		
105. Tetrachloroethene	GC	601	6200 C–97		See footnote,[3] p. 130.
	GC/MS	624, 1624B	6200 B–97.		
106. Toluene	GC	602	6200 C–97.		
	GC/MS	624, 1624B	6200 B–97.		
107. 1,2,4-Trichlorobenzene	GC	612			See footnote,[3] p. 130.
	GC/MS	625, 1625B	6410 B–00		See footnote,[9] p. 27.
108. 1,1,1-Trichloroethane	GC	601	6200 C–97.		
	GC/MS	624, 1624B	6200 B–97.		
109. 1,1,2-Trichloroethane	GC	601	6200 C–97		See footnote,[3] p. 130.
	GC/MS	624, 1624B	6200 B–97.		
110. Trichloroethene	GC	601	6200 C–97.		
	GC/MS	624, 1624B	6200 B–97.		
111. Trichlorofluoromethane	GC	601	6200 C–97.		
	GC/MS	624	6200 B–97.		
112. 2,4,6-Trichlorophenol	GC	604	6420 B–00.		
	GC/MS	625, 1625B	6410 B–00		See footnote,[9] p. 27.
113. Vinyl chloride	GC	601	6200 C–97.		
	GC/MS	624, 1624B	6200 B–97.		
114. Nonylphenol	GC/MS			D7065–06.	
	LC/MS/MS			D7485–09.	
115. Bisphenol A (BPA)	GC/MS			D7065–06.	
	LC/MS/MS			D7574–09.	
116. p-tert-Octylphenol (OP)	GC/MS			D7065–06.	
	LC/MS/MS			D7485–09.	
117. Nonylphenol Monoethoxylate (NP1EO)	GC/MS			D7065–06.	
	LC/MS/MS			D7485–09.	
118. Nonylphenol Diethoxylate (NP2EO)	GC/MS			D7065–06.	
	LC/MS/MS			D7485–09.	
119. Polybrominated diphenyl ethers (PBDEs) 49 congeners.	HRGC/HRMS	1614A.			
120. Polychlorinated biphenyls (PCBs) 209 Congeners.	HRGC/HRMS	1668C.			
121. Adsorbable Organic Halides (AOX)	Adsorption and Coulometric Titration.	1650.			

TABLE IC—LIST OF APPROVED TEST PROCEDURES FOR NON-PESTICIDE ORGANIC COMPOUNDS—Continued

Parameter [1]	Method	EPA [2 7]	Standard methods	ASTM	Other
122. Chlorinated Phenolics	In Situ Acetylation and GC/MS.	1653.			

Table IC notes:

[1] All parameters are expressed in micrograms per liter (μg/L) except for Method 1613B in which the parameters are expressed in picograms per liter (pg/L).

[2] The full text of Methods 601–613, 624, 625, 1624B, and 1625B, are given at Appendix A, "Test Procedures for Analysis of Organic Pollutants," of this Part 136. The full text of Method 1613B is incorporated by reference into this Part 136 and is available from the National Technical Information Services as stock number PB95–104774. The standardized test procedure to be used to determine the method detection limit (MDL) for these test procedures is given at Appendix B, "Definition and Procedure for the Determination of the Method Detection Limit," of this Part 136. The full text of Methods 1613B, 1614A, 1650, 1653, and 1668C are available from EPA Office of Water (4303T) 1200 Pennsylvania Ave, NW, Washington, DC 20460.

[3] "Methods for Benzidine: Chlorinated Organic Compounds, Pentachlorophenol and Pesticides in Water and Wastewater," U.S. Environmental Protection Agency, September, 1978.

[4] Method 624 may be used for definitive determination of Acrolein and Acrylonitrile.

[5] Method 625 may be extended to include benzidine, hexachlorocyclopentadiene, N-nitrosodimethylamine, and N-nitrosodiphenylamine. However, when they are known to be present, Methods 605, 607, and 612, or Method 1625B, are preferred methods for these compounds.

[5a] 625, screening only.

[6] "Selected Analytical Methods Approved and Cited by the United States Environmental Protection Agency," Supplement to the Fifteenth Edition of *Standard Methods for the Examination of Water and Wastewater* (1981).

[7] Each analyst must make an initial, one-time demonstration of their ability to generate acceptable precision and accuracy with Methods 601–603, 624, 625, 1624B, and 1625B (See Appendix A of this Part 136) in accordance with procedures each in Section 8.2 of each of these Methods. Additionally, each laboratory, on an on-going basis must spike and analyze 10% (5% for Methods 624 and 625 and 100% for methods 1624B and 1625B) of all samples to monitor and evaluate laboratory data quality in accordance with Sections 8.3 and 8.4 of these methods. When the recovery of any parameter falls outside the warning limits, the analytical results for that parameter in the unspiked sample are suspect. The results should be reported, but cannot be used to demonstrate regulatory compliance. These quality control requirements also apply to the Standard Methods, ASTM Methods, and other methods cited.

[8] "Organochlorine Pesticides and PCBs in Wastewater Using Empore™ Disk" 3M Corporation Revised 10/28/94.

[9] USGS Method 0–3116–87 from "Methods of Analysis by U.S. Geological Survey National Water Quality Laboratory—Determination of Inorganic and Organic Constituents in Water and Fluvial Sediments," U.S. Geological Survey, Open File Report 93–125.

[10] Analysts may use Fluid Management Systems, Inc. Power-Prep system in place of manual cleanup provided the analyst meets the requirements of Method 1613B (as specified in Section 9 of the method) and permitting authorities.

TABLE ID—LIST OF APPROVED TEST PROCEDURES FOR PESTICIDES [1]

Parameter	Method	EPA [2 7 10]	Standard methods	ASTM	Other
1. Aldrin	GC	608, 617	6630 B–00 & C–00.	D3086–90, D5812–96 (02).	See footnote,[3] p. 7; See footnote,[4] O–3104–83; See footnote,[8] 3M0222.
	GC/MS	625	6410 B–00.		
2. Ametryn	GC	507, 619			See footnote,[3] p. 83; See footnote,[9] O–3106–93; See footnote,[6] p. S68.
	GC/MS	525.1, 525.2			See footnote,[14] O–1121–91.
3. Aminocarb	TLC				See footnote,[3] p. 94; See footnote,[6] p. S60.
	HPLC	632.			
4. Atraton	GC	619			See footnote,[3] p. 83; See footnote,[6] p. S68.
5. Atrazine	GC	507, 619			See footnote,[3] p. 83; See footnote,[6] p. S68; See footnote,[9] O–3106–93.
	HPLC/MS				See footnote,[12] O–2060–01.
	GC/MS	525.1, 525.2			See footnote,[11] O–1126–95.
6. Azinphos methyl	GC	614, 622, 1657			See footnote,[3] p. 25; See footnote,[6] p. S51.
	GC MS				See footnote,[11] O–1126–95.
7. Barban	TLC				See footnote,[3] p. 104; See footnote,[6] p. S64.
	HPLC	632.			
8. α-BHC	GC	608, 617	6630 B–00 & C–00.	D3086–90, D5812–96(02).	See footnote,[3] p. 7; See footnote,[8] 3M0222.
	GC/MS	625 [5]	6410 B–00		See footnote,[11] O–1126–95.
9. β-BHC	GC	608, 617	6630 B–00 & C–00.	D3086–90, D5812–96(02).	See footnote,[8] 3M0222.
	GC/MS	625	6410 B–00.		
10. δ-BHC	GC	608, 617	6630 B–00 & C–00.	D3086–90, D5812–96(02).	See footnote,[8] 3M0222.

TABLE ID—LIST OF APPROVED TEST PROCEDURES FOR PESTICIDES [1]—Continued

Parameter	Method	EPA [2 7 10]	Standard methods	ASTM	Other
	GC/MS	625	6410 B–00.		
11. γ-BHC (Lindane)	GC	608, 617	6630 B–00 & C–00.	D3086–90, D5812–96(02).	See footnote,[3] p. 7; See footnote,[4] O–3104–83; See footnote,[8] 3M0222.
	GC/MS	625 [5]	6410 B–00		See footnote,[11] O–1126–95.
12. Captan	GC	617	6630 B–00	D3086–90, D5812–96(02).	See footnote,[3] p. 7.
13. Carbaryl	TLC				See footnote,[3] p. 94, See footnote,[6] p. S60.
	HPLC	531.1, 632.			
	HPLC/MS	553			See footnote,[12] O–2060–01.
	GC/MS				See footnote,[11] O–1126–95.
14. Carbophenothion	GC	617	6630 B–00		See footnote,[6] p. S73.
15. Chlordane	GC	608, 617	6630 B–00 & C–00.	D3086–90, D5812–96(02).	See footnote,[3] p. 7; See footnote,[4] O–3104–83; See footnote,[8] 3M0222.
	GC/MS	625	6410 B–00.		
16. Chloropropham	TLC				See footnote,[3] p. 104; See footnote,[6] p. S64.
	HPLC	632.			
17. 2,4-D	GC	615	6640 B–01		See footnote,[3] p. 115; See footnote,[4] O–3105–83.
	HPLC/MS				See footnote,[12] O–2060–01.
18. 4,4′-DDD	GC	608, 617	6630 B–00 & C–00.	D3086–90, D5812–96(02).	See footnote,[3] p. 7; See footnote,[4] O–3105–83; See footnote,[8] 3M0222.
	GC/MS	625	6410 B–00.		
19. 4,4′-DDE	GC	608, 617	6630 B–00 & C–00.	D3086–90, D5812–96(02).	See footnote,[3] p. 7; See footnote,[4] O–3104–83; See footnote,[8] 3M0222.
	GC/MS	625	6410 B–00.		See footnote,[11] O–1126–95.
20. 4,4′–DDT	GC	608, 617	6630 B–00 & C–00.	D3086–90, D5812–96(02).	See footnote,[3] p. 7; See footnote,[4] O–3104–83; See footnote,[8] 3M0222.
	GC/MS	625	6410 B–00.		
21. Demeton-O	GC	614, 622			See footnote,[3] p. 25; See footnote,[6] p. S51.
22. Demeton-S	GC	614, 622			See footnote,[3] p. 25; See footnote,[6] p. S51.
23. Diazinon	GC	507, 614, 622, 1657			See footnote,[3] p. 25; See footnote,[4] O–3104–83; See footnote,[6] p. S51.
	GC/MS	525.1, 525.2			See footnote,[11] O–1126–95.
24. Dicamba	GC	615			See footnote,[3] p. 115.
	HPLC/MS				See footnote,[12] O–2060–01.
25. Dichlofenthion	GC	622.1			See footnote,[6] p. S73.
26. Dichloran	GC	608.2, 617	6630 B–00		See footnote,[3] p. 7.
27. Dicofol	GC	617	6630 B–00		See footnote,[4] O–3104–83.
28. Dieldrin	GC	608, 617	6630 B–00 & C–00.	D3086–90, D5812–96(02).	See footnote,[3] p. 7; See footnote,[4] O–3104–83; See footnote,[8] 3M0222.
	GC/MS	625	6410 B–00		See footnote,[11] O–1126–95.
29. Dioxathion	GC	614.1, 1657			See footnote,[6] p. S73.
30. Disulfoton	GC	507, 614, 622, 1657			See footnote,[3] p. 25; See footnote,[6] p. S51.
	GC/MS	525.1, 525.2			See footnote,[11] O–1126–95.
31. Diuron	TLC				See footnote,[3] p. 104; See footnote,[6] p. S64.
	HPLC	632.			
	HPLC/MS	553			See footnote,[12] O–2060–01.
32. Endosulfan I	GC	608, 617	6630 B–00 & C–00.	D3086–90, D5812–96(02).	See footnote,[3] p. 7; See footnote,[4] O–3104–83; See footnote,[8] 3M022.
	GC/MS	625 [5]	6410 B–00		See footnote,[13] O–2002–01.
33. Endosulfan II	GC	608, 617	6630 B–00 & C–00.	D3086–90, D5812–96(02).	See footnote,[3] p. 7; See footnote,[8] 3M0222.
	GC/MS	625 [5]	6410 B–00		See footnote,[13] O–2002–01.
34. Endosulfan Sulfate	GC	608, 617	6630 C–00		See footnote,[8] 3M0222.
	GC/MS	625	6410 B–00.		

TABLE ID—LIST OF APPROVED TEST PROCEDURES FOR PESTICIDES [1]—Continued

Parameter	Method	EPA [2 7 10]	Standard methods	ASTM	Other
35. Endrin	GC	505, 508, 608, 617, 1656	6630 B–00 & C–00.	D3086–90, D5812–96(02).	See footnote,[3] p. 7; See footnote,[4] O–3104–83; See footnote,[8] 3M0222.
	GC/MS	525.1, 525.2, 625 [5]	6410 B–00.		
36. Endrin aldehyde	GC	608, 617	6630 C–00		See footnote,[8] 3M0222.
	GC/MS	625.			
37. Ethion	GC	614, 614.1,1657			See footnote,[6] p. S73.
	GC/MS				See footnote,[13] O–2002–01.
38. Fenuron	TLC				See footnote,[3] p. 104; See footnote,[6] p. S64.
	HPLC	632.			
	HPLC/MS				See footnote,[12] O–2060–01.
39. Fenuron-TCA	TLC				See footnote,[3] p. 104; See footnote,[6] p. S64.
	HPLC	632.			
40. Heptachlor	GC	505, 508, 608, 617, 1656	6630 B–00 & C–00.	D3086–90, D5812–96(02).	See footnote,[3] p. 7; See footnote,[4] O–3104–83; See footnote,[8] 3M0222.
	GC/MS	525.1, 525.2, 625	6410 B–00.		
41. Heptachlor epoxide	GC	608, 617	6630 B–00 & C–00.	D3086–90, D5812–96(02).	See footnote,[3] p. 7; See footnote,[4] O–3104–83; See footnote,[6] p. S73; See footnote,[8] 3M0222.
	GC/MS	625	6410 B–00.		
42. Isodrin	GC	617	6630 B–00 & C–00.		See footnote,[4] O–3104–83; See footnote,[6] p. S73.
43. Linuron	GC				See footnote,[3] p. 104; See footnote,[6] p. S64.
	HPLC	632.			
	HPLC/MS	553			See footnote,[12] O–2060–01.
	GC/MS				See footnote,[11] O–1126–95.
44. Malathion	GC	614, 1657	6630 B–00		See footnote,[3] p. 25; See footnote,[6] p. S51.
	GC/MS				See footnote,[11] O–1126–95.
45. Methiocarb	TLC				See footnote,[3] p. 94; See footnote,[6] p. S60.
	HPLC	632.			
	HPLC/MS				See footnote,[12] O–2060–01.
46. Methoxychlor	GC	505, 508, 608.2, 617, 1656.	6630 B–00 & C–00.	D3086–90, D5812–96(02).	See footnote,[3] p. 7; See footnote,[4] O–3104–83; See footnote,[8] 3M0222.
	GC/MS	525.1, 525.2			See footnote,[11] O–1126–95.
47. Mexacarbate	TLC				See footnote,[3] p. 94; See footnote,[6] p. S60.
	HPLC	632.			
48. Mirex	GC	617	6630 B–00 & C–00.	D3086–90, D5812–96(02).	See footnote,[3] p. 7; See footnote,[4] O–3104–83.
49. Monuron	TLC				See footnote,[3] p. 104; See footnote,[6] p. S64.
	HPLC	632.			
50. Monuron-TCA	TLC				See footnote,[3] p. 104; See footnote,[6] p. S64.
	HPLC	632.			
51. Neburon	TLC				See footnote,[3] p. 104; See footnote,[6] p. S64.
	HPLC	632.			
	HPLC/MS				See footnote,[12] O–2060–01.
52. Parathion methyl	GC	614, 622, 1657	6630 B–00		See footnote,[3] p. 25.
	GC/MS				See footnote,[11] O–1126–95.
53. Parathion ethyl	GC	614	6630 B–00		See footnote,[3] p. 25.
	GC/MS				See footnote,[11] O–1126–95.
54. PCNB	GC	608.1, 617	6630 B–00	D3086–90, D5812–96(02).	See footnote,[3] p. 7.
55. Perthane	GC	617	6630 B–00	D3086–90, D5812–96(02).	See footnote,[4] O–3104–83.
56. Prometon	GC	507, 619			See footnote,[3] p. 83; See footnote,[6] p. S68; See footnote,[9] O–3106–93.
	GC/MS	525.1, 525.2			See footnote,[11] O–1126–95.

TABLE ID—LIST OF APPROVED TEST PROCEDURES FOR PESTICIDES [1]—Continued

Parameter	Method	EPA [2 7 10]	Standard methods	ASTM	Other
57. Prometryn	GC	507, 619			See footnote,[3] p. 83; See footnote,[6] p. S68; See footnote,[9] O–3106–93.
	GC/MS	525.1, 525.2			See footnote,[13] O–2002–01.
58. Propazine	GC	507, 619, 1656			See footnote,[3] p. 83; See footnote,[6] p. S68; See footnote,[9] O–3106–93.
	GC/MS	525.1, 525.2.			
59. Propham	TLC				See footnote,[3] p. 104; See footnote,[6] p. S64.
	HPLC	632.			
	HPLC/MS				See footnote,[12] O–2060–01.
60. Propoxur	TLC				See footnote,[3] p. 94; See footnote,[6] p. S60.
	HPLC	632.			
61. Secbumeton	TLC				See footnote,[3] p. 83; See footnote,[6] p. S68.
	GC	619.			
62. Siduron	TLC				See footnote,[3] p. 104; See footnote,[6] p. S64.
	HPLC	632.			
	HPLC/MS				See footnote,[12] O–2060–01.
63. Simazine	GC	505, 507, 619, 1656			See footnote,[3] p. 83; See footnote,[6] p. S68; See footnote,[9] O–3106–93.
	GC/MS	525.1, 525.2			See footnote,[11] O–1126–95.
64. Strobane	GC	617	6630 B–00 & C–00.		See footnote,[3] p. 7.
65. Swep	TLC				See footnote,[3] p. 104; See footnote,[6] p. S64.
	HPLC	632.			
66. 2,4,5-T	GC	615	6640 B–01		See footnote,[3] p. 115; See footnote,[4] O–3105–83.
67. 2,4,5-TP (Silvex)	GC	615	6640 B–01		See footnote,[3] p. 115; See footnote,[4] O–3105–83.
68. Terbuthylazine	GC	619, 1656			See footnote,[3] p. 83; See footnote,[6] p. S68.
	GC/MS				See footnote,[13] O–2002–01.
69. Toxaphene	GC	505, 508, 608, 617, 1656	6630 B–00 & C–00.	D3086–90, D5812–96(02).	See footnote,[3] p. 115; See footnote,[4] O–3105–83.
	GC/MS	525.1, 525.2, 625	6410 B–00.		
70. Trifluralin	GC	508, 617, 627, 1656	6630 B–00		See footnote,[3] p. 7; See footnote,[9] O–3106–93.
	GC/MS	525.1, 525.2			See footnote,[11] O–1126–95.

Table ID notes:

[1] Pesticides are listed in this table by common name for the convenience of the reader. Additional pesticides may be found under Table IC, where entries are listed by chemical name.

[2] The full text of Methods 608 and 625 are given at Appendix A, "Test Procedures for Analysis of Organic Pollutants," of this Part 136. The standardized test procedure to be used to determine the method detection limit (MDL) for these test procedures is given at Appendix B, "Definition and Procedure for the Determination of the Method Detection Limit," of this Part 136.

[3] "Methods for Benzidine, Chlorinated Organic Compounds, Pentachlorophenol and Pesticides in Water and Wastewater," U.S. Environmental Protection Agency, September 1978. This EPA publication includes thin-layer chromatography (TLC) methods.

[4] "Methods for Analysis of Organic Substances in Water and Fluvial Sediments," Techniques of Water-Resources Investigations of the U.S. Geological Survey, Book 5, Chapter A3 (1987).

[5] The method may be extended to include α–BHC, γ–BHC, endosulfan I, endosulfan II, and endrin. However, when they are known to exist, Method 608 is the preferred method.

[6] "Selected Analytical Methods Approved and Cited by the United States Environmental Protection Agency." Supplement to the Fifteenth Edition of *Standard Methods for the Examination of Water and Wastewater* (1981).

[7] Each analyst must make an initial, one-time, demonstration of their ability to generate acceptable precision and accuracy with Methods 608 and 625 (See Appendix A of this Part 136) in accordance with procedures given in Section 8.2 of each of these methods. Additionally, each laboratory, on an on-going basis, must spike and analyze 10% of all samples analyzed with Method 608 or 5% of all samples analyzed with Method 625 to monitor and evaluate laboratory data quality in accordance with Sections 8.3 and 8.4 of these methods. When the recovery of any parameter falls outside the warning limits, the analytical results for that parameter in the unspiked sample are suspect. The results should be reported, but cannot be used to demonstrate regulatory compliance. These quality control requirements also apply to the Standard Methods, ASTM Methods, and other methods cited.

[8] "Organochlorine Pesticides and PCBs in Wastewater Using Empore™ Disk", 3M Corporation, Revised 10/28/94.

[9] USGS Method 0–3106–93 from "Methods of Analysis by the U.S. Geological Survey National Water Quality Laboratory—Determination of Triazine and Other Nitrogen-containing Compounds by Gas Chromatography with Nitrogen Phosphorus Detectors" U.S. Geological Survey Open File Report 94–37.

[10] EPA Methods 608.1, 608.2, 614, 614.1, 615, 617, 619, 622, 622.1, 627, and 632 are found in "Methods for the Determination of Nonconventional Pesticides in Municipal and Industrial Wastewater," EPA 821–R–92–002, April 1992.

[11] O–1126–95 GC/MS: Zaugg, S.D., Sandstrom, M.W., Smith, S.G., and Fehlberg, K.M., 1995, Methods of Analysis by the U.S. Geological Survey National Water Quality Laboratory—Determination of pesticides in water by C–18 solid-phase extraction and capillary-column gas chromatography/mass spectrometry with selected-ion monitoring: U.S. Geological Survey Open-File Report 95–181, Method O–1126–95, 49 p.

[12] O–2060–01 LC/MS: Furlong, E.T., Anderson, B.D., Werner, S.L., Soliven, P.P., Coffey, L.J., and Burkhardt, M.R., 2001, Methods of Analysis by the U.S. Geological Survey National Water Quality Laboratory-Determination of Pesticides in Water by Graphitized Carbon-Based Solid-Phase Extraction and High-Performance Liquid Chromatography/Mass Spectrometry: U.S. Geological Survey Water-Resources Investigations Report 01–4134 Method O–2060–01, 73 p.

[13] O–2002–01 Sandstrom, M.W., Stroppel, M.E., Foreman, W.T., and Schroeder, M.P., 2001, Methods of Analysis by the U.S. Geological Survey National Water Quality Laboratory—Determination of moderate-use pesticides in water by C–18 solid-phase extraction and capillary-column gas chromatography/mass spectrometry: U.S. Geological Survey Water-Resources Investigations Report 01–4098, Method O–2002–01, 70 p.

[14] O–1121–91: Sandstrom, M.W., Wydoski, D.S., Schroeder, M.P., Zamboni, J.L., and Foreman, W.T., 1992, Methods of Analysis by the U.S. Geological Survey National Water Quality Laboratory—Determination of organonitrogen herbicides in water by solid-phase extraction and capillary-column gas chromatography/mass spectrometry with selected-ion monitoring,: U.S. Geological Survey Open-File Report 91–519; O–1121–91, 34 p.

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TABLE IG—TEST METHODS FOR PESTICIDE ACTIVE INGREDIENTS

[40 CFR 455]

EPA survey code	Pesticide name	CAS No.	EPA analytical method No.(s)
8	Triadimefon	43121–43–3	507/633/525.1/525.2/1656
12	Dichlorvos	62–73–7	1657/507/622/525.1/525.2
16	2,4-D; 2,4-D Salts and Esters [2,4-Dichloro-phenoxy-acetic acid].	94–75–7	1658/515.1/615/515.2/555
17	2,4-DB; 2,4-DB Salts and Esters [2,4-Dichlorophenoxybutyric acid].	94–82–6	1658/515.1/615/515.2/555
22	Mevinphos	7786–34–7	1657/507/622/525.1/525.2
25	Cyanazine	21725–46–2	629/507
26	Propachlor	1918–16–7	1656/508/608.1/525.1/525.2
27	MCPA; MCPA Salts and Esters [2-Methyl-4-chlorophenoxyacetic acid].	94–74–6	1658/615/555
30	Dichlorprop; Dichlorprop Salts and Esters [2-(2,4-Dichlorophenoxy) propionic acid].	120–36–5	1658/515.1/615/515.2/555
31	MCPP; MCPP Salts and Esters [2-(2-Methyl-4-chlorophenoxy) propionic acid].	93–65–2	1658/615/555
35	TCMTB [2-(Thiocyanomethylthio) benzo-thiazole]	21564–17–0	637
39	Pronamide	23950–58–5	525.1/525.2/507/633.1
41	Propanil	709–98–8	632.1/1656
45	Metribuzin	21087–64–9	507/633/525.1/525.2/1656
52	Acephate	30560–19–1	1656/1657
53	Acifluorfen	50594–66–6	515.1/515.2/555
54	Alachlor	15972–60–8	505/507/645/525.1/525.2/1656
55	Aldicarb	116–06–3	531.1
58	Ametryn	834–12–8	507/619/525.1/525.2
60	Atrazine	1912–24–9	505/507/619/525.1/525.2/1656
62	Benomyl	17804–35–2	631
68	Bromacil; Bromacil Salts and Esters	314–40–9	507/633/525.1/525.2/1656
69	Bromoxynil	1689–84–5	1625/1661
69	Bromoxynil octanoate	1689–99–2	1656
70	Butachlor	23184–66–9	507/645/525.1/525.2/1656
73	Captafol	2425–06–1	1656
75	Carbaryl [Sevin]	63–25–2	531.1/632/553
76	Carbofuran	1563–66–2	531.1/632
80	Chloroneb	2675–77–6	1656/508/608.1/525.1/525.2
82	Chlorothalonil	1897–45–6	508/608.2/525.1/525.2/1656
84	Stirofos	961–11–5	1657/507/622/525.1/525.2
86	Chlorpyrifos	2921–88–2	1657/508/622
90	Fenvalerate	51630–58–1	1660
103	Diazinon	333–41–5	1657/507/614/622/525.1/525.2
107	Parathion methyl	298–00–0	1657/614/622
110	DCPA [Dimethyl 2,3,5,-tetrachloro-terephthalate]	1861–32–1	508/608.2/525.1/525.2/515.1/515.2/1656
112	Dinoseb	88–85–7	1658/515.1/615/515.2/555
113	Dioxathion	78–34–2	1657/614.1
118	Nabonate [Disodium cyanodithio-imidocarbonate]	138–93–2	630.1
119	Diuron	330–54–1	632/553
123	Endothall	145–73–3	548/548.1
124	Endrin	72–20–8	1656/505/508/608/617/525.1/525.2
125	Ethalfluralin	55283–68–6	1656/627 Note 1
126	Ethion	563–12–2	1657/614/614.1
127	Ethoprop	13194–48–4	1657/507/622/525.1/525.2
132	Fenarimol	60168–88–9	507/633.1/525.1/525.2/1656
133	Fenthion	55–38–9	1657/622
138	Glyphosate [N-(Phosphonomethyl) glycine]	1071–83–6	547

TABLE IG—TEST METHODS FOR PESTICIDE ACTIVE INGREDIENTS—Continued

[40 CFR 455]

EPA survey code	Pesticide name	CAS No.	EPA analytical method No.(s)
140	Heptachlor	76–44–8	1656/505/508/608/617/525.1/525.2
144	Isopropalin	33820–53–0	1656/627
148	Linuron	330–55–2	553/632
150	Malathion	121–75–5	1657/614
154	Methamidophos	10265–92–6	1657
156	Methomyl	16752–77–5	531.1/632
158	Methoxychlor	72–43–5	1656/505/508/608.2/617/525.1/525.2
172	Nabam	142–59–6	630/630.1
173	Naled	300–76–5	1657/622
175	Norflurazon	27314–13–2	507/645/525.1/525.2/1656
178	Benfluralin	1861–40–1	[1]1656/[1]627
182	Fensulfothion	115–90–2	1657/622
183	Disulfoton	298–04–4	1657/507/614/622/525.1/525.2
185	Phosmet	732–11–6	1657/622.1
186	Azinphos Methyl	86–50–0	1657/614/622
192	Organo-tin pesticides	12379–54–3	Ind-01/200.7/200.9
197	Bolstar	35400–43–2	1657/622
203	Parathion	56–38–2	1657/614
204	Pendimethalin	40487–42–1	1656
205	Pentachloronitrobenzene	82–68–8	1656/608.1/617
206	Pentachlorophenol	87–86–5	625/1625/515.2/555/515.1/525.1/525.2
208	Permethrin	52645–53–1	608.2/508/525.1/525.2/1656/1660
212	Phorate	298–02–2	1657/622
218	Busan 85 [Potassium dimethyldithiocarbamate]	128–03–0	630/630.1
219	Busan 40 [Potassium N-hydroxymethyl-N-methyldithiocarbamate].	51026–28–9	630/630.1
220	KN Methyl [Potassium N-methyl-dithiocarbamate]	137–41–7	630/630.1
223	Prometon	1610–18–0	507/619/525.1/525.2
224	Prometryn	7287–19–6	507/619/525.1/525.2
226	Propazine	139–40–2	507/619/525.1/525.2/1656
230	Pyrethrin I	121–21–1	1660
232	Pyrethrin II	121–29–9	1660
236	DEF [S,S,S-Tributyl phosphorotrithioate]	78–48–8	1657
239	Simazine	122–34–9	505/507/619/525.1/525.2/1656
241	Carbam-S [Sodium dimethyldithiocarbanate]	128–04–1	630/630.1
243	Vapam [Sodium methyldithiocarbamate]	137–42–8	630/630.1
252	Tebuthiuron	34014–18–1	507/525.1/525.2
254	Terbacil	5902–51–2	507/633/525.1/525.2/1656
255	Terbufos	13071–79–9	1657/507/614.1/525.1/525.2
256	Terbuthylazine	5915–41–3	619/1656
257	Terbutryn	886–50–0	507/619/525.1/525.2
259	Dazomet	533–74–4	630/630.1/1659
262	Toxaphene	8001–35–2	1656/505/508/608/617/525.1/525.2
263	Merphos [Tributyl phosphorotrithioate]	150–50–5	1657/507/525.1/525.2/622
264	Trifluralin	1582–09–8	1656/508/617/627/525.1/525.2
268	Ziram [Zinc dimethyldithiocarbamate]	137–30–4	630/630.1

[1] Monitor and report as total Trifluralin.

TABLE IH—LIST OF APPROVED MICROBIOLOGICAL METHODS FOR AMBIENT WATER

Parameter and units	Method [1]	EPA	Standard methods	AOAC, ASTM, USGS	Other
Bacteria:					
1. Coliform (fecal), number per 100 mL or number per gram dry weight.	Most Probable Number (MPN), 5 tube, 3 dilution, or.	p. 132 [3]	9221 C E–2006.		
	Membrane filter (MF) [2], single step.	p. 124 [3]	9222 D–1997	B–0050–85.[4]	
2. Coliform (fecal) in presence of chlorine, number per 100 mL.	MPN, 5 tube, 3 dilution, or.	p. 132 [3]	9221 C E–2006.		
	MF [2], single step	p. 124 [3]	9222 D–1997.		
3. Coliform (total), number per 100 mL.	MPN, 5 tube, 3 dilution, or.	p. 114 [3]	9221 B–2006.		
	MF [2], single step or two step.	p. 108 [3]	9222 B–1997	B–0025–85.[4]	

TABLE IH—LIST OF APPROVED MICROBIOLOGICAL METHODS FOR AMBIENT WATER—Continued

Parameter and units	Method [1]	EPA	Standard methods	AOAC, ASTM, USGS	Other
4. Coliform (total), in presence of chlorine, number per 100 mL.	MPN, 5 tube, 3 dilution, or.	p. 114 [3]	9221 B–2006.		
	MF [2] with enrichment ...	p. 111 [3]	9222 (B+B.5c)–1997.		
5. *E. coli,* number per 100 mL.	MPN [6 8 14], multiple tube	.....	9221 B.1–2006/9221 F–2006.[11 13]		
	Multiple tube/multiple well.	.....	9223 B–2004 [12]	991.15 [10]	Colilert®.[12 16] Colilert-18®.[12 15 16]
	MF [2 5 6 7 8], two step, or	1103.1 [19] ...	9222 B–1997/9222 G–1997,[18] 9213 D–1997.	D5392–93.[9]	
	Single step	1603 [20], 1604 [21].	9213 D–2007	.....	mColiBlue-24®.[17]
6. Fecal streptococci, number per 100 mL.	MPN, 5 tube, 3 dilution,	p. 139 [3]	9230 B–2007.		
	MF [2], or	p. 136 [3]	9230 C–2007	B–0055–85.[4]	
	Plate count	p. 143.[3]			
7. Enterococci, number per 100 mL.	MPN [6 8], multiple tube ..	.....	9230 B–2007.		
	Multiple tube/multiple well.	.....	.....	D6503–99 [9]	Enterolert®.[12 22]
	MF [2 5 6 7 8] two step	1106.1 [23] ...	9230 C–2007	D5259–92.[9]	
	Single step, or	1600.[24]			
	Plate count	p. 143.[3]			
Protozoa:					
8. *Cryptosporidium* ..	Filtration/IMS/FA	1622,[25] 1623.[26]			
9. *Giardia*	Filtration/IMS/FA	1623.[26]			

[1] The method must be specified when results are reported.

[2] A 0.45 μm membrane filter (MF) or other pore size certified by the manufacturer to fully retain organisms to be cultivated and to be free of extractables which could interfere with their growth.

[3] USEPA. 1978. Microbiological Methods for Monitoring the Environment, Water, and Wastes. Environmental Monitoring and Support Laboratory, U.S. Environmental Protection Agency, Cincinnati, OH. EPA/600/8–78/017.

[4] USGS. 1989. U.S. Geological Survey Techniques of Water-Resource Investigations, Book 5, Laboratory Analysis, Chapter A4, Methods for Collection and Analysis of Aquatic Biological and Microbiological Samples, U.S. Geological Survey, U.S. Department of the Interior, Reston, VA.

[5] Because the MF technique usually yields low and variable recovery from chlorinated wastewaters, the Most Probable Number method will be required to resolve any controversies.

[6] Tests must be conducted to provide organism enumeration (density). Select the appropriate configuration of tubes/filtrations and dilutions/volumes to account for the quality, character, consistency, and anticipated organism density of the water sample.

[7] When the MF method has not been used previously to test waters with high turbidity, large numbers of noncoliform bacteria, or samples that may contain organisms stressed by chlorine, a parallel test should be conducted with a multiple-tube technique to demonstrate applicability and comparability of results.

[8] To assess the comparability of results obtained with individual methods, it is suggested that side-by-side tests be conducted across seasons of the year with the water samples routinely tested in accordance with the most current Standard Methods for the Examination of Water and Wastewater or EPA alternate test procedure (ATP) guidelines.

[9] ASTM. 2000, 1999, 1996. Annual Book of ASTM Standards—Water and Environmental Technology. Section 11.02. ASTM International. 100 Barr Harbor Drive, West Conshohocken, PA 19428.

[10] AOAC. 1995. Official Methods of Analysis of AOAC International, 16th Edition, Volume I, Chapter 17. Association of Official Analytical Chemists International. 481 North Frederick Avenue, Suite 500, Gaithersburg, MD 20877–2417.

[11] The multiple-tube fermentation test is used in 9221B.1. Lactose broth may be used in lieu of lauryl tryptose broth (LTB), if at least 25 parallel tests are conducted between this broth and LTB using the water samples normally tested, and this comparison demonstrates that the false-positive rate and false-negative rate for total coliform using lactose broth is less than 10 percent. No requirement exists to run the completed phase on 10 percent of all total coliform-positive tubes on a seasonal basis.

[12] These tests are collectively known as defined enzyme substrate tests, where, for example, a substrate is used to detect the enzyme β-glucuronidase produced by *E. coli.*

[13] After prior enrichment in a presumptive medium for total coliform using 9221B.1, all presumptive tubes or bottles showing any amount of gas, growth or acidity within 48 h ± 3 h of incubation shall be submitted to 9221F. Commercially available EC–MUG media or EC media supplemented in the laboratory with 50 μg/mL of MUG may be used.

[14] Samples shall be enumerated by the multiple-tube or multiple-well procedure. Using multiple-tube procedures, employ an appropriate tube and dilution configuration of the sample as needed and report the Most Probable Number (MPN). Samples tested with Colilert® may be enumerated with the multiple-well procedures, Quanti-Tray® or Quanti-Tray®/2000, and the MPN calculated from the table provided by the manufacturer.

[15] Colilert-18® is an optimized formulation of the Colilert® for the determination of total coliforms and *E. coli* that provides results within 18 h of incubation at 35 °C rather than the 24 h required for the Colilert® test and is recommended for marine water samples.

[16] Descriptions of the Colilert®, Colilert-18®, Quanti-Tray®, and Quanti-Tray®/2000 may be obtained from IDEXX Laboratories Inc. 1 IDEXX Drive, Westbrook, ME 04092.

[17] A description of the mColiBlue24® test may be obtained from Hach Company, 100 Dayton Ave., Ames, IA 50010.

[18] Subject total coliform positive samples determined by 9222B or other membrane filter procedure to 9222G using NA–MUG media.

[19] USEPA. March 2010. Method 1103.1: *Escherichia coli* (*E. coli*) in Water by Membrane Filtration Using membrane-Thermotolerant *Escherichia coli* Agar (mTEC). U.S. Environmental Protection Agency, Office of Water, Washington, DC EPA–821–R–10–002.

[20] USEPA. December 2009. Method 1603: *Escherichia coli* (*E. coli*) in Water by Membrane Filtration Using Modified membrane-Thermotolerant *Escherichia coli* Agar (Modified mTEC). U.S. Environmental Protection Agency, Office of Water, Washington, DC EPA–821–R–09–007.

[21] Preparation and use of MI agar with a standard membrane filter procedure is set forth in the article, Brenner et al. 1993. "New Medium for the Simultaneous Detection of Total Coliform and *Escherichia coli* in Water." Appl. Environ. Microbiol. 59:3534–3544 and in USEPA. September 2002.: Method 1604: Total Coliforms and *Escherichia coli* (*E. coli*) in Water by Membrane Filtration by Using a Simultaneous Detection Technique (MI Medium). U.S. Environmental Protection Agency, Office of Water, Washington, DC EPA 821–R–02–024.

[22] A description of the Enterolert® test may be obtained from IDEXX Laboratories Inc. 1 IDEXX Drive, Westbrook, ME 04092.
[23] USEPA. December 2009. Method 1106.1: Enterococci in Water by Membrane Filtration Using membrane-Enterococcus-Esculin Iron Agar (mE–EIA). U.S. Environmental Protection Agency, Office of Water, Washington, DC EPA–821–R–09–015.
[24] USEPA. December 2009. Method 1600: Enterococci in Water by Membrane Filtration Using membrane-Enterococcus Indoxyl-β–D–Glucoside Agar (mEI). U.S. Environmental Protection Agency, Office of Water, Washington, DC EPA–821–R–09–016.
[25] Method 1622 uses a filtration, concentration, immunomagnetic separation of oocysts from captured material, immunofluorescence assay to determine concentrations, and confirmation through vital dye staining and differential interference contrast microscopy for the detection of *Cryptosporidium*. USEPA. December 2005. Method 1622: *Cryptosporidium* in Water by Filtration/IMS/FA. U.S. Environmental Protection Agency, Office of Water, Washington, DC EPA–821–R–05–001.
[26] Method 1623 uses a filtration, concentration, immunomagnetic separation of oocysts and cysts from captured material, immunofluorescence assay to determine concentrations, and confirmation through vital dye staining and differential interference contrast microscopy for the simultaneous detection of *Cryptosporidium* and *Giardia* oocysts and cysts. USEPA. December 2005. Method 1623. *Cryptosporidium* and *Giardia* in Water by Filtration/IMS/FA. U.S. Environmental Protection Agency, Office of Water, Washington, DC EPA–821–R–05–002.

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(b) * * *

(1) The full texts of the CWA U.S. EPA methods are available at *http://epa.gov/waterscience/methods/method.* The full text for determining the method detection limit when using the test procedures is given in appendix B of this part 136.

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(54) USEPA. March 2010. Method 1103.1: *Escherichia coli (E. coli)* in Water by Membrane Filtration Using membrane-Thermotolerant *Escherichia coli* Agar (mTEC). U.S. Environmental Protection Agency, Office of Water, Washington, DC EPA–621–R–10–002. Available at *http://www.epa.gov/waterscience/methods/method.* Table IH, Note 19.

(55) USEPA. December 2009. Method 1106.1: Enterococci in Water by Membrane Filtration Using membrane-Enterococcus-Esculin Iron Agar (mE–EIA). U.S. Environmental Protection Agency, Office of Water, Washington, DC EPA–621–R–09–015. Available at *http://www.epa.gov/waterscience/methods/method.* Table IH, Note 23.

(56) USEPA. December 2009. Method 1603: *Escherichia coli (E. coli)* in Water by Membrane Filtration Using Modified membrane-Thermotolerant *Escherichia coli* Agar (Modified mTEC). U.S. Environmental Protection Agency, Office of Water, Washington, DC EPA–821–R–09–007. Available at *http://www.epa.gov/waterscience/methods/method.* Table IA, Note 20; Table IH, Note 20.

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(59) USEPA. December 2009. Method 1600: Enterococci in Water by Membrane Filtration Using membrane-Enterococcus Indoxyl-β-D-Glucoside Agar (mEI). U.S. Environmental Protection Agency, Office of Water, Washington, DC EPA–821–R–09–016. Available at *http://www.epa.gov/waterscience/methods/method.* Table IA, Note 23; Table IH, Note 24.

(60) USEPA. December 2005. Method 1622: *Cryptosporidium* in Water by Filtration/IMS/FA. U.S. Environmental Protection Agency, Office of Water, Washington, DC EPA–821–R–05–001. Available at *http://www.epa.gov/waterscience/methods/method.* Table IA, Note 25.

(61) USEPA. December 2005. Method 1623: *Cryptosporidium* and *Giardia* in Water by Filtration/IMS/FA. U.S. Environmental Protection Agency, Office of Water, Washington, DC EPA–821–R–05–002. Available at *http://www.epa.gov/waterscience/methods/method.* Table IA, Note 26.

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(70) USEPA. April 2010. Method 1680: Fecal Coliforms in Sewage Sludge (Biosolids) by Multiple-Tube Fermentation using Lauryl Tryptose Broth (LTB) and EC Medium. U.S. Environmental Protection Agency, Office of Water, Washington, DC EPA–821–R–10–003. Available at *http://www.epa.gov/waterscience/methods/method.* Table IA, Note 13.

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(73) EPA Method 200.5, Revision 4.2. "Determination of Trace Elements in Drinking Water by Axially Viewed Inductively Coupled Plasma-Atomic Emission Spectrometry." 2003. EPA/600/R–06/115. (Available at *http://www.epa.gov/nerlcwww/ordmeth.htm.*)

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(e) Sample preservation procedures, container materials, and maximum allowable holding times for parameters are cited in Tables IA, IB, IC, ID, IE, IF, IG and IH are prescribed in Table II. Information in this table takes precedence over information provided in specific methods or elsewhere unless a party documents the acceptability of an alternative to the Table II instructions. Such alternatives may include a change from the prescribed preservation techniques, container materials, and maximum holding times applicable to samples collected from a specific discharge. The nature and extent of the documentation of such changes (how to apply as well as supporting data) is left to the discretion of the permitting authority (state agency or EPA region) or other authority and may rely on instructions, such as those provided for method modifications at § 136.6.

TABLE II—REQUIRED CONTAINERS, PRESERVATION TECHNIQUES, AND HOLDING TIMES

Parameter number/name	Container [1]	Preservation [2 3]	Maximum holding time (in hours) [4]
Table IA—Bacterial Tests:			
1–5. Coliform, total, fecal, and *E. coli*	PA, G	Cool, < 10 °C, 0.008% $Na_2S_2O_3$ [5].	[22 23] 8
6. Fecal streptococci	PA, G	Cool, < 10 °C, 0.008% $Na_2S_2O_3$ [5].	[22] 8
7. Enterococci	PA, G	Cool, < 10 °C, 0.008% $Na_2S_2O_3$ [5].	[22] 8
8. *Salmonella*	PA, G	Cool, < 10 °C, 0.008% $Na_2S_2O_3$ [5].	[22] 8
Table IA—Aquatic Toxicity Tests: 9–12. Toxicity, acute and chronic.	P, FP, G	Cool, 0–6 °C [16]	36
* * * * * * *			
Table IH—Bacterial Tests:			

TABLE II—REQUIRED CONTAINERS, PRESERVATION TECHNIQUES, AND HOLDING TIMES—Continued

Parameter number/name	Container [1]	Preservation [2 3]	Maximum holding time (in hours) [4]
1. *E. coli*	PA, G	Cool, < 10 °C, 0.008% $Na_2S_2O_3$ [5].	[22] 8
2. Enterococci	PA, G	Cool, < 10 °C, 0.008% $Na_2S_2O_3$ [5].	[22] 8
Table IH—Protozoan Tests:			
8. *Cryptosporidium*	LDPE; field filtration	1–10 °C	[21] 96
9. *Giardia*	LDPE; field filtration	1–10 °C	[21] 96

[1] "P" is for polyethylene; "FP" is fluoropolymer (polytetrafluoroethylene (PTFE); Teflon®), or other fluoropolymer, unless stated otherwise in this Table II; "G" is glass; "PA" is any plastic that is made of a sterilizable material (polypropylene or other autoclavable plastic); "LDPE" is low density polyethylene.

[2] Except where noted in this Table II and the method for the parameter, preserve each grab sample within 15 minutes of collection. For a composite sample collected with an automated sample (*e.g.,* using a 24-hour composite sample; see 40 CFR 122.21(g)(7)(i) or 40 CFR Part 403, Appendix E), refrigerate the sample at <=6 °C during collection unless specified otherwise in this Table II or in the method(s). For a composite sample to be split into separate aliquots for preservation and/or analysis, maintain the sample at <=6°, unless specified otherwise in this Table II or in the method(s), until collection, splitting, and preservation is completed. Add the preservative to the sample container prior to sample collection when the preservative will not compromise the integrity of a grab sample, a composite sample, or aliquot split from a composite sample within 15 minutes of collection. If a composite measurement is required but a composite sample would compromise sample integrity, individual grab samples must be collected at prescribed time intervals (*e.g.,* 4 samples over the course of a day, at 6-hour intervals). Grab samples must be analyzed separately and the concentrations averaged. Alternatively, grab samples may be collected in the field and composited in the laboratory if the compositing procedure produces results equivalent to results produced by arithmetic averaging of results of analysis of individual grab samples. For examples of laboratory compositing procedures, see EPA Method 1664A (oil and grease) and the procedures at 40 CFR 141.34(f)(14)(iv) and (v) (volatile organics).

[3] When any sample is to be shipped by common carrier or sent via the U.S. Postal Service, it must comply with the Department of Transportation Hazardous Materials Regulations (49 CFR part 172). The person offering such material for transportation is responsible for ensuring such compliance. For the preservation requirement of Table II, the Office of Hazardous Materials, Materials Transportation Bureau, Department of Transportation has determined that the Hazardous Materials Regulations do not apply to the following materials: Hydrochloric acid (HCl) in water solutions at concentrations of 0.04% by weight or less (pH about 1.96 or greater; Nitric acid (HNO_3) in water solutions at concentrations of 0.15% by weight or less (pH about 1.62 or greater); Sulfuric acid (H_2SO_4) in water solutions at concentrations of 0.35% by weight or less (pH about 1.15 or greater); and Sodium hydroxide (NaOH) in water solutions at concentrations of 0.080% by weight or less (pH about 12.30 or less).

[4] Samples should be analyzed as soon as possible after collection. The times listed are the maximum times that samples may be held before the start of analysis and still be considered valid (*e.g.,* samples analyzed for fecal coliforms may be held up to 6 hours prior to commencing analysis). Samples may be held for longer periods only if the permittee or monitoring laboratory has data on file to show that, for the specific types of samples under study, the analytes are stable for the longer time, and has received a variance from the Regional Administrator under Sec. 136.3(e). For a grab sample, the holding time begins at the time of collection. For a composite sample collected with an automated sampler (*e.g.,* using a 24-hour composite sampler; see 40 CFR 122.21(g)(7)(i) or 40 CFR part 403, Appendix E), the holding time begins at the time of the end of collection of the composite sample. For a set of grab samples composited in the field or laboratory, the holding time begins at the time of collection of the last grab sample in the set. Some samples may not be stable for the maximum time period given in the table. A permittee or monitoring laboratory is obligated to hold the sample for a shorter time if it knows that a shorter time is necessary to maintain sample stability. See 136.3(e) for details. The date and time of collection of an individual grab sample is the date and time at which the sample is collected. For a set of grab samples to be composited, and that are all collected on the same calendar date, the date of collection is the date on which the samples are collected. For a set of grab samples to be composited, and that are collected across two calendar dates, the date of collection is the dates of the two days; *e.g.,* November 14–15. For a composite sample collected automatically on a given date, the date of collection is the date on which the sample is collected. For a composite sample collected automatically, and that is collected across two calendar dates, the date of collection is the dates of the two days; *e.g.,* November 14–15. For static-renewal toxicity tests, each grab or composite sample may also be used to prepare test solutions for renewal at 24 h, 48 h, and/or 72 h after first use, if stored at 0–6 °C, with minimum head space.

[5] ASTM D7365–09a specifies treatment options for samples containing oxidants (*e.g.* chlorine).

[6] Sampling, preservation and mitigating interferences in water samples for analysis of cyanide are described in ASTM D7365–09a. There may be interferences that are not mitigated by the analytical test methods or D7365–09a. Any technique for removal or suppression of interference may be employed, provided the laboratory demonstrates that it more accurately measures cyanide through quality control measures described in the analytical test method. Any removal or suppression technique not described in D7365–09a or the analytical test method must be documented along with supporting data.

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[16] Place sufficient ice with the samples in the shipping container to ensure that ice is still present when the samples arrive at the laboratory. However, even if ice is present when the samples arrive, immediately measure the temperature of the samples and confirm that the preservation temperature maximum has not been exceeded. In the isolated cases where it can be documented that this holding temperature cannot be met, the permittee can be given the option of on-site testing or can request a variance. The request for a variance should include supportive data which show that the toxicity of the effluent samples is not reduced because of the increased holding temperature. Aqueous samples must not be frozen. Hand-delivered samples used on the day of collection do not need to be cooled to 0 to 6 °C prior to test initiation.

[21] Holding time is calculated from time of sample collection to elution for samples shipped to the laboratory in bulk and calculated from the time of sample filtration to elution for samples filtered in the field.

[22] Sample analysis should begin as soon as possible after receipt; sample incubation must be started no later than 8 hours from time of collection.

[23] For fecal coliform samples for sewage sludge (biosolids) only, the holding time is extended to 24 hours for the following sample types using either EPA Method 1680 (LTB–EC) or 1681 (A–1): Class A composted, Class B aerobically digested, and Class B anaerobically digested.

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4. Section 136.4 is revised to read as follows:

§ 136.4 Application for and approval of alternate test procedures for nationwide use.

(a) A written application for review of an alternate test procedure (alternate method) for nationwide use may be made by letter via email or by hard copy in triplicate to the National Alternate Test Procedure Program Coordinator (National Coordinator), Office of Science and Technology (4303T), Office of Water, U.S. Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460. Any application for an alternate test procedure (ATP) under this paragraph shall:

(1) Provide the name and address of the responsible person or firm making the application.

(2) Identify the pollutant(s) or parameter(s) for which nationwide

approval of an alternate test procedure is being requested.

(3) Provide a detailed description of the proposed alternate test procedure, together with references to published or other studies confirming the general applicability of the alternate test procedure for the analysis of the pollutant(s) or parameter(s) in wastewater discharges from representative and specified industrial or other categories.

(4) Provide comparability data for the performance of the proposed alternative test procedure compared to the performance of the reference method.

(b) The National Coordinator may request additional information and analyses from the applicant in order to determine whether the alternate test procedure satisfies the applicable requirements of this

(c) *Approval for nationwide use.* (1) After a review of the application and any additional analyses requested from the applicant, the National Coordinator will notify the applicant, in writing, of acceptance or rejection of the alternate test procedure for nationwide use in CWA programs. If the application is not approved, the National Coordinator will specify what additional information might lead to a reconsideration of the application, and notify the Regional Alternate Test Procedure Coordinators of such rejection. Based on the National Coordinator's rejection of a proposed alternate test procedure and an assessment of any approvals for limited uses for the unapproved method, the Regional Coordinator may decide to withdraw approval of the method for limited use in the Region.

(2) Where the National Coordinator approved an applicant's request for nationwide use of an alternate test procedure, the National Coordinator will notify the applicant that the National Coordinator will recommend rulemaking to approve the alternate test procedure. The National Coordinator will notify the Regional Coordinators that they may consider approval of this alternate test procedure for limited use in their Regions based on the information and data provided in the applicant's application.

(3) EPA will propose to amend 40 CFR part 136 to include the alternate test procedure in § 136.3. EPA shall make available for review all the factual bases for its proposal, including any performance data submitted by the applicant and any available EPA analysis of those data.

(4) Following public comment, EPA shall publish in the **Federal Register** a final decision on whether to amend 40 CFR part 136 to include the alternate test procedure as an approved analytical method.

(5) Whenever the National Coordinator has approved an applicant's request for nationwide use of an alternate test procedure, any person may request an approval of the method for limited use under § 136.5 from the EPA Region.

5. Section 136.5 is revised to read as follows:

§ 136.5 Approval of alternate test procedures for limited use.

(a) Any person may request the Regional Alternate Test Procedure Coordinator to approved the use of an alternate test procedure in the Region.

(b) When the request for the use of an alternate test procedure concerns use in a State with an NPDES permit program approved pursuant to section 402 of the Act, the requestor, shall first submit an application for limited use to the Director of the State agency having responsibility for issuance of NPDES permits within such State. The Director will forward the application to the Regional Coordinator with a recommendation for or against approval.

(c) Any application for approval of an alternate test procedure for limited use may be made by letter, email or by hard copy. The application shall include the following:

(1) Provide the name and address of the applicant and the applicable ID number of the existing or pending permit and issuing agency for which use of the alternate test procedure is requested, and the discharge serial number.

(2) Identify the pollutant or parameter for which approval of an alternate test procedure is being requested.

(3) Provide justification for using testing procedures other than those specified in Table I or in the NPDES permit.

(4) Provide a detailed description of the proposed alternate test procedure, together with references to published studies of the applicability of the alternate test procedure to the effluents in question.

(d) Approval for limited use. (1) After a review of the application and in the case of a State with an approved NPDES permit program, review of the recommendation of the Director, the Regional Coordinator will notify the applicant and the appropriate State agency of approval or rejection of the use of the alternate procedure. The approval may be restricted to use only with request to a specific discharge or facility (and its laboratory) or, at the discretion of the Regional Coordinator, to all discharger or facilities (and their associated laboratories) specified in the approval for the Region. If the application for approval is not approved, the Regional Coordinator shall specify what additional information might lead to a reconsideration of the application.

(2) The Regional Coordinator will forward a copy of every approval and rejection notification to the National Alternate Test Procedure Coordinator.

6. Section 136.6 is revised to read as follows:

§ 136.6 Method modifications and analytical requirements.

(a) *Definitions of terms used in this section.*

(1) *Analyst* means the person or laboratory using a test procedure (analytical method) in this Part.

(2) *Chemistry of the method* means the reagents and reactions used in a test procedure that allow determination of the analyte(s) of interest in an environmental sample.

(3) *Determinative technique* means the way in which an analyte is identified and quantified (*e.g.,* colorimetry, mass spectrometry).

(4) *Equivalent performance* means that the modified method produces results that meet or exceed the QC acceptance criteria of the approved method.

(5) *Method-defined analyte* means an analyte defined solely by the method used to determine the analyte. Such an analyte may be a physical parameter, a parameter that is not a specific chemical, or a parameter that may be comprised of a number of substances. Examples of such analytes include temperature, oil and grease, total suspended solids, total phenolics, turbidity, chemical oxygen demand, and biochemical oxygen demand.

(6) *QC* means "quality control."

(b) *Method modifications.* (1) If the underlying chemistry and determinative technique in a modified method are essentially the same as an unmodified part 136 method, then the modified method is an equivalent and acceptable alternative to the approved method. However, those who develop or use a modification to an approved (part 136) method must document that the performance of the modified method, in the matrix to which the modified method will be applied, is equivalent to the performance of the approved method. This documentation should include the routine initial demonstration of capability and ongoing QC including determination of precision and accuracy, detection limits, and matrix spike recoveries. Initial demonstration of capability typically

includes analysis of a four replicate mid-level standard and a method detection limit study. Ongoing quality control typically includes method blanks, mid-level laboratory control samples, and matrix spikes. The method is considered equivalent if the quality control requirements in the reference method are achieved. The method user's Standard Operating Procedure (SOP) must clearly document the modifications made to the reference method. Examples of allowed method modifications are listed below. The user must notify their permitting authority and/or their certification authority/accreditation body of the intent to use a modified method when accreditation is requested. Such notification should be of the form "Method xxx has been modified within the flexibility allowed in 40 CFR Part 136.6". Specific details of the modification need not be provided, but must be documented in the Standard Operating Procedure (SOP). The certification authority/accreditation body may request a copy of the SOP.

(2) *Requirements.* The modified method must have sufficient sensitivity to meet the data quality objectives. The modified method must also meet or exceed performance of the approved method(s) for the analyte(s) of interest, as documented by meeting the initial and ongoing quality control requirements in the method.

(i) *Requirements for establishing equivalent performance.* If the approved method contains QC tests and QC acceptance criteria, the modified method must use these QC tests and the modified method must meet the QC acceptance criteria with the following conditions:

(A) The analyst may only rely on QC tests and QC acceptance criteria in a method if it includes wastewater matrix QC tests and QC acceptance criteria (*e.g.,* matrix spikes) and both initial (start-up) and ongoing QC tests and QC acceptance criteria.

(B) If the approved method does not contain QC tests and QC acceptance criteria or if the QC tests and QC acceptance criteria in the method do not meet the requirements of this section, then the analyst must employ QC tests published in the "equivalent" or part 136 method that has such QC, or the essential QC requirements specified at 136.7. If the QC requirements are sufficient, but published in other parts of an organization's compendium rather than within the part 136 method then that part of the organization's compendium must be used.

(C) In addition, the analyst must perform ongoing QC tests, including assessment of performance of the modified method on the sample matrix (*e.g.,* analysis of a matrix spike/matrix spike duplicate pair for every twenty samples), and analysis of an ongoing precision and recovery sample (*e.g.,* laboratory fortified blank or blank spike) and a blank with each batch of 20 or fewer samples.

(D) Calibration must be performed using the modified method. The modified method must be tested with every wastewater matrix and be applied to up to nine distinct matrices in addition to any and all reagent water tests. If the performance in the wastewater matrix or reagent water does not meet the QC acceptance criteria, the method modification may not be used.

(ii) *Requirements for documentation.* The modified method must be documented in a method write-up or an addendum that describes the modification(s) to the approved method prior to the use of the method for compliance purposes. The write-up or addendum must include a reference number (*e.g.,* method number), revision number, and revision date so that it may be referenced accurately. In addition, the organization that uses the modified method must document the results of QC tests and keep these records, along with a copy of the method write-up or addendum, for review by an auditor.

(3) *Restrictions.* An analyst may not modify an approved Clean Water Act analytical method for a method-defined analyte. In addition, an analyst may not modify an approved method if the modification would result in measurement of a different form or species of an analyte. Changes in method parameters are not allowed if such changes would alter the defined methodology (i.e. method principle) of the unmodified method. For example, phenol method 420.1 or 420.4 defines phenolics as ferric iron oxidized compounds that react with 4-aminoantipyrine (4–AAP) at pH 10 after being distilled from acid solution. Because total phenolics represents a group of compounds that all react at different efficiencies with 4–AAP, changing test conditions likely would change the behavior of these different phenolic compounds. An analyst may not modify any sample preservation and/or holding time requirements of an approved method.

(4) *Allowable changes.* Except as noted under *Restrictions* of this section, an analyst may modify an approved test procedure (analytical method) provided the underlying reactions and principles used in the approved method remain essentially the same and provided that the requirements of this section are met. If equal or better performance can be obtained with an alternative reagent, then it is allowed. These changes refer to modifications of the analytical procedures used for identification and measurement of the analyte and do not apply to sample collection and preservation procedures. Some examples of these types of changes are:

(A) Use of gas diffusion in place of manual or automated distillation.

(B) Changes in equipment operating parameters such as the monitoring wavelength of a colorimeter or the reaction time and temperature as needed to achieve the chemical reactions defined in the unmodified CWA method. For example, molybdenum blue phosphate methods have two absorbance maxima, one at about 660 nm and another at about 880 nm. The former is about 2.5 times less sensitive than the latter. Wavelength choice provides a cost effective, dilution free means to increase sensitivity of molybdenum blue phosphate methods.

(C) Interchange of oxidants, such as the use of titanium oxide in UV assisted automated digestion of TOC and total Phosphorus as long as complete oxidation can be demonstrated.

(5) *Previously Accepted Modifications.* The following modifications have been used successfully in the laboratory community for many years. Data have demonstrated that these modifications provide equivalent performance to the methods approved at part 136 across a wide variety of matrix types. Therefore, these modifications are allowed without the need to generate additional equivalency data, or the specific notification of permitting and/or certification authority/accreditation bodies required for novel method modifications. However, a laboratory wishing to use these modifications must continue to demonstrate acceptable method performance by performing and documenting all applicable initial demonstration of capability and ongoing QC tests and meeting all applicable QC acceptance criteria as described in § 136.7.

(i) Changes between manual method, flow analyzer and discrete instrumentation.

(ii) Changes in chromatographic columns or temperature programs.

(iii) Changes between automated and manual sample preparation, such as digestions, distillations, and extractions; in-line sample preparation is an acceptable form of automated sample preparation for CWA methods.

(iv) In general, ICP–MS is a sensitive and selective detector for metal analysis; however, isobaric interference can cause

problems for quantitative determination as well as identification based on the isotope pattern. Interference reduction technologies, such as collision or reaction cells, are designed to reduce the effect of spectroscopic interferences that may bias results for the element of interest. The use of interference reduction technologies is allowed provided the method performance specifications relevant to ICP–MS measurements are met.

(v) The use of EPA Method 200.2 or the sample preparation steps from EPA Method 1638 including the use of closed vessel digestion is allowed for EPA Method 200.8 provided the method performance specifications relevant to the ICP–MS are met.

(vi) Changes in pH adjustment reagents. Changes in compounds used to adjust pH are acceptable as long as they do not produce interference. For example, using a different acid to adjust pH in colorimetric methods.

(vi) Changes in buffer reagents are acceptable provided that the changes do not produce interferences.

(viii) Changes in the order of reagent addition are acceptable provided that the change does not produce interference. For example using the same reagents, but adding them in different order or preparing them in combined or separate solutions (so they can be added separately), is allowed provided reagent stability or method performance is improved.

(ix) Changes in calibration range (provided that the modified range covers any relevant regulatory limit.)

(x) Changes in calibration model. Linear calibration models do not adequately fit calibration data with one or two inflection points. For example, vendor-supplied data acquisition and processing software provides quadratic fitting functions to handle such situations. If calibration data for a particular analytical method routinely display quadratic character, using quadratic fitting functions is acceptable. In such cases, the minimum number of calibrators for second order fits should be six and in no case should concentrations be extrapolated for instrument responses that exceed that of the most concentrated calibrator. Examples of methods with nonlinear calibration functions include chloride by SM4500–Cl–E–1997, hardness by EPA 130.1, cyanide by ASTM D6888 or OIA1677, Kjeldahl nitrogen by PAI–DK03, and anions by EPA 300.0. When a regression curve is calculated as an alternative to using the average response factor, the quality of the calibration may be evaluated using the Relative Standard Error (RSE). The acceptance criterion for the RSE is the same as the acceptance criterion for Relative Standard Deviation (RSD), in the method. RSE is calculated as:

$$RSE = 100x\sqrt{\frac{\sum_{i=1}^{n}\left(\frac{C_i - PC_i}{C_i}\right)^2}{n-p}}$$

n = Number of calibration points

p = Number of parameters in the model (1 for linear through the origin, 2 for linear not through the origin, 3 for quadratic, etc.)

C_i = True concentration of the standard at level i

PC_i = Predicted concentration at level i, using the calibration model chosen.

Using the RSE as a metric has the added advantage of allowing the same numerical standard to be applied to the calibration model, regardless of the form of the model. Thus, if a method states that the RSD should be ≤ 20% for the traditional linear model through the origin, then the RSE acceptance limit can remain ≤ 20% as well. Similarly, if a method provides an RSD acceptance limit of ≤ 15%, then that same figure can be used as the acceptance limit for the RSE. RSE may be used as an alternative to correlation coefficients and coefficients of determination for evaluating calibration curves for any of the methods at part 136. If the method includes a numerical criterion for the RSD, then the same numerical value is used for the RSE. Some older methods do not include any criterion for the calibration curve—for these methods if RSE is used the value should be ≤ 20%. Note that RSE is included as an alternative to correlation coefficient as a measure of the suitability of a calibration curve. It is not necessary to evaluate both RSE and correlation coefficients.

(xi) Changes in equipment such as using similar equipment from a vendor different from that mentioned in the method.

(xii) The use of micro or midi distillation apparatus in place of macro distillation apparatus.

(xiii) The use of prepackaged reagents.

(xiv) The use of digital titrators and methods where the underlying chemistry used for the determination is similar to that used in the approved method.

(xv) Use of Selected Ion Monitoring (SIM) mode for analytes that cannot be effectively analyzed in full scan mode and reach the required minimum detectible concentration. False positives are more of a concern when using SIM analysis, so at a minimum, one quantitation and two qualifying ions

must be monitored for each analyte (unless less than three ions with intensity greater than 15% of the base peak are available). The ratio of the two qualifying ions to the quantitation ion must be evaluated and should agree with the ratio of an authentic standard within plus/minus 20 percent. Analyst judgment must be applied to the evaluation of ion ratios since the ratios can be affected by co-eluting matrix compounds. The signal to noise ratio of the least sensitive ion should be at least 3:1. Retention time should match within 0.05 minute of an authentic standard analyzed under identical conditions. Matrix compounds can cause minor shifts in retention time and can be evaluated by observing any shifts in the retention times of the internal standards. The total scan time should be such that a minimum of eight scans are obtained per chromatographic peak.

(xvi) Changes are allowed in purge-and-trap sample volumes or operating conditions. Some examples are:

(A) Changes in purge time and purge-gas flow rate. A change in purge time and purge-gas flow rate is allowed provided sufficient total purge volume is used to achieve the required minimum detectible concentration and calibration range for all compounds. In general, a purge rate in the range 20–200 mL/min and a total purge volume in the range 240–880 mL are recommended.

(B) Use of nitrogen or helium as a purge gas provided that the minimum detectible concentrations for all compounds are met. Using nitrogen as a purge gas can provide a significant cost saving to the laboratory, compared to helium.

(C) Sample temperature during the purge state. Gentle heating of the sample during purge (*e.g.* 40 °C) increases purge efficiency of the hydrophilic compounds and improves sample-to-sample repeatability (%RSD) because all samples are purged under precisely the same conditions.

(D) Trap sorbent. Any trap design is acceptable provided the data acquired meet all QC criteria.

(E) Changes to the desorb time. Shortening the desorb time (*e.g.* from 4 minutes to 1 minute) has no discernable effect on compound recoveries, and can shorten overall cycle time and significantly reduce the amount of water introduced to the analytical system improving the precision of analysis, especially for water soluble analytes. A desorb time of four minutes is recommended, however a desorb time in the range of 0.5–2 minutes may be used provided that all QC specifications in the method are met.

(F) Use of water management techniques is allowed. Water is always collected on the trap along with the analytes and is a significant interference for analytical systems (GC and GC/MS). Modern water management techniques (*e.g.*, dry purge or condensation points) can remove moisture from the sample stream and improve analytical performance.

(xvii) The following modifications are allowable when performing EPA Method 625: The base/neutral and acid fractions may be added together and analyzed as one extract provided that the analytes can be reliably identified and quantified in the combined extracts; the pH extraction sequence may be reversed to better separate acid and neutral components; neutral components may be extracted with either acid or base components; a smaller sample volume may be used to minimize matrix interferences provided matrix interferences are demonstrated and documented; an alternate surrogate and internal standard concentrations other than those specified in the method are acceptable provided that method performance is not degraded; an alternate calibration curve and a calibration check other than those specified in the method may be used; a different solvent for the calibration standards may be used to match the solvent of the final extract.

(xviii) If the characteristics of a wastewater matrix prevent efficient recovery of organic pollutants and prevent the method from meeting QC requirements, the analyst may attempt to resolve the issue by using salts provided that such salts do not react with or introduce the target pollutant into the sample (as evidenced by the analysis of method blanks, laboratory control samples, and spiked samples that also contain such salts) and that all requirements of paragraph (b)(2) of this section are met. Chlorinated samples must be dechlorinated prior to the addition of such salts.

(xix) If the characteristics of a wastewater matrix result in poor sample dispersion or reagent deposition on equipment and prevent the analyst from meeting QC requirements, the analyst may attempt to resolve the issue by adding a inert surfactant that does not affect the chemistry of the method such as Brij-35 or sodium dodecyl sulfate (SDS), provided that such surfactant does not react with or introduce the target pollutant into the sample (as evidenced by the analysis of method blanks, laboratory control samples, and spiked samples that also contain such surfactant) and that all requirements of paragraph (b)(1) and (b)(2) of this section are met. Chlorinated samples must be dechlorinated prior to the addition of such surfactant.

7. Add new § 136.7 to part 136 to read as follows:

§ 136.7 Quality assurance and quality control.

(a) Twelve essential Quality Control checks and acceptable abbreviations are:

(1) Demonstration of Capability (DOC);

(2) Method Detection Limit (MDL);

(3) Laboratory reagent blank (LRB), also referred to as method blank;

(4) Laboratory fortified blank (LFB), also referred to as a spiked blank, or laboratory control sample (LCS);

(5) Matrix spike, matrix spike duplicate, or laboratory fortified blank duplicate (LFBD) for suspected difficult matrices;

(6) Internal standards, surrogate standards (for organic analysis) or tracers (for radiochemistry);

(7) Calibration (initial and continuing), initial and continuing performance (ICP) solution also referred to as initial calibration verification (ICV) and continuing calibration verification (CCV);

(8) Control charts (or other trend analyses of quality control results);

(9) Corrective action (root cause analyses);

(10) QC acceptance criteria;

(11) Definitions of a batch (preparation and analytical); and

(12) Specify a minimum frequency for conducting these QC checks.

(b) These twelve quality control checks must be clearly documented in the written method along with a performance specification or description for each of the twelve quality control checks.

Appendix A [Removed and Reserved]

8. Remove and reserve Appendix A to Part 136.

Appendix C [Removed and Reserved]

9. Remove and reserve Appendix C to Part 136.

10. Revise Appendix D to Part 136 to read as follows:

Appendix D to Part 136—Precision and Recovery Statement for Methods for Measuring Metals

Two selected methods from "Methods for Chemical Analysis of Water and Wastes", EPA–600/4–79–020 (1979) have been subjected to interlaboratory method validation studies. The two selected methods are Thallium and Zinc. The following precision and recovery statements are presented in this appendix and incorporated into part 136:

Method 279.2

For Thallium, Method 279.2 (Atomic Absorption, Furnace Technique) replace the Precision and Accuracy Section statement with the following:

Precision and Accuracy

An interlaboratory study on metal analyses by this method was conducted by the Quality Assurance Branch (QAB) of the Environmental Monitoring Systems Laboratory—Cincinnati (EMSL–CI). Synthetic concentrates containing various levels of this element were added to reagent water, surface water, drinking water and three effluents. These samples were digested by the total digestion procedure, 4.1.3 in this manual. Results for the reagent water are given below. Results for other water types and study details are found in "EPA Method Study 31, Trace Metals by Atomic Absorption (Furnace Techniques)," National Technical Information Service, 5285 Port Royal Road, Springfield, VA 22161 Order No. PB 86–121 704/AS, by Copeland, F.R. and Maney, J.P., January 1986.

For a concentration range of 10.00–252 µg/L

$X = 0.8781(C) - 0.715$
$S = 0.1112(X) + 0.669$
$SR = 0.1005(X) + 0.241$

Where:

C = True Value for the Concentration, µg/L
X = Mean Recovery, µg/L
S = Multi-laboratory Standard Deviation, µg/L
SR = Single-analyst Standard Deviation, µg/L

Method 289.2

For Zinc, Method 289.2 (Atomic Absorption, Furnace Technique) replace the Precision and Accuracy Section statement with the following:

Precision and Accuracy

An interlaboratory study on metal analyses by this method was conducted by the Quality Assurance Branch (QAB) of the Environmental Monitoring Systems Laboratory—Cincinnati (EMSL–CI). Synthetic concentrates containing various levels of this element were added to reagent water, surface water, drinking water and three effluents. These samples were digested by the total digestion procedure, 4.1.3 in this manual. Results for the reagent water are given below. Results for other water types and study details are found in "EPA Method Study 31, Trace Metals by Atomic Absorption (Furnace Techniques)," National Technical Information Service, 5285 Port Royal Road, Springfield, VA 22161 Order No. PB 86–121 704/AS, by Copeland, F.R. and Maney, J.P., January 1986.

For a concentration range of 0.51–189 µg/L

$X = 1.6710(C) + 1.485$
$S = 0.6740(X) - 0.342$
$SR = 0.3895(X) - 0.384$

Where:

C = True Value for the Concentration, µg/L
X = Mean Recovery, µg/L
S = Multi-laboratory Standard Deviation, µg/L
SR = Single-analyst Standard Deviation, µg/L

PART 260—HAZARDOUS WASTE MANAGEMENT SYSTEM: GENERAL

11. The authority citation for part 260 continues to read as follows:

Authority: 42 U.S.C. 6905, 6912(a), 6921–6927, 6930, 6934, 6935, 6937, 6938, 6939, and 6974.

Subpart B—Definitions

12. Section 260.11 is amended by revising paragraph (c)(2) to read as follows:

§ 260.11 References.

* * * * *

(c) * * *

(2) Method 1664, Revision A and Revision B, N-Hexane Extractable Material (HEM; Oil and Grease) and Silica Gel Treated n-Hexane Extractable Material SGT–HEM; Non-polar Material) by Extraction and Gravimetry, PB99–121949 and EPA–821–R–10–001, February 2010. IBR approved for part 261, appendix IX.

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PART 423—STEAM ELECTRIC POWER GENERATING POINT SOURCE CATEGORY

13. The authority citation for part 423 continues to read as follows:

Authority: Secs. 301; 304(b), (c), (e), and (g); 306(b) and (c); 307(b) and (c); and 501, Clean Water Act (Federal Water Pollution Control Act Amendments of 1972, as amended by Clean Water Act of 1977) (the "Act"; 33 U.S.C. 1311; 1314(b), (c), (e), and (g); 1316(b) and (c); 1317(b) and (c); and 1361; 86 Stat. 816, Pub. L. 92–500; 91 Stat. 1567, Pub. L. 95–217), unless otherwise noted.

14. Section 423.11 is amended by revising paragraphs (a) and (l) to read as follows:

§ 423.11 Specialized definitions.

* * * * *

(a) The term *total residual chlorine* (or total residual oxidants for intake water with bromides) means the value obtained using any of the "chlorine-total residual" methods in Table IB 136.3(a), or other methods approved by the permitting authority.

* * * * *

(l) The term *free available chlorine* means the value obtained using any of the "chlorine-free available" methods in Table IB 136.3(a) where the method has the capability of measuring free available chlorine, or other methods approved by the permitting authority.

* * * * *

PART 430—PULP, PAPER, AND PAPERBOARD POINT SOURCE CATEGORY

15. The authority citation for part 430 continues to read as follows:

Authority: Secs. 301, 304, 306, 307, 308, 402, and 501, Clean Water Act as amended, (33 U.S.C. 1311, 1314, 1316, 1317, 1318, 1342, and 1361) and Section 112 of the Clean Air Act, as amended (42 U.S.C. 7412).

General Provisions

16. Section 430.01 is amended by revising paragraph (a) and by adding paragraphs (s) through (v) to read as follows:

§ 430.01 General definitions.

* * * * *

(a) *Adsorbable organic halides (AOX).* A bulk parameter that measures the total mass of chlorinated organic matter in water and wastewater. The approved method of analysis for AOX is Method 1650, listed in Table 1C at 40 CFR 136.3.

* * * * *

(s) *TCDD.* 2,3,7,8-tetrachlorodibenzop-dioxin. The approved method of analysis for TCDD is Method 1613B, listed in Table 1C at 40 CFR 136.3.

(t) *TCDF.* 2,3,7,8-tetrachlorodibenzop-furan. The approved method of analysis for TCDF is Method 1613B, listed in Table 1C at 40 CFR 136.3.

(u) Chloroform is listed with approved methods of analysis in Table 1C at 40 CFR 136.3.

(v) The approved method of analysis for the following chlorinated phenolic compounds is Method 1653, listed in Table 1C at 40 CFR 136.3:

(1) Trichlorosyringol.
(2) 3,4,5-trichlorocatechol.
(3) 3,4,6-trichlorocatechol.
(4) 3,4,5-trichloroguaiacol.
(5) 3,4,6-trichloroguaiacol.
(6) 4,5,6-trichloroguaiacol.
(7) 2,4,5-trichlorophenol.
(8) 2,4,6-trichlorophenol.
(9) Tetrachlorocatechol.
(10) Tetrachloroguaiacol.
(11) 2,3,4,6-tetrachlorophenol.
(12) Pentachlorophenol.

PART 435—OIL AND GAS EXTRACTION POINT SOURCE CATEGORY

17. The authority citation for part 435 continues to read as follows:

Authority: 33 U.S.C. 1311, 1314, 1316, 1317, 1318, 1342, and 1361.

18. Section 435.11 is amended as follows:

a. By revising paragraph (d).
b. By revising paragraph (e).
c. By revising paragraph (k)(2).
d. By revising paragraph (o).
e. By revising paragraph (t).
f. By revising paragraph (u).
g. By revising paragraph (x).
h. By revising paragraph (ee).
i. By revising paragraph (gg).
j. By revising paragraph (hh).
k. By revising paragraph (ss).
l. By adding paragraph (uu).

§ 435.11 Specialized definitions.

* * * * *

(d) *Base fluid retained on cuttings* as applied to BAT effluent limitations and NSPS refers to the "Determination of the Amount of Non-Aqueous Drilling Fluid (NAF) Base Fluid from Drill Cuttings by a Retort Chamber (Derived from API Recommended Practice 13B–2)", EPA Method 1674, which is published in "Analytic Methods for the Oil and Gas Extraction Point Source Category," EPA–821–R–09–013. See paragraph (uu) of this section.

(e) *Biodegradation rate* as applied to BAT effluent limitations and NSPS for drilling fluids and drill cuttings refers to the "Protocol for the Determination of Degradation of Non Aqueous Base Fluids in a Marine Closed Bottle Biodegradation Test System: Modified ISO 11734:1995," EPA Method 1647, supplemented with "Procedure for Mixing Base Fluids With Sediments," EPA Method 1646. Both EPA Method 1646 and 1647 are published in "Analytic Methods for the Oil and Gas Extraction Point Source Category," EPA–821–R–09–013. See paragraph (uu) of this section.

* * * * *

(k) * * *

(2) *Dry drill cuttings* means the residue remaining in the retort vessel after completing the retort procedure specified in EPA Method 1674, which is published in "Analytic Methods for the Oil and Gas Extraction Point Source Category," EPA–821–R–09–013. See paragraph (uu) of this section.

* * * * *

(o) *Formation oil* means the oil from a producing formation which is detected in the drilling fluid, as determined by the GC/MS compliance assurance method when the drilling fluid is analyzed before being shipped offshore, and as determined by the RPE method, EPA Method 1670, when the drilling fluid is analyzed at the offshore point of discharge. The GC/MS compliance assurance method and the RPE method approved for use with this part are published in the "Analytic Methods for the Oil and Gas Extraction Point Source Category," EPA–821–R–09–013. See paragraph (uu) of this section. Detection of formation oil by the RPE method may be confirmed by the GC/MS compliance assurance method, and the results of the GC/MS compliance assurance method shall apply instead of those of the RPE method.

* * * * *

(t) *Maximum weighted mass ratio averaged over all NAF well sections* for BAT effluent limitations and NSPS for base fluid retained on cuttings means the weighted average base fluid retention for all NAF well sections as determined by EPA Method 1674, which is published in "Analytic Methods for the Oil and Gas Extraction Point Source Category," EPA–821–R–09–013. See paragraph (uu) of this section.

(u) *Method 1654A* refers to EPA Method 1654, Revision A, entitled "PAH Content of Oil by HPLC/UV," December 1992, which is published in "Analytic Methods for the Oil and Gas Extraction Point Source Category," EPA–821–R–09–013. See paragraph (uu) of this section.

* * * * *

(x) *No discharge of free oil* means that waste streams may not be discharged that contain free oil as evidenced by the monitoring method specified for that particular stream, *e.g.,* deck drainage or miscellaneous discharges cannot be discharged when they would cause a film or sheen upon or discoloration of the surface of the receiving water; drilling fluids or cuttings may not be discharged when they fail EPA Method 1617 (Static Sheen Test), which is published in "Analytic Methods for the Oil and Gas Extraction Point Source Category," EPA–821–R–09–013. See paragraph (uu) of this section.

* * * * *

(ee) *Sediment toxicity* as applied to BAT effluent limitations and NSPS for drilling fluids and drill cuttings refers to the ASTM E 1367–92 method: "Standard Guide for Conducting 10-day Static Sediment Toxicity Tests with Marine and Estuarine Amphipods," 1992, with *Leptocheirus plumulosus* as the test organism and sediment preparation procedures specified in EPA Method 1646, which is published in "Analytic Methods for the Oil and Gas Extraction Point Source Category," EPA–821–R–09–013. See paragraph (uu) of this section. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from the American Society for Testing and Materials, 100 Barr Harbor Drive, West Conshohocken, PA, 19428. Copies may be inspected 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 copy may also be inspected at EPA's Water Docket, 1200 Pennsylvania Ave., NW., Washington, DC 20460.

* * * * *

(gg) *SPP toxicity* as applied to BAT effluent limitations and NSPS for drilling fluids and drill cuttings refers to the bioassay test procedure, "Suspended Particulate Phase (SPP) Toxicity Test," presented in EPA Method 1619, which is published in "Analytic Methods for the Oil and Gas Extraction Point Source Category," EPA–821–R–09–013. See paragraph (uu) of this section.

(hh) *Static sheen test* means the standard test procedure that has been developed for this industrial subcategory for the purpose of demonstrating compliance with the requirement of no discharge of free oil. The methodology for performing the static sheen test is presented in EPA Method 1617, which is published in "Analytic Methods for the Oil and Gas Extraction Point Source Category," EPA–821–R–09–013. See paragraph (uu) of this section.

* * * * *

(ss) C_{16}–C_{18} *internal olefin drilling fluid* means a C_{16}–C_{18} internal olefin drilling fluid formulated as specified in Appendix 1 of Subpart A of this part.

* * * * *

(uu) *Analytic Methods for the Oil and Gas Extraction Point Source Category* is the EPA document, EPA–821–R–09–013, that compiles analytic methods for this category. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be inspected 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 copy may also be inspected at EPA's

Water Docket, 1200 Pennsylvania Ave., NW., Washington, DC 20460.

19. In § 435.12, the first footnote to the table is revised to read as follows:

§ 435.12 Effluent limitations guidelines representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available (BPT).

* * * * *

BPT EFFLUENT LIMITATIONS—OIL AND GREASE

* * * * *

* * * * *

[1] No discharge of free oil. See § 435.11(x).

* * * * *

20. In § 435.13, footnotes 2, 3, and 5 through 11 to the table are revised to read as follows:

§ 435.13 Effluent limitations guidelines representing the degree of effluent reduction attainable by the application of the best available technology economically achievable (BAT).

* * * * *

BAT EFFLUENT LIMITATIONS

* * * *

[2] As determined by the suspended particulate phase (SPP) toxicity test. See § 435.11(gg).

[3] As determined by the static sheen test. See § 435.11(hh).

* * * * *

[5] PAH mass ratio = Mass (g) of PAH (as phenanthrene)/Mass (g) of stock base fluid as determined by EPA Method 1654, Revision A, [specified at § 435.11(u)] entitled "PAH Content of Oil by HPLC/UV," December 1992, which is published in "Analytic Methods for the Oil and Gas Extraction Point Source Category," EPA–821–R–09–013. See § 435.11(uu).

[6] Base fluid sediment toxicity ratio = 10-day LC_{50} of C_{16}–C_{18} internal olefin/10-day LC_{50} of stock base fluid as determined by ASTM E 1367–92 [specified at § 435.11(ee)] method: "Standard Guide for Conducting 10-day Static Sediment Toxicity Tests with Marine and Estuarine Amphipods," 1992, after preparing the sediment according to the procedure specified in EPA Method 1646, which is published in "Analytic Methods for the Oil and Gas Extraction Point Source Category," EPA–821–R–09–013. See § 435.11(uu).

[7] Biodegradation rate ratio = Cumulative headspace gas production (ml) of C_{16}–C_{18} internal olefin/Cumulative headspace gas production (ml) of stock base fluid, both at 275 days as determined by EPA Method 1647, which is published in "Analytic Methods for the Oil and Gas Extraction Point Source Category," EPA–821–R–09–013. See § 435.11(e) and (uu).

[8] Drilling fluid sediment toxicity ratio = 4-day LC_{50} of C_{16}–C_{18} internal olefin drilling fluid/4-day LC_{50} of drilling fluid removed from drill cuttings at the solids control equipment as determined by ASTM E 1367–92 method: "Standard Guide for Conducting 10-day Static Sediment Toxicity Tests with Marine and Estuarine Amphipods," 1992, with *Leptocheirus plumulosus* as the test organism and sediment preparation procedures specified in EPA Method 1646, which is published in "Analytic Methods for the Oil and Gas Extraction Point Source Category," EPA–821–R–09–013. See § 435.11(ee) and (uu).

[9] As determined before drilling fluids are shipped offshore by the GC/MS compliance assurance method (EPA Method 1655), and as determined prior to discharge by the RPE method (EPA Method 1670) applied to drilling fluid removed from drill cuttings. If the operator wishes to confirm the results of the RPE method (EPA Method 1670), the operator may use the GC/MS compliance assurance method (EPA Method 1655). Results from the GC/MS compliance assurance method (EPA Method 1655) shall supersede the results of the RPE method (EPA Method 1670). EPA Method 1655 and 1670 are published in "Analytic Methods for the Oil and Gas Extraction Point Source Category," EPA–821–R–09–013. See § 435.11(uu).

[10] Maximum permissible retention of non-aqueous drilling fluid (NAF) base fluid on wet drill cuttings averaged over drilling intervals using NAFs as determined by EPA Method 1674, which is published in "Analytic Methods for the Oil and Gas Extraction Point Source Category," EPA–821–R–09–013. See § 435.11(uu). This limitation is applicable for NAF base fluids that meet the base fluid sediment toxicity ratio (Footnote 6), biodegradation rate ratio (Footnote 7), PAH, mercury, and cadmium stock limitations (C_{16}–C_{18} internal olefin) defined above in this table.

[11] Maximum permissible retention of non-aqueous drilling fluid (NAF) base fluid on wet drill cuttings averaged over drilling intervals using NAFs as determined by EPA Method 1674, which is published in "Analytic Methods for the Oil and Gas Extraction Point Source Category," EPA–821–R–09–013. See § 435.11(uu). This limitation is applicable for NAF base fluids that meet the ester base fluid sediment toxicity ratio and ester biodegradation rate ratio stock limitations defined as:

(a) Ester base fluid sediment toxicity ratio = 10-day LC_{50} of C_{12}–C_{14} ester or C_8 ester/10-day LC_{50} of stock base fluid as determined by ASTM E 1367–92 method: "Standard Guide for Conducting 10-day Static Sediment Toxicity Tests with Marine and Estuarine Amphipods," 1992, with *Leptocheirus plumulosus* as the test organism and sediment preparation procedures specified in EPA Method 1646, which is published in "Analytic Methods for the Oil and Gas Extraction Point Source Category," EPA–821–R–09–013. See § 435.11(ee) and (uu);

(b) Ester biodegradation rate ratio = Cumulative headspace gas production (ml) of C_{12}–C_{14} ester or C_8 ester/Cumulative headspace gas production (ml) of stock base fluid, both at 275 days as determined by EPA Method 1647, which is published in "Analytic Methods for the Oil and Gas Extraction Point Source Category," EPA–821–R–09–013. See § 435.11(e) and (uu); and (c) PAH mass ratio (Footnote 5), mercury, and cadmium stock limitations (C_{16}–C_{18} internal olefin) defined above in this table.

21. In § 435.14, footnote 2 to the table is revised to read as follows:

§ 435.14 Effluent limitations guidelines representing the degree of effluent reduction attainable by the application of the best conventional pollutant control technology (BCT).

* * * * *

BAT EFFLUENT LIMITATIONS

* * * *

[2] As determined by the static sheen test. See § 435.11(hh).

* * * * *

22. In § 435.15, footnotes 2, 3, and 5 through 11 to the table are revised to read as follows:

§ 435.15 Standards of performance for new sources (NSPS).

* * * * *

NEW SOURCE PERFORMANCE STANDARDS

* * * * *

[2] As determined by the suspended particulate phase (SPP) toxicity test. See § 435.11(gg).

[3] As determined by the static sheen test. See § 435.11(hh).

* * * * *

[5] PAH mass ratio = Mass (g) of PAH (as phenanthrene)/Mass (g) of stock base fluid as determined by EPA Method 1654, Revision A, [specified at § 435.11(u)] entitled "PAH Content of Oil by HPLC/UV," December 1992, which is published in "Analytic Methods for the Oil and Gas Extraction Point Source Category," EPA–821–R–09–013. See § 435.11(uu).

[6] Base fluid sediment toxicity ratio = 10-day LC_{50} of C_{16}–C_{18} internal olefin/10-day LC_{50} of stock base fluid as determined by ASTM E 1367–92 [specified at § 435.11(ee)] method: "Standard Guide for Conducting 10-day Static Sediment Toxicity Tests with Marine and Estuarine Amphipods," 1992, after preparing the sediment according to the procedure specified in EPA Method 1646, which is published in "Analytic Methods for the Oil and Gas Extraction Point Source Category," EPA–821–R–09–013. See § 435.11(uu).

[7] Biodegradation rate ratio = Cumulative headspace gas production (ml) of C_{16}–C_{18} internal olefin/Cumulative headspace gas production (ml) of stock base fluid, both at 275 days as determined by EPA Method 1647, which is published in "Analytic Methods for the Oil and Gas Extraction Point Source Category," EPA–821–R–09–013. See § 435.11(e) and (uu).

[8] Drilling fluid sediment toxicity ratio = 4-day LC_{50} of C_{16}–C_{18} internal olefin drilling fluid/4-day LC_{50} of drilling fluid removed from drill cuttings at the solids control equipment as determined by ASTM E 1367–92 method: "Standard Guide for Conducting 10-day Static Sediment Toxicity Tests with Marine and Estuarine Amphipods," 1992, with *Leptocheirus plumulosus* as the test organism and sediment preparation procedures specified in EPA Method 1646, which is published in "Analytic Methods for the Oil and Gas Extraction Point Source Category," EPA–821–R–09–013. See § 435.11(ee) and (uu).

[9] As determined before drilling fluids are shipped offshore by the GC/MS compliance assurance method (EPA Method 1655), and as determined prior to discharge by the RPE method (EPA Method 1670) applied to drilling fluid removed from drill cuttings. If the operator wishes to confirm the results of the RPE method (EPA Method 1670), the operator may use the GC/MS compliance assurance method (EPA Method 1655). Results from the GC/MS compliance assurance method (EPA Method 1655) shall supersede the results of the RPE method (EPA Method 1670). EPA Method 1655 and 1670 are published in "Analytic Methods for the Oil and Gas Extraction Point Source Category," EPA–821–R–09–013. See § 435.11(uu).

[10] Maximum permissible retention of non-aqueous drilling fluid (NAF) base fluid on wet drill cuttings averaged over drilling intervals using NAFs as determined by EPA Method 1674, which is published in "Analytic Methods for the Oil and Gas Extraction Point Source Category," EPA–821–R–09–013. See § 435.11(uu). This limitation is applicable for NAF base fluids that meet the base fluid sediment toxicity ratio (Footnote 6), biodegradation rate ratio (Footnote 7), PAH, mercury, and cadmium stock limitations (C_{16}–C_{18} internal olefin) defined above in this table.

[11] Maximum permissible retention of non-aqueous drilling fluid (NAF) base fluid on wet drill cuttings average over drilling intervals using NAFs as determined by EPA Method 1674, which is published in "Analytic Methods for the Oil and Gas Extraction Point Source Category," EPA–821–R–09–013. See § 435.11(uu). This limitation is applicable for NAF base fluids that meet the ester base fluid sediment toxicity ratio and ester biodegradation rate ratio stock limitations defined as:

(a) Ester base fluid sediment toxicity ratio = 10-day LC_{50} of C_{12}–C_{14} ester or C_8 ester/10-day LC_{50} of stock base fluid as determined by ASTM E 1367–92 method: "Standard Guide for Conducting 10-day Static Sediment Toxicity Tests with Marine and Estuarine Amphipods," 1992, with *Leptocheirus plumulosus* as the test organism and sediment preparation procedures specified in EPA Method 1646, which is published in "Analytic Methods for the Oil and Gas Extraction Point Source Category," EPA–821–R–09–013. See § 435.11(ee) and (uu);

(b) Ester biodegradation rate ratio = Cumulative headspace gas production (ml) of C_{12}–C_{14} ester or C_8 ester/Cumulative headspace gas production (ml) of stock base fluid, both at 275 days as determined by EPA Method 1647, which is published in "Analytic Methods for the Oil and Gas Extraction Point Source Category," EPA–821–R–09–013. See § 435.11(e) and (uu); and (c) PAH mass ratio (Footnote 5), mercury, and cadmium stock limitations (C_{16}–C_{18} internal olefin) defined above in this table.

23. Subpart A of part 435 is amended by removing Appendices 1 through 7.

24. Subpart A of part 435 is amended by redesignating Appendix 8 as Appendix 1.

Subpart D—Coastal Subcategory

25. Section 435.41 is amended,

a. By revising paragraph (d).
b. By revising paragraph (e).
c. By revising paragraph (k).
d. By revising paragraph (m)(2).
e. By revising paragraph (q).
f. By revising paragraph (r).
g. By revising paragraph (y).
h. By revising paragraph (ee).
i. By revising paragraph (ff).
j. By adding paragraph (mm).

§ 435.41 Specialized definitions.

* * * * *

(d) *Base fluid retained on cuttings* as applied to BAT effluent limitations and NSPS refers to the "Determination of the Amount of Non-Aqueous Drilling Fluid (NAF) Base Fluid from Drill Cuttings by a Retort Chamber (Derived from API Recommended Practice 13B–2)", EPA Method 1674, which is published in "Analytic Methods for the Oil and Gas Extraction Point Source Category," EPA–821–R–09–013. See paragraph (mm) of this section.

(e) *Biodegradation rate* as applied to BAT effluent limitations and NSPS for drilling fluids and drill cuttings refers to the "Protocol for the Determination of Degradation of Non Aqueous Base Fluids in a Marine Closed Bottle Biodegradation Test System: Modified ISO 11734:1995," EPA Method 1647, supplemented with "Procedure for Mixing Base Fluids With Sediments," EPA Method 1646. Both EPA Method 1646 and 1647 are published in "Analytic Methods for the Oil and Gas Extraction Point Source Category," EPA–821–R–09–013. See paragraph (mm) of this section.

* * * * *

(k) *Diesel oil* refers to the grade of distillate fuel oil, as specified in the American Society for Testing and Materials Standard Specification for Diesel Fuel Oils D975–91, that is typically used as the continuous phase in conventional oil-based drilling fluids. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from the American Society for Testing and Materials, 100 Barr Harbor Drive, West Conshohocken, PA 19428. Copies may be inspected 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 copy may also be inspected at EPA's Water Docket, 1200 Pennsylvania Ave., NW., Washington, DC 20460.

* * * * *

(m) * * *

(2) *Dry drill cuttings* means the residue remaining in the retort vessel after completing the retort procedure specified in EPA Method 1674, which is published in "Analytic Methods for the Oil and Gas Extraction Point Source Category," EPA–821–R–09–013. See paragraph (mm) of this section.

* * * * *

(q) *Formation oil* means the oil from a producing formation which is detected in the drilling fluid, as determined by the GC/MS compliance assurance method, EPA Method 1655, when the drilling fluid is analyzed before being shipped offshore, and as determined by the RPE method, EPA Method 1670, when the drilling fluid is analyzed at the offshore point of discharge. The GC/MS compliance assurance method and the RPE method approved for use with this part are published in the "Analytic Methods for the Oil and Gas Extraction Point Source Category," EPA–821–R–09–013. See paragraph (mm) of this section. Detection of formation oil by the RPE method may be confirmed by the GC/MS compliance assurance method, and the results of the GC/MS compliance assurance method shall supersede those of the RPE method.

(r) *Garbage* means all kinds of victual, domestic, and operational waste, excluding fresh fish and parts thereof, generated during the normal operation of coastal oil and gas facility and liable to be disposed of continuously or periodically, except dishwater, graywater, and those substances that are defined or listed in other Annexes to MARPOL 73/78. A copy of MARPOL may be inspected at EPA's Water Docket, 1200 Pennsylvania Ave., NW., Washington, DC 20460.

* * * * *

(y) *No discharge of free oil* means that waste streams may not be discharged that contain free oil as evidenced by the monitoring method specified for that particular stream, *e.g.,* deck drainage or miscellaneous discharges cannot be discharged when they would cause a film or sheen upon or discoloration of the surface of the receiving water; drilling fluids or cuttings may not be discharged when they fail EPA Method 1617 (Static Sheen Test), which is published in "Analytic Methods for the Oil and Gas Extraction Point Source Category," EPA–821–R–09–013. See paragraph (mm) of this section.

* * * * *

(ee) *SPP toxicity* as applied to BAT effluent limitations and NSPS for drilling fluids and drill cuttings refers to the bioassay test procedure, "Suspended Particulate Phase (SPP) Toxicity Test," presented in EPA Method 1619, which is published in "Analytic Methods for the Oil and Gas Extraction Point Source Category," EPA–821–R–09–013. See paragraph (mm) of this section.

(ff) *Static sheen test* means the standard test procedure that has been

developed for this industrial subcategory for the purpose of demonstrating compliance with the requirement of no discharge of free oil. The methodology for performing the static sheen test is presented in EPA Method 1617, which is published in "Analytic Methods for the Oil and Gas Extraction Point Source Category," EPA–821–R–09–013. See paragraph (mm) of this section.

* * * * *

(mm) *Analytic Methods for the Oil and Gas Extraction Point Source Category* is the EPA document, EPA–821–R–09–013, that compiles analytic methods for this category. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be inspected 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 copy may also be inspected at EPA's Water Docket, 1200 Pennsylvania Ave., NW., Washington, DC 20460.

26. In § 435.42, footnote 1 to the table is revised to read as follows:

§ 435.42 Effluent limitations guidelines representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available (BPT).

* * * * *

[1] No discharge of free oil. See § 435.41(y).

* * * * *

27. In § 435.43, footnotes 2 and 4 are revised to read as follows:

§ 435.43 Effluent limitations guidelines representing the degree of effluent reduction attainable by the application of the best available technology economically achievable (BAT).

* * * * *

BAT EFFLUENT LIMITATIONS

* * * * *

[2] As determined by the static sheen test. See § 435.41(ff).

* * * * *

[4] As determined by the suspended particulate phase (SPP) toxicity test. See § 435.41(ee).

* * * * *

28. In § 435.44 footnote 2 to the table is revised to read as follows:

§ 435.44 Effluent limitations guidelines representing the degree of effluent reduction attainable by the application of the best conventional pollutant control technology (BCT).

* * * * *

BAT EFFLUENT LIMITATIONS

* * * * *

[2] As determined by the static sheen test. See § 435.41(ff).

* * * * *

29. In § 435.45, footnotes 2 and 4 to the table are revised to read as follows:

§ 435.45 Standards of performance for new sources (NSPS).

* * * * *

NSPS EFFLUENT LIMITATIONS

* * * * *

[2] As determined by the static sheen test. See § 435.41(ff).

* * * * *

[4] As determined by the suspended particulate phase (SPP) toxicity test. See § 435.41(ee).

* * * * *

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Federal Register

Thursday,
September 23, 2010

Part III

Environmental Protection Agency

40 CFR Parts 85, 86 and 600

Department of Transportation

National Highway Traffic Safety Administration

49 CFR Part 575

Revisions and Additions to Motor Vehicle Fuel Economy Label; Proposed Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 85, 86 and 600

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 575

[EPA–HQ–OAR–2009–0865; FR–9197–3; NHTSA–2010–0087]

RIN 2060–AQ09; RIN 2127–AK73

Revisions and Additions to Motor Vehicle Fuel Economy Label

AGENCY: Environmental Protection Agency (EPA) and National Highway Traffic Safety Administration (NHTSA), Department of Transportation.

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) and the National Highway Traffic Safety Administration (NHTSA) are conducting a joint rulemaking to redesign and add information to the current fuel economy label that is posted on the window sticker of all new cars and light-duty trucks sold in the U.S. The redesigned label will provide new information to American consumers about the fuel economy and consumption, fuel costs, and environmental impacts associated with purchasing new vehicles beginning with model year 2012 cars and trucks. This action will also develop new labels for certain advanced technology vehicles, which are poised to enter the U.S. market, in particular plug-in hybrid electric vehicles and electric vehicles.

NHTSA and EPA are proposing these changes because the Energy Independence and Security Act (EISA) of 2007 imposes several new labeling requirements, because the agencies believe that the current labels can be improved to help consumers make more informed vehicle purchase decisions, and because the time is right to develop new labels for advanced technology vehicles that are being commercialized. This proposal is also consistent with the recent joint rulemaking by EPA and NHTSA that established harmonized federal greenhouse gas (GHG) emissions and corporate average fuel economy (CAFE) standards for new cars, sport utility vehicles, minivans, and pickup trucks for model years 2012–2016.

DATES: *Comments:* Comments must be received on or before November 22, 2010. Under the Paperwork Reduction Act, comments on the information collection provisions must be received by the Office of Management and Budget (OMB) on or before October 25, 2010. *See* the **SUPPLEMENTARY INFORMATION** section on "Public Participation" for more information about written comments.

Hearings: NHTSA and EPA will jointly hold two public hearings; one in Chicago on October 14, 2010, and one in Los Angeles on October 21, 2010, with both daytime and evening sessions at each location. EPA and NHTSA will announce the specific hearing locations and times of day in a separate **Federal Register** announcement. *See* the **SUPPLEMENTARY INFORMATION** section on "Public Participation" for more information about the public hearings.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–HQ–OAR–2009–0865 and/or NHTSA–2010–0087, by one of the following methods:

- *http://www.regulations.gov:* Follow the on-line instructions for submitting comments.
- *E-mail: newlabels@epa.gov.*
- *Fax:* EPA: (202) 566–1741; NHTSA: (202) 493–2251.
- *Mail:*
  - *EPA:* Environmental Protection Agency, EPA Docket Center (EPA/DC), Air and Radiation Docket, Mail Code 2822T, 1200 Pennsylvania Avenue, NW., Washington, DC 20460, Attention Docket ID No. EPA–HQ–OAR–2009–0865.
  - *NHTSA:* Docket Management Facility, M–30, U.S. Department of Transportation, West Building, Ground Floor, Rm. W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590.
  - In addition, please mail a copy of your comments on the information collection provisions to the Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Attn: Desk Officer for EPA, 725 17th St., NW., Washington, DC 20503.
- *Hand Delivery:*
  - *EPA:* Docket Center, (EPA/DC) EPA West, Room B102, 1301 Constitution Ave., NW., Washington, DC, Attention Docket ID No. EPA–HQ–OAR–2009–0865. Such deliveries are only accepted during the Docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information.
  - *NHTSA:* West Building, Ground Floor, Rm. W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590, between 9 a.m. and 5 p.m. Eastern Time, Monday through Friday, except Federal Holidays.

Instructions: Direct your comments to Docket ID No. EPA–HQ–OAR–2009–0865 and/or NHTSA–2010–0087. *See* the **SUPPLEMENTARY INFORMATION** section on "Public Participation" for more information about submitting written comments.

Public Hearing: NHTSA and EPA will jointly hold two public hearings; one in Chicago on October 14, 2010, and one in Los Angeles on October 21, 2010, with both daytime and evening sessions at each location. EPA and NHTSA will announce the specific hearing locations and times of day in a separate **Federal Register** announcement. See the **SUPPLEMENTARY INFORMATION** section on "Public Participation" for more information about the public hearings.

Docket: All documents in the dockets are listed in the *http://www.regulations.gov* index. Although listed in the index, some information is not publicly available, *e.g.,* confidential business information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available in hard copy in EPA's docket, and electronically in NHTSA's online docket. Publicly available docket materials are available either electronically in *http://www.regulations.gov* or in hard copy at the following locations: *EPA:* EPA Docket Center, 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. NHTSA: Docket Management Facility, M–30, U.S. Department of Transportation, West Building, Ground Floor, Rm. W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590. The Docket Management Facility is open between 9 a.m. and 5 p.m. Eastern Time, Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: EPA: Lucie Audette, Office of Transportation and Air Quality, Assessment and Standards Division, Environmental Protection Agency, 2000 Traverwood Drive, Ann Arbor MI 48105; telephone number: 734–214–4850; fax number: 734–214–4816; e-mail address: *audette.lucie@epa.gov,* or Assessment and Standards Division Hotline; telephone number (734) 214–4636; e-mail address *asdinfo@epa.gov. NHTSA:* Gregory Powell, National Highway Traffic Safety Administration, 1200 New Jersey Avenue, SE., Washington, DC 20590. Telephone: (202) 366–5206; Fax: (202) 493–2990; e-mail address: *gregory.powell@dot.gov.*

SUPPLEMENTARY INFORMATION:

A. Does this action apply to me?

This action affects companies that manufacture or sell new light-duty vehicles, light-duty trucks, and medium-duty passenger vehicles, as defined under EPA's CAA regulations,[1] [2] and passenger automobiles (passenger cars) and non-passenger automobiles (light trucks) as defined under NHTSA's CAFE regulations.[3] Regulated categories and entities include:

Category	NAICS Codes[A]	Examples of potentially regulated entities
Industry	336111 336112	Motor vehicle manufacturers.
Industry	811112 811198 423110	Commercial Importers of Vehicles and Vehicle Components.
Industry	336211	Stretch limousine manufacturers and hearse manufacturers.
Industry	441110	Automobile dealers.

[A] North American Industry Classification System (NAICS).

This list is not intended to be exhaustive, but rather provides a guide regarding entities likely to be regulated by this action. To determine whether particular activities may be regulated by this action, you should carefully examine the regulations. You may direct questions regarding the applicability of this action to the person listed in **FOR FURTHER INFORMATION CONTACT**.

B. Public Participation

NHTSA and EPA request comment on all aspects of this joint proposed rule. This section describes how you can participate in this process.

How do I prepare and submit comments?

In this joint proposal, there are many issues common to both EPA's and NHTSA's proposals. For the convenience of all parties, comments submitted to the EPA docket (whether hard copy or electronic) will be considered comments submitted to both EPA and the NHTSA docket, and vice versa. Therefore, the public only needs to submit one set of comments to either one of the two agency dockets that will be reviewed by both agencies. Comments that are submitted for consideration by only one agency should be identified as such, and comments that are submitted for consideration by both agencies should be identified as such. Absent such identification, each agency will exercise its best judgment to determine whether a comment is submitted on its proposal.

Further instructions for submitting comments to either the EPA or NHTSA docket are described below.

EPA: Direct your comments to Docket ID No EPA–HQ–OAR–2009–0865. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *http://www.regulations.gov,* including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through *http://www.regulations.gov* or 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 *http://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.*

NHTSA: Your comments must be written and in English. To ensure that your comments are correctly filed in the docket, please include the Docket Number NHTSA–2010–0087 in your comments. Your comments must not be more than 15 pages long.[4] NHTSA established this limit to encourage you to write your primary comments in a concise fashion. However, you may attach necessary additional documents to your comments. There is no limit on the length of the attachments. If you are submitting comments electronically as a PDF (Adobe) file, we ask that the documents submitted be scanned using the Optical Character Recognition (OCR) process, thus allowing the agency to search and copy certain portions of your submissions.[5] Please note that pursuant to the Data Quality Act, in order for the substantive data to be relied upon and used by the agencies, it must meet the information quality standards set forth in the OMB and Department of Transportation (DOT) Data Quality Act guidelines. Accordingly, we encourage you to consult the guidelines in preparing your comments. OMB's guidelines may be accessed at *http://www.whitehouse.gov/omb/fedreg_reproducible* (last accessed June 2, 2010), and DOT's guidelines may be accessed at *http://regs.dot.gov* (last accessed June 22, 2010).

Tips for Preparing Your Comments

When submitting comments, please remember to:

- Identify the rulemaking by docket numbers and other identifying information (subject heading, **Federal Register** date and page number).
- Follow directions—The agencies may ask you to respond to specific questions or organize comments by referencing a Code of Federal

[1] "Light-duty vehicle," "light-duty truck," and "medium-duty passenger vehicle" are defined in 40 CFR 86.1803–01.

[2] Generally, the term "light-duty vehicle" means a passenger car, the term "light-duty truck" means a pick-up truck, sport-utility vehicle, or minivan of up to 8,500 lbs gross vehicle weight rating, and "medium-duty passenger vehicle" means a sport-utility vehicle or passenger van from 8,500 to 10,000 lbs gross vehicle weight rating. Medium-duty passenger vehicles do not include pick-up trucks.

[3] "Passenger car" and "light truck" are defined in 49 CFR part 523.

[4] 49 CFR 553.21.

[5] Optical character recognition (OCR) is the process of converting an image of text, such as a scanned paper document or electronic fax file, into computer-editable text.

Regulations (CFR) part or section number.

• Explain why you agree or disagree, suggest alternatives, and substitute language for your requested changes.

• Describe any assumptions and provide any technical information and/or data that you used.

• If you estimate potential costs or burdens, explain how you arrived at your estimate in sufficient detail to allow for it to be reproduced.

• Provide specific examples to illustrate your concerns and suggest alternatives.

• Explain your views as clearly as possible, avoiding the use of profanity or personal threats.

Make sure to submit your comments by the comment period deadline identified in the **DATES** section above.

How do I submit confidential business information?

Any confidential business information (CBI) submitted to one of the agencies will also be available to the other agency.[6] However, as with all public comments, any CBI information only needs to be submitted to either one of the agencies' dockets, and it will be available to the other. Following are specific instructions for submitting CBI to either agency.

EPA: Do not submit CBI to EPA through *http://www.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 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. In addition, you should submit a copy from which you have deleted the claimed confidential business information to the Docket by one of the methods set forth above.

NHTSA: If you wish to submit any information under a claim of confidentiality, you should submit three copies of your complete submission, including the information you claim to be confidential business information, to the Chief Counsel, NHTSA, at the address given above under **FOR FURTHER INFORMATION CONTACT**. When you send a comment containing confidential business information, you should include a cover letter setting forth the information specified in our confidential business information regulation.[7] In addition, you should submit a copy from which you have deleted the claimed confidential business information to the Docket by one of the methods set forth above.

Will the agencies consider late comments?

NHTSA and EPA will consider all comments received before the close of business on the comment closing date indicated above under **DATES**. To the extent practicable, we will also consider comments received after that date. If interested persons believe that any new information the agency places in the docket affects their comments, they may submit comments after the closing date concerning how the agency should consider that information for the final rule. However, the agencies' ability to consider any such late comments in this rulemaking will be limited due to the time frame for issuing a final rule.

If a comment is received too late for us to practicably consider it in developing a final rule, we will consider that comment as an informal suggestion for future rulemaking action.

How can I read the comments submitted by other people?

You may read the materials placed in the docket for this document (*e.g.,* the comments submitted in response to this document by other interested persons) at any time by going to *http://www.regulations.gov.* Follow the online instructions for accessing the dockets. You may also read the materials at the EPA Docket Center or NHTSA Docket Management Facility by going to the street addresses given above under **ADDRESSES**.

How do I participate in the public hearings?

NHTSA and EPA will jointly hold two public hearings; one in Chicago on October 14, 2010, and one in Los Angeles on October 21, 2010, with both daytime and evening sessions at each location. EPA and NHTSA will announce the specific hearing locations and times of day in a separate **Federal Register** announcement.

If you would like to present testimony at the public hearings, we ask that you notify the EPA and NHTSA contact persons listed under **FOR FURTHER INFORMATION CONTACT** at least ten days before the hearing. Once EPA and NHTSA learn how many people have registered to speak at the public hearing, we will allocate an appropriate amount of time to each participant, allowing time for lunch and necessary breaks throughout the day. For planning purposes, each speaker should anticipate speaking for approximately ten minutes, although we may need to adjust the time for each speaker if there is a large turnout. We suggest that you bring copies of your statement or other material for the EPA and NHTSA panels and the audience. It would also be helpful if you send us a copy of your statement or other materials before the hearing. To accommodate as many speakers as possible, we prefer that speakers not use technological aids (*e.g.,* audio-visuals, computer slideshows). However, if you plan to do so, you must notify the contact persons in the **FOR FURTHER INFORMATION CONTACT** section above. You also must make arrangements to provide your presentation or any other aids to NHTSA and EPA in advance of the hearing in order to facilitate set-up. In addition, we will reserve a block of time for anyone else in the audience who wants to give testimony.

The hearing will be held at a site accessible to individuals with disabilities. Individuals who require accommodations such as sign language interpreters should contact the persons listed under **FOR FURTHER INFORMATION CONTACT** section above no later than ten days before the date of the hearing.

NHTSA and EPA will conduct the hearing informally, and technical rules of evidence will not apply. We will arrange for a written transcript of the hearing and keep the official record of the hearing open for 30 days to allow you to submit supplementary information. You may make arrangements for copies of the transcript directly with the court reporter.

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[6] This statement constitutes notice to commenters pursuant to 40 CFR 2.209(c) that EPA will share confidential information received with NHTSA unless commenters specify that they wish to submit their CBI only to EPA and not to both agencies.

[7] 49 CFR part 512.

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List of Acronyms and Abbreviations

A/C Air Conditioning
AC Alternating Current
AIDA Automobile Information Disclosure Act
BTU British Thermal Units
CAA Clean Air Act
CAFE Corporate Average Fuel Economy
CARB California Air Resources Board
CBI Confidential Business Information
CD Charge Depleting
CFR Code of Federal Regulations
CH_4 Methane
CNG Compressed Natural Gas
CO Carbon Monoxide
CO_2 Carbon Dioxide
CREE Carbon-related Exhaust Emissions
CS Charge Sustaining
DOE Department of Energy
DOT Department of Transportation
E85 A mixture of 85% ethanol and 15% gasoline
EISA Energy Independence and Security Act of 2007
EO Executive Order
EPA Environmental Protection Agency
EPCA Energy Policy and Conservation Act
EREV Extended Range Electric Vehicle
EV Electric Vehicle
FCV Fuel Cell Vehicle
FE Fuel Economy
FFV Flexible Fuel Vehicle
FTC Federal Trade Commission
FTP Federal Test Procedure
GHG Greenhouse Gas
GVWR Gross Vehicle Weight Rating
HCHO Formaldehyde
HEV Hybrid Electric Vehicle
HFC Hydrofluorocarbon
HFET Highway Fuel Economy Test
ICI Independent Commercial Importer
IT Information Technology
ICR Information Collection Request
LEV II Low Emitting Vehicle II
LEV II opt 1 Low Emitting Vehicle II, option 1
MDPV Medium Duty Passenger Vehicle
MPG Miles per Gallon
MPGe Miles per Gallon equivalent
MY Model Year
N_2O Nitrous Oxide
NAICS North American Industry Classification System
NEC Net Energy Change
NHTSA National Highway Traffic Safety Administration
NMOG Non-methane Organic Gases
NO_X Oxides of Nitrogen
NPRM Notice of Proposed Rulemaking
NTTAA National Technology Transfer and Advancement Act of 1995
O&M Operations and Maintenance
OCR Optical Character Recognition
OMB Office of Management and Budget
PEF Petroleum Equivalency Factor
PHEV Plug-in Hybrid Electric Vehicle
PM Particulate Matter
PZEV Partial Zero-Emissions Vehicle
R_{CDA} Actual Charge Depleting Range
RESS Rechargeable Energy Storage System
RFA Regulatory Flexibility Act
SAE Society of Automotive Engineers
SAFETEA–LU Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users
SBA Small Business Administration

SFTP Supplemental Federal Test Procedure
SOC State-of-Charge
SULEV II Super Ultra Low Emission Vehicles II
SUV Sport Utility Vehicle
UDDS Urban Dynamometer Driving Schedule
UF Utility Factor
ULEV II Ultra Low Emission Vehicles II
UMRA Unfunded Mandates Reform Act
ZEV Zero Emission Vehicle

I. Overview of Joint EPA/NHTSA Proposal on New Vehicle Labels

A. Summary of and Rationale for Proposed Label Changes

This joint action by the Environmental Protection Agency (EPA) and the National Highway Traffic Safety Administration (NHTSA) proposes what will likely be the most significant overhaul of the federal government's fuel economy label or "sticker" since its inception over 30 years ago.

The current fuel economy label required on all new passenger cars, light-duty trucks, and medium-duty passenger vehicles contains the following core information, as required by statute:

- City and highway fuel economy values in miles per gallon.
- Comparison of the vehicle's combined city/highway fuel economy to a range of comparable vehicles.
- Estimated fuel cost to operate the vehicle for one year.

This joint proposal is designed to update the current label in order to increase the usefulness of the label in helping consumers choose more efficient and environmentally friendly vehicles that would also meet new requirements added by Congress. This proposal also includes new label designs for electric vehicles (EVs) and plug-in hybrid electric vehicles (PHEVs), two advanced vehicle technologies that are beginning to enter the market.

EPA and NHTSA are co-proposing two label designs for public comment without a single primary proposal, although the final rule will adopt only one label design. Both label designs meet statutory requirements and rely on the same underlying data; they differ in how the data is used and presented on the label. One is a more traditional label design that retains the current label's focus on fuel economy values and annual fuel cost projections, with a general label layout more similar to the current label. The second label design contains all appropriate information but prominently features a letter grade to communicate the overall fuel economy and greenhouse gas emissions—along with projected 5-year fuel cost or savings associated with a particular vehicle when compared to an average vehicle. The agencies are also seeking comment on an alternative third label design that follows a more traditional format but presents some information differently. All labels expand upon the content found on the current label and include the following information for conventional vehicles (advanced technology vehicle labels contain additional information tailored to the individual technology):

- City and highway fuel economy values in miles per gallon.
- Combined city/highway fuel consumption in gallons per 100 miles.
- Tailpipe carbon dioxide (CO_2) emissions in grams per mile.
- Annual fuel cost in dollars per year.
- A slider bar comparing the combined fuel economy to all other vehicles.
- A slider bar comparing the CO_2 emissions to all other vehicles.
- A slider bar comparing non-CO_2 ("other" or "smog-related") emissions to all other vehicles.
- A symbol that can be read by a 'Smartphone' for additional consumer information (also known as a QR Code®).
- A reference to a Federal government Web site for additional information.

Despite the fact that the co-proposed labels are based on the same underlying data, they are significantly different in terms of presentation and prominence. The agencies encourage public feedback on the central question of which label design would be more useful and help consumers select more energy efficient and environmentally friendly vehicles that meet their needs, or whether the agencies should consider alternative designs.

NHTSA and EPA are proposing these changes because the Energy Independence and Security Act (EISA) of 2007 mandates several new labeling requirements intended to help consumers make more informed vehicle purchase decisions, and because this is an appropriate time to develop new labels for advanced technology vehicles (Battery Electric or EVs and Plug-In Hybrid Vehicles or PHEVs) that are being commercialized. The agencies believe that a joint label meeting our separate statutory requirements and our shared consumer information objectives makes far more sense for both consumers and manufacturers than separate labels. As a joint rulemaking, this proposal is also consistent with the recent joint rulemaking by EPA and NHTSA that established harmonized federal greenhouse gas (GHG) emissions and corporate average fuel economy (CAFE) standards for new cars, sport utility vehicles, minivans, and pickup trucks for model years 2012–2016.[8]

The agencies believe these new labeling requirements for automobiles are important in light of a growing national interest in both fuel economy and climate change. Historically, consumers have generally paid the most attention to fuel economy when fuel prices increase sharply over a short period of time, such as in 2008, but the agencies believe that this phenomenon has changed and consumers will continue in the future to pay more attention to fuel economy. Based on projections from the U.S. Energy Information Administration that future gasoline prices will increase over coming decades due to global economic growth and oil demand, we believe that it is likely that consumer interest in and use of the fuel economy label will grow over time.[9] In addition, given the increased awareness of consumers regarding climate change and air pollution, more comprehensive information on the emissions performance of vehicles, as required by EISA, could help consumers make more informed decisions on how a vehicle they buy may impact the environment.

It is also important for the agencies to define labeling requirements for advanced vehicle technologies that are nearing commercialization. The existing label has long provided city and highway fuel economy in terms of miles per gallon (MPG) values, which the agencies believe are well recognized and understood by consumers, and which are widely used as metrics for comparing the efficiency of one vehicle to another. Since the late 1970s when the fuel economy label was first established by EPA as required under the Energy Policy Conservation Act (EPCA) of 1975, over 99 percent of the automobiles sold have been conventional, internal-combustion engine vehicles that run on petroleum-based fuels (or a liquid fuel blend dominated by petroleum). When manufacturers produced different advanced technology vehicles, such as compressed natural gas vehicles, EPA has generally addressed the need for labels on a case-by-case basis.

[8] 75 FR 25324, May 7, 2010.

[9] Annual Energy Outlook 2010, Department of Energy, Energy Information Administration, DOE/EIA–0383 (2010), May 11, 2010, available at *http://www.eia.doe.gov/oiaf/aeo/index.html.*

Over the next several model years, however, the agencies expect to see increasing numbers of EVs and PHEVs entering the marketplace. This proposal includes changes to the label to address some of the specific issues raised by the use of grid electricity as a fuel for EVs and PHEVs. These vehicles will be required to display labels containing the same kind of information as conventional vehicles, but some of that information may be better conveyed in different ways, and consumers may be interested in different information for these vehicles. For example, evaluating the performance of a vehicle that uses grid electricity as some or all of its fuel, or the cost of operating such a vehicle, presents unique challenges for making an informed comparison between different EVs and PHEVs, and between advanced technology vehicles and their conventional vehicle counterparts including gasoline and diesel fueled vehicles and hybrid gasoline electric vehicles (HEVs).

The co-proposed label designs present two approaches for addressing the complex challenges associated with labels for these advanced technology vehicles, and the agencies encourage the public to comment on a wide range of possible solutions. The agencies recognize that this is only the first generation of EV and PHEV labels, and we expect to refine them over time as we have done with conventional vehicle labels. Additionally, the agencies recognize that other advanced technology vehicles, such as fuel cell vehicles (FCVs), may enter the marketplace in the near future as well, but for purposes of this first effort we have chosen to focus on EVs and PHEVs. Specific label requirements for other advanced technology vehicles will be developed at a later time as those vehicles enter the market.

This joint proposal is designed to satisfy each agency's statutory responsibilities in a manner that maximizes usefulness for the consumer, while avoiding unnecessary burden on the manufacturers who prepare the vehicle labels. Since 1977, EPA has required auto manufacturers to label all new automobiles,[10] pursuant to EPCA.[11] As amended, EPCA requires that labels shall contain the following information:

(1) The fuel economy of the automobile;

(2) The estimated annual fuel cost of operating the automobile;

(3) The range of fuel economy of comparable vehicles of all manufacturers;

(4) A statement that a booklet is available from the dealer to assist in making a comparison of fuel economy of other automobiles manufactured by all manufacturers in that model year;

(5) The amount of the automobile fuel efficiency tax ("gas guzzler tax") imposed on the sale of the automobile under section 4064 of the Internal Revenue Code of 1986 (26 U.S.C. 4064); and

(6) Other information required or authorized by the EPA Administrator that is related to the information required by (1) through (4) above.[12]

In the Energy Independence and Security Act of 2007 (EISA),[13] Congress required that NHTSA, in consultation with EPA and the Department of Energy (DOE), establish regulations to implement several new labeling requirements for new automobiles.[14] NHTSA must develop a program that requires manufacturers to label new automobiles with information reflecting an automobile's performance with respect to fuel economy and greenhouse gas and other emissions over the useful life of the automobile based on criteria provided by EPA.[15] NHTSA must also develop a rating system that makes it easy for consumers to compare the fuel economy and greenhouse gas and other emissions of automobiles at the point of purchase, including designations of automobiles with the lowest GHG emissions over the useful life of the vehicles, and the highest fuel economy.[16]

Thus, either the basic label for automobiles needs to be expanded to include additional information on performance in terms of fuel economy, greenhouse gas and other emissions, or a new label needs to be required. NHTSA and EPA believe that a joint rulemaking to combine all of these elements into a single revised fuel economy label is the most appropriate way to meet the goals described above, rather than placing the information in two separate labels with duplicative and overlapping information, which could cause consumer confusion and impose unnecessary burden on the manufacturers.[17]

Finally, given the goals described above and the need to provide additional information on the label, the agencies believe that the overall vehicle label design format and content should be reevaluated and could be improved. Simply including the additional information required under EISA for both conventional and advanced technology vehicles necessitates a review of the overall label design.

As described above, the agencies view the purpose of the label as providing information that will be most useful for consumers in making informed decisions regarding the energy efficiency and emissions impacts of the vehicles they purchase. Providing information on energy, environmental performance, and cost can educate consumers in various ways. These metrics have the potential to help people who value this kind of information to make a more informed choice among different vehicles. It also has the potential to inform people who currently place less or even no value on this kind of information, but who may decide it is more important to them at some point in the future. NHTSA and EPA are mindful that this is a complicated issue and that there is no readily ascertainable metric to determine whether we have achieved this somewhat subjective and qualitative purpose. Therefore, EPA and NHTSA are co-proposing two options, and also taking comment on another alternative, that highlight a number of relevant issues on which we seek public comment. The agencies will consider all public comments and publish a final rule in the near future.

B. A Comprehensive Research Program Informed the Development of Proposed Labels

Since today's proposal includes adding important new elements to the existing label as well as creating new labels for advanced technology vehicles, EPA and NHTSA embarked on a comprehensive and innovative research program beginning in the fall of 2009. The research helped inform the development of the new labels being proposed and included three phases of consumer focus groups, a review of available literature, and a day-long consultation with an expert panel of individuals who have introduced new products or have spearheaded national educational campaigns.

For the focus groups, the agencies decided to use a three-phase approach

[10] An "automobile" is defined for these purposes as a "4-wheeled vehicle that is propelled by fuel, or by alternative fuel, manufactured primarily for use on public streets, roads, and highways" and "rated at not more than 8,500 pounds gross vehicle weight." *See* 49 U.S.C. 32901(a)(3) and 32908(a)(1).

[11] Public Law 94–163.

[12] 49 U.S.C. 32908(b).

[13] Public Law 110–140.

[14] EISA Sec. 108, codified at 49 U.S.C. 32908(g).

[15] 49 U.S.C. 32908(g)(1)(a)(i).

[16] 49 U.S.C. 32908(g)(1)(a)(ii).

[17] The agencies also raised the issue of the upcoming labeling requirements in the recent joint rulemaking for MYs 2012–2016 CAFE and GHG standards for light-duty vehicles, 75 FR 25324 (May 7, 2010).

in order to accommodate the sheer amount of information intended to be covered in the groups, as well as to use each phase to inform the next phase to help evolve the overall label design in regard to both content and appearance. Focus groups were held beginning in late February through May 2010 in four cities: Charlotte, Houston, Chicago, and Seattle. Overall, 32 focus groups were convened with a total of 256 participants. We asked the focus groups about the following issues:

- How they use the current fuel economy label,
- What feedback they could give us on potential new information and metrics for the label for conventional and advanced technology vehicles (EVs and PHEVs), and
- What feedback they could give us, after reviewing draft labels, on designs and the level of information that makes sense, as well as overall preference for displaying information.

The insights received from the focus groups were key for the agencies with regard to individual metrics that consumers wanted to see on labels and also with regard to effective label designs. Overall, focus groups indicated [18] that redesigned labels must:

- Create an immediate first impression for consumers.
- Be easy to read and understand quickly.
- Clearly identify vehicle technology (conventional, EV, PHEV).
- Utilize color.
- Chunk information to allow people to deal with "more information."
- Be consistent in content and design across technologies.
- Allow for comparison across technologies.
- Make it easy to identify the most fuel efficient and environmentally friendly vehicles.

Following the focus group research, we assembled an expert panel for a one day consultation and asked them to give us feedback on the draft label designs the focus groups had helped create and to also assist us in identifying opportunities and strategies to provide more and better information to consumers so that they can more easily assess the costs, emissions, and energy efficiency of different vehicles. The experts came from a variety of fields in advertising and product development, and were chosen because they have led successful national efforts to introduce new products or have spearheaded national educational campaigns. After viewing the draft labels, the expert panel offered the agencies the following insights and guidance [19] that were key in developing one of the co-proposed label designs, including:

- Keep it simple; we yearn for simplicity (fewer, bigger, better).
- Consumers don't act on details.
- Remember the reality of very short label viewing time—roll ratings and metrics up into a single score.
- Use cost savings information- a very strong consumer motivator.
- Develop a Web site that would be launched in conjunction with the new label. This consumer-focused, user friendly Web site would provide more specific information on the label including additional information on the letter grade, along with access to the tools, applications, and social media.

Beyond these two core research elements, the agencies also undertook a comprehensive literature review [20] and drafted and had peer reviewed an internet survey. The agencies intend to administer the survey concurrently with the release of this proposal, and the results will be made publicly available in the dockets for this proposal prior to issuing a final rule with the new label requirements.

The agencies also met with a number of stakeholders, including environmental organizations, auto manufacturers, and dealers, to gather their input on what the label should and should not contain, as well as to ascertain particular concerns.[21] Comments received on labeling issues in the context of the joint rulemaking on fuel economy and GHG standards,[22] as well as for the 2006 fuel economy labeling rule,[23] have also been considered.

C. When would the proposed label changes take effect?

The agencies propose that the final label changes will take effect for model year (MY) 2012 vehicles, consistent with the recent joint rulemaking by EPA and NHTSA that established harmonized federal GHG emissions and CAFE standards for new cars, sport utility vehicles, minivans, and pickup trucks for model years 2012 through 2016.[24] For those advanced technology vehicles that will be introduced to the market prior to MY2012, EPA will work with individual manufacturers on a case-by-case basis to develop interim labels under EPA's current regulations that can be used prior to MY2012 and that are consistent with the proposed labels for advanced technology vehicles.

D. What are the estimated costs and benefits of the proposed label changes?

The primary costs associated with this proposed rule come from revisions to the fuel economy label and new testing requirements. As discussed in Section VII of this preamble, we estimate that the costs of this rule are likely to be in the range of $649,000—$2.8 million per year. This rule is not economically significant under Executive Order 12866 or any DOT or EPA policies and procedures because it does not exceed $100 million or meet other related standards.

The primary benefits associated with this proposed rule come from any improvements in consumer decision-making that may lead to reduced vehicle and fuel costs for them. There may be additional effects on criteria pollutants and greenhouse gas emissions. At this time, EPA and NHTSA do not believe it is feasible to fully develop a complete benefits analysis of the potential benefits.

EPA and NHTSA request comment on the assessment of the benefits and costs presented in Section VII below.

E. Relationship of This Proposal to Other Federal and State Programs

This proposal involves the addition of new information and design changes to conventional vehicle labels and the creation of specific labels for certain advanced vehicle technologies, but will not impact other important elements of the Federal government's fuel economy and GHG emissions regulatory programs. For example, this proposal will not affect the fuel economy compliance values used in NHTSA's CAFE program, or the GHG emissions compliance values used in EPA's GHG emissions control program. Nor will this proposal affect the methodology by which EPA generates the consumer fuel economy values used on the vehicle labels and provided at *http://*

[18] Environmental Protection Agency Fuel Economy Label: Phase 1 Focus Groups, EPA420–R–10–903, August 2010; Environmental Protection Agency Fuel Economy Label: Phase 2 Focus Groups, EPA420–R–10–904, August 2010 ; and Environmental Protection Agency Fuel Economy Label: Phase 3 Focus Groups, EPA420–R–10–905, August 2010.

[19] Environmental Protection Agency Fuel Economy Label: Expert Panel Report, EPA420–R–10–908, August 2010.

[20] Environmental Protection Agency Fuel Economy Label: Literature Review, EPA420–R–10–906, August 2010.

[21] Pursuant to DOT Order 2100.2, NHTSA will place a memorandum recording those meetings it attended, and attach documents submitted by stakeholders, as appropriate, when the information received formed a basis for this proposal, and the information can be made public, in the docket for this rulemaking.

[22] Available at Docket No. NHTSA–2009–0059 and EPA–HQ–OAR–2009–0472.

[23] Available at Docket No. EPA–HQ–OAR–2005–0169.

[24] 75 FR 25324, May 7, 2010.

www.fueleconomy.gov. The result of the additional information, including environmental information, appearing on the label will necessitate that additional information also be displayed on this Web site in the future. Finally, this proposal does not affect the test procedures that are used by EPA and manufacturers to generate the Federal government's vehicle fuel economy and GHG emissions database.

This proposal also does not affect the vehicle labels required by the California Air Resources Board which indicate relative ratings for "Smog" and "Global Warming," in fulfillment of that state's statutory requirements. The agencies are aware that the California labels provide information that is effectively duplicative with some of the information on the labels that will result from this rulemaking effort, although using different underlying rating methodologies and presentational approaches. It is the hope of both NHTSA and EPA that the Federal label can meet the CARB requirements and, thus, preclude the need for a separate set of labels. However, it is ultimately up to California to determine how to implement its statute and, thus, beyond the purview of this rulemaking to make any such determination.

F. History of Federal Fuel Economy Label Requirements

The fuel economy label has evolved several times since it was first required by Congress in the 1970s, both in response to new statutory requirements and to changing policy objectives. There have been important changes in the past to make the label more technically accurate and understandable to consumers. The changes being proposed are consistent with past efforts by EPA to make the fuel economy label more consumer friendly and effective over time. This section provides a brief historical summary of the development of the fuel economy label.

The Energy Policy and Conservation Act of 1975 (EPCA) established two primary fuel economy requirements: (1) Fuel economy information, designed for public use, in the form of fuel economy labels posted on all new motor vehicles, and the publication of an annual booklet of fuel economy information to be made available free to the public by car dealers; and (2) calculation of a manufacturer's average fuel economy and compliance with a standard (later, this compliance program became known as the Corporate Average Fuel Economy (CAFE) program). The responsibilities for these requirements were split between EPA, the Department of Transportation (DOT) [25] and the Department of Energy (DOE). EPA is responsible for establishing the test methods and procedures both for determining the fuel economy estimates that are displayed on the labels and in the annual booklet, and for the calculation of a manufacturer's corporate average fuel economy. DOT, and by delegation, NHTSA, is responsible for administering the CAFE compliance program, which includes establishing standards, determining compliance, and assessing any penalties as needed. DOE is responsible for publishing and distributing the annual fuel economy information booklet.

EPA published regulations implementing portions of the EPCA statute in 1976.[26] The provisions in this regulation, effective with the 1977 model year, established the first fuel economy label along with the procedures to calculate fuel economy values for labeling and CAFE purposes that used the Federal Test Procedure (FTP or "city" test) and the Highway Fuel Economy Test (HFET or "highway" test) data as the basis for the calculations. At that time, the fundamental process for determining fuel economy was the same for labeling as for CAFE, except that the CAFE calculations combined the city and highway fuel economy values into a single number for manufacturers' compliance purposes.[27]

After a few years of public exposure to the fuel economy estimates on the labels of new vehicles, it soon became apparent that drivers were disappointed by not often achieving these estimates on the road and expected them to be as accurate as possible. In 1978, Congress recognized the concern about differences between EPA-estimated fuel economy values and actual consumer experience and mandated a study under section 404 of the National Energy Conservation Policy Act of 1978.[28] In February 1980, a set of hearings were conducted by the U.S. House of Representatives Subcommittee on Environment, Energy, and National Resources. One of the recommendations in the subsequent report by the Subcommittee was that "EPA devise a new MPG system for labeling new cars and for the Gas Mileage Guide that provides fuel economy values, or a range of values, that most drivers can reasonably expect to experience." [29]

EPA commenced a rulemaking process in 1980 to revise its fuel economy labeling procedures, and analyzed a vast amount of in-use fuel economy data as part of that rulemaking.[30] In 1984, EPA published new fuel economy labeling procedures that were applicable to 1985 and later model year vehicles.[31] The decision was made to retain the FTP and highway test procedures, primarily because those procedures were also used for other purposes, including emissions certification and CAFE determination. Based on the in-use fuel economy data, however, it was evident that the final fuel economy values put on the labels needed to be adjusted downward in order to reflect more accurately consumers' average fuel economy experience. The final rule, therefore, included downward adjustment factors for both the city and highway label fuel economy estimates. The city values (based on the raw FTP test data) were adjusted downward by 10 percent and the highway values (likewise based on the raw highway test data) were adjusted downward by 22 percent.[32]

In the early 2000s, EPA again began investigating the accuracy of the fuel economy label estimates, and concluded that driving behavior (*e.g.,* higher average speed and acceleration) and other factors (such as the use of ethanol as a gasoline blending agent) had changed significantly since the correction factors were implemented in 1985, leading again to a widening gap between real-world fuel economy and the label estimates that consumers saw when shopping for new vehicles. During the development of vehicle emissions regulations in the late 1990s, EPA had already conclusively found that the city and highway tests did not adequately represent real-world driving, and in December of 2006 EPA finalized new

[25] The CAFE-related responsibilities of the Secretary of Transportation are delegated to the NHTSA Administrator at 49 CFR 1.50.

[26] 41 FR 38685, promulgated at 40 CFR part 600.

[27] EPCA requires that manufacturers simply comply with passenger car and light truck CAFE standards, it does not require separate city and highway standards for each type of automobile. Thus, EPA calculates the average fuel economy for a manufacturer by weighting and combining the results of each automobile on the separate city and highway cycles. *See* 49 U.S.C. 32904(c).

[28] Public Law 95–619, Title IV, 404, November 9, 1978.

[29] House Committee on Government Operations, "Automobile Fuel Economy: EPA's Performance," Report 96–948, May 13, 1980.

[30] "Passenger Car Fuel Economy: EPA and Road," U.S. Environmental Protection Agency, Report no. EPA 460/3–80–010, September 1980, and "Technical Support Report for Rulemaking Action: Light Duty Vehicle Fuel Economy Labeling," U.S. Environmental Protection Agency, Report no. EPA/AA/CTAB/FE–81–6, October 1980.

[31] 49 FR 13845, April 6, 1984, and 49 FR 48149, December 10, 1984.

[32] 49 FR 13845, April 6, 1984.

test methods for calculating the fuel economy label values.[33]

The 2006 final rule made three important changes. First, EPA's new methods brought the miles per gallon estimates closer to consumers' actual fuel economy by including factors such as high speeds, quicker accelerations, air conditioning use, and driving in cold temperatures. These revised fuel economy estimates also reflect other conditions that influence fuel economy, like road grade, wind, tire pressure, load, and the effects of different fuel properties. The new estimates took effect with model year 2008 vehicles. Second, EPA now requires fuel economy labels on certain heavier vehicles up to 10,000 pounds gross vehicle weight, such as larger SUVs and vans. Manufacturers will be required to post fuel economy labels on these vehicles beginning with the 2011 model year. Third, to convey fuel economy information to the public more effectively, EPA updated the design and content of the label. The rule required that new labels be placed on vehicles manufactured after September 1, 2007. The fuel economy for each vehicle model continues to be presented to consumers on the label as city and highway MPG estimates.

G. Statutory Provisions and Legal Authority

1. Energy Policy and Conservation Act (EPCA)

Under EPCA, EPA is responsible for developing the fuel economy labels that are posted on all new light duty cars and trucks sold in the U.S. and beginning in MY 2011 all new medium duty trucks as well. Medium-duty passenger vehicles are a subset of vehicles between 8,500 and 10,000 pounds gross vehicle weight that includes large sport utility vehicles and vans, but not pickup trucks. EPCA requires the manufacturers of automobiles to attach the fuel economy label in a prominent place on each automobile manufactured in a model year and also requires auto dealerships to maintain the label on the automobile.[34]

EPCA specifies the information that is minimally required on every fuel economy label.[35] As stated above, labels must include:

- The fuel economy of the automobile,
- The estimated annual fuel cost of operating the automobile.
- The range of fuel economy of comparable automobiles of all manufacturers,
- A statement that a booklet is available from the dealer to assist in making a comparison of fuel economy of other automobiles manufactured by all manufacturers in that model year,
- The amount of the automobile fuel efficiency tax imposed on the sale of the automobile under section 4064 of the Internal Revenue Code of 1986; [36] and
- Other information required or authorized by the Administrator that is related to the information required [within the first four items].

Under the provision for "other information" EPA has previously required the statements "your actual mileage will vary depending on how you drive and maintain your vehicle," and cost estimates "based on 15,000 miles at $2.80 per gallon" be placed on vehicle labels.

There are additional labeling requirements found in EPCA for "dedicated" automobiles and "dual fueled" automobiles. A dedicated automobile is an automobile that operates only on an alternative fuel.[37] Dedicated automobile labels must also display the information noted above.

A dual fueled vehicle is a vehicle which is "capable of operating on alternative fuel or a mixture of biodiesel and diesel fuel, and on gasoline or diesel fuel" for the minimum driving range (defined by the DOT).[38] Dual fueled vehicle labels must:

- Indicate the fuel economy of the automobile when operated on gasoline or diesel fuel.
- Clearly identify the automobile as a dual fueled automobile.
- Clearly identify the fuels on which the automobile may be operated; and
- Contain a statement informing the consumer that the additional information required by subsection (c)(2) [the information booklet] is published and distributed by the Secretary of Energy.[39]

EPCA defines "fuel economy" for purposes of these vehicles as "the average number of miles traveled by an automobile for each gallon of gasoline (or equivalent amount of other fuel) used, as determined by the Administrator [of the EPA] under section 32904(c) [of this title]." [40]

Additionally, EPA is required under EPCA to prepare a fuel economy booklet containing information that is "simple and readily understandable." [41] The booklet is commonly known as the annual "Fuel Economy Guide." EPCA further instructs DOE to publish and distribute the booklet. EPA is required to "prescribe regulations requiring dealers to make the booklet available to prospective buyers." [42] While the booklet continues to be available in paper form, in 2006, EPA finalized regulations allowing manufacturers and dealers to make the Fuel Economy Guide available electronically to customers as an option.[43]

2. Energy Independence and Security Act (EISA)

The 2007 passage of the Energy Independence and Security Act (EISA) amended EPCA by introducing additional new vehicle labeling requirements, to be implemented by the National Highway Traffic Safety Administration (NHTSA).[44] While EPA retained responsibility for establishing test methods and calculation procedures for determining the fuel economy estimates of automobiles for the purpose of posting fuel economy information on labels and in an annual Fuel Economy Guide, NHTSA gained responsibility for requiring automobiles to be labeled with additional performance metrics and rating systems to help consumers compare vehicles to one another more easily at the point of purchase.

Specifically, and for purposes of this rulemaking, subsection "(g) Consumer Information" was added to 49 U.S.C. 32908. Subsection (g), in relevant part, directed the Secretary of Transportation (by delegation, the NHTSA Administrator) to "develop and implement by rule a program to require manufacturers—to label new automobiles sold in the United States with information reflecting an automobile's performance on the basis of criteria that the [EPA] Administrator shall develop, not later than 18 months after the date of the of the Ten-in-Ten Fuel Economy Act, to reflect fuel economy and greenhouse gas and other emissions over the useful life of the

[33] 71 FR 77872, December 27, 2006.

[34] 49 U.S.C. 32908(b)(1).

[35] 49 U.S.C. 32908(b)(2)(A) through (F).

[36] 26 U.S.C. 4064.

[37] 49 U.S.C. 32901(a)(1) defines "alternative fuel" as including—(A) methanol; (B) denatured ethanol; (C) other alcohols; (D) except as provided in subsection (b) of this section, a mixture containing at least 85 percent of methanol, denatured ethanol, and other alcohols by volume with gasoline or other fuels; (E) natural gas; (F) liquefied petroleum gas; (G) hydrogen; (H) coal derived liquid fuels; (I) fuels (except alcohol) derived from biological materials; (J) electricity (including electricity from solar energy); and (K) any other fuel the Secretary of Transportation prescribes by regulation that is not substantially petroleum and that would yield substantial energy security and environmental benefits."

[38] 49 U.S.C. 32901(a)(9), (c).

[39] 49 U.S.C. 32908(b)(3).

[40] 49 U.S.C. 32901(a)(11).

[41] 49 U.S.C. 32908(c).

[42] Id.

[43] 71 FR 77915, Dec. 27, 2006.

[44] Public Law 110–140.

automobile: a rating system that would make it easy for consumers to compare the fuel economy and greenhouse gas and other emissions of automobiles at the point of purchase, including a designation of automobiles— with the lowest greenhouse gas emissions over the useful life of the vehicles; and the highest fuel economy * * *"

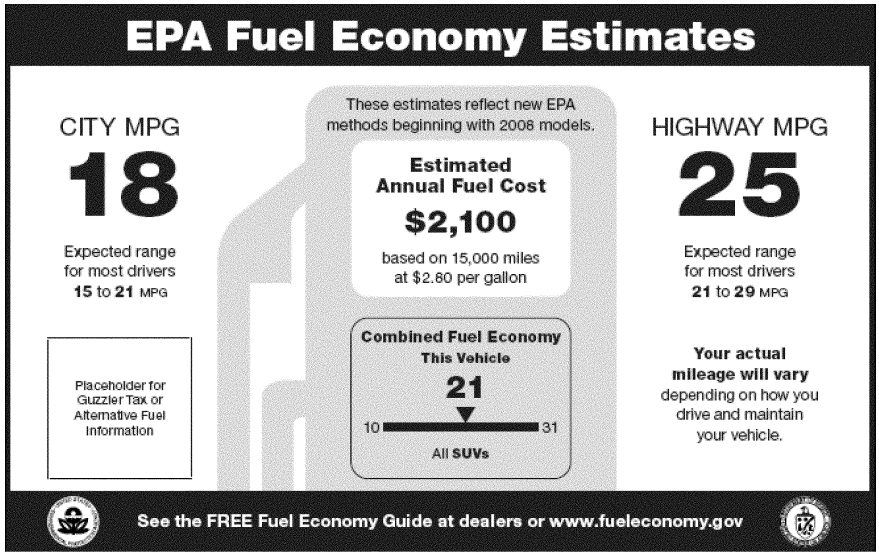
Thus, both EPA and NHTSA have authority over labeling requirements related to fuel economy and environmental information under EPCA and EISA, respectively. In order to implement that authority in the most coordinated and efficient way, the agencies are jointly proposing the revised labels presented below. NHTSA notes that its proposed regulatory text changes to 49 CFR Chapter V to implement the EISA requirements (and to make other proposed changes) are currently designated as "reserved." This is not to suggest that these sections will remain "reserved" (*i.e.,* blank) for the final rule. NHTSA will add regulatory text to implement the EISA requirements in these sections for the final rule consistent with the agencies' final decisions on label formats and based on review and consideration of all public comments.

II. Proposed Revisions to the Fuel Economy Label Content (Metrics and Rating Systems)

This section discusses the elements that the agencies are proposing for the fuel economy label. Section A discusses the range of options considered and proposed for "conventional" petroleum-fueled vehicles (*i.e.,* those powered solely by gasoline or diesel fuel). Current hybrid vehicles, which are fundamentally gasoline-fueled vehicles,[45] will continue to use the same label as other gasoline vehicles, just as they do today. Many of the approaches discussed in Section A, such as the rating systems, will apply across all vehicles, including advanced technology vehicles. Section B specifically discusses the special cases of advanced technology vehicles. These vehicles—such as electric vehicles (EVs) and plug-in gasoline-electric hybrid vehicles (PHEVs)[46]—are one of the key reasons we are proposing new regulations. The agencies are concerned that current label requirements do not adequately address these vehicles, and we are seeking to develop labels that are useful and understandable to consumers, as well as equitable across the range of different vehicles and technological approaches. Section C addresses some of the less common fuels and fuel combinations for which label templates must ultimately be developed, such as compressed natural gas and methanol.

A. Conventional Gasoline, Diesel and Hybrid Vehicles

The complete effect of this proposal would be a single new label, which replaces the existing fuel economy label and which contains more information than is currently displayed, even in the case of conventional petroleum-fueled vehicles. An example of the current label is shown here to provide a basis for comparison with the proposed labels.



The new single label is the result of EPA and NHTSA's decision that it is good public policy to consolidate label requirements called for by EPCA and EISA. This label would contain information not only on a new vehicle's fuel economy, annual fuel cost, and range of fuel economy within class, but also, for the first time, information on a new vehicle's fuel consumption, emissions, and comparative rating information, as required by statute. This expansion of the role of the label beyond fuel economy information reflects the new EISA requirements, which are premised on the concept that greenhouse gas and other environmental information is also in the public interest.

In developing this proposal, the agencies came up with two distinct approaches for conveying information on the label. While both approaches rely on the same underlying data and both meet EPCA and EISA requirements, they differ in how they present and emphasize the information. One approach is more traditional, focusing primarily on MPG values and secondarily on annual fuel cost, but adding new elements, such as environmental information. A label using this approach would look familiar to the public, with a style similar to the

[45] Current hybrid vehicles obtain their electric power from their onboard conventional gasoline engine and energy captured through regenerative braking. Thus, the vehicle's energy source is still gasoline.

[46] Definitions for hybrid electric vehicles, electric vehicles, fuel cell vehicles, and plug-in hybrid electric vehicles can be found in EPA regulations at 40 CFR 86.1803–01.

existing label. Requiring a label based on the traditional approach assumes that potential vehicle purchasers will use the information that is most meaningful to them, whether that is MPG, fuel cost, or other values. For example, participants in the focus groups leading up to this proposal indicated that, when considering the current fuel economy label, nearly all used the city and highway MPG values almost exclusively, despite the presence of other data elements on the label; some also used annual fuel cost and within-class comparison information.[47]

The other approach uses the same data, but shifts the emphasis to a single, more prominent value that reflects fuel consumption and its counterpart, greenhouse gas emissions, using a format the consumers will easily recognize—a letter grade. The associated numerical values and other required elements would remain on the label, but with much less prominence. This approach makes it simpler for the consumer to identify those vehicles that use less oil and have a lesser environmental impact and more clearly expands the role of the label beyond fuel economy information. Many of the focus group participants indicated that they trusted the EPA to determine which of these factors were important, and the agencies believe that consumers might be more likely to consider a vehicle with higher fuel economy and lesser environmental impact if they were provided with a simpler label.[48]

The agencies believe each approach has merit and that the public will be well-served by having both be fully considered; therefore, EPA and NHTSA are co-proposing two label designs based on these two approaches, without either being the primary proposal. NHTSA and EPA expect that comments will provide valuable insight on these two proposed label designs, and seek comment on the merits and drawbacks of each, recognizing that the label design ultimately finalized may draw on elements from all the labels presented in this proposal. The labels are presented in Section III. Label designs 1 and 2 are co-proposed, with Label 1 being the letter grade approach and Label 2 being the more traditional approach. Label 3, on which comment is also sought, is an alternative version of the traditional approach.

The subsections that follow describe each of the data elements presented on the labels, how the agencies considered them, and how we are proposing that they be displayed on each of the co-proposed labels.

1. Fuel Economy Performance

Since 1977, the EPA fuel economy label has represented the fuel economy performance of a vehicle with estimates of city and highway miles per gallon (MPG). With more than 30 years of consumers seeing these estimates as the most prominent values displayed on the fuel economy labels, it is not surprising that the consumer research conducted as part of this rulemaking has revealed a strong attachment to city and highway MPG values. A combined city and highway MPG value was first placed on the label starting with model year 2008—as part of the graphic showing the combined MPG value of the vehicle compared with other vehicles in the same class[49] but, even prior to this, the combined MPG value has always been a key input to estimating the annual fuel cost value required on the label.[50]

Representing the vehicle's fuel economy performance on the label with an estimate of miles per gallon is a core element of the fuel economy information requirements of EPCA, which specifically states that the label must display "the fuel economy of the automobile" and defines "fuel economy" as "the average number of miles travelled * * * for each gallon of gasoline."[51] In addition, EPA and NHTSA have determined that continuing to display the fuel economy values on the label would also meet the new requirements put in place by EISA that call for a label "reflecting an automobile's performance [based on criteria determined by EPA] to reflect fuel economy * * * over the useful life of the vehicle."[52] Because vehicle fuel economy depends primarily on fundamental vehicle design characteristics that do not change over time, the agencies believe that fuel economy remains essentially stable throughout the life of properly-maintained vehicles. Thus the agencies believe that the current test methods that determine label values for new vehicles will meet the EISA requirements by providing reasonable estimates of fuel economy performance for the full useful life of a vehicle. Finally, consumers have shown a strong familiarity with and preference for MPG values, and have consistently indicated that these values are used as part of the vehicle purchase decision.

For these reasons, the agencies are proposing to continue to provide mile per gallon estimates to consumers, but with some changes relative to the current label, and with markedly different approaches on the two co-proposed labels.

The agencies recognize that the focus group research suggested that consumers have a strong familiarity with and preference for the city and highway fuel economy values[53] (although this preference was much stronger for conventional vehicles than for advanced technology vehicles; in those cases perhaps the complexity of the labels encouraged them to part with some of the numbers on the label). Focus group participants who argued strongly for separate city and highway MPG values on the label often stated, for example, that most of their driving is either city or highway, and that a combined city-highway MPG value might make it harder for them to determine what MPG they should reasonably expect for that vehicle.[54] The agencies believe that this apparent preference was formed in large part because of EPA's decision to present these as the dominant figures on the label for decades, not because consumers demanded these metrics 33 years ago. Had EPA been presenting the combined number as the dominant figure on the label since 1977, we might expect to see a great deal of familiarity with and understanding of that particular value today. However, the distinction between city and highway driving does not address the key variables that could impact energy consumption for alternative technologies, such as ambient temperature. Thus, the agencies believe that, for labeling purposes, the city/highway distinction may be a less relevant metric than in the past.

Thus with Label 1, NHTSA and EPA propose that the MPG values be significantly reduced in prominence (*i.e.,* smaller font and "below the fold" location on the label), with the letter grade rating assuming the predominant role. Given space constraints and the

[47] Environmental Protection Agency Fuel Economy Label: Phase 1 Focus Groups, EPA420–R–10–903, August 2010, p. 10.

[48] Environmental Protection Agency Fuel Economy Label: Phase 1 Focus Groups, EPA420–R–10–903, August 2010, p. 36.

[49] The vehicle classes are defined in EPA regulations at 40 CFR 600.315–08 and provide a basis for comparing a vehicle's fuel economy to that of other vehicles in its class as required by statute. See the discussion in section VI.C for a detailed discussion of the vehicle class structure.

[50] Combined fuel economy is a harmonic average of the City and Highway MPG values, with the City value weighted 55% and the Highway value weighted 45%. *See* 71 FR 77904, December 27, 2006.

[51] 49 U.S.C. 32908(b)(1)(A).

[52] 49 U.S.C. 32908(g)(1)(A)(i).

[53] Environmental Protection Agency Fuel Economy Label: Phase 1 Focus Groups, EPA420–R–10–903, August 2010, p. 10.

[54] Environmental Protection Agency Fuel Economy Label: Phase 1 Focus Groups, EPA420–R–10–903, August 2010, p. 10.

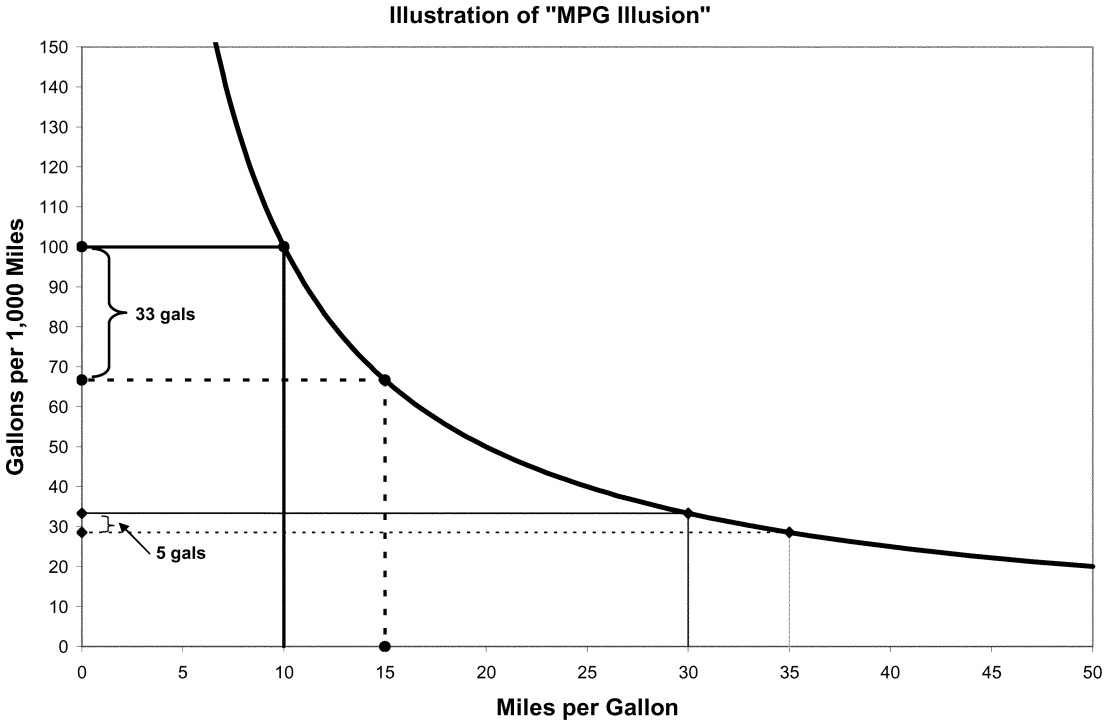
amount of information that is required to be provided on the label, continuing to display MPG estimates with the same or similar prominence would be likely unnecessary and possibly untenable. The city and highway MPG values would be available for those who wish to use them, but the rating assumes the key role of informing the public about the relative energy use and carbon emissions of a vehicle. The agencies believe that this de-emphasis on MPG values would have two primary benefits: First, the rating's predominance should encourage consumers to use it rather than the specific MPG values to compare across vehicle technology types (particularly as MPG values become less meaningful for vehicles that do not run, or only partially run, on fuels dispensed by the gallon); and second, to address the non-linearity of MPG with respect to energy use, emissions, and cost, discussed further in Section II.A.2, which becomes more important as significantly higher mileage vehicles are poised to enter the marketplace.

The agencies are proposing a different approach for Label 2, in which the combined MPG value is displayed prominently, with separate city and highway values continuing to be shown on the label, but as subordinate values. This approach focuses attention on MPG since it is the metric that consumers are the most familiar with and have come to utilize on the label. However, it downplays the separate city and highway value in favor of a single, combined MPG, because the agencies believe that continuing to highlight multiple pieces of fuel economy information with the same level of prominence could make it more difficult for consumers to compare vehicles, particularly across technology types, where MPG becomes a less meaningful metric. A similar approach is taken on Label 3.

The agencies seek comment generally on these two approaches to displaying fuel economy performance information on the labels. Specifically, comment is sought on whether or not the labels that emphasize combined city/highway MPG values over separate city and highway MPG values are helpful to consumers, and why or why not. If combined MPG is preferred, comment is sought on whether or not city and highway values should continue to be displayed, and why or why not.

2. Fuel Consumption

While miles per gallon is statutorily mandated for fuel economy labels and has appeared on the label for several decades, the agencies have some concern that it can be a potentially misleading comparative tool for consumers, particularly when it is used as a proxy for fuel costs. The problem can be easily illustrated by the following figure, which shows the non-linear relationship between gallons used over a given distance and miles per gallon. It can be seen that the difference in gallons it takes to go 1,000 miles between 10 and 15 MPG (about 33 gallons) is substantially greater than the difference in gallons it takes to go the same distance between 30 and 35 MPG (about 5 gallons). In other words, even if consumers clearly understand that higher MPG is better, those comparing vehicles with relatively low MPG values may not know that MPG differences that appear to be small, even one or two MPG, may actually have very different fuel consumption values, and that selecting the slightly higher MPG vehicle could actually result in significantly less fuel used, thus saving a considerable amount of money. Fuel consumption numbers, unlike MPG, relate directly to the amount of fuel used. Mathematically, they represent gallon per mile, instead of miles per gallon. Not coincidentally, they also relate directly to the amount of CO_2 emitted, because the grams of CO_2 produced are directly proportional to gallons of fuel combusted.



This so-called "MPG illusion," which has been widely written about by a number of economists to illustrate why MPG is a flawed measure of how a vehicle's efficiency relates to fuel costs,[55] was raised as an issue during the development of the 2006 fuel economy labeling rule. Some vehicle manufacturers suggested at the time that it may be more meaningful to express fuel efficiency in terms of consumption (*e.g.,* gallons per mile or per 100 miles) rather than in terms of economy (miles per gallon).[56] Fuel consumption is the primary metric used in Europe, and the Canadian fuel economy labels report both MPG and a consumption metric (liters per 100 kilometers). Because a few stakeholders expressed an interest in a fuel consumption metric at the time, EPA requested comments on a gallons-per-mile metric and how it could be best used and presented publicly, such as whether it should be included in the Fuel Economy Guide.

The comments received in response to this request were mixed. Public Citizen, on the one hand, responded that, while there may be some merit to including a fuel consumption metric, consumers are comfortable with MPG. Any change, they argued, should be carefully deliberated and involve a massive public outreach campaign to educate consumers.[57] They also suggested that the estimated annual fuel cost provides information derived from consumption values and is thus a suitable proxy for consumption. Toyota, in contrast, commented that fuel consumption is a more meaningful measure than MPG for expressing fuel efficiency, while acknowledging EPA's statutory limitations. They noted—as have many others—that the MPG metric is fundamentally nonlinear in relation to issues of consumer interest, such as cost of fuel or gallons used, and noted that anecdotal evidence shows that the nonlinear aspects of MPG can lead to consumer confusion. Toyota concluded that "* * * this is a matter on which the EPA is obligated to educate the public as fuel consumption, not fuel economy, is a direct reflection of the environmental impact of vehicles in use." [58]

EPA responded to these comments in the 2006 final rule by concluding that switching to a consumption metric without a long-term consumer education program would cause confusion and that, absent Congressional action, the fuel economy labels would still have to continue to report MPG. EPA also agreed with commenters that the estimated annual fuel cost was a consumption-based metric which conveys essentially the same information (although the estimated annual fuel cost on the label is not without its own limitations, as described below).

To allow further consideration of this issue, the consumer focus groups conducted for this rulemaking were asked to specifically explore the MPG illusion. Most participants were unconvinced that consumption should be included on the label with primary prominence and, although many were unopposed to having it as additional information, it was unclear whether it would add value from their perspective.[59] This was the case regardless of the consumption metric tested, ranging from gallons per 100 miles to annual gallons consumed.

However, there is general interest from a number of parties in the inclusion of a fuel consumption metric on the label. The agencies, as well, believe that it is important to introduce the concept of consumption to enable consumers to more accurately consider fuel use and costs during the vehicle purchase process. Thus, the agencies propose to introduce such a metric along with the MPG values, expecting that, over time, and with some education, consumers will begin to understand energy consumption and the direct connection it has with the fuel costs and environmental impacts of the vehicle. EPA is therefore proposing to include an estimate of gallons per 100 miles on the label under its 49 U.S.C. 32908(b)(1)(F) authority to require other information related to fuel economy on the label, and requests comment on doing so, as well as on alternative options for reflecting fuel consumption, such as annual gallons consumed.[60] For consumers to use a consumption number, however, EPA and NHTSA believe that a comprehensive education campaign would have to accompany the roll-out of new labels.

The agencies also seek comment on the specifics of displaying a consumption metric on the two labels being co-proposed. Although the label may provide city and highway MPG values as well as a combined city/highway MPG, we are proposing to require only the combined city/highway consumption value on the label. The agencies are concerned that requiring a consumption value corresponding to every MPG value would lead to an undesirable proliferation of numbers on the label.

3. Greenhouse Gas Performance

In addition to the fuel economy performance information that has been provided on the labels since 1977, Congress directed NHTSA, through EISA, to require new vehicles to also be labeled with information reflecting their greenhouse gas performance, which would be determined on the basis of criteria provided by EPA to NHTSA. As with fuel economy, the GHG performance information would be per vehicle model type. EPA hereby proposes the criteria for determining greenhouse gas performance, addressing the greenhouse gases to be incorporated, the emissions sources to include, the underlying test procedures, and the specific metric to be used. The agencies seek comment on whether these criteria, as described below, are reasonable and appropriate for determining the greenhouse gas performance of new vehicles. For purposes of this NPRM, NHTSA is proposing that the greenhouse gas performance element of the label be based on these criteria. These same greenhouse gas performance values would also be used as the basis for the proposed greenhouse gas rating systems.

With regard to the greenhouse gases to be covered, the agencies propose that the label include greenhouse gas performance information solely on the basis of carbon dioxide (CO_2) emissions, which typically constitute approximately 95% of the tailpipe emissions of greenhouse gases. Including emission levels of the greenhouse gases methane (CH_4) and nitrous oxide (N_2O) along with CO_2 would not provide additional differentiation between vehicles. This is because, for purposes of compliance with EPA's GHG standards beginning in model year 2012, CH_4 and N_2O values would be based on emission factors–that is, set values applied to each vehicle,

[55] Allcott, H., Mullainathan, S., "Energy: Behavior and Energy Policy," Science, March 5, 2010, available at: *http://www.sciencemag.org/cgi/content/summary/327/5970/1204;* Larrick, R.L., Soll, J.B., "The MPG Illusion," Science, June 20, 2008, available at *http://www.sciencemag.org/cgi/content/full/320/5883/1593;* McArdle, M., "Department of Mathematical Illusion," The Atlantic, December 24, 2007, available at: *http://www.theatlantic.com/business/archive/2007/12/department-of-mathematical-illusion/2425/.*

[56] US EPA Response to Comments: Fuel Economy Labeling of Motor Vehicles, EPA–420–R–06–016, Dec 2006, pp. 60–61.

[57] Public Citizen Comments on Proposed Fuel Economy Labeling Of Motor Vehicles, EPA–HQ–OAR–2005–0169–0123.1, Apr 3, 2006, p. 4.

[58] Toyota Motor Corporation Comments on Proposed Fuel Economy Labeling Of Motor Vehicles, EPA–HQ–OAR–2005–0169–0118.1, Mar 31, 2006, p. 7.

[59] Environmental Protection Agency Fuel Economy Label: Phase 1 Focus Groups, EPA420–R–10–903, August 2010, p. 17.

[60] This proposal is being made under EPA's authority to require other information related to fuel economy on the label, as described in 49 U.S.C. 32908(b)(1)(F).

rather than direct measurements. Because these values would be set at the same level for all vehicles, the agencies do not believe that including them would provide consumers with additional useful information.

Similarly, the agencies propose that the greenhouse gas information be based on CO_2 emissions for the vehicle model type, rather than the carbon-related exhaust emissions (CREE) methodology used to determine fuel consumption for CAFE programs and compliance with the light duty greenhouse gas requirements. The use of CREE adds a level of complexity that, while useful for compliance purposes, may not be beneficial to public understanding of the relative differences in GHG emissions between vehicles because the levels of other carbon-related emissions are low relative to CO_2 emissions. Although the agencies propose that the greenhouse gas information on the label be based only on CO_2, we also seek comment on whether and, if so, how, the other greenhouse gases and carbon-related emissions should be included.

Regarding the underlying test procedures to be used to determine the vehicle-specific GHG performance information for the labels, the agencies propose that the CO_2 values presented on the label be based on the five-cycle test procedures that are currently utilized for fuel economy labeling purposes.[61] These test procedures measure rates of tailpipe CO_2 and other emissions, which form the basis of the fuel economy values currently used for vehicle labeling. The five-cycle test procedures have been used for labeling since model year 2008, and have significantly improved the correlation between label values for MPG and those seen in actual use. Manufacturers could thus calculate CO_2 emission rates using the same approach that they use for label fuel economy values, which the agencies know to be well-correlated with actual performance in use. More specifically, if a manufacturer uses the "derived five cycle" method for determining MPG for fuel economy labeling, they would use the same method for determining CO_2 for labeling purposes. The city and highway CO_2 emissions test results would then be used in the derived five-cycle equations, which the EPA has converted from a MPG basis to a CO_2 basis for this purpose. Similarly, vehicle model types that are using the "full five cycle" method for fuel economy labeling would use the CO_2 results from those tests for purposes of fuel economy labeling. The agencies are therefore proposing that manufacturers use the same five-methodology currently utilized for fuel economy labeling purposes for determining GHG values for purposes of the new label.

As far as emission sources to include, NHTSA and EPA propose that the greenhouse gas emissions represented on the label include only vehicle tailpipe emissions,[62] and do not account for any GHG emissions generated upstream of the vehicle. This approach is also consistent with the vehicle GHG emissions compliance levels recently adopted by EPA, which treat GHG emissions for electric operation as zero up to a cumulative production cap per manufacturer.[63]

When exploring this issue with focus groups, the agencies found that most participants did not consider the issue of upstream emissions either way. A few raised it when they noted that an electric vehicle indicated zero emissions, and suggested that these vehicles did cause some emissions at the power plant, which should be represented on the label.[64] On further discussion, they generally determined that it would be challenging for the label to meaningfully represent the range of emissions from power plants operated on different fuels, and suggested that this information was obtainable from other sources.[65] Given space constraints and the difficulty of explaining the potential range of upstream emissions due to different fuel sources, participants tended to agree that this issue could be adequately addressed by a statement on the label indicating that the CO_2 values on the label represented vehicle tailpipe emissions only. The label designs presented in this NPRM include the words "Tailpipe Only" next to the CO_2 value presented; the agencies seek comment on whether this wording will be readily and uniformly understood to mean that upstream GHG emissions are not being reflected on the label, or whether other, more direct wording might be clearer and more helpful to consumers.

Aside from tailpipe CO_2, the agencies are not proposing, but seek comment on the inclusion of an additional factor in the GHG performance used for labeling: air conditioning (A/C) credits generated by a manufacturer under the light duty vehicle GHG requirements. Air conditioning (A/C) systems contribute to GHG emissions in two ways. Hydrofluorocarbon (HFC) refrigerants, which are powerful GHGs, can leak from the A/C system (direct A/C emissions). Operation of the A/C system also places an additional load on the engine, which results in additional CO_2 tailpipe emissions (indirect A/C related emissions). The efficiency-related A/C impacts are accounted for in the five-cycle tests utilized for fuel economy labeling and proposed as the basis for GHG labeling purposes. However, EPA and NHTSA are considering whether allowing manufacturers that generate credits towards their GHG compliance obligation by reducing A/C leakage-related GHGs should be allowed to factor these credits into the CO_2 value displayed on the label and used as the basis for the GHG rating. Allowing manufacturers to factor A/C credits into the GHG performance metric on the label would reward them for making A/C leakage improvements, but it would also cause the GHG performance value and the fuel economy performance value to diverge, and would impact the methodology for any rating system that combines GHGs and fuel economy. Because A/C-related reductions are not "tailpipe," including leakage improvements in the tailpipe emissions could be misleading and inaccurate. If the final label includes other non-tailpipe emissions, the agencies may consider incorporating A/C leakage improvements. EPA and NHTSA seek comment on a number of issues: whether including A/C leakage adjustments would lead to widening the gap between what is on the label and what consumers get in the real world; whether and, if so, how, to allow the use of A/C credits for the purposes of labeling, with specific focus on the methodology and how the labels might display the inclusion of A/C leakage credits if the agencies decided to allow their use.

EPA and NHTSA are proposing to use grams per mile as the metric to display greenhouse gas performance information on the label, which would be consistent with the metric used for GHG emission standards and compliance for light duty vehicles. The agencies believe that this metric is also consistent with requirements in 49

[61] 40 CFR part 600.210–08.

[62] The agencies seek comment on the potential inclusion of GHG emissions reflecting from A/C leakage credits, as described later in this section.

[63] EPA placed a cumulative production cap on the total production of EVs, PHEVs, and FCVs for which an individual manufacturer can claim the zero grams/mile compliance value during model years 2012–2016. The cumulative production cap will be 200,000 vehicles, except that those manufacturers that sell at least 25,000 EVs, PHEVs, and FCVs in MY 2012 will have a cap of 300,000 vehicles for MY 2012–2016. See 75 FR 25436 (May 7, 2010).

[64] Environmental Protection Agency Fuel Economy Label: Phase 3 Focus Groups, EPA420–R–10–905, August 2010, p. 42.

[65] Environmental Protection Agency Fuel Economy Label: Phase 3 Focus Groups, EPA420–R–10–905, August 2010, p. 42.

U.S.C. 32908(g)(1)(A) that performance reflect emissions "over the useful life of the automobile." As with fuel economy, the agencies do not at this time expect notable deterioration of greenhouse gas emissions levels over a vehicle's useful life. However, the agencies seek comment on alternative approaches to convey GHG performance information, such as tons per year, using an approach parallel to that discussed in section II for annual cost information.

4. Fuel Economy and Greenhouse Gas Rating Systems

EISA requires that the label include a "rating system that would make it easy for consumers to compare the fuel economy and greenhouse gas and other emissions of automobiles at the point of purchase, including a designation of the automobiles with the lowest greenhouse gas emissions over the useful life of the vehicles, and the highest fuel economy. * * *"[66] The two co-proposed label designs present two variations on ratings systems for fuel economy and greenhouse gas emissions, based on two interpretations of the statutory language. These two approaches—separate absolute ratings for fuel economy and greenhouse gases, and a relative rating that combines the two factors—are not mutually exclusive, and a label could contain one or both.

In developing rating systems, the agencies are cognizant of the focus group testing conducted for this proposal, in which it appeared that many participants did not rely on any rating system. Perhaps due to their familiarity with the prominently displayed MPG numbers, many participants relied initially and sometimes exclusively on MPG or MPGe label values to compare vehicles to one another.[67] Given this result, the agencies are proposing two different approaches to the ratings.

The first approach is displayed at the bottom of Label 1 and Label 2: Separate ratings scales for fuel economy and greenhouse gas emissions, bounded by specific values for the "best" and the "worst" vehicles, and with specific fuel economy and GHG emissions values for the vehicle model type in question identified in the appropriate location on the scale. The scales on Label 2 are essentially larger versions of those on Label 1, with the addition of a within-class indicator on the fuel economy scale to meet the EPCA[68] requirement for comparison across comparable vehicles.

This variation—absolute rating scales—directly utilizes the actual fuel economy and CO_2 performance values per vehicle model type to define the rating, which the agencies believe has both potential benefits and drawbacks. The agencies believe that, by rating vehicles on an absolute scale, this approach clearly meets the text of the EISA requirement for providing fuel economy and GHG performance information and indicating highest fuel economy and lowest GHG vehicles. The rating system allows the consumer looking at the label on the dealer's lot to identify precisely the highest and lowest fuel economy values available, the lowest and highest GHG emissions values available, and where the vehicle bearing the label falls in relation to these extremes. When this variation was presented in focus groups, some participants liked the level of detail provided by absolute rating scales and found it helpful in understanding how a vehicle compared to the "best" and "worst" vehicles available, although others found it to be more detail than they wanted or did not pay attention to this information on the label.[69]

However, even for those consumers who appreciate this level of detail in comparing vehicles by fuel economy and GHG emissions, there is the possibility that the "best" will change over the course of the model year and that the MPG or gram/mile value at the end of the scale may no longer be accurate. Highest and lowest values to be used on the scale would be provided to manufacturers by EPA prior to the start of the model year via annual guidance. Because these values will be based on the previous model year plus any additional information regarding the upcoming new sales fleet available to the EPA, they are expected to be relatively accurate. However, because they are projected values, the introduction during the model year of any new and unexpected vehicles not previously identified to EPA could potentially cause inaccuracy in the end points of the rating scales. In general, because of the expected introduction of electric vehicles, which have no tailpipe CO_2 emissions and thus anchor one end of the scale at zero, and because of the expectation that, for the foreseeable future, one or more vehicles will anchor the opposite end at a relatively constant level, the agencies believe that the end points will likely remain *relatively* constant, but they may not remain *exactly* constant. The agencies therefore seek comment on how significant this potential for inaccuracy could be on consumers' ability to use the absolute rating scales to compare fuel economy and GHG emissions across vehicles, and on whether commenters believe the labels would have to be revised in order to meet the statutory requirement every time a new "best" vehicle was introduced if they were not accommodated by the end points.

The second approach to a rating system is also displayed on Label 1: A combined rating scale for fuel economy and GHG emissions, shown in the form of a letter grade. Because vehicles that are low in CO_2 emissions have inherently good fuel economy (and vice versa), and because CO_2 emissions are the primary determinant of fuel economy using EPA test procedures, vehicles would generally tend to have the same "score" for fuel economy as for GHG emissions. Thus, if the ratings are equivalent, as a practical matter, it would be consistent with the statutory requirement to provide a single, combined rating system.

The proposed letter grade scale would range from A+ to D, including plus and minus designations to provide more opportunities for improvement. All vehicles would receive a "passing" grade—that is, the ratings would not include an "E" or "F" grade—because all vehicles must meet CAA requirements in order to be sold, and the agencies do not wish to convey otherwise. Additionally, the "A+" vehicles—with associated text stating the range of letter grades—will indicate which vehicles are the "best," thus, meeting the requirement that the label designate highest fuel economy and lowest greenhouse gas vehicles.

This variation of a fuel economy and greenhouse gas rating system was suggested by the expert panel and was not presented in focus groups, but many focus group participants favored the simplification of information presented when possible, and the agencies believe that such a well-known rating approach will be immediately recognizable by the majority of consumers. The agencies are also hopeful that a rating system as simple as a letter grade may encourage consumers to rely more on the rating system itself in making purchasing decisions, rather than on, for example, MPG numbers, which are subject to the "MPG illusion" issue discussed above.

A letter grade allows vehicles purchasers to make a comparative assessment among vehicles with different grades, consolidating information so that consumers might

[66] 49 U.S.C. 32908(g)(1)(A)(ii).

[67] Environmental Protection Agency Fuel Economy Label: Phase 3 Focus Groups, EPA420–R–10–905, August 2010, p. 36.

[68] 49 U.S.C. 32908(b)(1)(C).

[69] Environmental Protection Agency Fuel Economy Label: Phase 3 Focus Groups, EPA420–R–10–905, August 2010, p. 41.

more easily assess the GHG emissions and fuel economy of different vehicles and make fully informed decisions. The agencies also request comment on whether any vehicle should receive a grade of A+ or whether this might lead to mistaken consumer conclusion that the vehicle has no energy or environmental impacts.

As noted above, CO_2 emissions are directly measured by EPA and form the basis for calculating the fuel efficiency of the vehicle; using CO_2 as the basis for the rating is the most direct methodological approach and will avoid any rounding discrepancies that could occur from converting to MPG and then to fuel consumption. It also avoids the need to adjust the MPG thresholds by fuel type to account for differences in the energy content of fuel. Utilizing CO_2 as the controlling factor in the rating thresholds is a practical consideration and is not meant to imply that GHG emissions are more important than energy use; both are relevant considerations and are viewed by the agencies as equally important under the rating system.[70]

The agencies propose to base this rating system approach on the range of CO_2 emissions for the projected fleet, placing the middle of the rating scale at the combined 5-cycle CO_2 emissions rate for the median vehicle,[71] with equal-sized increments of CO_2 assigned to each grade or rating.[72] The higher-GHG end of the scale would therefore be twice the CO_2 emissions rate of the median value, although, effectively, any vehicle higher than this level would also receive the lowest rating. Under such an approach, the median value would become more stringent over time as a result of GHG emissions requirements and, thus, the entire scale would shift toward lower GHG levels. Unless a vehicle model reduced its rate of CO_2 emissions across the model years, its ratings would gradually drop over time. This approach would be consistent with both the evolution of fuel economy and emission requirements, and the public expectation that products evolve over time. The CO_2 thresholds associated with each rating would be determined on an annual basis and provided through guidance in advance of the model year. EPA would require that manufacturers use the ratings from the prior year if they are in a position to need to label a vehicle before the annual guidance has been issued. The agencies recognize that revising the median baseline vehicle each year may lead to some consumer confusion, but this dilemma is no different than what consumers currently encounter when they view identical vehicles from different model years and their associated annual fuel cost or the comparative fuel economy slider bar for each vehicle displayed on today's label. The agencies continue to believe that the underlying assumptions need to be up-to-date to be most useful to consumers. Nevertheless, the agencies request comment on what the agencies might do to avoid potential confusion.

The following example is based on model year 2010 data and assumes that one or more vehicles that emit zero CO_2 tailpipe emissions (*i.e.,* electric or fuel cell vehicles) have entered the market. Gasoline-equivalent MPG values are provided in the table for clarity. However, the agencies propose that the CO_2 values be controlling for purposes of assigning the rating.

TABLE II.A.4–1—EXAMPLE FUEL ECONOMY AND GREENHOUSE GAS RATING SYSTEM

CO_2 range (grams per mile)	Rating	Combined gasoline MPG or MPGe
0–76	A+	117 and higher.
77–152	A	59–116.
153–229	A–	40–58.
230–305	B+	30–39
306–382	B	24–29.
383–458	B–	20–23.
459–535	C+	18–19.
536–611	C	16–17.
612–688	C–	14–15.
689–764	D+	13.
765–842 and higher	D	12 and lower.

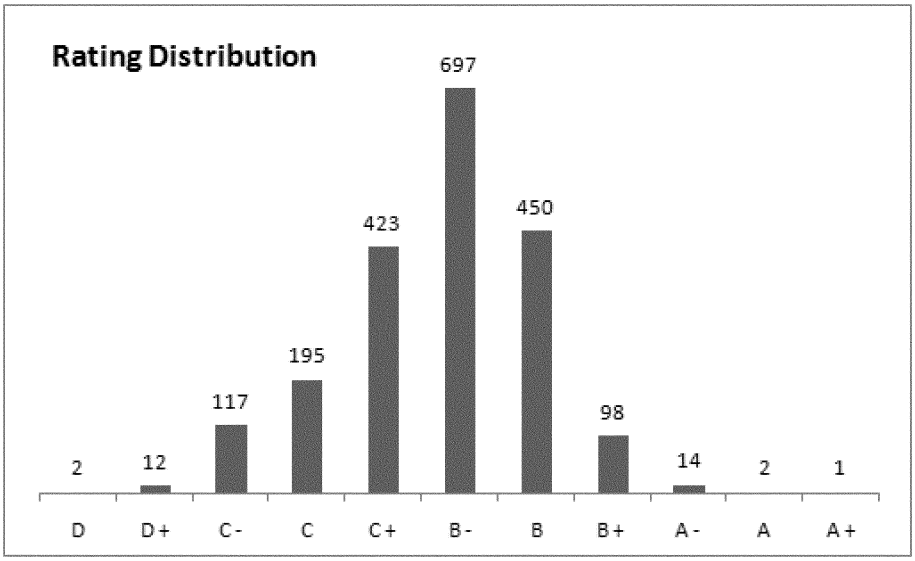
This example would result in the following distributions of ratings, based on 2010 vehicle model types, plus several additional vehicles indicated as "Electric Vehicle" and "Plug-in Hybrid Electric Vehicle."[73]

[70] The direct relationship between CO_2 and fuel consumption breaks down to some extent for vehicles with electric operation. For these vehicles, tailpipe CO_2 emissions are zero; however, energy is consumed by the vehicle and an energy efficiency value other than infinity can be assigned. Nevertheless, given that electric drive trains are currently much more efficient than those for conventional vehicles, the relationship between those vehicles emitting zero CO_2 and having the highest energy efficiency holds true at the present time. This approach may need to reassessed in the future if efficiencies of electric drive and conventional vehicles begin to approach each other, or if it is desired to differentiate between the efficiencies of electric-powered vehicles, but should not be a necessary consideration in the foreseeable future.

[71] Median vehicle is determined by vehicle model type, with model type as defined in 40 CFR 600.002–08.

[72] The agencies evaluated several potential methodologies for creating this rating system besides equal increments of CO_2. We rejected an approach that would create the rating system based on establishing equal size categories for the ratings using miles per gallon—that is, taking the range of MPG of the vehicle fleet and dividing that range into ten equal segments. Given that the fleet will soon see vehicles that achieve MPG-equivalent values of 75 to 100, the agencies were concerned that this methodology would create a situation where a vehicle such as the 2010 Toyota Prius (which gets a combined MPG of 50 MPG) would receive only an average rating. Using this method would result in the vast majority of vehicles receiving a rating well below the middle rating, which would not seem to be an appropriate result of a rating system. However, the agencies seek comment on whether a combined rating system based on MPG instead of on CO_2 might be developed in a way that avoided these results.

[73] The additional vehicles are examples of types expected to enter the commercial market. The CO_2 and MPGe values shown are examples only and are not based on any formal testing or certification data.



RATINGS BY CLASS

	A+	A	A−	B+	B	B−	C+	C	C−	D+	D
Small car	1	2	8	71	215	306	79	57	30	2	.....
Midsize car	.....	.....	6	5	79	92	43	6	8	.....	2
Large car	.....	.....	.....	.....	11	31	41	10	13	6	.....
Minivan	.....	.....	.....	.....	2	9	18	.....	2	.....	.....
Pickup	.....	.....	.....	.....	2	30	56	52	9	.....	.....
Station wagon	.....	.....	.....	12	75	65	12	.....	.....	.....	.....
SUV	.....	.....	.....	8	68	167	166	68	45	4	.....
Van	.....	.....	.....	.....	.....	.....	4	2	10	.....	.....

Applying this rating system to model year 2010 data would assign the ratings as follows for the sample vehicles listed. Of course, future model year vehicles could receive different ratings from those shown in this example.

	CO_2 g/mi	MPGe	Sample vehicles
A+	0–76	117 and up	Electric Vehicle.
A	77–152	59–116	Plug-In Hybrid Electric Vehicle.
A−	153–229	40–58	Ford Fusion Hybrid, Honda Civic Hybrid, Toyota Prius.
B+	230–305	30–39	Chevrolet Cobalt (Manual), Ford Escape Hybrid (2WD), Honda Fit, Nissan Altima Hybrid, Toyota Camry Hybrid, Toyota Corolla (1.8L Manual), Toyota Yaris, Volkswagen Golf.
B	306–382	24–29	Chevrolet Cobalt (Automatic), Chevrolet Malibu (2.4L), Ford Escape (2.5L Manual), Ford Escape Hybrid (4WD), Ford Focus, Ford Fusion (2.5L), Ford Ranger (2.3L Manual), Honda Accord (2.4L), Honda Civic, Honda CR–V (2WD), Hyundai Elantra, Hyundai Sonata (2.4L), Jeep Patriot (2.0L, 2.4L Manual), Mazda 3, Nissan Altima (2.5L), Nissan Sentra, Porsche Boxster (Automatic), Toyota Camry (2.5L), Toyota Corolla (1.8L Automatic, 2.4L), Toyota Highlander Hybrid, Toyota Matrix, Toyota RAV4 (2.5L).
B−	383–458	20–23	Cadillac CTS (3.0/3.6L, Automatic), Chevrolet Impala, Chevrolet Malibu (3.5L and 3.6L), Chevrolet Silverado 15 Hybrid, Chevrolet Tahoe 1500 Hybrid, Dodge Charger (2.7/3.5L with 4-speed Automatic), Dodge Grand Caravan (4.0L), Ford Escape (2.5L Automatic), Ford Fusion (3.5L), Ford Mustang (4.0L Manual), Ford Ranger (2.3L Automatic), GMC Canyon (2.9L), GMC Sierra 15 Hybrid, Honda Accord (3.5L), Honda CR–V (4WD), Hyundai Sonata (3.3L), Hyundai Santa Fe, Jeep Patriot (2.4L CVT), Nissan Altima (3.5L), Porsche Boxster (Manual), Subaru Forester, Toyota 4Runner (2.7L), Toyota Camry (3.5L), Toyota Highlander (2WD), Toyota RAV4 (3.5L), Toyota Tacoma (2.7L 2WD).
C+	459–535	18–19	BMW 750Li (4.4L 2WD), Cadillac CTS (3.0/3.6L, Manual), Chevrolet Corvette (6.2L Automatic, 7.0L), Chevrolet Express 1500 (4.3L), Chevrolet Silverado 15 (4.3L 2WD, 5.3L), Chevrolet Tahoe 1500, Dodge Charger (3.5/5.7L with 5-speed Automatic), Dodge Grand Caravan (3.3L, 3.8L), Ford Explorer (4.6L 2WD), Ford F150 (2WD 6-speed Automatic), Ford Mustang (4.0L Automatic, 4.6L, 5.4L), Ford Ranger (4.0L Automatic), GMC Canyon (3.7L, 5.3L 2WD), GMC Sierra 15 (4.3L 2WD, 5.3L), Honda Pilot, Jaguar XJ, Jeep Grand Cherokee (3.7L), Kia Sedona, Toyota 4Runner (4.0L), Toyota Highlander (4WD), Toyota Sienna, Toyota Tacoma (2.7L 4WD, 4.0L Automatic), Toyota Tundra (4.6L 2WD).

	CO_2 g/mi	MPGe	Sample vehicles
C	536–611	16–17	BMW 750Li (4.4L 4WD, 6.0L 2WD), Cadillac CTS (6.2L, Manual), Chevrolet Corvette (6.2L Manual), Chevrolet Express 1500 (5.3L), Chevrolet Silverado 15 (4.3L 4WD, 4.8L, 6.3L 2WD), Dodge Charger (6.1L), Ford Explorer (4.0L and 4.6L 4WD), Ford F150 (4-speed Automatic, 4WD 6-speed automatic), GMC Canyon (5.3L 4WD), GMC Sierra 15 (4.3L 4WD, 4.8L, 6.2L), Jeep Grand Cherokee (5.7L), Nissan Titan (2WD), Toyota Tacoma (4.0L Manual), Toyota Tundra (4.0L, 4.6L 4WD, 5.7L 2WD).
C−	612–688	14–15	Aston Martin DBS, BMW M5, Cadillac CTS (6.2L, Automatic), Chevrolet Silverado 15 (6.3L 4WD), GMC Sierra 15 (6.2L 4WD), Land Rover Range Rover, Lexus LX 570, Maserati Quattroporte, Nissan Titan (4WD), Toyota Tundra (5.7L 4WD).
D+	689–764	13	Ferrari 599 GTB Fiorano, Mercedes-Benz Maybach 57.
D	765 and up	12 and down	Ferrari 612 Scaglietti.

One potential issue with this approach is that a rating system based on CO_2 emissions may not be an adequate proxy for a fuel economy rating system if the agencies decide in the final rule to allow manufacturers to use A/C credits in determining their CO_2 emissions values. Since fuel economy by definition does not account for HFC leakage, a CO_2 rating boosted by A/C leakage credits would not accurately represent the vehicle's fuel economy rating. EISA requires that labels include a rating system that allows consumers to compare fuel economy across vehicles, so a fuel economy rating system that includes HFC leakage arguably would not meet these requirements. The proposed Label 1 would address this issue, whether A/C were included in the letter-grade rating or not, by virtue of also having the absolute rating scale for fuel economy at the bottom of the label. Still, the agencies seek comment on whether a rating system that combined fuel economy and CO_2 emissions could accurately describe both if A/C credits were permitted to be included in the rating system for CO_2.

Another issue with using a CO_2-based method is the fact that some diesel vehicles would see their rating reduced by ½ letter grade—*i.e.,* diesel vehicles would appear "worse" to the consumer in the rating system—relative to an approach that relied on MPG or fuel consumption, given the higher carbon content of a gallon of diesel fuel compared to a gallon of gasoline. This could potentially discourage some sales of diesel vehicles if consumers are influenced by the rating system, which the agencies may not necessarily want to accomplish. However, because a consistent basis is needed across all fuels, MPGe would need to be used rather than MPG: This would provide equivalency on an energy basis rather than a volume basis, and would allow the use of an MPG-type metric across fuels that are not dispensed by the gallon, such as CNG and electricity. Since gasoline, diesel, biodiesel, and ethanol have nearly equivalent ratios of energy to carbon, the choice of MPGe versus CO_2/mile has minimal impact on the rating system results, particularly for liquid fuels. The agencies nevertheless seek comment on how significantly a CO_2-based rating system might impact diesel sales, and whether an MPGe-based rating system might ameliorate any such impact, and if so, how that rating system would need to be structured for technology neutrality.

In practical terms, this means that the rating system would include all vehicles for which fuel economy information and labeling is required, which currently includes all passenger automobiles and light trucks as defined by NHTSA at 49 CFR part 523. More specifically, the rating system would span all automobiles up to 8,500 pounds gross vehicle weight, plus some vehicles (large SUVs and some passenger vans) between 8,500 and 10,000 pounds gross vehicle weight. We believe that this is consistent with the intent of Congress, based on the text of EISA which refers clearly to labels for "automobiles" rather than "passenger" or "non-passenger automobiles," and which states that the rating system must include a designation of the vehicle with the highest fuel economy and lowest GHG emissions.[74] The approach of including all vehicles in a single rating system is supported by the market research and literature reviews done for this proposal, which show that, while prospective vehicle purchasers narrow their choices by vehicle type early in the buying decision, they do not focus narrowly on a single class, at least as defined by EPA. Focus group participants indicated that they shopped, on average, across two to three vehicle classes.[75] For these consumers, a single rating system will enable them to make accurate vehicle comparisons across whichever vehicles they choose to shop. Market research also indicates that consumers have varying definitions of what constitutes a specific vehicle class, thus making it challenging to categorize vehicles in a way that is useful for all consumers.

Nevertheless, EPA is seeking comment on rating passenger cars separately from light duty trucks under its authority to require other information related to fuel economy as authorized by the Administrator at 49 U.S.C. 32908(b)(1)(F).[76] In this case, EPA would propose to use the same definitions for cars and trucks used for light-duty fuel economy and GHG standards, which are NHTSA's definitions provided in 49 CFR part 523. Doing so would be consistent with automaker obligations under those requirements, in which cars and trucks have separate sets of standards. Additionally, market research shows that, while many people shop across several narrowly-defined classes, about two-thirds shop exclusively among either trucks or cars. These consumers might find it useful to compare among only those vehicles of interest. If a commenter believes that separate rating systems for cars and trucks would be preferable, EPA especially seeks comment on whether those consumers that shop among both cars and trucks could adequately compare across their vehicles of interest if ratings systems were separated, and whether or not the emerging "crossover" market will make this "car/truck" distinction increasingly less relevant and potentially confusing to the public.[77]

[74] 49 U.S.C. 32908(g)(1)(A)(ii).

[75] Environmental Protection Agency Fuel Economy Label: Pre-Focus Groups Online Survey Report, EPA420–R–10–907, August 2010, p. 18.

[76] NHTSA does not interpret 49 U.S.C. 32908(g)(1)(A)(ii) as permitting rating systems based on less than the entire fleet, so a rating system for fuel economy and/or GHG emissions based on only the car or truck fleet would not be sufficient to satisfy EISA's requirement, although EPA could require such a rating system under its authority.

[77] For example, under NHTSA's and EPA's definitions, the same version of a crossover could potentially be a "car" if it were two wheel drive and a "truck" if it were four wheel drive. A consumer looking at the labels of these two vehicles side by side might find it challenging to understand why their ratings were different.

5. Other Emissions Performance and Rating System

In addition to fuel economy and greenhouse gas information and ratings, EISA requires new vehicles to also be labeled with information reflecting a vehicle's performance in terms of "other emissions," and a rating system that would make it easy for consumers to compare the other emissions of automobiles at the point of purchase.[78] Unlike fuel economy and GHG emissions, EISA does not expressly require the designation of the "best" vehicle in terms of other emissions. This section lays out the criteria that EPA proposes NHTSA use to form the basis for other emissions performance and ratings. Concurrently, NHTSA proposes that these criteria be used as the foundation for information that is provided on the label.

Congress did not precisely define in EISA which of the pollutants in the universe of possible candidates for "other emissions" should be included for labeling purposes. The agencies assume that Congress did not intend to create any new substantive requirements as part of this labeling provision for pollutants that are not currently regulated and, thus, propose that "other emissions" include those tailpipe emissions, other than CO_2, for which vehicles are required to meet current emission standards. These air pollutants comprise both criteria emissions regulated under EPA's National Ambient Air Quality Standards and air toxics, and include:

- NMOG—non-methane organic gases;
- NO_X—oxides of nitrogen;
- PM—particulate matter;
- CO—carbon monoxide; and
- HCHO—formaldehyde.

Auto manufacturers must provide the agency with emission rates of these pollutants for all new light duty vehicles each model year under EPA's Tier 2 light duty vehicle emissions standards requirements,[79] or the parallel requirements for those vehicles certified instead to the California emissions standards.[80] Emission standards for these pollutants are aggregated into bins; each bin contains emissions limits on a gram per mile basis for each of the aforementioned pollutants for the useful life of the vehicle, as shown in Table II.A.5–1. To be eligible for sale in the United States, each vehicle model and configuration must be certified to a specific bin, meaning that the automaker is confirming that the vehicle is designed not to exceed the specified emission rates for any of the pollutants over the useful life of the vehicles. Automakers must submit data to EPA that demonstrates compliance with these levels, with a requirement that their fleet achieve a sales-weighted NO_X average equivalent to the Bin 5 standard or cleaner annually. California and states that have adopted California emissions standards in lieu of the federal standards have similar sets of emissions standards, known as the Low Emitting Vehicle II (LEV II) standards.[81]

TABLE II.A.5–1—U.S. EPA LIGHT DUTY TIER 2 EMISSION STANDARDS

	Emission limits at full useful life (120,000 miles) for model year 2004 and later light duty vehicles, light duty trucks, and medium duty passenger vehicles				
	NO_X (g/mi)	NMOG (g/mi)	CO (g/mi)	PM (g/mi)	HCHO (g/mi)
Bin 1	0	0	0	0	0
Bin 2	0.02	0.01	2.1	0.01	0.004
Bin 3	0.03	0.055	2.1	0.01	0.011
Bin 4	0.04	0.07	2.1	0.01	0.011
Bin 5	0.07	0.09	4.2	0.01	0.018
Bin 6	0.1	0.09	4.2	0.01	0.018
Bin 7	0.15	0.09	4.2	0.02	0.018
Bin 8	0.2	0.125	4.2	0.02	0.018

The agencies considered whether to provide specific information and ratings for each of these individual pollutants listed above. EPA Tier 2 emission regulations do require manufacturers to submit specific information regarding the performance of each vehicle for each of these pollutants, but the agencies believe that attempting to require all of it to be represented on the fuel economy label, along with rating systems for each, would be unduly burdensome and not reasonable given space constraints and the need to present all the other information required by EPCA and EISA.

In addition, in the focus groups conducted for this proposal, consumers' interest in actual emissions levels across multiple pollutants was minimal, and this level of detail is likely to be well beyond that which most members of the public would seek or find useful.[82] Repeatedly, focus group participants reflected that it was the job of the government to determine the relative importance of the pollutants, and that the label should not leave this determination up to the individual. Given that EISA did not specify exactly which pollutants would make up "other emissions" and given focus group feedback that differentiation between other emissions did not add value for many participants, the agencies are not proposing to provide pollutant-specific information on the label for "other emissions.'' Nevertheless, the agencies seek comment on whether pollutant-specific information and ratings might have value to consumers beyond what the agencies have seen in their focus group research, and if so, how the agencies might design a label to require pollutant-specific information and ratings that would make it easy for consumers to compare other pollutant emissions across vehicles at the point of purchase.

Instead, the agencies believe that a rating based on the groups of emissions standards—either the Federal Tier 2 bin system or the California LEV II system, as appropriate—can and should be used

[78] 49 U.S.C. 32908(g)(1)(A).

[79] 40 CFR part 86, subpart S.

[80] 42 U.S.C. 7543(b), Clean Air Act Section 209, gives California special authority to enact stricter air pollution standards for motor vehicles than the federal government's, as long as under certain requirements are met. 42 U.S.C. 7507, Clean Air Act Section 177, allows states, under certain conditions, to adopt California's vehicle emission standards. See 40 CFR 86.1844–01.

[81] The California Low-Emission Vehicle Regulations for Passenger Cars, Light-Duty Trucks and Medium-Duty Vehicles, Title 13, California Code of Regulations (last amended March 29, 2010).

[82] Environmental Protection Agency Fuel Economy Label: Phase 1 Focus Groups, EPA420–R–10–903, August 2010, p. 29.

to meet this requirement. This approach mirrors the current Air Pollution Score on EPA's Green Vehicle Guide (*http://www.epa.gov/greenvehicle*). Vehicle certification under either the Federal Tier 2 bin system or the California LEV II system allows auto manufacturers to certify that their vehicles will fall into an emissions range across each of the regulated pollutants. In effect, the Federal and California systems rate vehicles according to their air pollution emissions by compiling the requirements across multiple pollutants into one category (a Tier 2 bin or a LEV II standard). Though these systems are useful for regulatory compliance, they have limited recognition among consumers. However, relative rating systems are well-recognized by the public, and the Federal emissions bins and California standards categories are well-suited to conversion to a relative rating system that would be readily understandable.

EPA and NHTSA therefore propose to establish a rating system for "other emissions" in which each rating is associated with a bin from the Federal Tier 2 emissions standards (or comparable California emissions standard). Table II.A.5–2 provides an example of how such a system would work for a ten-point rating scale.[83] Various graphical representations of this rating are being contemplated, as discussed in Section III.

TABLE II.A.5–2—PROPOSED RATING SYSTEM FOR OTHER EMISSIONS

Rating	EPA Tier 2 emissions standard	California Air Resources Board LEV II emissions standard
10	Bin 1	ZEV.
9	N/A	PZEV.
8	Bin 2	SULEV II.
7	Bin 3	N/A.
6	Bin 4	ULEV II.
5	Bin 5	LEV II.
4	Bin 6	LEV II opt 1.
3	Bin 7	N/A.
2	Bin 8	SULEV II large trucks.
1	N/A	ULEV & LEV II large trucks.

Because such a rating would be directly reflective of the emissions standards requirements for air pollutants to which the vehicle is certified, the agencies believe that it could serve the dual purposes of performance information and ratings for "other emissions" as required by 49 U.S.C. 32908(g)(1)(A)(i) and (A)(ii). Such an approach would have the advantage of avoiding requiring detailed information on the label that would detract from the key elements and could be of minimal use to the majority of the public. NHTSA and EPA seek comment on whether also utilizing the rating system to meet the requirement for performance information on other emissions would be permissible under EISA.

6. Overall Energy and Environmental Rating

One of the issues that came up frequently in the focus groups conducted for this proposal was how to design a label that balanced the competing interests of completeness and simplicity. It became clear that different consumers wanted different amounts of information and levels of detail about fuel economy, GHG emissions, and other emissions, and how vehicles compare to one another. Many focus group participants expressed an interest in most or all of the information that might be offered, until they saw that the label they had "designed" would be cluttered and difficult to read; at this point, many culled their desired information down to a few key elements. Other participants simply were not interested in much detail. Yet other participants insisted that they wanted more detail anyway and would not find labels with more information distracting or confusing.[84]

One approach that emerged to condense the level of detail was to combine rating systems: For example, a rating system that combined fuel economy and CO_2 emissions, or that combined CO_2 and other pollutant emissions, or that combined all three. Because they have different sets of units and different scales, rating systems that combine different data elements must employ relative or unit-free scales, such as the letter grade system, rather than absolute approaches like the separate rating scales discussed above. Using the bar as an example, if CO_2 and other pollutants were combined into a single bar, a vehicle that falls at one point between the absolute end points for CO_2 emissions may not fall at the same point between the (different) end points for other emissions, which would make combining the ratings challenging at best, and unhelpful at worst. Similarly, while a vehicle may fall at roughly the same point between "best" and "worst" absolute values for both fuel economy and CO_2 emissions, differences in scale make presenting that visually difficult and possibly factually incorrect.

Thus, if the agencies wanted to try to combine rating systems for visual simplicity and to appeal to consumers who want labels with less information, a relative scale—1 to 10, 1 to 5, A+ to D − is needed. The agencies tested combined relative scales for GHG and other pollutant emissions fairly extensively in the focus groups, with mixed results. When environmental ratings were shown in the context of the label, the preference was for a consolidated environmental rating, with participants expressing minimal interest in having separate information on greenhouse gases and other air pollutant emissions; these participants often stated that the EPA was in a better position to assess the relative concerns regarding the various environmental factors than were the participants

[83] Under EPA regulations, Independent Commercial Importers (ICIs) are allowed to import a limited number of older vehicles that can be certified to the emission standards which were in effect at the time the vehicle was produced. In some cases, these standards may be pre-Tier 2 standards. Because the rating system being proposed for other pollutants on the FE label is based on the Tier 2 bin structure, we are proposing that vehicles imported by ICIs that are not subject to the Tier 2 standards will automatically be rated as a "1" (*i.e.,* the rating assigned to vehicles with the worst emissions under the Tier 2 bin structure).

[84] Environmental Protection Agency Fuel Economy Label: Phase 1 Focus Groups, EPA420–R–10–903, August 2010, p. 29.

themselves.[85] In contrast, however, when the environmental rating approaches were shown in isolation, apart from the context of the entire label, many participants indicated a preference for two separate ratings, arguing that more complete information holds more value.[86]

Congress required in EISA that each new vehicle must be labeled with a "rating system that would make it easy for consumers to compare the fuel economy and greenhouse gases and other emissions of automobiles at the point of purchase, including a designation of automobiles with the lowest GHG emissions over the useful life of the vehicles; and the highest fuel economy* * *" Thus, for purposes of meeting the statute, the question is whether a rating that combined two or all three elements could accurately reflect which vehicle achieves the lowest GHG and the highest fuel economy. For purposes of meeting consumers' needs in a label, the question is how to design a label that is helpful both to the people who want more information and detail and to the people who want less information and detail. Given the EPCA requirements for fuel economy and annual cost information, and the EISA requirements for performance information on fuel economy, greenhouse gases, and other emissions, the agencies believe that the needs for more detail-oriented consumers will likely be adequately met.

In the previous section we discussed an approach to combining fuel economy and CO_2 into one overall rating; in this section the agencies discuss the additional option of also combining "other emissions" with either CO_2 or with a combined fuel economy/CO_2 rating. EPA and NHTSA recognize that there is not a strong correlation between CO_2 and other emissions, due to sophisticated emission control systems, such as catalytic converters and exhaust gas recirculation, which target reductions of specific pollutants but do not also reduce CO_2 emissions. In addition, the agencies are cognizant of the very real challenges automakers must overcome to achieve the required emissions levels and do not wish to deprive them of public recognition of advancements in reducing air pollutants that could come with a separate rating system for pollutants. Moreover, a separate rating would provide information for purchasers who value low emission levels and an opportunity to raise awareness among other consumers of which vehicles produce lower emissions. And finally, as discussed above, the agencies have determined that a rating for "other emissions" also meets the EISA requirement of providing vehicle performance information for those emissions. Combining this rating for "other emissions" with ratings for fuel economy and greenhouse gases would potentially be at odds with this requirement. For these reasons, the agencies propose that the rating for "other emissions" be separate from the rating(s) for fuel economy and greenhouse gases.

Nevertheless, while some focus group participants wanted more information, most clearly wanted less and suggested that they would glean little additional value from a label with separate ratings. The agencies seek comment on whether it would be more useful to provide a single rating that captures all three elements: fuel economy, greenhouse gases, and other emissions. As a matter of technical appropriateness, although there is not a strong correlation between emissions of CO_2 and emission of other pollutants, there is some correlation. The vehicles with the lowest fuel economy levels and highest CO_2 emissions do not typically meet the cleaner emission bins; conversely, those with high fuel economy and low CO_2 emissions are rarely, if ever, certified to the higher emission bins.

Including other emissions in the rating system to form one rating would simplify for the consumer the overall energy and environmental impact of using the vehicle, thus reducing their need to weigh the relative importance of the various elements. It also allows the label to be less cluttered and more streamlined.

Therefore, it is possible and perhaps reasonable to combine "other emissions" with the fuel economy/CO_2 letter grade approach. Under this approach, the rating for fuel economy and greenhouse gases applicable to a vehicle would be adjusted upward or downward, based on the Federal emissions bin (or California standard) to which the vehicle is certified. That is, vehicles that are certified to the cleanest bins would have their rating increased—for example, under a letter grade system, a Bin 2 vehicle otherwise eligible for a B+ would have their rating increased to an A−. Table II.A.6–1 illustrates how such a system could work.

TABLE II.A.6–1—POTENTIAL COMPREHENSIVE RATING

Fuel economy/ greenhouse gas rating	Overall energy and environment rating		
	Bin 1, 2, 3	Bin 4, 5	Bin 6, 7, 8
A+	A+	A+	A
A	A+	A	A−
A−	A	A−	B+
B+	A−	B+	B
B	B+	B	B−
B−	B	B−	C+
C+	B−	C+	C
C	C+	C	C−
C−	C	C−	D+
D+	C−	D+	D
D	D+	D	D−

7. Indicating Highest Fuel Economy/ Lowest Greenhouse Vehicles

In addition to ratings indicating relative emissions performance, EISA also requires the rating system to include "a designation of automobiles with the lowest greenhouse gas emissions over the useful life of the vehicles; and the highest fuel economy."

Depending on the rating system(s) selected, differing approaches may be needed to achieve this requirement. For example, if the fuel economy and greenhouse gas ratings are provided separately, such as with the absolute bars shown on labels 1 and 2, consumers would be able to easily identify the highest fuel economy and lowest greenhouse gas emitting vehicles by looking for those that have the highest absolute values. If fuel economy and greenhouse gases are combined into one rating, such as with the letter grade system, but are provided separately from other emissions, again consumers should be able to easily identify the highest fuel economy/lowest GHG vehicles by looking for those that achieve the best rating category. However, this will likely encompass more models than would be designated "best" under an absolute rating system, which may or may not have been the intent of EISA. In that instance, the rating system itself meets the requirement for designation of lowest GHG automobiles, defined in that case as the group of vehicles that achieve the best rating category.

If, on the other hand, fuel economy and greenhouse gases are combined with other emissions into a comprehensive rating, and no other information on the label indicates the highest fuel economy/lowest GHG vehicles, then the rating system would need to be adjusted in order to ensure that EISA requirements were met. The agencies seek comment on whether

[85] Environmental Protection Agency Fuel Economy Label: Phase 1 Focus Groups, EPA420–R–10–903, August 2010, p. 25.

[86] Environmental Protection Agency Fuel Economy Label: Phase 3 Focus Groups, EPA420–R–10–905, August 2010, p. 39.

separate ratings should be provided for other emissions or whether a single combined rating for fuel economy, GHG and other emissions should be provided.

8. SmartWay Logo

EPA and NHTSA additionally seek comment on utilizing the SmartWay logo as an indicator of a high level of overall environmental performance. The SmartWay logo appears as follows:



The SmartWay logo could be added to the label as a way of highlighting the top environmental performers each model year. This approach is contemplated for labels 2 and 3.

The trademarked SmartWay designation was launched in 2005 on the EPA's Green Vehicle Guide Web site (*http://www.epa.gov/greenvehicle*) to provide consumers with a quick and easy way to determine which vehicles were the cleanest and most fuel efficient for each model year. It has been awarded to those vehicle models that achieve certain thresholds on the Greenhouse Gas score (which is tied to the vehicle's fuel economy and fuel type) and the Air Pollution score (which is tied to the Tier 2 bins or California standards, as applicable). Historically, the SmartWay thresholds determined by EPA have been targeted to approximately the top 20% of vehicle models each model year, and have been tightened over time as the fleet has become cleaner and more fuel efficient.

The SmartWay logo for light duty vehicles is currently being used on a voluntary basis by auto manufacturers, vehicle-search web sites, rental car companies, banks/credits unions (green vehicle loan programs), and private companies (light duty commercial fleets and employee incentive programs). The SmartWay logo was included on labels shown to focus group participants for this rulemaking. Although participants did not recognize the logo, most readily understood that they could use it when shopping for vehicles to quickly identify those that were environmentally friendly, without having to review the rest of the environmental information on the label.[87]

Because focus groups have indicated that some consumers prefer more detailed information while others prefer a simpler presentation, the agencies are seeking comment on whether to require or optionally allow the SmartWay logo on the label for applicable vehicles. This logo would indicate in a binary fashion, similar to other eco-labels, whether \ a vehicle meets certain environmental and energy use thresholds. Specifically, the agencies seek comment on whether including the SmartWay logo would be helpful to consumers on a label that already addresses fuel economy, GHGs, and other emissions in other formats.

9. Annual Fuel Cost

EPCA requires the estimated annual fuel cost be displayed on the fuel economy label.[88] Prior to 2008, the label simply displayed the estimated annual cost with no explanatory information. EPA's consumer research in 2006 found that consumers paid little attention to this metric, and the reason most frequently stated was that the assumptions behind the estimate (annual miles and fuel price) were unknown to them.[89] As a result, the 2008 label modifications included a requirement that these assumptions be placed on the label.[90] EPA publishes annual guidance directing manufacturers what fuel price to use for determining annual cost—based on projections made by the Department of Energy [91]—so that all vehicles in a given model year use the same assumptions. The estimated annual fuel cost can therefore be used to compare across vehicles of the same model year. As an example, the estimated annual fuel cost to be used for labels on model year 2008 gasoline-fueled vehicles is $2.80.

Despite the addition to the label of the assumptions behind the annual fuel cost starting in 2008, the early focus groups conducted in 2010 showed that many participants still did not pay much attention to the estimated annual fuel cost metric. Participants often stated that this was because fuel prices fluctuate and, therefore, they did not think that the fuel price assumption stated on the label reflected what they were actually paying. Less frequently, participants additionally said that the fact that they did not drive 15,000 miles a year made the estimated annual cost not meaningful to them. Participants remained skeptical of the use of estimated annual fuel cost even when asked to consider whether it could be a useful comparative metric across other vehicles of the same model year. In retrospect, it is possible that providing this information on the label about the assumptions behind the annual fuel cost number resolved one issue and caused others, in that now there are two more numbers for the consumer to process and question. There is also the possibility that consumers are not aware that the two assumptions are used universally across all vehicles, which would call into question the usefulness of the metric as a comparative tool at the point of purchase (for example, if they believe that the manufacturers individually determine the inputs to the estimated annual fuel cost). However, participants in the Phase 3 focus groups leading up to this NPRM consistently employed the annual fuel cost information (along with MPG) when asked to compare the fuel efficiency of advanced technology vehicles like PHEVs and EVs with conventional vehicles, with their more complicated set of energy metrics.[92]

Recognizing the EPCA statutory requirement to continue to display the estimated annual fuel cost, EPA requests comment on how to improve consumers' understanding of the estimated annual fuel cost, whether it is a useful comparative tool across technologies, and if so, how to best communicate on the label that it is a valid comparative tool. EPA also requests comment on whether there might be an additional way to display fuel cost information—or a better way of displaying the required information—that might be more useful or might have a greater impact on consumers. In the 2010 focus groups, some groups were presented with a number of different ways of displaying fuel costs on the label, ranging in magnitude from dollars per mile to dollars per five years.[93] A fairly clear preference emerged for dollars per year, with dollars per month a frequent second choice.[94] EPA is thus proposing labels that continue to prominently display the estimated annual fuel cost and the associated assumptions. EPA is requesting comment on whether the label should include the estimated monthly fuel cost, or other alternative cost information. Commenters should bear in mind the statutory requirement that estimated annual fuel cost be on the label; thus

[87] Environmental Protection Agency Fuel Economy Label: Phase 3 Focus Groups, EPA420–R–10–905, August 2010, p. 41.

[88] 49 U.S.C. 32908(b)(1)(B).

[89] PRR, Inc., EPA Fuel Economy Label Focus Groups: Report of Findings, prepared for U.S. Environmental Protection Agency, March 2005.

[90] 40 CFR 600.307–08.

[91] The Department of Energy's Energy Information Administration publishes gasoline and diesel fuel price forecasts at least annually in its Annual Energy Outlook, available at *http://www.eia.doe.gov/oiaf/aeo/index.html.*

[92] Environmental Protection Agency Fuel Economy Label: Phase 3 Focus Groups, EPA420–R–10–905, August 2010, p.37.

[93] Environmental Protection Agency Fuel Economy Label: Phase 1 Focus Groups, EPA420–R–10–903, August 2010, p. 19.

[94] Environmental Protection Agency Fuel Economy Label: Phase 1 Focus Groups, EPA420–R–10–903, August 2010, p. 19.

any other cost would have to be an additional piece of information.

10. Relative Fuel Savings or Cost

The expert panel recommended another approach to presenting fuel cost information—to focus on the savings attainable by purchasing a more fuel efficient vehicle. These panelists felt strongly that savings is a much more powerful message than cost, which tends to be discounted, as just discussed. Although savings calculations would necessarily also rely on assumptions, they suggested that the value of savings to the consumer is significant enough to overcome these drawbacks, at least for a substantial portion of the population. NHTSA and EPA therefore propose including a five-year savings value on Label 1. No such value is proposed for Labels 2 or 3, although the agencies could also require savings information on these labels, if one of them were finalized.

The agencies explored a number of methods for calculating savings. The most promising approach seems to be savings compared to the projected median vehicle for that model year, and the agencies propose this method. Thus, some vehicles would show a savings, while others would show consumers paying more for fuel over five years compared to a reference vehicle; these values would increase in magnitude the further the vehicle is in terms of fuel consumption from the reference value. This approach appropriately reflects that fuel cost savings become larger the more a vehicle improves their fuel economy, and conversely that vehicles cost more to fuel when fuel efficiency is decreased when compared to the reference, median, vehicle.

As with the fuel economy and greenhouse gas rating system and comparable class information, the EPA would provide annual guidance indicating the value to be used as the reference against which the fuel cost savings would be measured. The reference five-year fuel cost would be calculated by applying the gasoline fuel price to the average miles driven over the first five years of the reference vehicle's life, assuming a particular fuel economy for the reference vehicle; these values would be provided in the annual guidance. We propose that the fuel economy value for the reference vehicle be based on the projected fuel economy value of the median vehicle model type for sale the previous model year, not sales-weighted, and adjusted based on projections regarding the upcoming model year. This value is expected to change slightly from one year to the next as the fleet becomes more fuel efficient in response to regulations and market forces. The guidance would also include the fuel prices to be used to calculate fuel cost savings for the particular vehicle, based on its applicable fuel type. Finally, we propose to round the fuel cost savings values used on the label to the nearest one hundred dollars to avoid implying more precision than is warranted, as well as for ease of recall.

As previously stated, vehicles with a higher fuel economy than the median vehicle would be designated as saving the consumer a certain number of dollars over a five year period. For those vehicles with fuel economy lower than the median vehicle, the label would state that the consumer would spend a certain number of dollars more over a five year period. Vehicles that are within fifty dollars of the reference vehicle fuel cost could be designated as saving zero dollars. Alternatively, text could indicate that this vehicle is comparable to the average vehicle. Although the agencies recognize that "median" is a more accurate term than "average," we propose the use of the term 'average" as being more readily understandable.

Other methods considered include savings compared to the average vehicle one grade lower, and fuel cost savings compared to vehicles 10 MPG lower. These approaches had certain positive aspects, particularly in that they demonstrated the value of incremental improvements in vehicle choice. In the main, however, they provided values that seemed to be difficult to interpret and could perhaps cause perverse effects. For example, a vehicle at the high end of their grade or rating would have a higher savings value than a vehicle at the low end of their grade or rating. This might be valuable for those who are considering vehicles within the same grade. However, for those shoppers who glanced at the number quickly, they might erroneously conclude that, for instance, a vehicle at the low end of the B- grade would save less on fuel costs than a vehicle at the high end of the D+ grade. The agencies seek comment on this and alternative approaches, as opposed to the proposed approach of displaying a vehicle's fuel cost savings relative to the median vehicle in the fleet. The agencies are also seeking comment on whether there is a potential for consumer confusion caused by two different cost values displayed on Label 1 with regard to the estimated annual fuel cost of operating the vehicle and the 5 year fuel cost savings number compared to the average vehicle. We are interested in receiving comments on how consumers may perceive these values as interacting with each other and we intend to explore this issue further prior to finalizing this proposal, including exploring research conducted in executive branch agencies.

11. Range of Fuel Economy of Comparable Vehicles

EPCA requires that the label contain "the range of fuel economy of comparable automobiles of all manufacturers," a requirement that the label addressed somewhat awkwardly for many years.[95] As a result of EPA's 2006 labeling rule, the labels now use a graphical element to show the performance of the labeled vehicle relative to the best and worst within that vehicle class.[96] In the 2010 focus groups, it became clear that this information, though more prominently displayed on today's fuel economy label than in previous iterations of the label, continued to be under-utilized by consumers as a tool to assist them in making vehicle purchase decisions.

EPA is now proposing two possible ways of meeting this statutory requirement. Given the likelihood of more information on the label, a graphic as used on the current label that repeats the combined fuel economy number may overly complicate the new label. Thus one option being proposed is simply a text statement that would read "Combined fuel economy for [insert vehicle class] ranges from XX to XX." This approach is used on Labels 1 and 3. The other option EPA is proposing is essentially an updated version of the current graphical representation, which combines the fuel economy rating across all vehicles with the within-class information into one graphical element, as shown in Section III as part of Label 2.

The agencies believe that one of these approaches could be used to satisfy the statutory requirements in 49 U.S.C. 32908(b)(1)(C) ("the range of fuel economy of comparable automobiles"). As an alternative, EPA seeks comment on whether the requirement to indicate fuel economy of comparable vehicles is met by the overall fuel economy rating required by 49 U.S.C. 32908(g)(1)(A)(ii) ("a rating system that would make it easy to compare the fuel economy * * * of automobiles"), given that consumers tend to consider vehicles from several classes during their purchase process.

12. Other Label Text

EPA is proposing some minor changes and an addition to the text on the label

[95] 49 U.S.C. 32908(b)(1)(C).

[96] 40 CFR 600.307–08. A discussion of the comparable class categories and a proposed change to those categories can be found in section VI.B.

not previously discussed, and seeks comment on each of these text changes.

First, each of the proposed labels has information that indicates the fuel on which the vehicle operates. The agencies believe it will become increasingly important, as different technologies emerge, to display clearly the kind of vehicle a consumer is viewing. For dual fuel vehicles (*e.g.,* current gasoline/ethanol vehicles), EPA is required by statute to identify the vehicle as a dual fuel vehicle and to identify the fuels that the vehicle operates on.[97] In the case of current flexible-fuel vehicles, for example, this text would read "Dual Fuel: Gasoline-Ethanol (E85)," and for plug-in hybrid vehicles arriving soon on the market this text would read "Dual Fuel: Gasoline-Electricity." In addition, we are proposing the use of various icons on the label to distinguish between different technologies and between different operating modes. These icons include stylized electric plugs, fuel pumps, and fuel dispensing nozzles.

Second, because of the expanded information on the label and DOT requirements under EISA, EPA is proposing to change the label heading from the current text ("EPA Fuel Economy Estimates") to "EPA/DOT Fuel Economy & Environmental Comparisons." We also propose adding the DOT logo to the label, to provide appropriate recognition of DOT's role mandated by EISA.

Third, EPA is proposing to change the Fuel Economy Guide statement found on the label to reflect the expanding features that comprise *http://www.fueleconomy.gov,* with the hope that this Web site will become the first Internet stop for a vehicle's fuel economy and environmental information. The proposed text would read: "Visit *http://www.fueleconomy.gov* to calculate estimates personalized for your driving, and to download the Fuel economy Guide (also available at dealers)."

EPCA requires EPA and the Department of Energy (DOE) to prepare and distribute to dealers a fuel economy booklet, commonly known as the annual "Fuel Economy Guide," containing information that is "simple and readily understandable."[98] EPCA requires that the guide include fuel economy and estimated annual fuel costs of operating automobiles manufactured in each model year, as well as some additional information for dual fueled automobiles (such as the fuel economy and driving range on both fuels). Further, EPCA requires that a statement appear on the fuel economy label that this booklet is available from dealers.[99] Starting in the 2008 model year, the statement on the label was broadened to include a reference to *http://www.fueleconomy.gov* as another source for the Fuel Economy Guide; this Web site is based on the EPA fuel economy information and jointly run by EPA and DOE. Thus the current text now reads: "See the FREE Fuel Economy Guide at dealers or *http://www.fueleconomy.gov*."

Both the U.S. Department of Energy's Office of Energy Efficiency and Renewable Energy and the EPA currently maintain *http://www.fueleconomy.gov.* The site helps fulfill DOE and EPA's responsibility under EPCA of 1992 to provide accurate MPG information to consumers. The site provides fuel economy estimates, energy and environmental impact ratings, fuel-saving tips, as well as a downloadable version of the fuel economy guide and other useful information. Since its inception in 1999 this Web site has been used by millions of consumers, and the latest data from 2008 indicates that more that 30 million user sessions occurred in that year.

Because of the extensive amount of information and user features available on the Web site beyond simply providing electronic access to the Fuel Economy Guide, the agencies wish to direct consumers to this Web site when they are researching their vehicle purchases. For example, the Web site allows a user to personalize their fuel economy information by inputting their specific driving habits and fuel prices. This ability will be even more important for understanding the impacts of driving distance and battery charging habits on the fuel consumption of vehicles like plug-in hybrid electric vehicles, and EPA expects to work with DOE to develop a Web-based system to allow users to customize the fuel economy estimates for these advanced technology vehicles. Further, information that some consumers may want but that is not available on the label is likely to be available on the Web site. For example, in the 2010 focus groups some participants expressed an interest in knowing the cost to fill the tank, or the volume of the fuel tank, or how many miles could be driven on a tank. The Web site provides all this information, and information such as the miles per tank can be personalized to reflect a person's relative amount of city and highway driving. Finally, the Web site also has developed a version tailored to mobile devices.

During the expert panel, EPA provided the panelists with a copy of the current Fuel Economy Guide. The panelists all expressed concerns that the public probably didn't know it was available, didn't access it at the dealer showrooms if they did know it was available, and would not respond well to it in its current format. They recommended a simple one-sheet "guide" that dealers would distribute in the form of a checklist, that would allow EPA to deliver the top ten points on fuel economy that could not (and should not) be included on the label. It also would ensure that even if individuals did not utilize the Web site, they would receive this information. It was also suggested that if possible, distribution of this document be mandatory.

EPA requests comments on the usefulness of the Fuel Economy Guide in its current form and also requests comments on whether EPA and DOE should develop a different approach in the future to the Fuel Economy Guide—including the idea of transforming the guide into a consumer friendly "checklist" guide. While EPA recognizes that it does not have the authority to mandate distribution of this guide by dealers we also request comments on how we could better encourage and work with dealers to more prominently display and distribute the fuel economy guide in the future.

The expert panel also strongly recommended that the new fuel economy label prominently display an easy to remember URL. Panelists suggested that not only should such a URL be easy to remember, it should also provide a consistent platform for educational messages that would be highly visible for consumers and serve as a portal for web users to engage each other on fuel economy issues, including exchanging helpful tips and tools. Panelists indicated that this type of URL and message platform is of critical importance in today's marketplace and that EPA should make better use of the label to engage the public in this manner. Finally, the panelists recommended this new URL not be a '.gov' Web site, which they suggested is generally perceived as static and uninviting by consumers that are increasingly reliant on highly interactive social media networks and tools. Label 1 series found in Section III currently displays how this URL concept might be incorporated in Label 1. We note that President Obama has an initiative on transparency and open

[97] 49 U.S.C. 32908(b)(3).

[98] 49 U.S.C. 32908(c)(1)(A).

[99] 49 U.S.C. 32908(b)(1)(D).

government,[100] and as part of this initiative, the Executive Branch has already made some significant improvements to its Web sites.

The agencies request comment on the new URL concept displayed on Label 1, along with the underlying approach recommended by the expert panel: That the agencies create and display a prominent URL on the label that will provide both a visible consumer message and an easy to remember web portal or gateway to a more interactive consumer Web site. As envisioned, this Web site would introduce the new label approach, laying out what is new and unique to this label. It would explain what the agencies are trying to accomplish with the new design, and detail the concept of the grading system and underlying scoring method. It would include applications that consumers can use to personalize their vehicle buying decisions, based on their own driving habits and needs. It would also provide information that is not available on the label, such as the upstream emissions associated with each vehicle choice. It would also link to the detailed vehicle information and consumer discussion pages on fueleconomy.gov, capitalizing on the existing government Web site and further maximizing its consumer friendliness and usability.

Finally, for conventional vehicles, EPA is not proposing any changes to the statement that currently reads "Your actual mileage will vary depending on how you drive and maintain your vehicle." However, because some advanced technology vehicles are especially susceptible to certain conditions, such as cold weather, EPA is considering the addition of some specific qualifications to this statement for some vehicle technologies, and seeks comment on what qualifications might be most helpful.

13. Gas Guzzler Tax Information

EPCA requires that "Gas Guzzler" tax information be included on the fuel economy label.[101] These taxes are required under the Internal Revenue Code 26 U.S.C. 4064(c)(1). This part of the Internal Revenue Code contains the provisions governing the administration of the Gas Guzzler Tax, and specifically contains the table of applicable taxes and defines which vehicles are subject to the taxes. The IRS code specifies that the fuel economy to be used to assess the amount of tax will be the combined city and highway fuel economy as determined by using the procedures in place in 1975, or procedures that give comparable results (similar to EPCA's requirements for determining CAFE for passenger automobiles). These provisions have been codified in 40 CFR 600.513–08. This proposed rule would not impact these provisions.

The current labeling requirements for the Gas Guzzler Tax require that an affected vehicle have the following statement on the label (the regulations provide different ways of displaying this depending on the label; for example, an alternative fuel vehicle label has some additional information that limits space, thus the template for labeling such a vehicle accounts for this). In the limited situations in which this labeling requirement applies, EPA expects to provide label templates including this information that are consistent with the label design that is ultimately selected. For example, for Label 1 presented in Section III, one potential option is to place the gas guzzler information in the position for fuel cost savings. EPA seeks comment on this approach.

B. Advanced Technology Vehicle Labels

1. Introduction

In the past, EPA has not devoted much effort to fuel economy label issues for advanced technology vehicles. There is a simple reason for this—if EPA defines a conventional vehicle to be that which derives all of its propulsive energy from a petroleum fuel (or a liquid fuel blend dominated by petroleum) stored on-board the vehicle, then conventional vehicles have represented well over 99% of all vehicles sold since the advent of fuel economy labels in the 1970s. EPA made the judgment that the very small number of consumers who might have considered the purchase of an electric or natural gas or other type of advanced technology vehicle over the last 35 years did not justify a major investment of government resources to address the more complex issues associated with advanced technology labels. Rather, EPA addressed the occasional need for an advanced technology vehicle label on a case-by-case basis.

But, this situation is changing and as the market evolves, this approach is no longer sufficient. For the first time since labels have been in use (in fact for the first time since the early days of the automotive industry), it appears increasingly likely that the future automotive marketplace will offer a much more diverse set of technological choices to consumers. EPA and NHTSA believe that now is the time to begin to design labels that are more appropriate for advanced technology vehicles that we expect to be commercialized in the next few years. For purposes of this rulemaking, the agencies intend to focus on two advanced technologies:

- Electric vehicles (EVs) are vehicles that are powered exclusively by batteries (charged with electricity from the grid) and electric motors, and which do not have a conventional internal combustion engine or any other powertrain. Several automakers sold EVs in the early and mid-1990s,[102] but the only EV on the U.S. market today is the luxury Tesla Roadster with annual sales of a few hundred vehicles. The first more mainstream-priced EV offered for sale in the U.S. is the Nissan Leaf, for which orders are now being taken and first deliveries are projected for late this year in selected markets.[103] In addition, Ford has announced plans for a model year 2012 Ford Focus EV.[104]
- Plug-in hybrid electric vehicles (PHEVs) can be powered in as many as three different ways: (1) Like an EV, exclusively by batteries and electric motors, (2) like a conventional hybrid vehicle, when the vehicle gets all of its propulsive energy from a conventional internal combustion engine/transmission (usually fueled with gasoline), though the battery still assists with regenerative braking and engine buffering, and (3) a combination of both conventional hybrid and electric operation. PHEVs entail a family of different engineering approaches, and will continue to evolve as the technology matures. One distinct type of PHEV is called an extended range electric vehicle (EREV). An EREV PHEV has a very distinct operational profile: As long as the battery is above its minimal charge level, the vehicle is operated exclusively on the electric powertrain, and then when the battery is at its minimal charge, it operates like a conventional hybrid getting all of its power from gasoline or other liquid fuel. In a way, an EREV PHEV can be

[100] *See* Presidential Memorandum on Transparency and Open Government, *available at http://www.whitehouse.gov/the_press_office/Transparency_and_Open_Government/* (last accessed July 20, 2010); *see also* Open Government Directive from OMB, *available at http://www.whitehouse.gov/omb/assets/memoranda_2010/m10-06.pdf* (last accessed July 20, 2010).

[101] 49 U.S.C. 32908(b)(1)(E).

[102] Ehsani,M., Gao,Y., and Einadi, A. (2010). Modern Electric, Hybrid Electric and Fuel Cell Vehicles: F Fundamentals, Theory, and Design. Second Edition. Pp 12–14.

[103] "Nissan's Electric Leaf Set for Production," Detroit News. May 26, 2010, *http://detnews.com/article/20100526/AUTO01/5260357,* (last accessed May 26, 2010).

[104] Abuelsamid, Sam, "Detroit 2010: 2012 Focus Electric could be both sedan and hatch", green.autoblog.com, Jan. 11, 2010, available at: *http://green.autoblog.com/2010/01/11/detroit-2010-2012-ford-focus-electric-could-be-both-sedan-and-h.* (last accessed July 12, 2010).

considered to be a combination of an EV and a conventional hybrid, with an emphasis on operating like an EV as much as possible. There have been no commercial EREV PHEVs sold in the U.S. to date but the first commercial offering is likely to be the Chevrolet Volt, which is scheduled to be introduced in late 2010.[105] A second type of PHEV is called a "blended" PHEV. As long as the battery is charged, it will operate on a combination of grid electricity and gasoline (while a blended PHEV might not have any "guaranteed" all-electric range, it is possible that some blended PHEV designs may have some all-electric range under certain driving conditions), then when the battery is at its minimal charge, the vehicle gets all of its propulsive energy from the gasoline fuel and engine (though the battery still assists with regenerative braking and engine buffering, as with a conventional hybrid). In this respect, a blended PHEV can be viewed as a combination of a "grid-enhanced" hybrid and a conventional hybrid, but without the emphasis on using only electricity for shorter trips as with the EREV PHEV. To the degree that a blended PHEV does have some practical all-electric range, the boundary between a blended PHEV and an EREV PHEV begins to blur. There have been no original equipment blended PHEV offerings in the U.S. to date, but many automakers are developing prototypes and some aftermarket conversions are available. The first commercial U.S. blended PHEV may be a Toyota Prius, likely offered as a 2012 model.[106]

Other advanced technology vehicles will also likely be on the market in the near future—for example, Honda continues to sell a dedicated compressed natural gas Civic in selected states and several manufacturers plan to sell fuel cell vehicles (FCVs) in the future.[107] In any case, the issues associated with and the decisions that we make about labels for EVs and PHEVs will go a long way toward preparing us to address labels from other advanced technologies in the future. EPA and NHTSA seek comments on whether there are other advanced technologies that have the potential to achieve mainstream interest in the near future and for which the agencies should develop labels in a future rulemaking.

PHEVs and EVs represent a fundamental departure from the powertrain and fueling infrastructure that has exclusively dominated the U.S. market for the last century—a single powertrain (an internal combustion engine with a mechanical transmission) and a single fuel (gasoline) available at public service stations. While PHEVs retain this option, they also offer the consumer the option to charge the on-board battery from the electric grid at home and to propel the vehicle exclusively or partially by the battery and electric motor. An EV must be operated this way. These fundamentally different powertrains and refueling approaches raise many challenging issues from a consumer information standpoint that may affect how the agencies decide to require these vehicles to be labeled.

- These technologies are still evolving. EPA has been able to test only a small number of these advanced technology vehicles, and it is unclear whether the vehicles that we have tested are a good reflection of the technologies that will ultimately be offered in the market.
- Gasoline and electricity are very different automotive fuels. Gasoline is a liquid fuel with a high energy density that is stored on-board the vehicle in a relatively simple and lightweight tank that can be filled in a few minutes, while electricity is generated by chemical reactions inside a much lower energy density (and therefore heavier) battery pack and which can take many hours to recharge. Gasoline is produced very efficiently from crude oil, but is a less efficient vehicle fuel, while electricity is less efficient to produce from a wide variety of resources (such as coal, nuclear, natural gas, hydropower, and wind), but is a more efficient vehicle fuel. Approximately 80% of the "life-cycle" greenhouse gas emissions from a gasoline vehicle are emitted directly from the vehicle tailpipe, while all of the life-cycle greenhouse gas emissions associated with an electric vehicle are "upstream" of the vehicle. As just one simple example, miles per gallon, the core metric that has been used on gasoline labels for the last 35 years, is a much more complicated metric for a fuel like electricity which is not measured in gallons.
- Some advanced technologies can operate on more than one fuel, either simultaneously (*e.g.,* the use of gasoline and electricity in the charge depleting mode of a blended PHEV) or at different times (*e.g.,* an EREV PHEV uses electricity in charge depleting mode, then gasoline in hybrid mode). By itself, this suggests that a consumer label for a vehicle that operates on two fuels might have to have approximately twice as much information as a label for a vehicle that operates on a single fuel.
- Consumer behavior can have a much larger impact on the operation of an advanced technology vehicle, relative to that of a conventional vehicle. Whether the owner of a PHEV charges the battery every night and how many miles per day they drive—neither of which affects average energy consumption for a conventional vehicle—can have a dramatic impact on energy and environmental performance. Again using the standard miles per gallon of gasoline metric as an example, one EREV PHEV design may vary from 35 or 40 MPG on the low end (when the battery is empty and the vehicle is in hybrid mode) to essentially "infinite" MPG-gasoline if the vehicle is operated only off the battery pack. This fuel economy variability is much greater than with conventional vehicles, where MPG values for most individual vehicles are typically within 15–20% of the average value.
- Consumers have no practical experience with these new technologies, or in some cases might not even understand the basics of how the technologies work. While EPA has sponsored focus groups to gauge what consumers want on advanced technology labels, there can be little question that consumers are in a stronger position to provide meaningful input on conventional labels, with which they have decades of experience, than on advanced technology labels, where they may not now know what they will want and need to know in the future to make informed purchase decisions.

All of these factors suggest that there is the likelihood of significant consumer confusion when multiple advanced technology vehicles begin to compete in the marketplace. We have no illusions that our advanced technology labels will completely resolve this consumer confusion, but we do hope they will help to reduce the confusion. We are certain that advanced technology labels will be more complicated than conventional vehicle labels. Just as EPA has repeatedly refined the much simpler conventional vehicle labels over time, the agencies expect to do so with

[105] "Chevy Volt's Rollout to Include New York City,"New York Times, July 1, 2010, *http://wheels.blogs.nytimes.com/2010/07/01/chevy-volts-initial-rollout-to-include-new-york-city/.* (last accessed July 12, 2010).

[106] "Detroit 2010: Toyota's 2011 plug-in Prius release date is "aggressive" target," Green Autoblog, January 14, 2010, *http://green.autoblog.com/2010/01/14/detroit-2010-toyotas-2011-plug-in-prius-release-date-is-aggre.* (last accessed July 12, 2010).

[107] "GM Plans Fuel-Cell Vehicle Pilot Program in Hawaii," Environmental Leader, Energy & Environmental News for Business, May 12, 2010, *http://www.environmentalleader.com/2010/05/12/gm-plans-fuel-cell-vehicle-pilot-program-in-hawaii/.* (last accessed July 12, 2010).

advanced technology vehicle labels as well. Accordingly, while EPA and NHTSA are co-proposing two specific labels for EVs and PHEVs, the agencies also seek public comment on as many of the key issues as possible.

While this section will discuss EVs and EREV PHEVs as well, in many cases blended PHEVs will be the illustrative technology because they often raise the most challenging issues due to the fact that two different fuels can be used simultaneously.

2. EPA Statutory Requirements

a. Electric Vehicles (EVs)

Electricity is an alternative fuel under the statute and vehicles fueled only by alternative fuel are "dedicated automobiles."[108]

b. Plug-In Hybrid Electric Vehicles (PHEVs)

Some PHEVs are dual fueled automobiles under 49 U.S.C. 32901(a)(9). They are capable of operating on a mixture of electricity and gasoline, provide superior energy efficiency when operating on electricity compared to operating on gasoline, and provide superior efficiency when operating on a mixture of electricity and gasoline as when operating on gasoline.[109] These vehicles also meet the requirement that a dual fueled automobile must meet the minimum driving range under 49 U.S.C. 32901(c).[110] DOT has set the minimum driving range for electric vehicles at 7.5 miles on its nominal storage capacity of electricity when operated on the EPA urban test cycle and 10.2 miles on its nominal storage capacity of electricity when operated on the EPA highway test cycle.[111]

The statute contains particular requirements for dual fueled automobile labels. Section 32908(b)(3) requires that each label (A) indicate the fuel economy of the automobile when operated on gasoline or diesel fuel, (B) clearly identify the automobile as a dual fueled automobile, (C) clearly identify the fuels on which the automobile may be operated; and (D) contain a statement that additional information required by the statute is in the fuel economy booklet. The additional information required in the booklet for dual fuel automobiles is described in 32908(c)(2) and states that the label will include the energy efficiency and cost operation of the automobile when operated on gasoline as compared to when operated on alternative fuel and the driving range when operated on gasoline as compared to when operated on alternative fuel. It should also include information on the miles per gallon achieved when operated on alternative fuel and a statement explaining how these estimates may change when the automobile is operated on mixtures of alternative fuel and gasoline.

For simplicity and consistency, the agencies plan for all PHEV fuel economy labels to contain the information required for dual fueled vehicles under the statute, even though only some PHEVs are dual fuel automobiles. We seek comment on this approach.

The fuel economy required on the label means the average number of miles traveled by an automobile for each gallon of gasoline (or equivalent amount of other fuel) used.[112] Therefore, in order to meet the statutory requirement that fuel economy be displayed on the label, the electricity use for EVs and PHEVs on the fuel economy label is converted to gallons of gasoline equivalent.

EPA recognizes that the statutory requirements in the Energy Policy and Conservation Act of 1975 were adopted long before advanced technologies like EREV PHEVs and blended PHEVs were even conceived. While EPA must meet the statutory requirements, the agencies are concerned that requiring electricity to be conveyed in MPG equivalent values might actually make an advanced technology vehicle label less useful to consumers. The agencies seek public comment on this question as explained in more detail below.

3. Principles Underlying the Co-Proposed Advanced Technology Vehicle Labels

The agencies have found it helpful to identify a few basic principles to guide our thinking about and development of advanced technology vehicle labels.

- The advanced technology vehicle labels should provide objective information that helps consumers make good decisions for both themselves and the environment. The market research undertaken for this rulemaking found that the current fuel economy label is a trusted source of information regarding the fuel economy of today's conventional gasoline vehicles and the agencies seek to build on this foundation by ensuring that consumers receive objective, useful and essential information that helps inform their advanced technology vehicle purchasing decisions.[113] The agencies recognize that many of the most important drivers for the public and private interest in advanced vehicle technologies are in fact related to energy and environmental considerations.
- The advanced technology vehicle labels should aim for the simplest way to provide fairly complex information. As discussed above in the introduction to this section and with specific examples later in this section, the agencies are aware that advanced technology vehicle labels will inherently be more complex than conventional vehicle labels. We strive to strike a balance between providing sufficient information to be helpful and credible (too simple runs the risk of misinformation with such complex technologies), without trying to "do everything" on the label (which could be a source of confusion for many consumers). We believe that automakers and respected third-party organizations (and possibly the federal government via fueleconomy.gov or other Web sites) will develop sophisticated on-line (and possibly on-vehicle) calculators that will allow consumers to customize energy, environmental, and cost information for their unique driving and battery re-charging habits. We believe that labels should be aimed at the consumer who wants a quick overview of energy, environmental, and cost performance, and that those consumers who want detailed, customized information will look to other sources.
- The advanced technology vehicle labels must be as equitable as possible across different technologies, both advanced and conventional. For example, the agencies want to avoid picking a label design or label metric that inherently favors a certain advanced technology beyond the energy and environmental merits of the individual vehicles. There could be considerable consumer confusion when multiple advanced technology vehicles reach the market, each with their own marketing strategy, and labels are one way to minimize consumer confusion. We specifically solicit comments from automakers on whether we have achieved this goal of equity with our proposed label designs.
- Finally, while labels should provide one or more metrics to compare across vehicle technologies, both advanced and conventional, the advanced technology vehicle labels do not have to have the same precise design as conventional vehicle labels. Given that many of the

[108] 49 U.S.C. 32901(a)(1) and (a)(8).

[109] 49 U.S.C. 32901(a)(9)(A), (B), (C). EPA is extending the application of the subclause (C).

[110] 49 U.S.C. 32901(a)(9)(D).

[111] 49 CFR 538.5(b).

[112] 49 U.S.C. 32901(a)(11).

[113] Environmental Protection Agency Fuel Economy Label: Pre-Focus Groups Online Survey Report, EPA420–R–10–907, August 2010, p. 5.

label content issues associated with advanced vehicle technologies are much more complex than for conventional vehicles, it would probably be impossible for the labels to look the same. On the other hand, we do want the "look and feel" of the advanced technology and conventional vehicle labels to be as consistent as possible.

EPA and NHTSA seek public comment on the appropriateness of each of these principles, and whether there are additional principles that we should consider.

4. Key Advanced Technology Vehicle Label Issues

Most of the content on advanced technology vehicle labels will be similar to that on conventional vehicle labels. This section addresses those issues that are unique to advanced technology vehicle labels.

a. Upstream Emissions

This section discusses how the agencies plan to address the issue of greenhouse gas emissions associated with the use of motor vehicles, in the context of a program specifically designed to provide consumers with information that will be useful when purchasing a vehicle. The agencies' approach takes into account (1) the statutory language, (2) the fact that the law requires a great deal of information to be presented on the label, (3) the limited amount of information that can be provided on a label, (4) the importance of simplicity, clarity, accuracy, and intelligibility on the label, and (5) the ability to provide the public with additional and comprehensive information in a consumer-friendly format on a Web site.[114] This discussion focuses on, but is not limited to, the advanced technology vehicles that use electricity from the grid to power vehicles, such as the electric vehicles and plug-in hybrids that are expected to enter the market in larger numbers in the coming years; the discussion also refers to the use of renewable fuels in gasoline-powered vehicles.

For reasons outlined below, our proposed approach would limit the label to tailpipe-only emissions while providing much fuller information on a Web site. But we also identify, and seek comments on, alternative approaches, designed to accommodate the relevant variables.

The agencies believe that the proposed approach follows from a reasonable interpretation of the Energy Policy and Conservation Act (EPCA), as amended by the Energy Independence and Security Act (EISA) of 2007. The statute states that NHTSA must require vehicles to be labeled with information "reflecting an automobile's performance * * * [with respect to] greenhouse gas * * * emissions * * * of the automobile."[115] This information is to be based on criteria developed by EPA. NHTSA believes that a reasonable interpretation of this provision is that only GHG emissions directly from the vehicle itself are required for the label. On that interpretation, the information on performance and the rating of the vehicles would both be based on the emissions of the vehicle itself. This interpretation is also consistent with the history of the EPA labeling program and its focus on the vehicle itself. NHTSA believes that it would also be reasonable to interpret the statutory language such that the required label information on GHG emissions would include additional information on the upstream GHG emissions associated with electricity or other fuels used by the vehicle. This additional information could provide a broader context for reflecting the automobile's performance with respect to GHG emissions.

The agencies recognize that "lifecycle" GHG emissions are associated with the production and distribution of all automotive fuels used by motor vehicles. Lifecycle GHG emissions are associated with gasoline, diesel, and other fuels such as natural gas, electricity, and renewable biofuels. The agencies also recognize that while tailpipe-only emissions provide important information, a significant number of consumers may want, or benefit from, access to information on the total upstream GHG emissions associated with the operation of their vehicles. For example, electric vehicles do not have any tailpipe emissions since their motors do not burn fuel, but producing the electricity used to power such vehicles most likely emits greenhouse gases. Consumers might seek, or benefit from, a label that allows for simple and accurate comparisons across vehicles on the total upstream GHG emissions, in addition to tailpipe emissions. However, the agencies emphasize that developing the relevant information, and providing it to consumers in a manner that is accurate and meaningful, raises a number of challenging issues, particularly in the context of the label.

A full lifecycle evaluation would include an evaluation of a comprehensive set of GHG and energy impacts associated with both the vehicle (extraction and processing of materials, energy used in assembly, distribution, use, and disposal, etc.), and the fuel (feedstock extraction, feedstock transport, fuel processing, fuel transport, etc.). In practice, however, offering even the more limited accounting for GHG emissions from production and distribution of the fuel, including electricity, presents complex challenges. EPA currently does not measure fuel combustion/electricity generation GHG emissions in its vehicle testing. The agencies recognize that modeling can be performed to assist in estimating these emissions. But in developing upstream GHG emissions values, modeling would need to be done carefully to avoid inaccuracy and consumer confusion, especially in light of variations across time and across regions. For example, GHG emissions from electricity generation will vary significantly in the future, based on the different fuels used at generating stations—perhaps by as much as an order of magnitude between coal and non-fossil feedstocks.

It is true that the EPA has undertaken extensive lifecycle modeling of biofuels for the Renewable Fuel Standard rulemaking in response to the requirements of the Energy Independence and Security Act. But that assessment was done in the context of the particular mix of biofuels required nationally in 2022 by the Act, with a series of assumptions and estimates that may not be accurate today.

One overriding issue is whether the agencies could reasonably provide a single, national value for GHG emissions from electricity generation or could provide instead different values customized for various regions of the country.[116] There are data sources upon which a single national number could be derived. For individual owners, however, a single national value would generally not be accurate, and the individual would need access to additional information, such as regional values, to evaluate the impact of a specific vehicle.[117] In addition, the

[114] On the relationship between summary disclosure, as on the label, and full disclosure, as on the Web site, *see http://www.whitehouse.gov/sites/default/files/omb/assets/inforeg/disclosure_principles.pdf.*

[115] 49 U.S.C. 32908(g)(1)(A)(i). 49 U.S.C. 32908(g)(1)(A)(ii) also refers to GHG "emissions of automobiles," and further requires a designation of automobiles "with the lowest greenhouse gas emissions over the useful life of the vehicles."

[116] *See http://www.eia.doe.gov/energyexplained/index.cfm?page=electricity_in_the_united_states* for an overview of the national U.S. electric power industry net generation by fuel type.

[117] Regional values could be provided on a Web site. EPA has a Web site (*http://www.epa.gov/cleanenergy/energy-and-you/how-clean.html*) on

Continued

agencies would have to decide (1) whether to use average or marginal (*i.e.,* reflecting the fact that increased vehicle demand might change the overall mix of electricity sources) GHG emissions factors, and (2) if the marginal approach is used, whether to assume all nighttime charging or a mix of daytime and nighttime charging. Another major consideration is whether to base electricity generation GHG emissions values on today's electricity markets or on projected changes in electricity markets that might occur by 2020 or some other year (note that vehicles produced in the next few years will remain in the fleet for 15 or 20 years or more).

Some states have already passed legislation that could require major changes in how electricity is produced in those states in the future, and Congress has considered landmark legislation as well. It is clear that the question of how electricity will be produced in the future is very fluid. As a result of the Energy Independence and Security Act biofuel mandates, for example, the agencies expect the amount of biofuel in the transportation fuel market to increase significantly over time, and the contribution of feedstocks to change over that time as well. Information that addresses lifecycle emissions of biofuels would need to take these considerations into account.

The agencies believe that all of these complex factors can be best addressed by providing a great deal of relevant information on a Web site, which can go into considerable detail and be changed and updated as appropriate. We currently do not have a full lifecycle analysis from which to draw for labeling purposes across the full range of vehicles and fuels. The information reported to EPA on emissions from fuel production varies across fuel types and is much more detailed for gasoline production. At the present time, it would be difficult to represent emissions from energy generation on a national label in a way that is both useful and accurate for consumers, given regional variations, how generation within regions is dispatched, and access to green power purchases.

Therefore, EPA and NHTSA are proposing that the label should limit itself to tailpipe only emissions (clearly identified as such) and include a more complete discussion on energy generation and lifecycle analysis on the webpage. We believe that this approach will prove sufficiently informative to consumers. It also allows us the opportunity to provide a fuller discussion of GHG emissions associated with energy generation for alternative vehicles, as well as emissions from fuel production (gasoline and biofuels). For example, a Web site could provide calculator tools that could reflect regional variations in the GHG emissions associated with electricity generation as well as use national averages. A Web site could also provide information on the projected fuel lifecycle impacts associated with biofuels. The Web site could be updated over time as the mix of electricity fuel sources and biofuels changes. This approach could help the consumer understand over the lifetime of their vehicles how their electricity generation emissions impacts might be changing.

At this point in time, any effort to provide complete lifecycle information for fuels on the label could well produce undue confusion. A label that clearly presents tailpipe emissions appears to be the best available way to combine accuracy and disclosure, so long as fuller information is available on the Web site. The agencies believe that even though many consumers will not visit the Web site, it will be used by many groups and organizations, and as a result, the information that it provides will be made available and used in the marketplace. We seek comment on our current view that the web is the better place, compared to the label, to address the complex issues associated with emissions associated with electricity generation and lifecycle emissions more generally.

We invite both general and particular comments on the proposed approach. For example, we encourage commenters to be as specific as possible with any recommendations on how to address fuel combustion/electricity generation GHG emissions on the Web site. If information on these emissions is to be provided on a Web site, exactly what information? The agencies specifically invite comment on how to address fuel combustion emissions associated with the electricity used to power the advanced technology vehicles starting to enter commerce, such as electric vehicles (EVs) and plug-in hybrid vehicles (PHEVs). The agencies also invite comment on how to address full GHG emissions from biofuels on a Web site. Should emissions be identified specifically for the emissions associated with the combustion of fuel to produce electricity? Should such emissions be determined on a regional or a national basis? Should these emissions be provided as a relative comparison to a gasoline or diesel fuel, the current predominant fuels?

For the convenience of commenters, we have prepared the table below as an illustrative example of one simplified way that some lifecycle emissions information related to electricity production could be accounted for on a Web site, based on certain assumptions.[118] It is important to note that for comparison purposes, the agencies would need to develop methodologies to compare upstream emissions impacts from all other fuels as well, including diesel, renewable fuels, and natural gas. Consistent with the discussion above, it is important to emphasize that the tailpipe + lifecycle values in the table below are based on 2005 national average electricity GHG emissions, and could be very different for certain regions of the country today and for the nation in the future if there are major changes in the mix of methods used to generate electricity or in the GHG emissions associated with its generation.

Vehicle	Proposal—tailpipe-only CO2/mile	Tailpipe + upstream CO2/mile
Example EV	0	197
Example PHEV 1	89	210

which consumers can enter their zip code and find out what fuel mix is used to produce the electricity they use.

[118] The key assumptions underlying the illustrative numbers in the right-hand column are that: EV and PHEVs all assumed to use 200 Watt-hours per mile when operating on electricity over the EPA test and assuming a 30% range (43% electricity consumption) shortfall from test to road.

PHEV 1 assumed to operate on electricity 50% of the time.

PHEV 2 assumed to operate on electricity 25% of the time.

Uses 2005 nationwide average value of 0.642 grams of GHG per Watt-hour at powerplant (adjusted to include GHG emissions from feedstock extraction, transportation, and processing as well) from MY2012–2016 light-duty vehicle GHG final rule (75 Federal Register 25437).

Assumes typical 7% electricity grid transmission losses.

Uses 2250 grams GHG per gallon of gasoline.

Vehicle	Proposal—tailpipe-only CO2/mile	Tailpipe + upstream CO2/mile
Example PHEV2	133	217
Toyota Prius HEV	178	224
Honda Civic HEV	212	266
Honda Insight HEV	217	273
Ford Fusion HEV	228	287

In general, for purposes of providing information on the web, the agencies invite comment on the appropriate metrics to use and the specific suggestions for content and format, if appropriate. The agencies also request comment on which web resources it should prioritize for development that would provide the most useful information to consumers.

The agencies acknowledge that more consumers will look at the label than at the Web site, and that a "0" figure for GHG emissions might prove confusing to some consumers. While accurate and more complete information will be provided on the Web site, putting 0 grams CO2/mile on the label may lead some consumers to perceive that driving their EV does not contribute to GHG emissions. With respect to the label itself, the agencies are also requesting comment on alternative options for the label that, in addition to presenting tailpipe emissions, refer to or identify in some manner the emissions associated with the lifecycle of the fuel. Under one version of this alternative that is under serious consideration, similar to a co-proposal, the EV label would continue to reflect the "0" CO2g/mile number currently displayed on the co-proposed labels (Figures III–2, III–10), but the label would be modified by adding either a symbol or an asterisk and explanatory text which states, "The only C02 emissions are from electricity generation." Likewise, the agencies would modify the co-proposed PHEV labels (Figures III–3, III–6, III–1, III–12) inserting either a symbol or asterisk next to the current CO2g/mile number displayed with the following explanatory text, "Does not include CO2 from electricity generation."

This alternative approach might provide more accuracy and clarity for purchasers by more explicitly indicating that the CO2 emissions from generation of electricity are not reflected in the CO2 numbers on the label. Under this alternative, FFV labels (for FFV vehicles only) would continue to reflect the gasoline only CO2g/mile number currently displayed on the co-proposed labels (Figures III–8 and III–14), but the label (for FFVs only) would be modified by adding either a symbol or an asterisk and explanatory text that might state, "The CO2 emissions listed here are from gasoline combustion only. They do not reflect the use of renewable biofuels." The agencies request comment on this alternative option.

The agencies are also giving consideration to an approach that in addition to the tailpipe emissions, includes information on upstream emissions on the label for the various fuels. For electric vehicles, for example, GHG emissions are (on an average basis) a function of KwH per mile, and thus could in principle be calculated, and if a full or nearly full accounting could be provided in a clear and intelligible form, there would be advantages to providing it on the label to consumers, in addition to the tailpipe emissions data. Therefore, the agencies invite comment on the feasibility and usefulness of an alternative approach that in addition to identifying tailpipe emissions, would include a separate value for upstream emissions on the label as well as on the Web site.

In particular, the agencies invite comment on what type of information should be considered as "upstream," and whether a label including the upstream emissions could be based on national averages. The agencies might consider making assumptions to develop national averages.

Note, however, that agencies would need to make a substantial number of assumptions to develop such averages. These include assumptions about the overall impact on electric car recharging on the grid mix, which would include making assumptions about (1) the time-of-day distribution of recharging and (2) the subsequent impacts on the base and peak load electricity generation as well as (3) the nature of regional variability and (4) potential changes in the electricity generation fleet. A relevant source for this type of information may be the Energy Information Administration (EIA), which provides estimates of the future electricity generation mix, so there may be some basis for estimating future GHG emissions based on current state and federal policies; but these estimates will also rest on some uncertain assumptions. The same type of analysis (national averages for feedstocks and fuel production) would need to be developed and equivalent assumptions made related to upstream emissions from gasoline and diesel production as well as renewable fuels, natural gas, and hydrogen.

The agencies invite comments on whether and how the possible inclusion of upstream emissions information on the label might affect other elements of the label such as design, format, presentation of the various ratings and other information as well as the ranking of vehicles on the label.

The agencies also recognize that notwithstanding the many challenges, a potential advantage of including upstream emissions on the label is that consumers may be able to compare different EVs with respect to their upstream emissions, as some will require more energy per mile which would likely result in different upstream emissions impacts. Consumers may be able to make similar comparisons among EVs, PHEVs, gasoline and diesel powered vehicles as well as other fueled vehicles on the basis of upstream emissions. Regardless of what would be presented on the label, the agencies will continue to provide detailed information about the lifecycle GHG impacts of different vehicles on the Web site in a way that may provide a better way for individuals to take their region, driving habits, and other specific factors into account in their purchase decisions.

In view of the many assumptions the agencies would need to make to include upstream emissions on the label, we emphasize that this alternative would have to overcome several serious challenges. We ask for comment on whether and how each of those challenges, outlined above, could be addressed.

b. Energy Consumption Metrics

Energy consumption metrics are another issue which becomes more complicated with advanced technology vehicles. For conventional gasoline vehicles, the MPG metric has been the foundation of the consumer label for 35 years. It is not a perfect metric, and some have expressed concerns about its

"non-linearity," *e.g.,* the absolute fuel consumption savings associated with improving one mile per gallon from 10–11 MPG is over ten times greater than the fuel consumption savings associated with improving from 35–36 MPG as discussed above. But, in some respects, MPG has been a good metric for a consumer information program: Lay people had used the MPG metric prior to its use on the label, the concept was simple and understood by almost all consumers, the practical range of 10–50 MPG was accessible to lay people and facilitated simple calculations that most consumers could perform, etc. The results from recent EPA focus groups conducted by the agencies were unequivocal—the MPG values were, by far, the most trusted and useful values on the label.[119]

Unfortunately, while the miles per gallon metric has been very useful when 99+% of all vehicles operated on petroleum fuels, its usefulness as a metric is less clear for a future vehicle fuel such as electricity, which is not measured in gallons, but rather in kilowatt-hours. Therefore, for an electric vehicle, or for an EREV PHEV when operated exclusively on grid electricity, there are three broad choices for a consumption metric, independent of statutory considerations, to characterize the amount of electricity and all have advantages and disadvantages:

• Kilowatt-hours. The rationale for kilowatt-hours is that this is the metric by which electricity is "counted" and sold. In their monthly utility bills, consumers are charged a certain rate (or price) per kilowatt-hour, and this rate is multiplied by the number of kilowatt-hours that the consumer uses, to generate the overall monthly electricity bill. This is analogous to what happens at a gasoline service station, where a consumer pays a certain rate (or price) per gallon of gasoline, and this rate is multiplied by the number of gallons of gasoline that the consumer buys, to generate the overall gasoline bill. The primary argument against using kilowatt-hours is that the focus groups conducted by the agencies clearly indicates that few consumers understand what a kilowatt-hour is, and most of the consumers who do not know what a kilowatt-hour is say that they do not want to learn.[120]

• Gallons of gasoline-equivalent. From an engineering perspective, energy can be measured, and different forms of energy can be compared through the use of energy unit conversion factors. For example, a gallon of gasoline has the energy equivalent of 33.7 kilowatt-hours, and any value for kilowatt-hours can be converted to an energy-equivalent value of gallons of gasoline.[121] For example, a vehicle that used 33.7 kilowatt-hours would have used an amount of energy equivalent to 1 gallon of gasoline, while a vehicle that used twice as much electricity would have used an amount of energy equivalent to 2 gallons of gasoline. The rationale for using gallons of gasoline-equivalent is that consumers understand the concept of "gallons" much more than they understand any other energy metric. In the focus groups conducted for this rulemaking, the agencies found that participants believed they understood the equivalency approach and felt comfortable with this metric since it closely aligns with the miles per gallon metric that they have always relied upon.[122] The primary argument against using gallons of gasoline-equivalent is that the concept requires the conversion of one form of energy to another, and while this reflects a technical measurement of energy equivalency, it may or may not be useful to the consumer. For example, gasoline and electricity are very different fuels in many ways: How they are produced, how consumers buy them and refuel, whether consumer fuel expenditures stay in the local or regional economy or are exported, etc.

• A generic energy unit not directly connected to either gasoline or electricity, such as British Thermal Units (BTUs) or joules. The argument here would be to pick an energy metric that is "fuel neutral." The primary arguments against this are both that few consumers understand such a metric, and that no motor fuels are counted or sold in such units. While the agencies recognize this as another conceptual alternative, we have rejected this approach.

As discussed previously, EPCA requires that electricity use for EVs and PHEVs on the fuel economy label is converted to gallons of gasoline-equivalent. But the statute also provides discretion to EPA on the relative prominence of a gallons of gasoline-equivalent metric and a kilowatt-hours metric.

For EV labels, the agencies propose to show electricity consumption in both metrics: As miles per gallon of gasoline-equivalent (MPGe) and as kilowatt-hours per 100 miles. The agencies recognize that higher MPGe values are better, while lower kw–hr/100 miles values are better. The agencies seek comment on whether this is helpful or confusing to consumers.

The most complicated advanced technology vehicle in this regard is a blended PHEV that is operating simultaneously on gasoline and grid electricity. There are two options for energy metrics for blended PHEVs, which are based on the general concepts introduced above.

• Retain separate energy metrics for gasoline and electricity. The gasoline metric would continue to be miles per gallon of gasoline (supplemented by a gallons/100 miles consumption value as well), while the electricity metric would be kilowatt-hours of electricity (either miles per kilowatt-hour or kilowatt-hours per 100 miles). The advantages of this approach are (1) it includes the values that EPA measures, (2) the metrics reflect how these forms of energy are counted and how consumers pay for them, (3) the separate values do not require judgments about whether consumers "value" gasoline and electricity equally or not, and (4) it would avoid possible confusion over what a combined miles per gallon of gasoline-equivalent value means (*i.e.,* some, maybe many, consumers would probably assume that a miles per gallon of gasoline-equivalent value was equal to a miles per gallon of gasoline value, which would be inaccurate). The disadvantages of such an approach are (1) few consumers understand the metric of kilowatt-hours, (2) dual energy metrics make it extremely difficult to compare energy efficiency across vehicles, and (3) those consumers who focus only on miles per gallon of gasoline and ignore kilowatt-hours of electricity, will believe that a blended PHEV is more energy efficient than it actually is.

• Combine to a single energy metric of miles per gallon of gasoline-equivalent. This would require the use of the conversion factor of 33.7 kilowatt-hours per gallon of gasoline-equivalent value cited above. The advantages of this approach are (1) it yields a single value that simplifies the label and facilitates vehicle comparisons, (2) it avoids the kilowatt-hour metric that consumers do not like or understand, and (3) some consumers (though not all) said they liked the concept of miles per gallon of gasoline-equivalent. The disadvantages of such an approach are

[119] Environmental Protection Agency Fuel Economy Label: Phase 1 Focus Groups, EPA420–R–10–903, August 2010, p. 10.

[120] Environmental Protection Agency Fuel Economy Label: Phase 2 Focus Groups, EPA420–R–10–904, August 2010 and Environmental Protection Agency Fuel Economy Label: Phase 3 Focus Groups, EPA420–R–10–905, August 2010.

[121] 65 FR 36990.

[122] Environmental Protection Agency Fuel Economy Label: Phase 2 Focus Groups, EPA420–R–10–904, August 2010, p. 22.

(1) it requires the simplifying assumption that all forms of energy (in this case, gasoline and electricity) are equally valued, (2) it does not allow the consumer to see the individual energy consumption values for gasoline and electricity, and (3) it will yield labels with both miles per gallon of gasoline and miles per gallon of gasoline-equivalent, which could be confusing to some consumers.

The agencies are proposing to use the miles per gallon of gasoline-equivalent metric only for PHEVs, but seek public comment on the relative merits of doing so versus using the separate energy metrics. The agencies believe that both approaches have advantages and disadvantages. In formulating comments on this topic, commenters could also consider three additional questions. One, do consumers care equally about gasoline and electricity, *i.e.,* are they just two different ways of fueling their vehicles, with a Btu of gasoline equivalent to a Btu of electricity, or do some or most consumers care more about one or the other form of energy? Two, how should the agencies interpret the focus group input in which most participants indicated that they did not understand kilowatt-hours on their electric bills and did not want to have this metric included on advanced vehicle labels? Three, should we view this as an opportunity to educate consumers about the importance of kilowatt-hours as a fundamental measurement of electricity consumption?

c. Driving Range Information (Including 5-Cycle Adjustment)

EPA does not include range information on conventional fuel economy labels. Petroleum fuels have high energy densities and are stored on-board the vehicle in relatively cheap and lightweight fuel tanks. The combination of high driving range values (gasoline vehicles typically have ranges of 300–500 miles) and the fact that range can be increased by simply increasing the size of the fuel tank, means that range for petroleum-fueled vehicles has not been a top consumer priority. In recognition of the fact that non-petroleum fuels generally have lower energy densities resulting in reduced driving ranges than petroleum fuels, the Federal Trade Commission (FTC) requires a label that lists the "manufacturer's estimated cruising range" for alternative-fueled vehicles.[123]

The primary issue addressed in this section is whether range should be included on advanced technology vehicle labels. For an EV, the primary range parameter of interest would be the miles that can be traveled between battery charges. For an EREV PHEV, the most important range parameter would be the miles that can be traveled in all-electric mode. For a blended PHEV, the primary range parameter would be the number of miles over which the battery is providing assistance in the form of grid electricity, but it is also possible that there could be some guaranteed or likely all-electric range as well.

The primary arguments for including range include (1) focus groups strongly supported including the range for EVs and PHEVs,[124] (2) range is a critical factor for what the consumer gets for his or her investment in a more expensive EV or PHEV, and is obviously a core utility attribute for an EV and a primary determinant of the overall environmental and energy performance of a PHEV, and (3) EPA can easily measure range.

The arguments against including range include (1) it is not a direct measurement of energy or environmental performance (in fact, for an EV, other things being equal, a higher range means a larger battery pack, a heavier vehicle, and therefore higher energy consumption, relative to the same vehicle with a lower range and smaller battery pack), (2) there will likely be much greater variability in EV range than we have faced with gasoline fuel economy in the past, so there are greater challenges involved in defining a specific range estimate, and (3) adding range would add to an already busy label.

The agencies are proposing to include range information on alternative technology vehicle labels and seek public comment on this issue.

A related issue is how EPA will determine the appropriate adjustment factor to use in converting 2-cycle test values for range to 5-cycle test values for vehicle labels. Under current EPA regulations established by the 2006 fuel economy label rulemaking, automakers would have two choices: (1) Submitting 5-cycle test data, and (2) using the MPG-based (derived 5-cycle) equations.[125] Using the MPG-based equations for EVs would yield an approximate 40 percent downward adjustment for EV range.[126] EPA notes that there were no EV or PHEV data in the database used to generate the MPG-based equations, and that the downward adjustment appropriate for EVs (which have low direct vehicle energy consumption levels) is the result of extrapolating the results of the conventional vehicle data that was used to generate the equations.

EPA proposes a new set of options for automakers to choose for purposes of identifying the appropriate 5-cycle range adjustment for EVs and the electric portion of PHEV operation. One, automakers could provide full 5-cycle test data, which is one option under current EPA regulations. Two, automakers could provide vehicle-specific real world range data collected from in-use vehicles. Three, automakers could use the MPG-based equations discussed above, but with the downward adjustment capped at the percent reduction represented by the worst-case gasoline vehicle in the EPA database. The worst-case gasoline vehicle is the highest-MPG gasoline vehicle, which is currently the Toyota Prius. Based on the application of the MPG-based equations to the Prius' MPG values, the Prius would get about a 30% downward adjustment from its 2-cycle data to its derived 5-cycle value, and this would therefore be the level that automakers could use for EVs and the electric operation of PHEVs.

EPA seeks comment on this proposal for the downward 5-cycle adjustment for EVs and PHEVs.

d. Battery Charging Time Information

EPA does not include information on the mechanisms for or time associated with refueling vehicles on conventional vehicle fuel economy labels. Refueling with petroleum fuels is a fairly quick and ubiquitous process, and has not been a topic of consumer concern. Refueling, or charging, a battery pack will be different in many ways. While gasoline vehicle refueling typically takes 5–10 minutes, charging a battery pack can take up to 12 hours or more, depending on the charging hardware. EPA focus group participants expressed strong interest in including some type of information on charging time on labels for EVs and PHEVs.[127]

The arguments for including battery charging time information on EV and PHEV labels include (1) focus groups supported doing so, (2) it is a core consumer utility parameter (*i.e.,* if the charging time is so long as to be

[123] 16 CFR part 309.

[124] Environmental Protection Agency Fuel Economy Label: Phase 2 Focus Groups, EPA420–R–10–904, August 2010, pp. 17, 28, and 38.

[125] 71 FR77887–77888, Dec 27, 2006.

[126] *See* 40 CFR 600.210–08. Using the equations in these regulations to adjust 2-cycle test values for extremely high MPG vehicles (or MPGe for EVs) will result in adjustments approaching 40 percent. Because the data used to determine these equations did not include any such vehicles, EPA is uncertain as to the applicability of the formulae to EVs and other extremely high MPG vehicles.

[127] Environmental Protection Agency Fuel Economy Label: Phase 2 Focus Groups, EPA420–R–10–904, August 2010, pp. 16, 26, and 38.

onerous, consumers will recharge less frequently and this will have an effect on the vehicle's energy and environmental performance), and (3) EPA could develop a test procedure for generating standardized information.

An example of a simple approach for measuring EV recharge time would be to use the method for recharging the battery recommended by the manufacturer and available to the consumer. Full battery recharge time could be defined as the time required to charge the vehicle battery to full capacity from the end of the electric vehicle range test or "empty." A fully charged battery would be defined as the same battery state of charge used to determine electric vehicle range. EPA is also seeking comment on partial recharge time. Partial recharge time could be measured and expressed as the time of recharge required to travel a given distance.

Arguments for excluding battery charging time on EV and PHEV labels include (1) there is only an indirect relationship between charging time and energy and environmental performance, (2) EPA does not now have a test procedure for generating standardized data, (3) it will be fairly easy for consumers and third parties to verify automaker claims on this basic question, and (4) adding battery charging time will make the advanced technology vehicle labels more cluttered.

The agencies seek comments on whether we should include battery charging time information on labels for EVs and PHEVs.

e. Merged Vehicle Operating Mode Information for PHEVs

Conventional vehicles have a single "operating mode," *i.e.,* all the powertrain components contribute to propel the vehicle at all times. Some advanced technology vehicles have more than one operating mode. For example, a blended PHEV could have up to three operating modes: An all-electric mode where the vehicle is propelled exclusively by grid electricity via the battery and electric motor, a second mode where the vehicle is propelled by a combination of both grid electricity and an internal combustion engine, and a third mode that uses only the internal combustion engine. For such vehicles, the agencies propose to provide consumers with basic performance information about each of the PHEV's individual operating modes. One advantage of this approach is that it will allow consumers to tailor the information from the individual operating modes to their own driving habits, and therefore develop "customized" information relevant to their own situations. One issue is whether the vehicle label should also provide information that combines the various operating modes into a single "merged" value reflecting an "average driver." One group that is developing guidance for how individual operating mode data could be combined for an "average driver" is the Society of Automotive Engineers Hybrid Technical Standards Committee,[128] and the agencies will continue to monitor the work of this and other relevant committees.

The rationale for including a merged value is that (1) some consumers may find information on the individual operating modes to be "too much" and may be more likely to pay attention to a single set of performance information, (2) few, if any, consumers will exclusively drive in a single operating mode, so some kind of combined information could be helpful, (3) a single, merged value can facilitate comparisons across different vehicle technologies and models and (4) customers of this new technology will not know how much they will operate the vehicle in each mode, so an average provides more complete information to them.

The arguments against including merged values are (1) the variability between the performance values for different operating modes can be very large, and so any assumptions about an "average driver" will be accurate for some consumers, but very inaccurate for many other consumers, and (2) including merged values, in addition to individual operating mode values, will add to an already busy label.

The agencies seek public comment on the question of whether labels for advanced technology vehicles with multiple operating modes should also include merged values that combine the various vehicle operating modes, and if so, on the best methodology for doing so.

f. City/Highway Versus Combined Values

EPA's conventional vehicle labels have long reported fuel economy values for both city and highway driving. For most conventional vehicles, highway fuel economy values are typically 40–50% higher than city fuel economy values. The agencies believe that this is another issue that is worth reexamining with respect to advanced technology vehicle labels.

Arguments for including separate city and highway information on advanced technology vehicle labels include (1) focus group feedback and other research has consistently shown that consumers find it useful to have separate fuel economy values for both city and highway driving for conventional vehicles,[129] and (2) since driving habits can vary widely, separate city and highway performance information can be helpful to those consumers who want to "customize" label information to their own driving habits.

Arguments for not including separate city and highway information on advanced technology vehicle labels include (1) some advanced technologies, for example EVs, show less of a change in energy consumption values between city and highway driving than do conventional vehicles which was one of the primary reasons why EPA originally displayed separate city and highway MPG values on conventional fuel economy labels, and (2) not reporting separate city and highway values can reduce some information by either a factor of two (if a combined value is shown instead of separate city and highway values) or three (if city, highway, and combined values were all shown), thus reducing the "number of numbers" on the label and possibly making the labels more readable and accessible for consumers. Focus group participants, when viewing whole labels for both conventional and advanced technology vehicles, did not express a preference for displaying city/highway numbers for advanced technology vehicles, although they did express a clear preference for city/highway values for conventional vehicles.

The agencies seek public comment on the following questions related to separate city and highway information for advanced technology vehicle labels. One, should EPA never report separate city and highway values, always report separate city and highway values, or retain discretion for doing so only when it is appropriate (i.e., when the differences between city and highway are significant enough to be meaningful)? Two, would it be acceptable for EPA to require the use of separate city and highway fuel economy values for conventional vehicles, but to not do so, in some or all cases, for advanced technology vehicles?

g. Methodology for Merged Values for PHEVs

One specific issue for PHEVs is the methodology for determining a single merged value that combines the various

[128] SAE J2841.

[129] Environmental Protection Agency Fuel Economy Label: Phase 1 Focus Groups, EPA420–R–10–903, August 2010 and Environmental Protection Agency Fuel Economy Label: Phase 3 Focus Groups, EPA420–R–10–905, August 2010, p. 12.

operating modes into a single overall value, given that PHEVs use both gasoline and grid electricity. The agencies expect that consumers who purchase a PHEV will do so with the intention of utilizing the capability of both fuels (e.g., it seems reasonable to assume that most consumers who purchase a more expensive PHEV would then charge the PHEV as frequently as possible in order to achieve fuel savings by maximizing their use of electricity and minimizing their use of gasoline). It thus seems appropriate to include the operation on both fuels in any merged values, using a weighted average of the appropriate metric for each of the modes of operation. The agencies propose and seek comment on using a methodology developed by SAE and DOE based on utility factors (UFs)—which predict the fractions of total distance driven in each mode of operation (electricity and gas)—to assign weighting factors for gasoline and electricity use for PHEVs for the purposes of determining merged values for fuel economy and/or greenhouse gas ratings and for any other metrics for which a single, merged value is appropriate. The proposed UF methodology is described in detail in Section VI.B.

h. Advertising Restrictions

The Federal lead on guidelines for the use of vehicle label information in automaker marketing campaigns rests with the Federal Trade Commission (FTC). The agencies believe that the unique issues, as well as in the likely increased complexity and "number of numbers," associated with advanced technology vehicle labels, warrant additional consideration of whether there needs to be new guidelines for the use of label information in private marketing campaigns. The agencies intend to raise this issue with the FTC, and seek comments from the public that could help inform our input to the FTC.

C. Labels for Other Vehicle/Fuel Technologies

Labels for conventional gasoline and diesel vehicles and for certain advanced technology vehicles are the primary focus of this proposed rule. Conventional gasoline and diesel vehicles are expected to make up a majority of the fleet well into the future, and improving on the communication of conventional vehicle fuel economy and related information is a continued priority of EPA and NHTSA. Electric vehicles and plug-in hybrid electric vehicles are entering the fleet in the near term, and there is the potential for a rapidly increasing market penetration of these vehicles in the future, yet labeling these vehicles in an understandable and equitable way presents significant challenges. However, there are several other specific vehicle technologies for which EPA currently has labels, and EPA is also proposing new label templates for those as well.

1. Flexible Fuel Vehicles

Flexible fuel vehicles (FFVs) (also called flex-fuel, dual-fueled or bi-fueled vehicles) are vehicles that can operate either on gasoline or diesel fuel, on an alternative fuel such as ethanol or methanol, or on a mixture of conventional and alternative fuels. Produced since the 1980s, flexible fuel vehicles (FFVs) are the most numerous of the currently available alternative fuel vehicles, with dozens of 2010 car and truck models available from General Motors, Chrysler, Ford, Mazda, Mercedes, Nissan, and Toyota. Essentially all FFVs today are E85 vehicles, which can run on a mixture of up to 85 percent ethanol and gasoline. These vehicles are considered "dual fueled vehicles" under EPCA, which states that the label for dual fuel vehicles must "indicate the fuel economy of the automobile when operated on gasoline or diesel fuel; clearly identify the automobile as a dual fueled automobile; clearly identify the fuels on which the automobile may be operated; and contain a statement informing the consumer that the additional information required by subsection (c)(2) of this section is published and distributed by the Secretary of Energy."[130]

The current labeling requirements for dual-fueled vehicles are consistent with these requirements. While not required, manufacturers may voluntarily include the fuel economy estimates (and estimated annual fuel costs) for the alternative fuel on the label, in addition to the gasoline information.[131] Consumers can view the gasoline and E85 fuel economy estimates of all FFVs in the Fuel Economy Guide and at *http://www.fueleconomy.gov.* In fact, EPCA requires that the Fuel Economy Guide contain information such as: (1) The fuel economy when operating on the alternative fuel, (2) the driving range when operating on the alternative fuel, and (3) information about how the performance might change when operating on mixtures of the two fuels.

EPA did not propose changes to these requirements in the 2006 labeling rule and did not seek comment on the topic. However, EPA received late public comments from several environmental and consumer groups urging EPA to require additional information on the use of E85 on FFV labels. Since EPA did not propose and request comments on this topic in the 2006 rulemaking, the agency did not finalize any such requirements.

EPA and NHTSA request public comment on three options for FFV labels.

One option is to make no changes to the current requirements for FFV labels and continue to use fueleconomy.gov and the Fuel Economy Guide to provide information on E85 use to consumers.[132] Consistent with the current requirements, EPA and NHTSA would finalize regulations that would allow manufacturers to display the E85 fuel economy values on the label on a voluntary basis.[133] The final regulations would include a template for such a label.

A second option is to require the addition of E85 fuel economy values to FFV labels using the units of miles per gallon. Since E85 has a lower energy density (i.e., about 25% less energy per gallon) than gasoline, this means that, other things being equal, an FFV will have a lower fuel economy on E85 than it will on gasoline. EPA recognizes that this does not mean that ethanol is a "less efficient" fuel than gasoline; in fact, FFVs are typically slightly more efficient on E85 than on gasoline in terms of miles per unit of energy. Accordingly, one approach under this option would be to add text such as the following wording on the label that conveys this message: "While the E85 MPG values are lower than the gasoline MPG values, the use of E85 is typically slightly more energy efficient than the use of gasoline." Under this option, it would also be possible to add E85 values for CO_2 emissions (an FFV typically emits slightly less CO_2 per mile on E85 than on gasoline) and fuel costs (an FFV typically costs somewhat more to operate on E85 than gasoline, though this can vary by region). If CO_2 values are not shown, it would also be possible to include a statement such as "Using E85 uses less oil and typically produces less CO_2 emissions than gasoline."

A third option is to utilize the concept of miles per gallon of gasoline-

[130] 49 U.S.C. 32908(c)(3).

[131] 40 CFR 600.307–08(b)(14).

[132] Consumers do get some information regarding E85 efficiency on a label required by the FTC. Currently the FTC label for FFVs displays the driving range on both fuels and some additional information regarding the use of alternative fuels. See 16 CFR part 309.

[133] Label examples for FFVs are shown in Section III, but these reflect only a transition of the currently used label content (some of which is required by statute) to the proposed label designs.

equivalent (MPGe), which is a way to quantitatively account for the slightly higher miles per unit of energy that an FFV achieves on E85 relative to gasoline. Because a gallon of gasoline has about 33 percent more energy than a gallon of E85, this means that an E85 MPG is multiplied by about 1.33 to convert it to a MPGe value. For most current FFVs, an E85 MPGe value will be slightly higher than the gasoline MPG value. The E85 MPGe value could be in place of, or in addition to, an E85 MPG value. As with the second option above, CO_2 and fuel costs values for E85 could also be included.

The Federal Trade Commission (FTC) currently requires the use of a label that displays the cruising range of FFVs and other alternative fuel vehicles. If the agencies finalize one of the options to include E85 information, and the FTC determines that that information is duplicative with its own information, it opens up the possibility that the FTC might review its requirement.

One remaining issue with FFVs is the methodology for assigning an overall combined value for greenhouse gas or fuel economy-based ratings or for any other metrics for which a single "merged" value is shown, given that two different fuels can be used. There is empirical evidence that approximately 99% of all FFV owners currently use gasoline rather than E85 fuel. Given this, the agencies propose, as a default, to base any merged values for FFVs on the assumption that the vehicle is operated on gasoline 100% of the time. However, if a manufacturer can demonstrate that some of its FFVs are in fact using E85 fuel in use, then the merged values can be based in part on E85 performance, prorated based on the percentage of the fleet using E85 use in the field. This approach is consistent with that used for vehicle GHG emissions compliance under the joint EPA/DOT standards for 2016 and later model year vehicles.[134] The agencies seek comment on applying the same approach here.

2. Compressed Natural Gas Vehicles

EPA regulations currently provide a label template for vehicles operating on compressed natural gas (CNG), and there is one major manufacturer currently selling a natural gas vehicle in selected markets. Given that a CNG vehicle is a single-fuel vehicle, EPA believes that the label designs developed for conventional or other alternative fuel vehicles can be easily adapted to gaseous-fueled vehicles, as has been done in the past. In fact, EPCA provided specific instructions regarding how to determine the fuel economy for dedicated alternative fuel vehicles such as gaseous-fueled vehicles. The statute states that for dedicated automobiles the fuel economy "is the fuel economy for those automobiles when operated on alternative fuel, measured under section 32905(a) or (c) of this title, multiplied by 0.15."[135] Section 32905(c) applies to gaseous-fueled vehicles, and it requires the following: "For any model of gaseous fuel dedicated automobile manufactured by a manufacturer after model year 1992, the Administrator shall measure the fuel economy for that model based on the fuel content of the gaseous fuel used to operate the automobile. One hundred cubic feet of natural gas is deemed to contain .823 gallon equivalent of natural gas. The Secretary of Transportation shall determine the appropriate gallon equivalent of other gaseous fuels. A gallon equivalent of gaseous fuel is deemed to have a fuel content of .15 gallon of fuel."[136]

This methodology is currently specified in EPA regulations. Note that 32905(c) applies a factor of 0.15, which is essentially a "credit" that increases the fuel economy of gaseous-fueled vehicles by a factor of about 6.7 for the purpose of CAFE calculations. But the statute recognizes that incorporation of this credit factor in the label values is not appropriate, hence the provision in 32908(b)(3) to multiply the 32905(c) result by 0.15, thus removing the credit value and resulting in an appropriate real-world label value.

The current EPA regulations interpret the statute as requiring that the label for CNG vehicles display a gasoline-equivalent value, and a label template for CNG is provided in the current regulations.[137] As can be seen, the current label for CNG vehicles is fundamentally the same as for gasoline vehicles, except that the fuel economy values are described as "gasoline equivalent" values, and the estimated annual fuel cost is based on a combined city/highway gasoline equivalent value and the price per gallon equivalent of CNG. The current label also contains text that reads "This vehicle operates on natural gas fuel only. Fuel economy is expressed in gasoline equivalent values."

We are therefore proposing that labels for CNG vehicles be essentially the same in terms of content and appearance as those proposed for conventional vehicles, with only a few exceptions. First, where the proposed labels indicate the fuel type, labels for CNG vehicles would state "Compressed Natural Gas Vehicle." Second, the fuel economy value(s) would be stated as gasoline-equivalent values. As is the case for the proposed labels for electric vehicles, the CNG labels would indicate the conversion factor that is used to determine the gasoline equivalent values (0.823 gallons-equivalent per 100 cubic feet of CNG, as required by statute).[138] Third, the estimated annual fuel cost would be calculated using the combined city/highway gasoline equivalent value and the cost per gallon equivalent of CNG. The use of gasoline-equivalent gallons is appropriate because this is how CNG is dispensed, priced, and sold at current CNG fueling stations. Finally, because the cruising range of CNG vehicles is typically limited relative to conventional vehicles, we are proposing the addition of cruising range to the CNG vehicle label (in this way the label would mimic the electric vehicle label). As is the case with electric vehicles, we believe that range is a key piece of information for the consumer who is considering a CNG vehicle. Other information on the label, such as the greenhouse gas and other pollutant emissions and ratings, would be determined from emission and fuel economy test results and the proposed calculation methodologies as is the case for all vehicles.

Section III presents the proposed and alternative label designs, including a proposed design for CNG vehicles. We request comment on the proposed approach for CNG vehicles, and whether there is additional information specific to CNG or alternative fuels that should be on the label.

3. Dual Fuel Natural Gas & Gasoline Vehicles

Although there is currently a template for dual fuel CNG/gasoline vehicles in the existing regulations, there are no manufacturers that are currently manufacturing new vehicles that run on CNG and on gasoline.[139] Thus we request comment on whether there is a need to develop a template for these vehicles based on the new labels. The agencies envision that such a label would be based largely on the proposed approach for dual fuel gasoline/ethanol vehicles discussed above, in that the fuel economy and related information

[134] 75 FR 25433, May 7, 2010.

[135] 49 U.S.C. 32908(b)(3).

[136] 49 U.S.C. 32905(c).

[137] Appendix IV to 40 CFR Part 600, Sample Fuel Economy Labels for 2008 and Later Model Year Vehicles.

[138] 49 U.S.C. 32905(c).

[139] Some aftermarket fuel conversion companies offer such vehicles, but EPA regulations do not currently require fuel economy labels for aftermarket fuel conversions.

for both fuels would be displayed on the label.

Although this proposal addresses most current technologies, it does not need to address every possible fuel and technology combination either in existence or that may emerge in the future. EPA has the authority to prescribe test procedures and label content for vehicles that are not specifically addressed by the regulations, and expects to do so on an as-needed basis to address new technologies and fuels.[140] In fact, EPA expects to exercise this authority with respect to labels for electric vehicles and plug-in hybrid electric vehicles that arrive on the market before the 2012 model year.

4. Diesel Fueled Vehicles

EPA proposes to continue to calculate the fuel economy of diesel vehicles in miles traveled on a gallon of diesel fuel. Diesel fuel has a long history of being sold on a volumetric basis, and the energy content difference between a gallon of gasoline and a gallon of diesel fuel is relatively small.

III. Proposed Revisions to Fuel Economy Label Appearance

This section presents and requests comment on three label designs. The agencies are co-proposing Label 1 and Label 2 design options, meaning that the agencies currently expect to finalize one of the two options. A third label design is being presented as an alternative on which the agencies are requesting comment. All of these designs take into account and meet the variety of statutory requirements in EPCA and EISA as discussed in Section I. It is important to note that although all of the label designs shown in this section make use of color to varying degrees, this Federal Register notice is capable of only displaying gray-scale versions. Full color versions can be viewed and/or downloaded from the docket (search for docket number EPA–HQ–OAR–2009–0865[141] or docket number NHTSA–2010–0087 at *http://www.regulations.gov*) or from the agencies' Web sites where all information related to this action will be posted (*http://www.epa.gov/fueleconomy/regulations.htm* and *http://www.nhtsa.gov/fuel-economy*). To the extent possible this section will describe the use of color on the labels, but interested parties should view the color versions to understand the full effect of the label designs.

Each design family consists of a set of labels applicable to an array of vehicle technology/fuel types. Specifically, we show label examples that apply to conventional vehicles (that is, vehicles operating on a single fuel with internal combustion engines or hybrid electric drive), flexible-fuel vehicles (for example gasoline-ethanol), compressed natural gas vehicles, electric vehicles, and plug-in hybrid electric vehicles. Each label family could be readily adapted to accommodate additional vehicle technologies or fuels, such as vehicles powered by fuel cells or other upcoming technologies. The agencies intend to finalize a label family with a consistent look and feel across vehicle types, in the belief that such consistency will most effectively allow for recognition of the label as well as comprehension of its content.

The agencies found through the focus groups and expert panel that many consumers will view the fuel economy label quickly, some using it to confirm the vehicle information they have previously researched on a manufacturers' website or a third party website such as Consumer Reports or Edmunds.com. Other consumers, in contrast, will view the fuel economy information for the first time when they visit a dealer lot or showroom. While a new vehicle purchase represents a significant financial outlay, the agencies learned through their research that consumers like it simple, and do not necessarily act on details. Therefore, while the agencies want and need to add certain pieces of information to meet statutory requirements and to help consumers make informed decisions about the fuel consumption and environmental impacts of their vehicle choices we must balance these objectives with the need to keep the new labels consumer friendly. To accomplish this, the agencies were guided by a set of core principles in designing these labels. The labels should:

- Create an immediate first impression for consumers.
- Be easy to read and understand quickly.
- Clearly identify vehicle technology (conventional, EV, EREV, PHEV).
- Utilize color.
- Chunk information to allow people to deal with "more information."
- Be consistent in content and design across technologies.
- Allow for comparison across technologies.
- Make it easy to identify the most fuel efficient and environmentally friendly vehicles.

The agencies are requesting comment on both the design and content of each label. Design issues are self-evident on the labels as presented, and we seek comment on the design aspects of each label family, including format, color, font, and graphical elements. Content issues have been extensively discussed throughout the preamble; for illustrative purposes, presentation of content varies somewhat from one label family to another and we seek comment on the various approaches. Specifically, we seek comment on the layout, prominence, and grouping of label elements in terms of clarity, apparent relative importance, responsiveness to consumer information needs, and effectiveness at meeting public policy goals. These sample labels do not present every possible configuration of each label; for example, gas guzzler information is not depicted, as it is utilized on only a small subset of labels. The final rule will provide specific templates for these unique cases. Detailed specifications for presenting all required label information will be included in the regulations.

Although we will finalize labels with a uniform look and feel, commenters should not view the content of the labels below as being necessarily tied to one label design. For example, just because Labels 1 and 3 for PHEV are the only labels that display the all-electric range for a PHEV does not mean that the information could not be incorporated into Label 2 or into other label designs. We are interested in comments that relate both to content that should be on the label, how it should be communicated, and what overall label presentation is most effective and consumer friendly.

Finally, please note that although the agencies have made every effort to make these labels as realistic as possible and to ensure that the values on each label are internally consistent, the labels presented here should be considered examples that are not intended to represent real automobiles.

A. Proposed Label Designs

The agencies are proposing two label designs, presenting both designs as equal "co-proposals" but expecting to finalize only one design based on public comments and other information gathered after the proposal. Although the two designs shown below have fundamentally different visual appearances and will no doubt elicit very different reactions from some viewers, they essentially present exactly

[140] 40 CFR 600.111–08(f) (test procedures) and 40 CFR 600.307–08(k) (label format requirements).

[141] *See* Memorandum from Roberts W. French, Jr. to EPA Docket # EPA–HQ–OAR–2009–0865, "Color versions of labels proposed by EPA and DOT in Notice of Proposed Rulemaking "Revisions and Additions to Motor Vehicle Fuel Economy Label," August 26, 2010.

the same basic information. For conventional vehicles, for example, each design displays the following:

- City MPG.
- Highway MPG.
- Combined gallons/100 miles.
- CO_2 grams per mile (combined city/highway).
- Estimated annual fuel cost.
- Range of fuel economy within the class.
- The fuel the vehicle uses.
- Three "slider bars" showing the performance of the labeled vehicle relative to other vehicles for MPG, CO_2, and other air pollutants.
- Annual fuel cost assumptions.
- A symbol that can be read by a "'Smartphone"' for additional consumer interactions (*i.e.,* a "QR" Code).
- A Fuel Economy Guide statement.
- EPA, DOE, and DOT logos.

1. Label 1

Label 1 is fundamentally different from Label 2 and 3 designs presented in this section in three different ways:

- First, the orientation is a portrait orientation, rather than the landscape style of the current label.
- Second, a rating reflecting the energy efficiency and environmental impacts of the vehicle is given overall prominence. Instead of providing a series of numbers on the label with varying or equal prominence, which may make it difficult for consumers to evaluate at a glance, this label presents the energy and environment rating as a letter grade (a system familiar to all consumers) with major prominence at the top of the label. The letter grade is simply another familiar scale on which to present a linear rating, comparable to the star system or a 1–10 rating. This grade would be based on CO_2 emissions and fuel economy consumption as described in Section II. To further help consumers identify the grade of a vehicle on the dealer sales lot, the agencies are proposing that different colors be used to differentiate between grade "families." In other words, the dominant color on all the "A" grade labels would be one color, the "B" grade labels would use a different color, and so on. For example, the circle which surrounds the letter grade would be a different color depending on the grade. The color versions of the labels demonstrate this, using green for A grades, yellow for B grades, orange for C grades, and a dark orange for D grades.
- Third, this label provides new fuel cost savings information not seen on any other label designs. Secondary only in prominence to the letter grade, and immediately below the letter grade, Label 1 would display the 5-year fuel cost of the vehicle in comparison to the average vehicle. For vehicles with fuel economy ratings above the median vehicle, the label would display how much the consumer would save, and for vehicles with ratings below average the label would display how much more the consumer would be spending.

All the remaining information is displayed in the bottom portion of the label and would be available to consumers who want to know the more detailed information or who take a more analytical approach to evaluating the vehicle. The agencies believe that this approach uses a rating system that is easily understood by consumers and that would dramatically simplify the process of evaluating the overall energy efficiency and environmental impacts of the vehicles they are considering. The de-emphasis of MPG on this label—indeed, one purpose of directing consumers to the overall rating—is intended to enable consumers to make the best fuel consumption and environmental choices, choices made easier by the addition of the comparative cost information. Additionally, a consumer that uses the letter grade and cost information on this label may be able to avoid the effect of the "MPG illusion" described in Section II.

BILLING CODE 6560–50–P

Figure III-1. Label 1 for gas/diesel vehicle, B grade.



Figure III-2. Label 1 for electric vehicle, A+ grade.



Figure III-3. Label 1 for PHEV, A grade.



Figure III-4. Label 1 for gas/diesel vehicle, C grade.



Figure III-5. Label 1 for gas/diesel vehicle, D grade.



Figure III-6. Label 1 for PHEV, Option 2.



Figure III-7. Label 1 for CNG vehicle, A- grade.



Figure III-8. Label 1 for FFV, B grade.



Option 2 for the PHEV version is offered as an alternative representation of plug-in hybrid electric vehicles. This option was developed to be consistent with other dual-fuel vehicle labeling approaches. It also provides an example of how more information about the different modes of operation for PHEVs could be displayed on Label 1. The agencies seek comment on whether this alternate approach to PHEV labeling for Label 1 provides better information for consumers or whether the first option is more useful.

2. Label 2

Label 2, shown below takes a more traditional approach, similar to the

current fuel economy label and highlights the key metrics of MPG and annual fuel cost. The agencies are seeking comment about whether, if this label were finalized, the prominence of gallons per hundred miles should be gradually increased on the label through one or more rulemakings to facilitate consumer familiarity with and usage of a consumption metric. As explained in Section II, these labels show the combined city/highway MPG with the highest prominence. The additional ratings are essentially identical to those of Label 1, except with the additional space for the MPG rating "slider bar." Because of this extra space for the slider bars, Label 2 can also display the range of fuel economy of the applicable vehicle class (Label 1 provides this information in text form) in the context of the range of fuel economy for the whole fleet. Label 2 uses the slider bar approach like Label 1 for all of the specific ratings, and, like Label 1, has separate ratings for MPG, greenhouse gases, and other air pollutants. The electric vehicle label in this series does have an additional piece of information relative to Label 1—the battery charging time. And unlike Label 1 and Label 3, the PHEV label in this series provides separate annual cost estimates for both the electric and gas modes of operation, which may be more useful to consumers who want to understand the costs specifically associated with operating the vehicle solely on mode either when operating on electricity or in gas-only operating mode.

BILLING CODE 6560–50–P

Figure III-9. Label 2 gas/diesel vehicle.

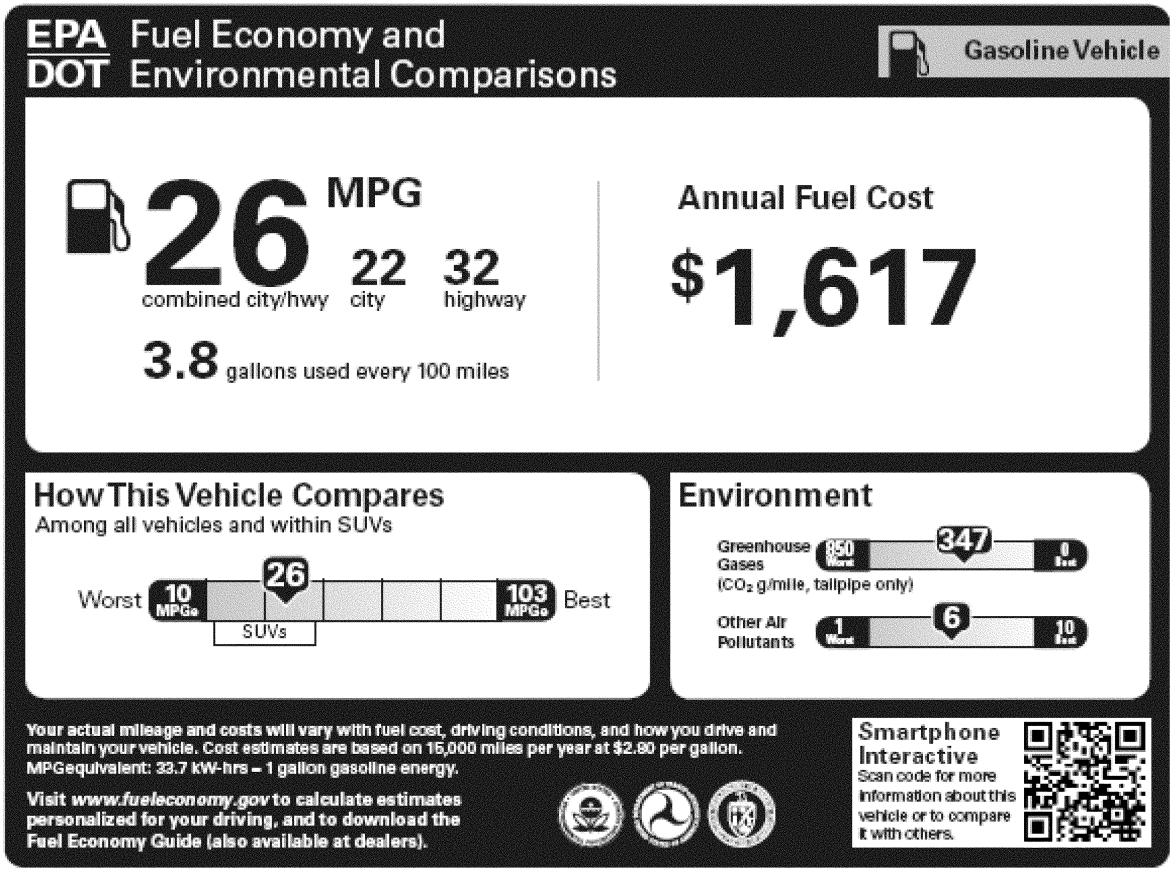


Figure III-10. Label 2 for electric vehicle.

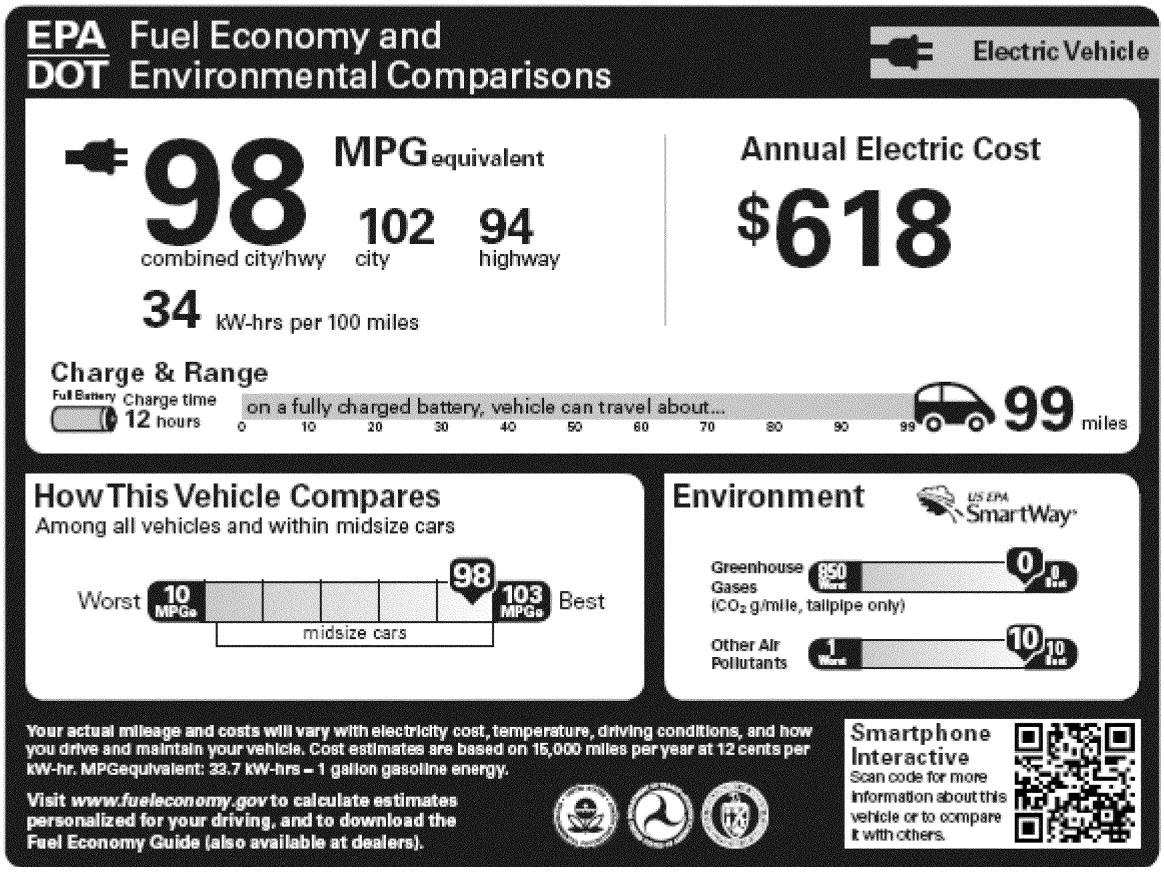


Figure III-11. Label 2 for PHEV, extended range electric (series) type.

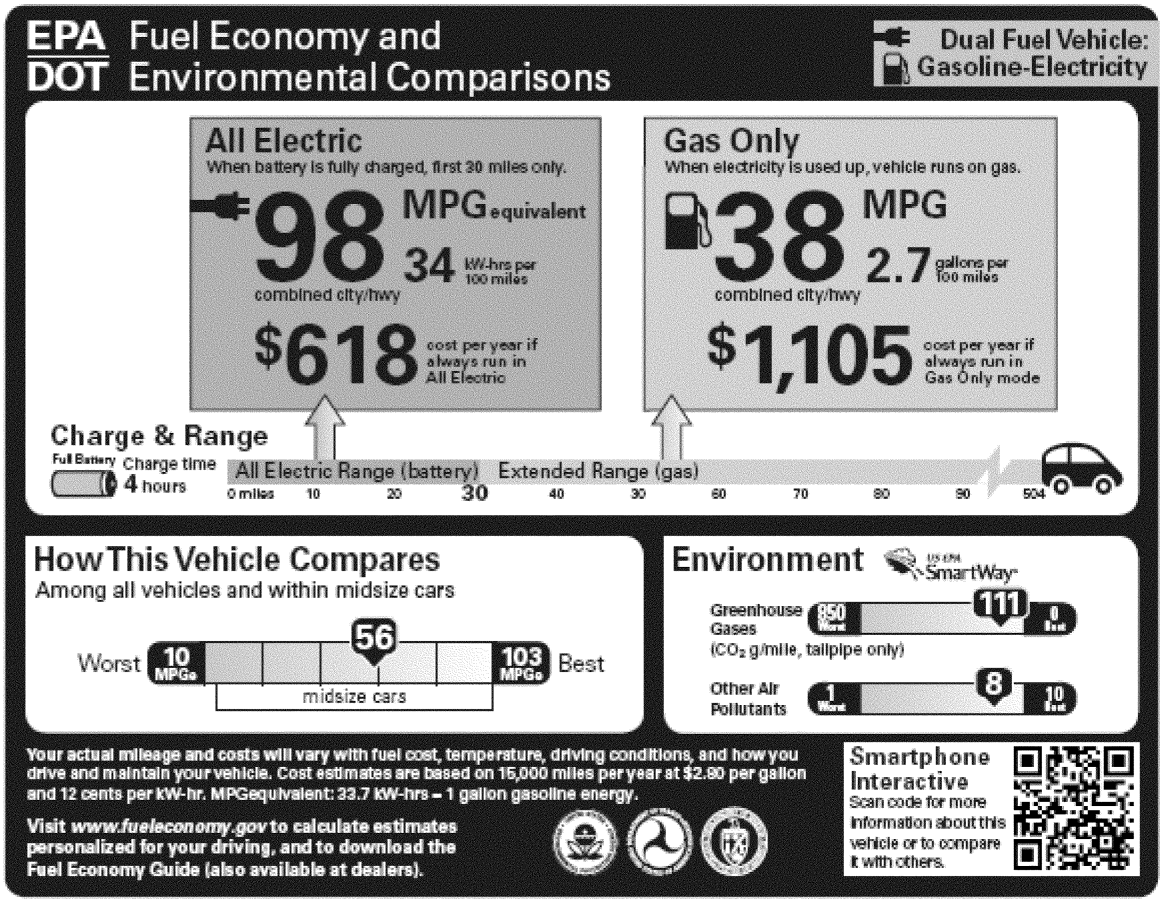


Figure III-12. Label 2 for PHEV (predominantly blended type).

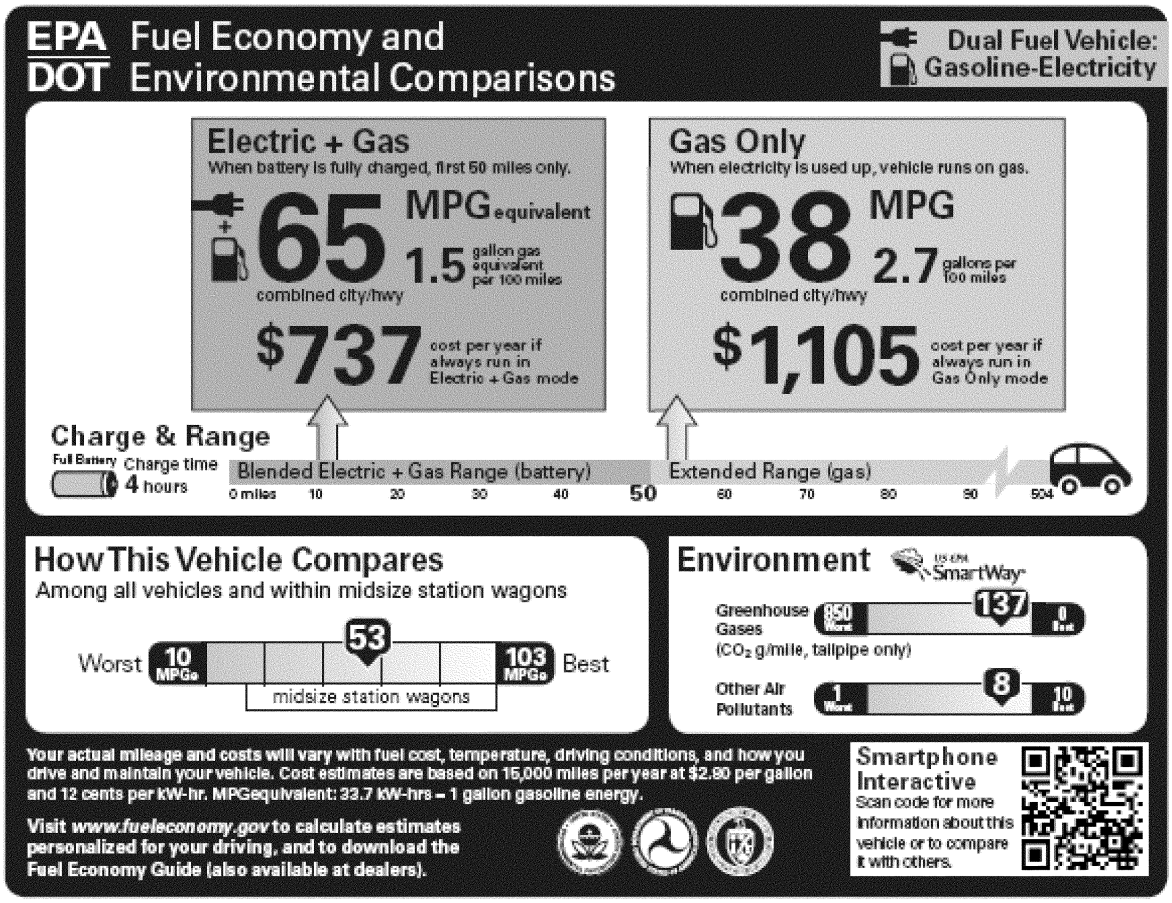


Figure III-13. Label 2 for CNG vehicle.

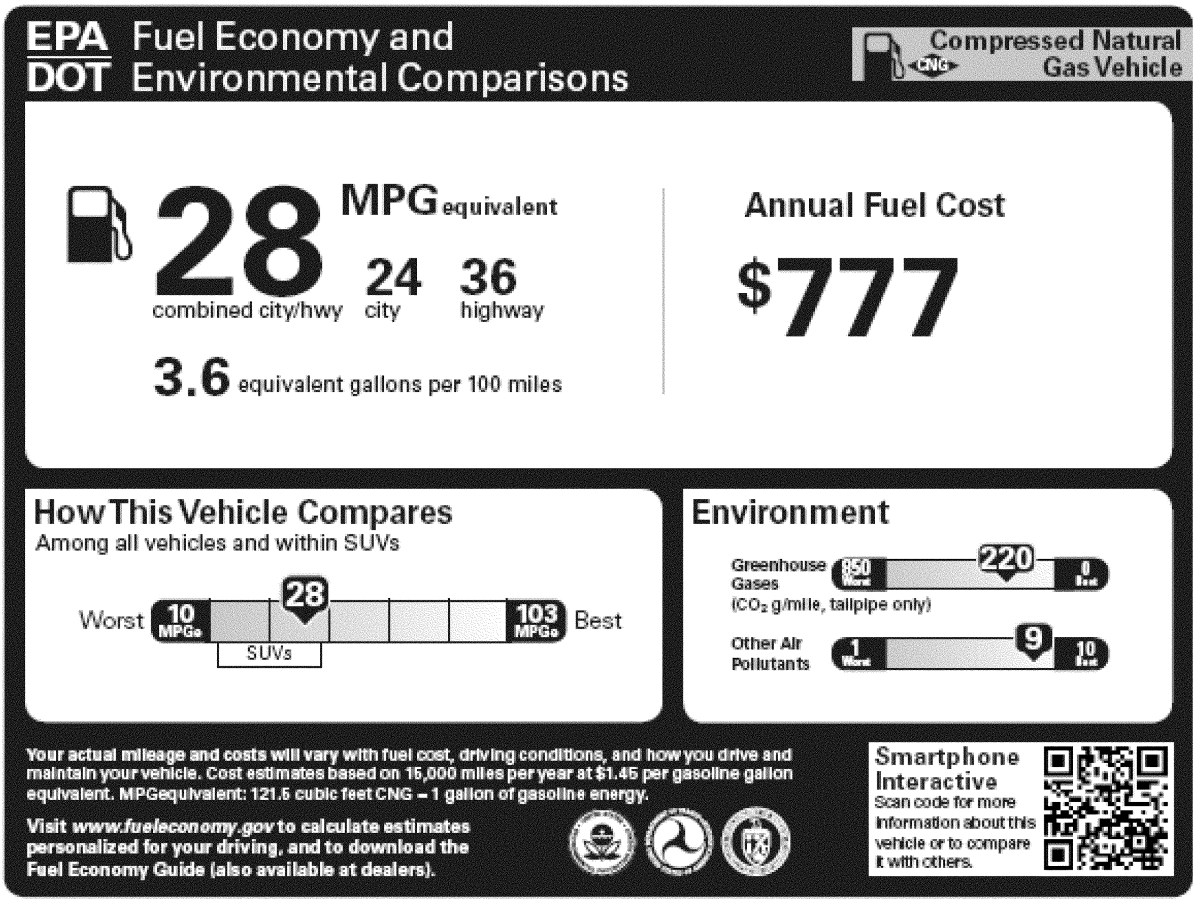
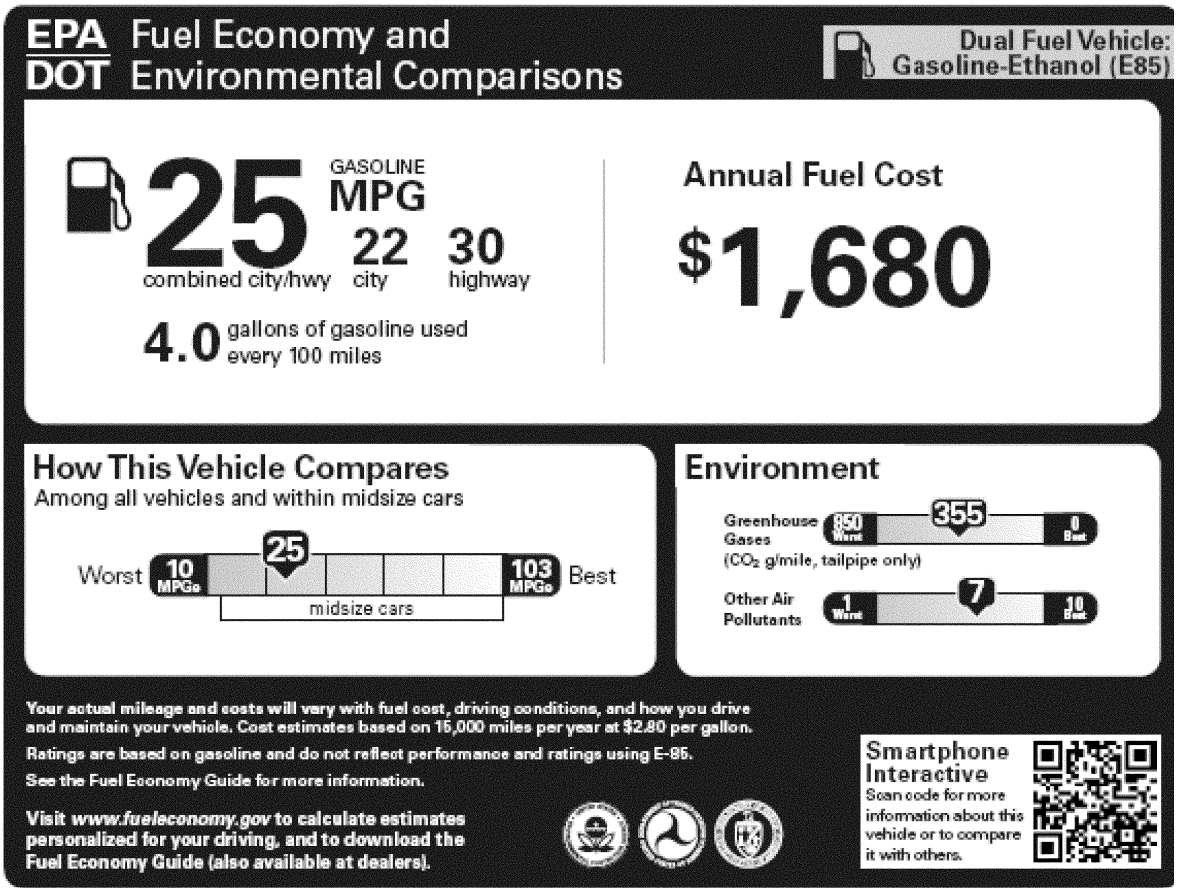


Figure III-14. Label 2 for FFV.



B. Alternative Label Design (Label 3)

The agencies also seek comment on a third label design that includes the same information as the other labels, but displays alternative ways of communicating the information. For example, this label (Label 3) combines the greenhouse gas and fuel economy ratings into one slider bar using a 1–10 rating scale (rather than the absolute values used in the other label designs), and instead of a relative "slider bar" scale for the other air pollutant rating, Label 3 uses a star rating system. Other than the difference in the rating systems, the Label 3 electric vehicle label provides essentially the same information as Label 2. For PHEVs, Label 3 provides only one annual fuel cost number (like Label 1) that merges the electric and gasoline modes. This label also displays for PHEVs an all-electric range, if the vehicle is capable of such operation.

Figure III-15. Label 3 for gas/diesel vehicle.

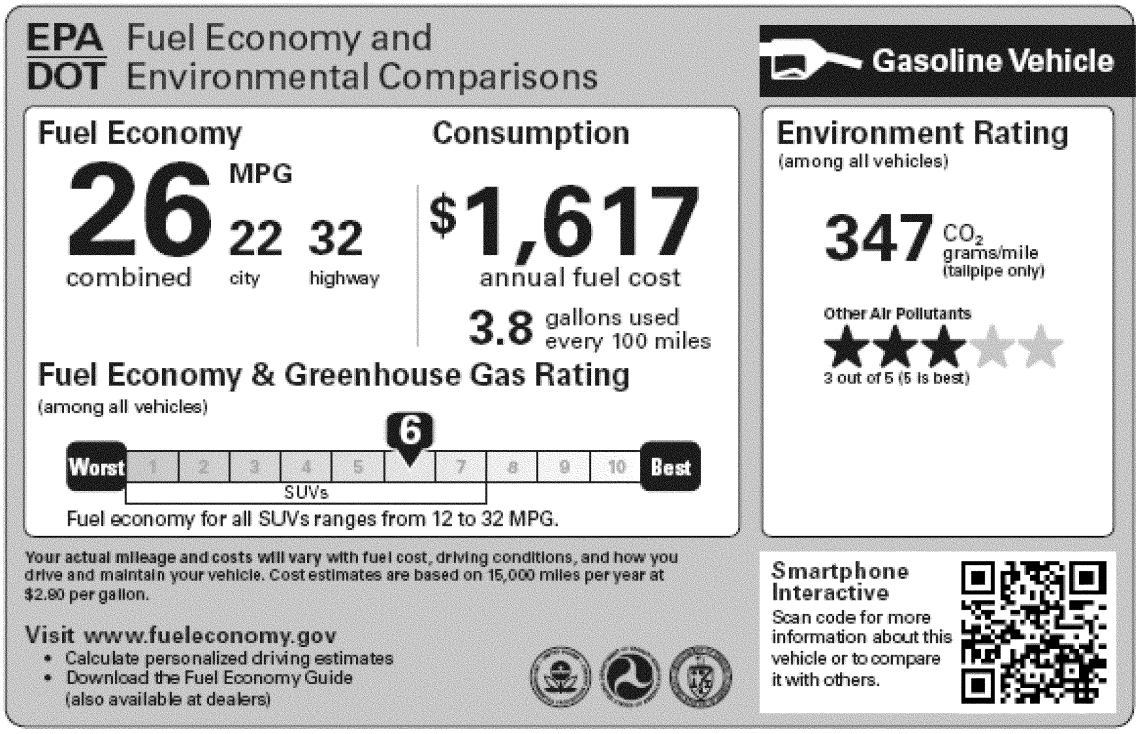


Figure III-16. Label 3 for electric vehicle.

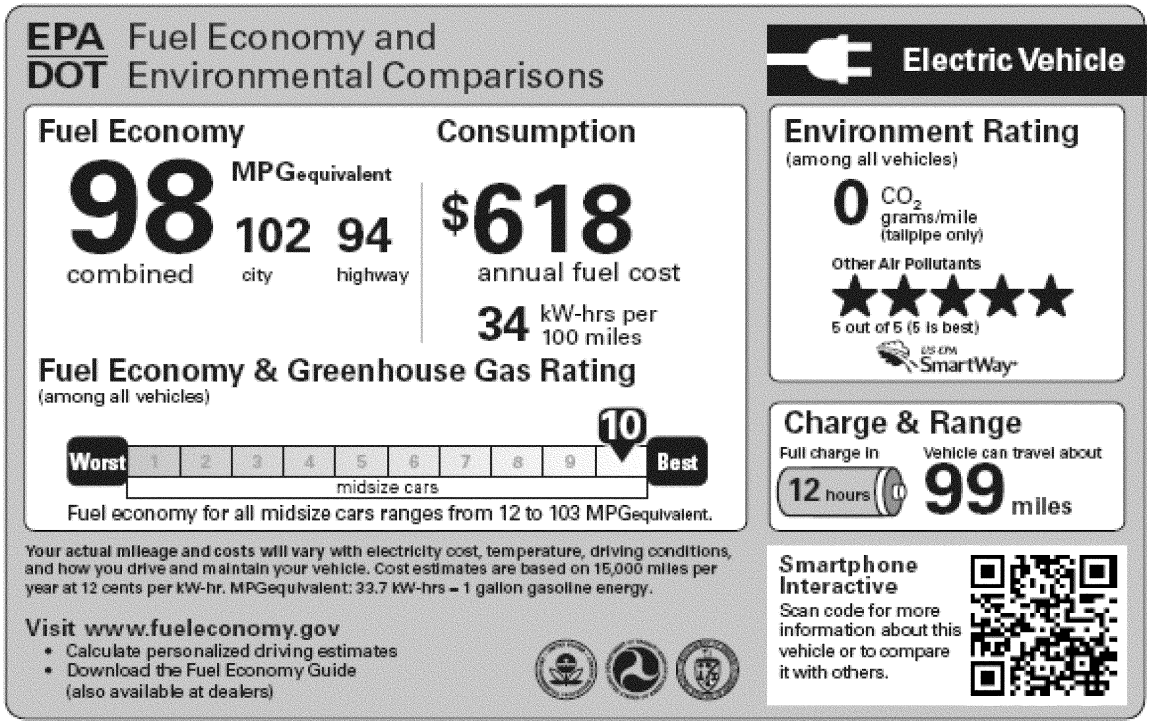


Figure III-17. Label 3 for PHEV, extended range electric (series) type.

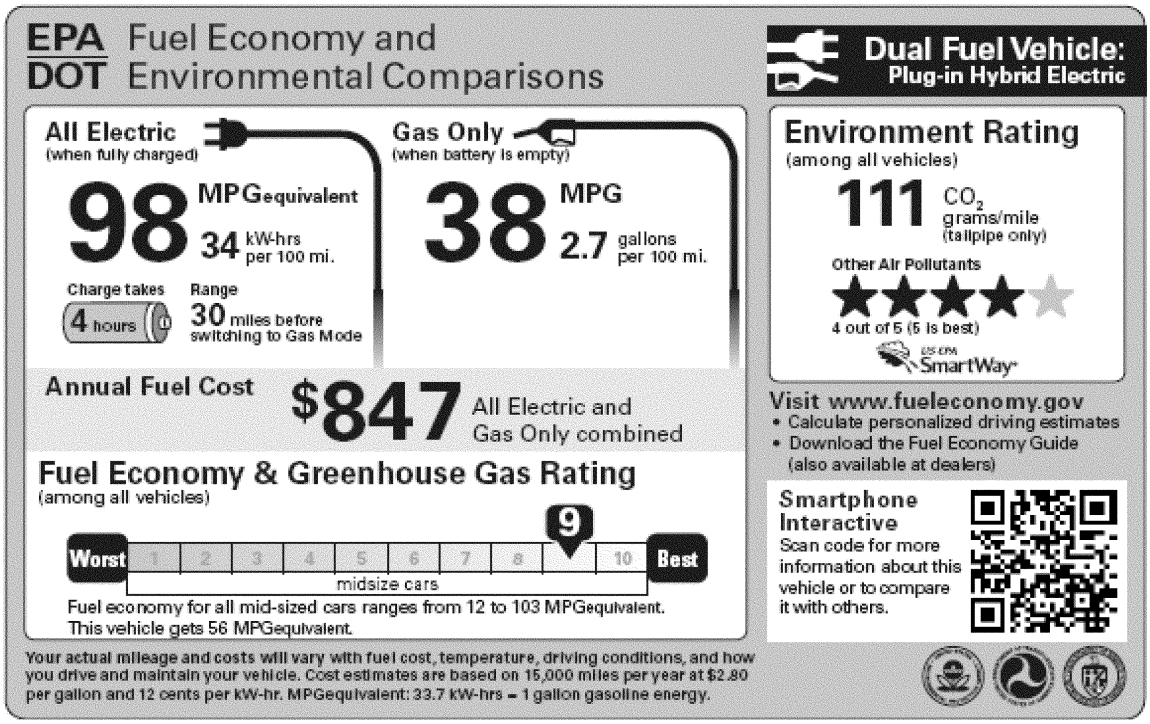
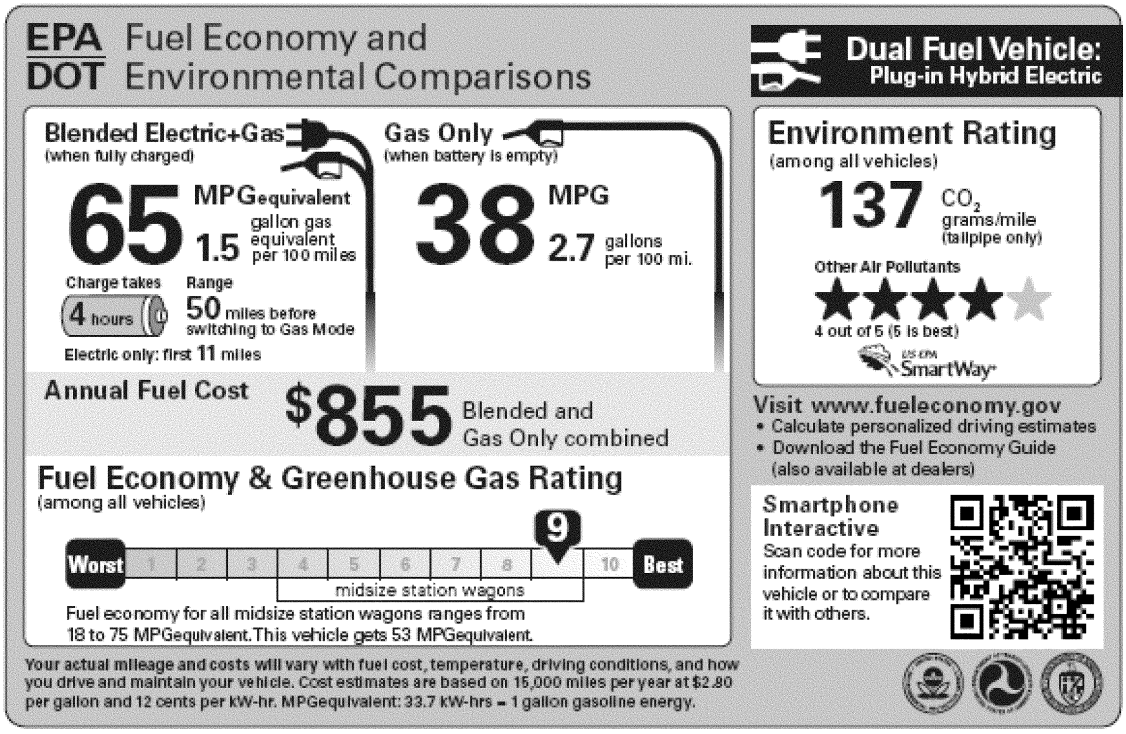


Figure III-18. Label 3 for PHEV, predominantly blended type.



BILLING CODE 6560–50–C

IV. Agency Research on Fuel Economy Labeling

As discussed above, the fuel economy label must contain certain pieces of information by statute, and may additionally contain other pieces of information considered helpful to consumers. Given that all of the label information must be presented so as to maximize usefulness and minimize confusion for the consumer, EPA and NHTSA embarked upon a comprehensive research program beginning in the fall of 2009. Developing an effective label—one that conveys the required and desired information to consumers so that they can understand and use it to make decisions—involves some inherent subjectivity, since what is understandable and useful for one consumer may be confusing or unhelpful to another. To better ground our proposed label designs in actual human responses, the agencies set out to better understand the following general issues: whether, how, and to what extent consumers use the current fuel economy label in the vehicle purchase process; the barriers to consumer understanding of the fuel efficiency of vehicles relative to one another (including both conventional vehicles and advanced technology vehicles); and how a newly redesigned label could most effectively convey information to consumers on fuel economy, fuel consumption, fuel cost, greenhouse gas, and other emissions.

When EPA last redesigned the fuel economy label in 2006, consumer research was valuable in helping to inform the development of that label.[142] Since today's proposal includes adding important new elements to the existing label as well as creating new labels for advanced technology vehicles, EPA and NHTSA embarked on a more comprehensive consumer research program than that undertaken in 2006 and have used this research to help develop the labels proposed in this NPRM.

A. Methods of Research

To gather information about the topics described below, the agencies designed a research plan including a review of literature on the vehicle buying process, three sets of focus groups in four different cities, a day-long facilitated consultation with experts in the field of shifting consumer behavior, and an internet survey of responses to proposed label designs (which will occur during the comment period following this NPRM). A more thorough discussion of each research method is provided below.

1. Literature Review

EPA and NHTSA conducted a review of the existing literature to understand the vehicle buying process. Specifically, the literature review addressed the sources of information that consumers use to research vehicles, their decision-making process, and the factors that influence which vehicles consumers choose to buy. These include vehicle-specific factors such as price, fuel economy, and safety, as well as the role that demographics and psychographics play in purchasing decisions. Literature examining consumer attitudes toward buying more fuel efficient and environmentally friendly (*i.e.,* "green") vehicles was also reviewed. Understanding when and how consumers consider fuel economy and the environmental impact in their vehicle purchase decisions helped the agencies determine the most effective ways to provide useful information to consumers on the vehicle label.

Additionally, the literature review report included an overview of existing educational campaigns aimed at helping consumers use information on the fuel efficiency and the environmental effects of their transportation choices. Review of these campaigns may help inform the agencies' development of educational tools and messages beyond the label to provide consumers with useful information on fuel efficient and environmentally friendly vehicles.

A broad range of sources were reviewed for this report, including journals in marketing, economics, and transportation research; business magazines; government documents; conference proceedings; and a variety of websites. Some of the key findings from the literature review are described in Section IV.B. A more detailed report is available in the docket.[143]

2. Focus Groups

The agencies felt it was critical to consider understandability and consumer reaction to a variety of label concepts given that the purpose of the fuel economy label is to inform consumers of the vehicle's fuel economy and, with the amendments enacted by EISA, greenhouse gases and other emissions. EPA and NHTSA additionally saw a need to conduct research beyond that of the previous rulemaking due to the advancements in vehicle technology underway, the increased market share of vehicles that use fuels other than gasoline, and the introduction of environmental information to the label. The agencies determined that they would gather in-depth, qualitative feedback about fuel economy labeling, potential new label information, and ways of displaying the information through focus groups. The focus group format allowed for in-depth probing around a variety of topics, including comprehension of potential elements on the fuel economy label and how consumers may use that information in making purchase decisions. The focus groups were not intended to provide quantitative results, but were instead designed to help EPA and NHTSA discern the subtleties of the large number of decisions that are necessary when creating a label that should convey numerous and sometimes complicated information.

The focus group process included a recruitment screener, on-line pre-focus group survey, and at least two gender-differentiated focus groups in four different cities for each of the three separate phases. The focus group methodology and results, including the recruitment screener and pre-focus group on-line surveys, are discussed in greater detail in the focus group Technical Memoranda available in the public docket for this rulemaking.[144]

The agencies concluded that conducting three phases of focus groups, each with a different concentration, was necessary to gather adequate information to explore the complex and numerous issues raised by this rulemaking. Phase 1 gathered qualitative information on consumer understanding and use of the current fuel economy label, consumer reaction to potential new information and metrics on the label for conventional vehicles, and also initial identification of effective displays for this information. Phase 2 asked consumers to identify what information they were interested in seeing on the label for advanced technology vehicles and explored the understandability and sufficiency of various information and metrics for PHEVs and EVs. Phase 3 explored the understandability and usefulness of new information integrated into whole label designs for both conventional and advanced technology vehicles. Thus, overall, focus groups were used to obtain a qualitative understanding of consumers' comprehension and reactions to fuel economy label information.

[142] The current label was redesigned and implemented for model year (MY) 2008 vehicles. *See* 71 FR 77871–77969 (December 27 2006).

[143] Environmental Protection Agency Fuel Economy Label: Literature Review, EPA420–R–10–906, August 2010.

[144] EPA–HQ–OAR–2009–0865.

The agencies assumed that individuals who had recently purchased vehicles would have the best insight into how the current fuel economy label is used and would therefore also be best suited to provide input about any changes that might be made to the label. To that end, participants were selected based on having purchased a vehicle within the past year, but not during the "cash for clunkers" purchase window.[145] A "participant screener" was used to ensure a reasonable cross-section of purchasers was represented in each group. Some of the demographic variations purposefully considered included the type of new vehicle purchased, price range of the new vehicle, average daily driving distance, and whether the individual had seriously considered or actually purchased an advanced technology vehicle such as a gasoline hybrid.

Each focus group participant was also asked to complete a short on-line survey before attending the session. This survey served three purposes: (1) To collect demographic data about the participants and information about their specific vehicle purchase process; (2) to provide participants with some background information about advanced technology vehicles so that the participants would have some exposure to new technologies prior to the focus group meeting; and (3) to gather information about how the participants had used the current fuel economy label in their purchase decisions, if at all. This survey data was not intended to be examined as a nationally representative sample and was only used as supplementary information when describing the focus group results.

The agencies anticipate that there will be additional focus groups prior to rule finalization in each of the four cities where focus groups were held pre-proposal. These focus groups will examine revised labels based on feedback the agencies receive during the comment period and will provide additional input on whole label designs. The agencies will place information obtained from these focus groups in the docket as it becomes available and encourages all interested parties to check the docket for updated information.

[145] "Cash for Clunkers" (Consumer Assistance to Recycle and Save Act of 2009, Pub. L. 111–32) was a NHTSA program that provided a tax incentive to trade-in low fuel efficient vehicles for new, higher fuel efficient vehicles. The purchase period in which this program operated was excluded to avoid any bias of participants, since the program was explicitly focused on fuel economy.

3. Internet Survey

While the focus groups were used to develop new label designs, the internet survey is meant to examine how understandable the new label designs are, and whether the proposed new label and alternative labels will improve consumers' knowledge about more efficient vehicles. The planned survey is scheduled to begin concurrent with the signing of this proposal and will test these questions for both conventional and advanced technology vehicles. A notice of the survey, published in the **Federal Register** on May 12, 2010, requested comment on the survey methodology.[146] No substantive comments were received.

This survey will use two samples: Self-selected U.S. new vehicle purchasers and people who expressed an intention to purchase a new vehicle by requesting a price quote from a dealer.[147] Each of these samples is divided into three separate groups. One version of the survey was developed for each group, identical in every way except that each of the groups will see only one of the label designs.

The survey tests respondents' *understanding* of the labels by showing each respondent a series of label pairs. In each pair, all vehicle characteristics are held constant except the information on the vehicle label. For instance, the fuel economy of the vehicles may differ, or one may have a conventional vehicle and one an electric vehicle. Respondents are then asked to identify which vehicle is better to use for trips of specified distances.[148] The key metric of interest is whether the label designs produce statistically significantly different results. If one label produces more correct responses than other labels, then it can be considered more understandable; if the labels do not produce statistically different results, then the labels can be considered equivalently understandable.

To test the potential *influence* of the labels on vehicle purchases, respondents see pairs of labels for vehicles with all vehicle attributes constant except those varied on the label, such as the technologies of the vehicles, their efficiencies, and their energy costs. Instead of using the label to identify the better vehicle for a scenario, the respondents are asked which of these vehicles they would prefer to buy, based on their individual driving patterns. Comparisons involve both conventional and advanced technology vehicles. Because the survey asks respondents about their typical daily driving distances, it is possible to see whether respondents chose the vehicle better suited for their habits. The key variable is whether the responses differ for different label designs.

The Internet survey data collection is planned to occur in early to mid-August 2010. The results of the survey will be made public as soon as they are available. The results will be made available in the public docket for this rulemaking at *regulations.gov.* If the results are not placed in the docket 30 days before the end of the comment period, the agencies will accept comments on these results up to 30 days from when they were placed in the docket.

4. Expert Panel

In order to gather additional feedback on the label designs developed from the focus groups and to identify opportunities and strategies to provide more and better information to consumers so that they can more easily assess the costs, emissions, and energy efficiency of different vehicles, EPA and NHTSA convened an expert panel. "Experts" were selected based on their past experience in changing social norms either by successfully launching new products or leading national education campaigns that have had a broad and significant impact. The method for selecting the panel began by first generating a list of products and social changes that met the criteria of impacting a significant percentage of the population quickly, while also demonstrating staying power. Individuals who had roles critical to the success of these efforts were then identified and recruited. Nine "experts" participated on the panel, with experiences that included launching very successful public health campaigns, Internet sites, new technologies, and cable networks. The

[146] U.S. EPA, "Agency Information Collection Activities; Proposed Collection; Comment Request; Internet Survey Research for Improving Fuel Economy Label Design and Content; EPA ICR No. 2390.01, OMB Control No. 2060–NEW," 75 FR 26751 (May 12, 2010).

[147] Sources of respondents were databases owned by Autobytel, *http://www.autobytel.com* (for those intending to buy new vehicles), and Focus USA (for those who purchased a vehicle in the last year), *http://www.focus-usa-1.com.*

[148] Respondents were asked which was better, rather than which was more fuel-efficient or less costly, so as to leave the respondents with the choice of what information on the label to use for the comparison. A later question asked which information they used in their response. While this somewhat ambiguous approach may reduce the absolute number of correct answers to the questions, the goal is testing the relative effects of the labels, not the absolute effects.

meeting was held from 9 a.m. to 3 p.m. in Washington, DC on June 9, 2010.

The topics covered include: Background information, review and feedback on the EPA/NHTSA research process, messaging techniques, outreach strategies, and feedback on possible label designs. The Expert Panel is discussed in greater detail in the Expert Panel Report in the public docket for this rulemaking.[149]

B. Key Research Questions and Findings

The agencies identified the following key research questions, given the overarching issues provided above:

- How should labels portray information about fuel consumption and fuel economy, fuel cost, greenhouse gas, and other emissions for consumers in a way that is most understandable and useful to them?
- How should labels for advanced technology vehicles portray information about fuel economy, fuel cost, greenhouse gas, and other emissions for consumers in a way that is most understandable and useful to them?
- How should the new labels be designed to meet the statutory requirements while best raising consumers' understanding of fuel efficiency, fuel cost and environmental impact?
- How can consumers compare vehicles when they are shopping?
- What purchase process do consumers currently use to make new vehicle purchasing decisions? Given this process, when are the most effective opportunities to communicate fuel economy and environmental information?

1. Effective Metrics and Rating Systems for Existing and New Label Information

How should labels portray information about fuel consumption and fuel economy, fuel cost, greenhouse gas, and other emissions for consumers in a way that is most understandable and useful to them?

As described in Section I, EPCA and EISA require the fuel economy label to provide fuel economy, cost, and environmental information, as well as provide a means to compare vehicles based on fuel economy, greenhouse gases, and other emissions. The agency's research program explored how this information might be displayed on the label in a useful and accessible format for consumers.

[149] Environmental Protection Agency Fuel Economy Label: Expert Panel Report, EPA420–R–10–908, August 2010.

a. Fuel Consumption and Fuel Economy

EPCA requires the label to display the "fuel economy of the automobile." However, fuel economy, commonly thought of as "MPG" (the number of miles that can be traveled consuming one gallon of fuel) is often misunderstood by consumers. As discussed more extensively in Section II, because MPG is not linear, when people compare vehicles with different MPG values they are apt to incorrectly estimate the fuel savings of one vehicle over another. For example, switching from a 15 MPG vehicle to a 20 MPG vehicle will save more fuel than switching from a 30 MPG vehicle to a 35 MPG vehicle. Thus, comparing vehicles based on MPG is not as helpful to consumers in making quick and accurate comparisons as consumers may believe it to be. Fuel consumption (the number of gallons of fuel consumed to travel a given distance), on the other hand, does yield the type of linear comparison that consumers should find useful. Therefore, the agencies explored ways to convey fuel consumption on the label.

Focus groups were instrumental in helping the agencies learn about communicating fuel consumption. Specifically, Phase 1 focus groups set out to gauge how receptive consumers were to a fuel consumption value and whether there were particular presentations of that value which were more understandable. To do this the 'Fuel Economy (MPG) Illusion' was introduced in the pre-focus group on-line survey, followed by specific probing in each group around what "fuel consumption" means. Phase 1 focus groups generally responded that it was the distance one can travel on a gallon of gas (which is fuel economy, rather than fuel consumption). Following this discussion the participants were presented with four different designs, each conveying fuel consumption and fuel economy information. The prominent value displayed within each design was fuel consumption, given in gallons per 100 miles while the less prominent value was fuel economy, given in miles per gallon. Even when participants demonstrated that they properly understood fuel consumption, most still indicated that they preferred miles per gallon over gallons per 100 miles. Participants indicated this to be the case even after the moderator explained the 'MPG Illusion.' A few participants did indicate that viewing gallons per 100 miles, instead of miles per gallon, might get them to switch to more efficient vehicle types. Some participants also said that they believed they would use the gallons per 100 mile fuel consumption information on the label to learn about the vehicle's city and highway gas consumption and to compare between different vehicles in making their purchase decision. However, most participants were not enthusiastic about using the fuel consumption information.

Almost all focus group participants showed a strong attachment to MPG. They like and use the city and highway MPG and are not familiar with gallons per 100 miles. If a new fuel consumption metric, such as gallons per 100 miles, were added to the label participants would still want the familiar MPG metric to be prominent on the label. Recognizing that consumers believe they derive significant value from MPG, but that consumption information may be more accurate and ultimately valuable to consumers, another approach to displaying fuel consumption was also devised and presented to focus groups: An "annual gallons used" value. The basis for deriving this new metric was that (1) it makes the magnitude of comparing vehicles based on consumption more apparent, and (2) it provides a clear link between the annual cost value and fuel consumption value. An annual gallons metric was also found to be one of the more effective ways to demonstrate the fuel economy illusion. While the agencies considered displaying the annual gallons of fuel information on the label we ultimately determined that the gallons per 100 mile metric should be introduced on the label as the new consumption metric, and that the introduction of the five year cost or savings information would also help consumers in overcoming the effects of the MPG illusion while also providing important additional information.

Phase 1 focus group participants also evaluated four different graphical display options for fuel consumption and were asked which was the most understandable design. Participants responded by identifying the design they felt was simple, informative and in a familiar format. However, participants did not agree on which design accomplished this.

The agencies further explored fuel economy and fuel consumption designs in Phase 3 where focus group participants were asked to evaluate whole label designs encompassing both fuel economy and fuel consumption values. In each of the three labels presented, the MPG value was a

dominant metric.[150] For each design participants were asked to determine between two labels, which represented the more fuel efficient vehicle. Participants were also asked to identify what piece of information on the label they used to make this determination. Fuel consumption was rarely identified as being used by participants. Instead, participants used MPG and cost values most often.[151]

In Phase 3, the agencies explored simplification of the labels by displaying on two of the three label designs only the combined (55% city and 45% highway) fuel economy value in lieu of listing the city and highway values separately. (See Section IV.B.4 for a discussion of whole label designs and why simplification is perceived as an overarching goal.) When participants were probed about why they did or did not like certain label designs, the presence of city and highway values was often cited as a positive for a label design, and the absence of the city and highway values was cited as a negative for a label design. In addition, when asked how to improve the label designs, several focus group participants asked for the city and highway values to be added to the label designs that did not include them.

The agencies gathered additional input on the most effective approaches for portraying fuel economy and fuel consumption information during the expert panel meeting. After viewing three label designs, expert panel participants provided comments on how the label could be made more understandable and useful for consumers. The expert panel emphasized that in order to be effective, the fuel economy label should be simple and able to be understood by consumers within a short amount of viewing time. To implement this goal, the expert panel suggested that the agencies develop a single, overall metric for vehicles that is easy for consumers to understand, such as a letter grade (A ±, B ±, etc.).[152]

The expert panel also suggested that the agencies consider redesigning the label such that the single metric is prominently featured on the top half, and any additional vehicle information and more specific metrics be included on the label in smaller font and in a less prominent location. The expert panel stated that this approach would provide interested consumers with more detailed information without distracting from the simpler, overall metric that all consumers could easily understand. The rationale for this label design is that it can provide useful comparative information to the consumer who may only glance at it, while also providing the necessary details to those who want more in-depth information. Additionally, the expert panel suggested prominently featuring a website URL and a QR Code® for smartphones to provide consumers with access to more detailed vehicle information elsewhere.[153] For example, the website and smartphone application might contain tools for consumers to calculate the fuel economy they can expect based on their own driving habits or allow consumers to quickly compare fuel economy and consumption for different vehicle models.

b. Fuel Cost

EPCA requires the fuel economy label display the "annual fuel cost of operating the automobile." Recognizing that some consumers have previously appeared to distrust or dismiss annual costs as not representative of their own experience, EPA and NHTSA explored whether there were other cost units (such as cost per month, per mile, per week, etc.) that could be additionally provided that would be more meaningful to consumers.

Throughout the focus groups in Phase 1 and 2, participants indicated that they tended to dismiss the annual cost information on the current label because gas prices fluctuate and vary with location, and they do not drive 15,000 miles per year.[154] Nevertheless, Phase 1 focus group participants identified the estimated annual fuel cost as the second most used piece of information on the label. In addition, in Phase 2 focus groups, where participants were asked to create labels from scratch, most groups placed a cost value on the label. When cost values are used, focus group members indicated they used it as a comparative tool to evaluate the fuel efficiency of different vehicles.

When asked what they thought about cost, focus group participants indicated they thought about the cost to fill a gas tank, the fuel cost over a period of time (daily, weekly, monthly, yearly, etc.), and the fuel cost over a given distance (cost per mile, 100 miles, 1000 miles, etc.). When Phase 1 focus group participants were presented with a variety of cost units, the two most popular choices among cost units were annual cost and cost per month. However, in Phase 3, when presented with labels that displayed both a monthly cost and an annual cost, participants suggested that the monthly cost value could be dropped.

Participants in the expert panel meeting suggested that the agencies provide information on the savings consumers could achieve by purchasing a more fuel efficient vehicle. One expert panel participant noted that the current label designs demonstrate costs, but that it would be better to demonstrate savings, which tends to be a very strong motivator.[155] One approach to communicating this information on the label would be to display the savings a consumer might expect over five years by purchasing and driving a vehicle with a higher overall letter grade.

c. Environmental Metrics

Environmental information on greenhouse gases (GHGs) and other emissions has not been previously displayed on the fuel economy label, so the agencies were interested in learning how a label might best convey to consumers information about the emissions impact of a new vehicle. The available literature on the impact of "eco-labeling" vehicles is mixed.[156] Some of the research indicates that consumers may welcome an eco-label on their vehicle, although they say that it is unlikely to impact their purchase decision. Through its consumer research, the agencies investigated what combination of metrics and ratings might be displayed on the fuel economy label to provide this information in an effective and consumer-friendly way, including a stand-alone CO_2 performance metric, relative versus absolute rating systems, a comparison system, and an environmental certification mark.

For the most part, Phase 1 focus group participants indicated that they did not research environmental information (beyond fuel economy) as part of the vehicle purchase process. While some participants indicated that they would use environmental information to compare different vehicles if it was placed on the fuel economy label the majority of focus group participants were indifferent to the inclusion of

[150] Environmental Protection Agency Fuel Economy Label: Phase 3 Focus Groups, EPA420–R–10–905, August 2010. (Contains visual depictions of each of the Phase III label series.)

[151] Environmental Protection Agency Fuel Economy Label: Phase 3 Focus Groups, EPA420–R–10–905, August 2010, p.12.

[152] Environmental Protection Agency Fuel Economy Label: Expert Panel Report, EPA420–R–10–908, August 2010, p. 15–17.

[153] Ibid.

[154] 15,000 miles per year is the current annual mileage assumption used on all fuel economy labels to estimate the annual fuel cost of operating a vehicle.

[155] Environmental Protection Agency Fuel Economy Label: Expert Panel Report, EPA420–R–10–908, August 2010, p. 17.

[156] Environmental Protection Agency Fuel Economy Label: Literature Review, EPA420–R–10–906, August 2010, p. 24.

environmental impact information on the label and indicated they were not likely to visit a website for environmental information. However, when presented with whole label designs in Phase 3 many respondents indicated that the environmental metric should be on the label, so that it is available for those who were interested.

In Phase 1, participants were presented with four different environmental metric options and approaches to displaying environmental information, and were asked to rate the most understandable and least understandable. Participants stated that they understood the environmental information in general, but did not understand what "grams of CO_2" meant. The display featuring a rating for other emissions in stars and grams of CO_2 numerically was most frequently chosen by Phase 1 participants to be the most understandable. Participants generally favored presentations that showed information in a simple format, though there was no consensus on which format achieved this. In general Phase 1 and 2 focus group findings indicate that we must keep environmental information simple if we want consumers to pay any attention to this information on a label. An overall environmental rating was most favorably received with the general reaction being that EPA was trusted to decide how to combine environmental impacts into a single rating.

Phase 1 focus groups were also asked if they recognized and knew what the "SmartWay" logo meant. None of the participants recognized the logo. However, when probed, most ascertained that it was an EPA designation of some sort. While some participants indicated the logo may confer credibility to an environmentally friendly vehicle, none indicated they would be less likely to purchase a vehicle without the logo.

In Phase 3 focus groups the agencies sought to examine further how environmental information might be displayed most effectively. Several permutations of graphical rating systems were shown to participants. These included designs in which "greenhouse gases" and "other air pollutants" were displayed as one combined environmental rating or separately. Rating scales were examined that were based on relative values, such as a "5 leaf" rating system as well as a linear scale that had the vehicle's absolute CO_2 value identified on a scale that had end-points identifying the approximate highest and lowest emitting vehicles available.[157]

The expert panel, when shown the labels designed by the agencies based on focus group input, stated that they neither understood the environmental information presented nor found it compelling. As described in Section IV.B.4, the expert panel recommended developing an overall rating for vehicles, which could combine fuel economy and environmental impacts. The expert panel noted that additional metrics (e.g., CO_2 performance) could be included in a less prominent position on the label for consumers interested in more detailed environmental information. Expert panel participants also suggested that environmental performance information could be made available on a website and accessed through the smartphone interactive (QR Code®) featured on the label.[158]

2. Effective Metrics and Ratings Systems for Advanced Technology Vehicles

How should labels for advanced technology vehicles portray information about fuel economy, fuel cost, greenhouse gas, and other emissions for consumers in a way that is most understandable and useful to them?

In addition to the issues discussed above for conveying information generally on labels, advanced technology vehicles that operate on fuels which differ from conventional gasoline and diesel fuel require new strategies to communicate and display fuel economy information effectively.[159] Through the research program, we explored potential approaches to communicating useful fuel economy, cost, and environmental information about electric vehicles and several variations of plug-in hybrid electric vehicles. As discussed further below, the research probed consumers to identify what specific information they would need if they were to seriously consider purchasing an advanced technology vehicle and what information would be most helpful on an advanced technology fuel economy label.[160]

Phase 2 focus groups were devoted to exploring what label information consumers believed was most important to display for advanced technology vehicles given the limited space provided on the fuel economy label. The focus group discussions were broken into segments based on three different vehicle technologies: EVs, extended range PHEVS, and blended PHEVs. Focus group discussions thus separated the different technologies in order to ascertain more accurately what information would be most useful to consumers to understand these new technologies. Phase 2 focus groups were tasked with "building" three different labels, each for different advanced technology vehicles and were given a large number of metrics from which to choose the building blocks. Almost all of the labels built by each focus group included the following elements: (1) The range that the vehicle could travel while depleting a full battery, the charge depleting operation; (2) the length of time it takes to charge the battery; (3) the cost of charging the battery, and if operating in two separate fuel modes, the cost associated with each mode of operation; and (4) an environmental metric.[161] When asked to identify the two most important pieces of information on the label, participants said, regardless of the city, gender, or technology discussed, that information on the range an advanced technology vehicle can travel on a fully charged battery and the length of time is takes to charge the battery were the most important information they needed to have in order to seriously consider purchasing these type of vehicle.

The expert panel's label recommendations did not differentiate between conventional and advanced technology vehicles. The recommendations they made for the conventional vehicle label would apply to the advanced technology vehicle label as well.

a. Range

Focus group participants stated that for any vehicle that operates, even just part of the time, on electricity, it is important for them to know the distance the vehicle can travel on a fully charged battery. Participants saw this as vital to their understanding of the vehicle's fuel economy. While Phase 2 focus groups expressed interest in seeing the range displayed for both city and highway values, when Phase 3 participants were presented with full labels, no one asked

[157] See Environmental Protection Agency Fuel Economy Label: Phase 3 Focus Groups, EPA420–R–10–905, August 2010, p. 39–40 for a detailed description of the metrics examined.

[158] Environmental Protection Agency Fuel Economy Label: Expert Panel Report, EPA420–R–10–908, August 2010, p. 15–17.

[159] *See* Section III.B. and III.C. for a discussion of the challenges that advanced technology and other non-traditional vehicles present for consumers when making vehicle purchase decisions.

[160] Environmental Protection Agency Fuel Economy Label: Phase 2 Focus Groups, EPA420–R–10–904, August 2010.

[161] Environmental Protection Agency Fuel Economy Label: Phase 2 Focus Groups, EPA420–R–10–904, August 2010. Appendix K.

for the range to be broken down by city and highway values.

b. Fuel Cost

Across all advanced technologies, participants were interested in battery charging costs. There was a fairly even split between cost per mile, annual cost and monthly cost values, regardless of technology. For any vehicle with a gasoline-only mode of operation, participants expressed a desire to see the cost expressed annually. The groups also indicated that labels for any vehicle that operated in a combined gas and electric mode should provide cost information on an annual basis. In Phase 3, when presented with annual fuel cost and monthly fuel cost options, many participants used the annual fuel cost when comparing across advanced technology vehicles. Some indicated that the monthly cost was useful for these advanced technology vehicles. In particular, people equated the electricity consumption to their monthly home electricity statements.

c. Fuel Consumption and Fuel Economy

For any advanced technology vehicle that operates in a gas-only mode, the Phase 2 focus groups indicated a strong desire to see fuel consumption expressed in miles per gallon. In any vehicle that had an electric-only mode of operation, the focus groups favored seeing the electric consumption information expressed in an MPG equivalent of "MPGs". (*See* Section II.B for a detailed discussion of MPGe). The second most understandable metric of electric-only operation was kilowatt-hour per 100 miles, but many participants felt strongly that kilowatt hours are very unfamiliar and should not be chosen as a metric. For the PHEVs with a blended mode (gas and electric), focus groups were interested in seeing an MPGe that combined the MPGe of electric operation and the MPG of gas operation. In any vehicle that could operate in more than one mode of operation, such as an EREV or PHEV, participants were interested in seeing fuel consumption values for each mode of operation, although some were interested in seeing a consumption value for the two modes expressed in MPGe [162] in addition to displaying the separate consumption information.

d. Environmental Information

Focus group participants did not independently identify the need to have environmental information on the label. However, in Phase 2, with the exception of one group, when given the option, all the groups elected to include environmental information on the label. Of the designs provided many participants selected a horizontal slider scale that ranked the vehicle's impact as the most understandable conveyance of environmental information.

Other displays of environmental metrics were examined in Phase 3. These displays included sliding scales segmented with relative rating systems as well as those with absolute values. Relative ratings such as stars or leaves were also shown. Participants commented that they wanted something that was quick and easy to read. Most focus group participants preferred something that was quick with little detail while some wanted more detailed information to help inform their decisions. Based on this finding, the agencies incorporated this approach into the co-proposed label designs in attempt to find the right balance of simple and detail information presentation. *See* section IV.B.1 for more comprehensive discussion of the environmental information focus group findings.

3. Effective Metrics To Enable Vehicle Comparison

How can consumers compare vehicles when they are shopping?

Beyond the statutory requirement to develop rating systems for fuel economy, GHGs, and other emissions, with designations of the "best" vehicles in terms of fuel economy and GHG emissions, the agencies recognize that the labels need to be consumer-friendly in terms of facilitating cross-vehicle and cross-technology comparisons. If consumers first encounter advanced technology vehicles on the dealer's lot, and are not predisposed to buy one, a label that effectively conveys the benefits of purchasing such a vehicle through a clear and understandable rating system will be helpful in informing consumers and potentially educating consumers about the benefits of these vehicles. Through the research program, the agencies also investigated how the fuel economy labels might be designed so that consumers could easily compare the fuel economy, costs, and environmental impacts across a range of vehicle technologies—from conventional gasoline and diesel vehicles to electric and plug-in hybrid vehicles.

Focus groups also provided feedback about various metrics which were intended to help a consumer compare a vehicle to other vehicles, as required by statute. In Phases 1 and 3, participants were shown not only rating scales such as a numerical or five stars system, but also a slider scale similar to the bar that exists on the current fuel economy label for within-class comparisons, both of which the agencies believed would meet the statutory requirement to provide a rating system. The participants seem to be split into two camps: Those that prefer the analytical detail of the value scale, and those that prefer the simplicity of a star-type rating scale.

For fuel economy and fuel consumption, Phase 1 participants were shown two kinds of examples: One that compared vehicles only within their current fuel economy class, and one that showed both a within-class comparison and a comparison among all vehicles. These comparisons were shown using gallons per hundred mile values and miles per gallon values. The majority of participants preferred the metric that showed the subject vehicle as it compared to all vehicles and as it compared to its fuel economy class in units of miles per gallon.

In Phase 2 most focus group participants said that they would like an effective way to compare among disparate vehicle technologies. Many settled on miles per gallon equivalent as a comparative metric, but most did not know what the equivalency was based upon. In Phase 3, when comparing advanced technology vehicles, most participants either used the MPGe value or the annual cost value to compare across vehicles. Some used the fuel economy rating systems that were provided. In general, the findings from the focus groups established no clear preference or approach for how to effectively communicate comparative vehicle information that would be useful to most consumers.

The expert panel disagreed that the focus group generated labels could be used effectively to compare across vehicle technologies— especially to the level of information found on the advanced technology labels, which they described as "scary" and "unfriendly." They were clear to point out, however, that their issues were with the label design, and that they were not rejecting the information contained on the label. The expert panel stated that there are inherent differences in reviewing labels in a focus group compared to on a dealership lot, where you have, on average, very short viewing time. The expert panel suggested that processing this amount of information quickly would be challenging, which could lead many consumers to tune out the label completely. As mentioned above, the panel recommended that the agencies roll up fuel economy, environmental

[162] Participants were given this option using existing utility factor data as the method for combing the two modes of operation. See Section VI.B for a discussion about utility factors.

impacts and cost information into a single easily understood letter/grade approach that will be intuitive for most consumers. The grade could be used across all technologies providing consumers easy comparative information. The expert panel allowed that the more complicated information could be made available in the bottom half of the label but argued that it would be crucial to retain a simple compelling comparison in the top portion of the label. The panel also suggested including a comparative metric that shows the potential savings from buying a more fuel efficient vehicle, as saving money historically has been a very strong motivator for consumers.

4. Effective Whole Label Designs

How should the new labels be designed to meet the statutory requirements while best raising consumers' understanding of fuel efficiency, fuel cost and environmental impact?

In addition to the examination of individual label elements described above, consumer research designed by EPA and NHTSA investigated the effects of various whole label designs on consumer comprehension and utilization, in order to test whether the labels would still be useful when all of the elements were put together. This inquiry is important because there is only so much space that information can occupy both on the label and in the consumer's mind when standing on the dealer's lot and confronted with so much other information. In order to provide sufficient information while ensuring that it remains understandable for the greatest number of consumers, a balancing act is inevitable. The consumer research attempted to assess how best the balance could be struck, as discussed further below in Section III.

The expert panel offered very strong opinions on what, given their experience, would make a label effective in engaging the public. They strongly recommended that the top portion of the label contain only one element—a "grade" that would combine as many of our required metrics as possible. This information should be big, bold, and easy to process while walking around a dealership. The label space under the grade would be reserved for the specific information required in the statute or deemed important in focus groups and other market research. When the panel was presented with label designs that had multiple metrics, explanatory text, and graphical icons, with no one element standing out, they felt that the labels were confusing and intimidating. The expert panel's consensus view, after viewing the draft labels developed through the focus groups, was that these labels would be daunting for most consumers to process, making them inclined to "tune out" even the most basic information. Their strongest recommendation: Keep it simple.[163]

5. Tools Beyond the Label

What purchase process do consumers currently use to make new vehicle purchasing decisions? Given this process, when are the most effective opportunities to communicate fuel economy and environmental information?

a. Vehicle Purchase Process

The vehicle purchase process is complex and iterative. There may be many opportunities to inform consumers about the fuel economy and environmental impact of the vehicles they are considering. Although much of this proposal focuses on the actual fuel economy label, the agencies recognize that consumers seek out fuel economy and environmental information at other times in the purchase process beyond simply viewing the fuel economy label on vehicles during visits to dealerships. In order to determine the most effective means to provide fuel economy and environmental information to consumers, the agencies sought to better understand when and how consumers encounter or search for this type of information in their vehicle purchase decision-making process.

Information on this vehicle buying process was obtained in an on-line survey of focus group participants prior to the actual focus groups. In addition, at the start of each session, participants were asked to discuss their purchase process so we could better understand the nuances associated with the responses we had received through the on-line survey. The pre-group online survey indicated that a majority of respondents already had a vehicle type in mind when they began the process. Consumers appear to narrow the spectrum from all available vehicles to the vehicle type or types they will research depending on their specific needs and interests. In general, the focus groups used broad categories to describe vehicle groupings, such as SUVs, minivans, sport cars, trucks, economy cars, and midsize cars.[164] For example, some focus group respondents said they narrowed their search based on vehicle cargo space, for others it was sedans, and for others it was SUVs and minivans.

According to the pre-focus group online survey and the focus groups themselves, a majority of the participants indicated that price/affordability was one of the top five factors that influenced their vehicle choice. Other key factors that influenced participants' vehicle choice included gas mileage/fuel economy, safety, reliability, size, interior and exterior appearance, comfort, brand name and performance. The agencies also reviewed existing literature on the factors that influence vehicle choice. For example, a 2009 survey of people between the ages of 18 and 30 ("Generation Y") found gas mileage to be the top factor indicated by participants as critical to vehicle purchasing decisions, followed by affordability/price.[165] Both demographic and psychographic factors (*e.g.,* 'what a vehicle says about me') also play a role in the vehicle purchase process.[166]

At present however, environmental impacts are not top purchasing considerations for most consumers. Focus group participants indicated that environmental impacts were not a consideration in the type of the vehicle they purchase. Only a small fraction of the participants in the pre-group online survey considered "low emissions" to be key factor when making a vehicle purchase decision. This finding is also supported by the literature review. Consumer research indicates that although consumers have a growing interest in purchasing "greener" vehicles, environmental impact is not sufficient by itself for most consumers to be willing to pay a premium.[167]

Another important aspect of the vehicle purchase process is how consumers research vehicles. Two-thirds of the respondents to the pre-focus group online survey reported they had researched fuel economy prior to buying their vehicle. Based on the available choices in the pre-focus group survey, respondents reported gathering fuel economy information from manufacturer Web sites, Consumer Reports, auto dealers, vehicle search websites, automobile magazines, others

[163] Environmental Protection Agency Fuel Economy Label: Expert Panel Report, EPA420–R–10–908, August 2010, p. 15–17.

[164] These categories are not necessarily related to the current 14 EPA-designated classes of vehicles. Vehicle classes are described in 40 CFR 600.315–08.

[165] Deloitte. "Connecting with Gen Y: Making the short list," 2010, p.2. Available at *http://www.deloitte.com/assets/Dcom-UnitedStates/Local%20Assets/Documents/us_automotive_Deloitte%20Automotive%20Gen%20Y%20Executive%20Summary_0107.pdf* (last accessed August 13, 2010).

[166] Environmental Protection Agency Fuel Economy Label: Literature Review, EPA420–R–10–906, August 2010, p. 30–39.

[167] Ibid., p. 8.

with similar vehicles, government websites, television advertisements, and the Fuel Economy label itself. The literature review found that consumers increasingly research fuel economy information online. For example, traffic on the DOE and EPA Web site *http://www.fueleconomy.gov* increased from 400,000 user sessions in 1999 to more than 30 million in 2008.[168] Other Internet sources used to research vehicles during the purchase process include consumer-to-consumer tools such as blogs and Web forums.[169]

Another finding from the literature review is that consumers are likely to be closer to purchasing a vehicle by the time they visit the dealership than they were in the past.[170] This highlights the value of educational tools beyond the label to provide consumers with information on a vehicle's fuel economy and environmental impact. Online tools may be particularly important. In addition to the Internet being a source of information for consumers, online sales of cars have been steadily increasing in the U.S. in recent years (although they still represent a small percentage of total car sales).[171]

b. Consumer Education

As described above, the vehicle purchase decision is not based entirely on the fuel economy label information, but is complex and iterative, and messages presented in contexts beyond the label may be even more helpful in getting consumers the information they need about fuel economy, fuel cost, GHGs, and other emissions. Several resources maintained by EPA and DOE are already available to help consumers obtain information about comparative vehicle fuel economy and environmental information, including *http://www.fueleconomy.gov,*[172] the Fuel Economy Guide,[173] and the Green Vehicle Guide.[174] In addition to the information sources and tools already available, under EISA, Congress requires NHTSA, in consultation with EPA and DOE, to develop a consumer education program to improve consumer understanding of automobile performance with regard to fuel economy, greenhouse gas and other emissions.

While this campaign is still in its very early stages and is not the subject of this rulemaking, it will be investigating modifications to existing tools, new collaborations for information dissemination and, potentially, new forms of media utilization in communicating the relationship of automobile performance to fuel economy and emissions. Particularly given the changes to the label that we anticipate will result from this rulemaking, introducing consumers to the new information available to them and how it can be used as they consider their next vehicle purchase will be very important.

Since the vehicle purchase process is multifaceted, EPA and NHTSA would like to better understand how various information tools beyond the label can provide critical fuel economy information to consumers. EPA and NHTSA especially seek to understand what additional types of consumer information and tools are most important and what level of individualized information is needed by consumers in the future.

There are a variety of existing education campaigns and resources to help enable consumers to make more fuel efficient and environmentally friendly transportation choices. These include the Federal Highway Administration's initiative "It All Adds Up to Cleaner Air," [175] the "Cleaner Cars for Maine" [176] program, and the "Drive Smarter Challenge" campaign.[177] Brief descriptions of these and other education campaigns are available in the literature review report.[178] Such campaigns may inform the agencies' development of educational tools to help consumers make more informed vehicle purchasing decisions.

The agencies request comment on ideas for the most effective means to educate consumers about the new elements and metrics being proposed on the label. In addition, EPA and NHTSA request specific comment on what additional tools we could provide to increase consumer comprehension about complex advanced technology vehicles and automobile performance related to fuel economy and emissions. We are proposing that this campaign potentially include both traditional marketing mechanisms, such as brochures, public service advertisements, media placements, and dealership-distributed checklists, along with more innovative approaches, which may include crowdsourcing with social media, interactive web site displays at dealerships that would allow consumers to "personalize" their fuel economy label, smartphone applications. In addition, per the recommendation of the expert panel, we are proposing to develop a Web site that would be launched in conjunction with the new label. This consumer-focused, user friendly Web site would provide more specific information on the label, along with access to the tools, applications, social media, and materials mentioned above.

All messages and materials will be tailored according to the method of communication and the target audience. EPA is requesting comment on effective messaging, materials, and methods of communication.

V. Implementation of the New Label

A. Timing

As previously noted, the agencies are proposing that the new label requirements initially take effect with the 2012 model year. This regulatory action is scheduled to be finalized in late December of 2010 or January of 2011 with a final rule effective 30 days after publication. This timing is similar to what was provided in the 2006 label rule.[179]

Model year 2012 vehicles can be introduced as early as January 2011, and in fact EPA has already heard from at least one manufacturer that plans such an early introduction, Given that this regulatory action is not scheduled to be finalized until December of 2010 or January of 2011 and that it is possible, based on when the final rule is published in the **Federal Register** for the effective date of the new regulations to be a date in March of 2011 it is clear that not all 2012 model year vehicles can be captured by the proposed regulations. There may also be cases where a manufacturer prints label "blanks" early in the model year, even if they plan to introduce vehicles in the more typical time frame of late summer and early fall. Although the proposed

[168] Greene, D.L., Gibson, R., and Hopson, J., "Reducing Oil Use and CO_2 Emissions by Informing Consumers' Fuel Economy Decisions: The Role for Clean Cities," prepared by Oak Ridge National Laboratory, Oak Ridge, TN, August 2009, p. 1. Available at *http://www1.eere.energy.gov/cleancities/pdfs/fuel_economy_strat_paper.pdf* (last accessed August 13, 2010).

[169] Environmental Protection Agency Fuel Economy Label: Literature Review, EPA420–R–10–906, August 2010, p. 23.

[170] Ibid., p.18–19.

[171] Deloitte. "A new era: Accelerating toward 2020—An automotive industry transformed," 2009, p. 12. Available at *http://www.deloitte.com/assets/Dcom-India/Local%20Assets/Documents/A%20New%20Era%20-%20Auto%20Transformation%20Report_Online.pdf* (last accessed August 13, 2010).

[172] *http://www.fueleconomy.gov/.*

[173] *http://www.fueleconomy.gov/feg/feg2000.htm.*

[174] *http://www.epa.gov/greenvehicles/Index.do.*

[175] *See http://www.italladdsup.gov* (last accessed August 13, 2010).

[176] *See http://www.maine.gov/dep/air/lev4me/index.html* (last accessed August 13, 2010).

[177] *See http://drivesmarterchallenge.org/* (last accessed August 13, 2010).

[178] Environmental Protection Agency Fuel Economy Label: Literature Review, EPA420–R–10–906, August 2010.

[179] *See* 40 CFR 600.301–08 and 71 FR 77879 (December 27, 2006).

regulations do not presume anything regarding the date of finalization of the new label and only specify applicability to the 2012 model year, we expect that the final rule will have to take these issues into account.

The final rule will likely specify a date of applicability of the new regulations that is some date certain after publication of the final rule that would allow manufacturers adequate time to plan for and implement the new designs. We believe that a date on the order of 30 days after publication would be appropriate, where vehicles produced after that date would have to use the new label format. We would of course encourage the voluntary use of the new label to the greatest extent possible from the date of signature to the specified effective date. The agencies request comments on the appropriate timeframe for implementing these new label requirements.

The agencies recognize that some of the potential changes in label design, including color graphics that would be printed at production run-time and differing footprints that necessitate redesign of the overall Monroney label may impact the amount of lead time required by manufacturers. While we believe that it is extremely important for the final label changes to take effect as soon as possible, we seek comment on these specific potential lead time issues.

To introduce the new label and ensure that the public understands the new information and format, the agencies plan to conduct extensive public outreach concurrent with the implementation of a final rule. We will provide information about the new label and how to use it via web-based information, fact sheets, and other communication methods. This information will be designed to explain all aspects of the new label.

B. Labels for 2011 Model Year Advanced Technology Vehicles

The new fuel economy label will address advanced technology vehicles, such as EVs and PHEVs, which some manufacturers are planning to introduce into the U.S. market prior to the 2012 model year. EPA issued regulations in 2009 that provided EPA discretion to authorize appropriate changes to the current fuel economy label with individual manufacturers, specifically with respect to advanced technology.[180] These regulations are applicable until this rule is finalized.

To address labels for advanced technology vehicles introduced before this rule is finalized; EPA may allow any manufacturer of such vehicles that will be introduced prior to the 2012 model year to use one of the co-proposed labels, or an alternative label that meets EPA's approval. For example, EPA could evaluate whether a manufacturer could use a table that compares various metrics (*e.g.,* fuel economy (mpg), electricity consumed (kWh), miles per gallon equivalent (mpg-e), and total energy cost) for different mileages the vehicle is driven between a full charge of the battery. This approach would provide the most complete amount of information for the vehicle's performance as a function of distance travelled. The broad range of metrics could also make it easier for the consumer to understand the energy consumption of the vehicle. The down side to including a table is that it provides a lot of information and could be potentially confusing for some consumers.

Manufacturers intending to introduce an advanced technology vehicle as a 2011 model year vehicle should meet with EPA to discuss the details of actual implementation. For example, EPA would discuss with the manufacturer the fact that the label format and information may only be used for the 2011 model year and may change for 2012 depending on the outcome of the final label regulations. EPA would also discuss in conjunction with the Federal Trade Commission (FTC) what aspects of the label information could be advertised and would also discuss with the manufacturer the details of specific test values used, such as mile per gallon equivalent, kW-hr per 100 miles, blended mode operation for a PHEV, etc.

C. Implementation of Label Content

Although much of the information presented on the label is determined from test data specific to the labeled vehicle or can be codified in the regulations, there are elements that will require annual (or in some cases, possibly less frequent) information provided by EPA. This is no different from today's label and the annual guidance letter published by EPA that includes the fuel economy ranges for each class of automobile, the fuel price information to be used to calculate costs, and other relevant information. This information will have to continue to be provided by EPA on an annual basis, but the new ratings proposed for the new labels will also require that EPA provide annually the range of fuel economy of all vehicles as well as the range of CO_2 emissions of all vehicles.

VI. Additional Related EPA Proposals

A. Electric and Plug-In Hybrid Electric Vehicle Test Procedures

1. Electric Vehicles

There currently is no federal test procedure for measuring fuel economy for electric vehicles. EPA has periodically performed fuel economy testing for electric vehicles utilizing test procedures and protocols developed by the Society of Automotive Engineers (SAE), specifically J1634. Manufacturers may continue to use SAEJ1634 test protocols, as cancelled in October 2002 until EPA can comment on a reissued SAE1634 that is in draft, with the exception of not using the C coefficient adjustment in paragraph 4.4.2. The C coefficient adjustment was intended to reflect air conditioning loads. Air conditioning usage is not considered in CAFÉ testing and is accounted for via the 5-cycle or derived 5-cycle equations for labeling. Until recently, there have been very few electric vehicles sold in the U.S. market. The few exceptions, such as the EV1 from General Motors (GM), were only made available to a select few customers for a limited time. As such, there was not a pressing need for an electric vehicle test procedure. However, with the imminent release of several new battery electric vehicles from manufacturers such as Ford and Nissan, the need for a Federal test procedure for measuring fuel economy or fuel consumption for electric vehicles is apparent.

Fuel economy estimates are measured for "city" and "highway" operation. Prior to the 2008 model year, all vehicles were fuel economy tested over just two test cycles: The Federal Test Procedure (FTP or "city" test) and the Highway Fuel Economy Test (HFET or "highway" test). In December, 2006, EPA published revisions to improve the calculation of fuel economy estimates to better reflect real world fuel economy performance.[181] These revisions included three additional chassis dynamometer test cycles to the current FTP and HFET for fuel economy testing purposes. The three additional cycles were the US06, SC03, and the Cold Temperature FTP. Prior to the 2008 model year, all three test cycles were used for emissions purposes for either the Supplemental Federal Test Procedure (SFTP) emissions standards (US06 and SC03) or the cold temperature (20 °F) emission standards. Beginning in the 2008 model year, all vehicles tested for fuel economy labeling purposes had to use the new "5-

[180] 74 FR 61537, Nov 25, 2009.

[181] 71 FR 77931, Dec. 27, 2006.

cycle" fuel economy methodology which either required testing all vehicles over the five test cycles discussed above or apply an equivalent 5-cycle correction referred to as the derived MPG- based approach. For alternative fueled vehicles, including electric vehicles, manufacturers have the option for fuel economy testing to test their vehicle over all five test cycles or use a derived MPG-based approach

a. FTP or "City" Test

The procedure for testing and measuring fuel economy and vehicle driving range for electric vehicles is similar to the process used by the average consumer to calculate the fuel economy of their personal vehicle. The distance the vehicle can operate until the battery is discharged to the point where it can no longer provide sufficient propulsive energy to maintain the speed tolerances as expressed in 40 CFR 86.115–78 is measured and divided by the total amount of electrical energy necessary to fully recharge the battery, similar to refueling the gas tank of a gasoline powered vehicle.

The first step of the procedure is to determine the distance the vehicle operates before the battery becomes discharged to the point where the vehicle can no longer provide sufficient propulsive energy to maintain the speed tolerances as expressed in 40 CFR 86.115–78. This begins with the preconditioning of the vehicle. The electric vehicle is preconditioned per 40 CFR part 86, section 132. Following preconditioning, the Rechargeable Energy Storage System (RESS) will be brought to full charge. The RESS will remain plugged into the electrical source for a minimum of 12 hours. For the FTP or city test cycles, the chassis dynamometer procedures will be conducted pursuant to 40 CFR 86.135 with the exception that the vehicle will run consecutive test cycles until the vehicle is unable to maintain the FTP speed tolerances as expressed in 40 CFR 86.115–78. To clarify, an FTP historically consisted of two Urban Dynamometer Driving Schedules. The FTP was later shortened to one full UDDS and only the first bag or phase of the second UDDS. The second phase of the second UDDS was considered just a repeat of the second phase of the first UDDS. In the context of electric vehicles, an FTP is two full consecutive UDDS's. The second UDDS of any FTP cycle will be started 10 minutes after the cold start as per § 86.135. Subsequent FTP cycles may require up to 30 minutes between starts due to test facility limitations. Between starts, the RESS is not to be charged. During the 10 minute or other longer soaks, the vehicle should have the hood closed and the cooling fans shut off.

If an electric vehicle cannot reach the FTP top speed, then the test will terminate once the vehicle speeds cannot be maintained within 2 mph as described in 40 CFR 86.115–78 up to the maximum speed. For low powered electric vehicles that cannot reach the FTP top speed, the vehicle top speed is the maximum speed the vehicle reached during the first FTP. The Administrator may approve alternate end of test criteria. For low powered electric vehicles that by design cannot maintain the speed tolerances as expressed in 40 CFR 86.115–78, low powered vehicles, the vehicle will continue testing if the vehicle is operated at maximum power. This provision is intended to apply uniformly throughout all the consecutive FTP cycles. A vehicle that can maintain trace speed on the first FTP cannot then be declared a low powered vehicle for subsequent FTP cycles. Upon reaching the end of test criteria, the distance driven shall be recorded and the vehicle decelerated to a stop. The end of test criteria is when the vehicle can no longer maintain the drive cycle per 40 CFR 86.115–78 or, for a low powered EV, can no longer maintain the speed tolerances per 40 CFR 86.115–78 up to the vehicle maximum speed as defined above. Similarly, low powered vehicles that cannot maintain the drive cycle due to insufficient acceleration will use the trace driven on first UDDS as the tolerance for end of test.

The final stage of the electric vehicle test procedure is the measurement of the electrical energy used to operate the vehicle. The end of test recharging procedure is intended to return the RESS to the full charge equivalent of the pre test conditions. The recharging procedure must start within three hours after completing the EV testing. The vehicle will remain on charge for a minimum of 12 hours to a maximum of 36 hours. After reaching full charge and the minimum soak time of 12 hours has been reached, the manufacturer may physically disconnect the RESS from the grid. The alternating current (AC) watt-hours must be recorded throughout the charge time. It is important that the vehicle soak conditions must not be violated. The measured AC watt-hours must include the efficiency of the charger system. The measured AC watt hours are intended to reflect all applicable electricity consumption including charger losses, battery and vehicle conditioning during the recharge and soak, and the electricity consumption during the drive cycles. Finally, the raw electricity consumption is calculated by dividing the recharge AC watt-hours by the distance traveled before the end of the test criteria is reached.

b. HFET or "Highway" Test

Similar to the FTP test procedure, the first step of the procedure is to determine the distance the vehicle operates before the battery becomes fully discharged. This begins with the preconditioning of the vehicle. Vehicle preconditioning is to be conducted as per 40 CFR part 86, section 132. Following preconditioning, the RESS will be brought to full charge. The RESS will remain plugged into the electrical source for a minimum of 12 hours. The vehicle may remain plugged into the electrical source up to 36 hours.

Dynamometer procedures will be conducted pursuant to 40 CFR 600.111 with the exceptions that electric vehicles will run consecutive cycles of the HFET until the end of test criteria is reached. Subsequent HFET cycle pairs may require up to 30 minutes of soak time between HFET cycle pairs due to facility limitations. Between cycle pairs, the vehicle hood is to be closed and the cooling fans shut off. Between starts, the RESS is not to be charged.

If an electric vehicle cannot reach the HFET top speed, then the test will terminate once the vehicle speeds cannot be maintained, up to the maximum speed. For low powered electric vehicles that cannot reach the HFET top speed, the vehicle top speed is the maximum speed the vehicle reached during the first HFET. The Administrator may approve alternate end of test criteria. For low powered electric vehicles that by design cannot maintain the speed tolerances as expressed in 40 CFR 86.115–78, the vehicle will continue testing if the vehicle is operated at maximum power. This provision is intended to apply uniformly throughout all the consecutive HFET cycles. Similarly, low powered vehicles that cannot maintain the drive cycle due to insufficient acceleration will use the trace driven on first UDDS as the tolerance for end of test. A vehicle that can maintain trace speed on the first HFET cannot then be declared a low powered vehicle for proceeding HFET cycles.

Similar to the FTP test procedure, the final stage of the HFET test procedure is the measurement of the electrical energy used to operate the vehicle. The end of test recharging procedure is intended to return the RESS to the full charge equivalent of the pre test conditions. The recharging procedure must start within three hours after completing the

EV testing. The vehicle will remain on charge for a minimum of 12 hours to a maximum of 36 hours. After reaching full charge and the minimum soak time of 12 hours has been reached, the manufacturer may physically disconnect the RESS from the grid. The alternating current (AC) watt-hours must be recorded throughout the charge time. It is important that the vehicle soak conditions must not be violated. The measured AC watt-hours must include the efficiency of the charger system. The measured AC watt hours are intended to reflect all applicable electricity consumption including charger losses, battery and vehicle conditioning during the recharge and soak, and the electricity consumption during the drive cycles. Finally, the raw electricity consumption is calculated by dividing the recharge AC watt-hours by the distance traveled before the end of the test criteria is reached.

c. Other EV Test Procedures

The Administrator may approve or require equivalent or additional EV test procedures including incorporating via reference SAEJ1634 published after this notice.

2. Plug-in Hybrid Electric Vehicles

a. PHEV Test Procedure Rationale

Test procedures for plug-in hybrid electric vehicles (PHEV) are required to quantify some operation unique to plug-in hybrids. The intent in developing new PHEV test procedures is to use existing test cycles and test procedures where applicable. PHEV operation can be generally classified into two modes of operation, charge depleting and charge sustaining operation. Charge depleting operation can be described as vehicle operation where the rechargeable energy storage system (RESS), commonly batteries, is being depleted of its "wall" charge. Charge sustaining operation can best be described as conventional hybrid operation.

New procedures for charge depleting operation would consist of existing test cycles repeated until the PHEV RESS is depleted to charge sustaining operation. Whereas in the past a conventional vehicle would be expected to consume fuel and emit emissions over repetitive identical test cycles consistently, the same cannot be said of PHEVs. PHEV fuel consumption, fuel mix, and emissions may change as the RESS is depleted. In order to accurately assess the emissions and fuel efficiency of a PHEV, the PHEV requires testing over the entire charge depleting range. Testing over the entire charge depleting range requires new test provisions to address vehicle setup and prep, measuring and charging the RESS, operation over repetitive test cycles, and calculating any new values that are now measured over repetitive test cycle.

As described above, charge sustaining operation can best be described as conventional hybrid operation. EPA would continue to use existing hybrid electric vehicle test procedures. The primary differences between HEV and other conventional vehicle testing are the need to monitor RESS state of charge and the extra drive time required to insure vehicle warm operation during the Federal Test Procedure. The RESS is measured and subject to the state of charge tolerances, below, to insure all energy is accurately accounted. The fully warm operation is satisfied by running a full 4 phase Ftp instead of the abbreviated 3 phase Ftp as traditionally used for conventional vehicle testing.

For the purposes of fuel economy label testing, PHEVs would be subject to the same test cycles as other light duty vehicles with a few exceptions. While operating in charge depleting mode, a PHEV is using electricity originally from an off board source. This is to say that a PHEV is operating at least partially on an alternative fuel while operating in charge depleting mode. For the purposes of fuel economy, PHEVs could continue to use the derived 5-cycle adjustment while in charge depleting mode. The derived 5-cycle adjustment would be applied to the total city and total highway fuel economies separately. For the purposes of applying the 5-cycle correction, the total fuel economies in charge depleting mode include both of the fuels consumed, typically gas and electricity, as expressed in a miles per gallon of gasoline equivalent unit. The 5-cycle correction is to be applied to the combined energy of each mode of operation even if the energy consumption is ultimately fuel specific. Applying a correction to the gasoline and electricity consumption separately could lead to a smaller adjustment than other vehicles since the 5-cycle correction is not linear. While in charge sustain mode, PHEVs would be subject to the same test procedures as conventional hybrid electric vehicles.

PHEVs must meet all applicable emissions standards regardless of RESS state of charge. EPA will consider a RESS as an adjustable parameter for the sake of emissions testing. It is the manufacturer's responsibility to insure vehicles are emissions compliant. EPA typically allows good engineering judgment in applying worse case emission testing criteria. For the purposes of certification compliance, EPA will consider charge sustain operation as worse case. EPA may confirmatory test or request the manufacturer to provide test data for any test cycle at any state of charge. Evaluation of fuel economy testing emissions may be used to change worse case emissions assumptions.

b. PHEV Test Procedure and Calculations

The EPA proposes to incorporate by reference SAEJ1711, in part, for PHEV test procedures.

Charge Depleting Operation—FTP or "City" Test and HFET or "Highway" Test

The EPA proposes to incorporate by reference SAEJ1711 chapters 3 and 4 for definitions and test procedures, respectively, where appropriate, with the following exceptions and clarifications. UF weighting is not intended for use with criteria pollutants.

Test cycles will continue until the end of the phase in which charge sustain operation is confirmed. Charge sustain operation is confirmed when one or more phases or cycles satisfy the Net Energy Change requirements below. EPA seeks comment on manufacturers optionally terminating charge deplete testing before charge sustain operation is confirmed with state of charge provided that the RESS has a higher SOC at charge deplete testing termination than in charge sustain operation. In the case of Plug In Hybrid Electric Vehicles with an all electric range, engine start time will be recorded but the test does not necessarily terminate with engine start. PHEVs with all electric operation follow the same test termination criteria as blended mode PHEVs. Testing can only be terminated at the end of a test cycle. The Administrator may approve alternate end of test criteria.

For the purposes of charge depleting CO_2 and fuel economy testing, manufacturers may elect to report one measurement per phase (one bag per UDDS). Exhaust emissions need not be reported or measured in phases the engine does not operate.

End of test recharging procedure is intended to return the RESS to a full charge equivalent to pre test conditions. The recharge AC watt hours must be recorded throughout the charge time. Vehicle soak conditions must not be violated. The AC watt hours must include the charger efficiency. The measured AC watt hours are intended to reflect all applicable electricity consumption including charger losses, battery and vehicle conditioning during the recharge and soak, and the

electricity consumption during the drive cycles.

Net Energy Change Tolerance, NEC, is to be applied to the RESS to confirm charge sustaining operation. The EPA is proposing to adopt the 1% of fuel energy NEC state of charge criteria as expressed in SAEJ1711. The Administrator may approve alternate NEC tolerances and state of charge correction factors if the 1% criteria is insufficient or inappropriate.

Preconditioning special procedures are optional for traditional "warm" test cycles that are now required to test starting at full RESS charge due to charge depleting range testing. If the vehicle is equipped with a charge sustain switch, the preconditioning cycle may be conducted per 600.111 provided that the RESS is not charged. Exhaust emissions are not taken in preconditioning drives. Alternate vehicle warm up strategies may be approved by the Administrator. This will allow a method for starting "warm" test cycles with a fully charged battery.

Hybrid Charge Sustaining Operation—FTP or "City" Test and HFET or "Highway" Test

The EPA proposes to incorporate by reference SAEJ1711 chapters 3 and 4 for definitions and test procedures. The EPA proposes to adopt the 1% of fuel energy NEC state of charge criteria as expressed in SAEJ1711. The Administrator may approve alternate NEC tolerances and state of charge correction factors if the 1% criteria is insufficient or inappropriate.

Preconditioning special procedures are optional for traditional "warm" test cycles that are now required to test starting at full RESS charge due to charge depleting range testing. If the vehicle is equipped with a charge sustain switch, the preconditioning cycle may be conducted per 600.111 provided that the RESS is not charged. Exhaust emissions are not taken in preconditioning drives. Alternate vehicle warm up strategies may be approved by the Administrator.

Charge Depleting Range Determination

Actual Charge Depleting Range (R_{CDA}) will be a calculated value that uses the charge sustaining state of charge of the RESS to define the R_{CDA} endpoint. Due to the nature of PHEVs, R_{CDA} will require calculation and is not necessarily when the engine first starts. Defining R_{CDA} using only engine on could leave PHEVs with three modes of operation. These three modes would be charge depletion, charge regeneration, and charge sustaining. If the regeneration of the RESS from the engine is not accounted for in the charge depleting mode, the RESS could be deep cycled beyond the CS SOC to gain range while the increase in CO_2 emissions due to the RESS regeneration would not be captured in the charge sustaining testing.

Calculation of R_{CDA} will require monitoring the RESS SOC throughout charge depleting testing. The R_{CDA} for each cycle would be the driven cycle distance from start of CD testing until the charge sustaining SOC is "crossed". The EPA is proposing to incorporate by reference the SAEJ1711 calculation for Actual Charge Depleting Range.

c. Other Test Cycles

PHEV and Electric vehicle testing over the SC03, US06, or Cold CO test cycles would follow the same general procedure as the FTP and HFED. EPA would consider the use of alternate or equivalent PHEV test procedures and may incorporate by reference SAEJ1711.

d. Test Tolerances

State of Charge tolerance correction factors may be approved by the Administrator. RESS state of charge tolerances beyond the 1% of fuel energy may be approved by the Administrator.

e. Mileage and Service Accumulation

The EPA is seeking comment on modifying the minimum and maximum allowable test vehicle accumulated mileage for both EVs and PHEVs. Due to the nature of PHEV and EV operation, testing may require many more vehicle miles than conventional vehicles. Furthermore, EVs and PHEVs either do not have engines or may use the engine for only a fraction of the miles driven.

f. Test Fuels

Electric Vehicles and PHEVs are to be recharged using the supplied manufacturer method provided that the methods are available to consumers. This method could include the electricity service requirements such as service amperage, voltage, and phase. Manufacturers may employ the use of voltage regulators in order to reduce test to test variability with prior Administrator approval.

B. Utility Factors

1. Utility Factor Background

Utility Factors are a method of combining CO_2 emissions, fuel consumption, or other metrics from multiple modes of operation into one value. The extent to which utility factors are used on a fuel economy label is completely dependent upon label format. That is to say, some PHEV label formats may not require utility factors at all or possibly only for CO_2. This discussion on utility factor is required to understand the different PHEV label formats within this proposal.

As discussed previously, PHEVs can use two types of energy sources: (1) An onboard battery charged by plugging the vehicle into the electrical grid possibly via a conventional wall outlet to power an electric motor, as well as (2) a gas or diesel-powered engine to propel the vehicle or power a generator used to provide electricity to the electric motor. Depending on how these vehicles are operated, they can use electricity exclusively, never use electricity and operate like a conventional hybrid, or operate in some combination of these two modes. This can make it difficult to estimate fuel economy, fuel consumption, annual cost, or CO_2 emissions from these vehicles.

The EPA has worked closely with stakeholders including vehicle manufacturers, the Society of Automotive Engineers (SAE), the State of California, the Department of Energy (DOE), and others to develop an approach for estimating fuel economy, fuel consumption, cost, CO_2 emission, or any other metric for vehicles that can operate using more than one energy source. EPA believes the appropriate method for combining the operation of vehicles that can operate with more than one fuel would be a weighted average of the appropriate metric for the two modes of operation. A methodology developed by SAE and DOE to predict the fractions of total distance driven in each mode of operation (electricity and gas) uses a term known as a utility factor (UF). UF's were developed using data from the 2001 Department of Transportation "National Household Travel Survey". A detailed method of UF development can be found in the Society of Automotive Engineers (SAE) J2841 "Utility Factor Definitions for Plug-In Hybrid Electric Vehicles Using Travel Survey Data". At the time of this proposal, SAEJ2841 was in the process of balloting prior to publishing. SAE reference documents can be obtained at *http://www.SAE.org.* By using a utility factor, it is possible to determine a weighted average of the electric and gasoline modes. For example, a UF of 0.8 would indicate that an all-electric capable PHEV operates in an all electric mode 80% of the time and uses the engine the other 20% of the time. In this example, the weighted average fuel economy value would be influenced more by the electrical operation than the engine operation.

For the purposes of PHEVs, UF development makes several assumptions. Assumptions include: the

first mode of operation is always electric assist or all electric drive, vehicles will be charged once per day, and that future PHEV drivers will follow drive patterns exhibited by the drivers in the surveys used in SAEJ2841. EPA acknowledges that current understanding of the above assumptions and that the data upon which utility factors were developed may change. Therefore, EPA may change the calculation of future utility factors in light of new data in a future rulemaking.

2. General Application of Utility Factors

While acknowledging the assumptions above, a UF could be assigned to each successive test or phase of testing until the battery charge was depleted to the point where the PHEV sole source of power was from the gasoline or diesel engine. One minus the sum of all the utility factors would then represent the fraction of driving performed in this "gasoline or diesel mode." Carbon dioxide emissions could then be expressed as:

Equation VI.B.2-1

$$Y_m = \sum_1^i (UF_i \times Y_i) + \left(1 - \sum_1^i UF_i\right) \times Y_{CS}$$

Where:

Y_m is the Utility Factor averaged mass of carbon dioxide for a specific drive cycle.

Y_i are the CO_2 mass emissions or CO_2 equivalent mass emissions for each phase or test cycle. For electricity, a carbon dioxide equivalent may be used as determined by the Administrator.

Y_{cs} is the charge sustain carbon dioxide mass emissions and for hybrids in the case of the FTP can be expressed as $Y_{cs} = 0.43 * Y_c + 0.57 * Y_H$, where Y_c is the charge sustain cold start test and Y_H is the charge sustain hot start mass emissions of carbon dioxide.

UF_i is the driving cycle and sequentially specific utility factor.

Likewise, the electrical consumption would be expressed by adding the electricity consumption from each mode. Since there is no electrical consumption in hybrid mode, or charge sustain mode, the equation for electricity consumption would be as follows:

Equation VI.B.2-2

$$E_m = \sum_1^i (UF_i \times E_i)$$

Where E_m is the utility factor averaged electricity consumption, E_i is the electricity consumption proportioned to each successive drive cycle, and UF_i is the driving cycle and sequentially specific utility factor.

3. Calculating Combined Values Using Cycle Specific Utility Factors

Utility factors could be cycle specific not only due to different battery ranges on different test cycles but also due to the fact that "highway" type driving may imply longer trips than urban driving. This would lead to different utility factors for urban and highway driving. The following section explains the EPA proposal of assigning a utility factor to each successive phase or test cycle performed in charge depleting or "PHEV" mode.

Utility factors can be assigned to each mode of operation according to the distance driven in each mode for a given powertrain combination. Rather than calculating a unique UF for each cycle based on measured distance driven, UF's will be assigned to each successive phase of consecutive Urban Dynamometer Driving Schedules, and each successive Highway Fuel Economy Driving schedule of consecutive HFEDs. Composite city and composite highway CO_2 emissions will first be calculated using test results and UFs from the respective cycles. Final combined values will then be an averaged 55% city and 45% highway value. The proposed cycle specific utility factors for UDDS or "city" driving are provided in Table VI.B.2–1 and the proposed cycle specific utility factors for HFEDS or "highway" driving are provided in Table VI.B.2–2. The method used to develop cycle specific utility factors can be found in SAEJ2841. EPA seeks comment on using utility factors other than the fleet 55/45 city/highway specific utility factors for labeling and compliance. Finally, example CO_2 calculations are provided below.

TABLE VI.B.2–1—FTP PHASE SPECIFIC UTILITY FACTORS

Phase	Urban driving, "city"		Seq. UF
	Distance, mi	Cumulative UF	
1	3.59	0.125	0.125
2	7.45	0.243	0.118
3	11.04	0.340	0.096
4	14.9	0.431	0.091
5	18.49	0.505	0.074
6	22.35	0.575	0.070
7	25.94	0.632	0.057
8	29.8	0.685	0.054
9	33.39	0.729	0.044
10	37.25	0.770	0.041
11	40.84	0.803	0.033
12	44.7	0.834	0.031
13	48.29	0.859	0.025
14	52.15	0.882	0.023
15	55.74	0.900	0.018
16	59.6	0.917	0.017

TABLE VI.B.2–2—HFED CYCLE SPECIFIC UTILITY FACTORS

HFEDS	Highway driving		
	Distance, mi	Cumulative UF	Seq. UF
1	10.3	0.125	0.125
2	20.6	0.252	0.127

TABLE VI.B.2–2—HFED CYCLE SPECIFIC UTILITY FACTORS—Continued

HFEDS	Highway driving		
	Distance, mi	Cumulative UF	Seq. UF
3	30.9	0.378	0.126
4	41.2	0.500	0.121
5	51.5	0.610	0.111
6	61.8	0.707	0.097
7	72.1	0.787	0.080

Example CO_2 Calculations

A PHEV was tested with the following results. The example PHEV operated over four consecutive UDDS to quantify charge depleting or "PHEV" mode and ran the required bag hybrid UDDS test to represent charge sustaining or "hybrid" mode.

TABLE VI.B.2–3—CHARGE DEPLETING EXAMPLE CO_2 EMISSIONS

UDDS	Bag	Cycle miles	CO_2 g/mi	CO_2 g	Dc integrated amp hrs	Proportioned W hrs	Measured distance, mi	UF	Whr/mi
1	1	3.59	50.0	180.5	4	705.88	3.61	0.125	195.5
1	2	7.45	35.0	134.8	3.8	670.59	3.85	0.118	174.2
2	3	11.04	30.0	107.4	3.7	652.94	3.58	0.096	182.4
2	4	14.9	37.0	143.2	3.5	617.65	3.87	0.091	159.6
3	5	18.49	55.7	198.3	2	352.94	3.56	0.074	99.1
3	6	22.35	232.5	902.2	0	0	3.88	0.07	0.0
4	7	25.94	249.2	877.3	0	0	3.52	0.057	0.0
4	8	29.8	230.0	897.0	0	0	3.90	0.054	0.0

TABLE VI.B.2–4—CHARGE SUSTAINING EXAMPLE CO_2 EMISSIONS

UDDS	Bag	Cycle miles	CO_2 g/mi	CO_2 g	Measured distance, mi
1	1	3.59	251.4	910	3.62
1	2	7.45	233.8	900	3.85
2	3	11.04	251.4	890	3.54
2	4	14.9	228.1	885	3.88

Applying the above data for the example PHEV to the General UF formula in Equation VI.B.2–1 using Table VI.B.2–1 will yield the City CO_2 value. Ym=50 CO_2 g/mi x 0.125 + 35 CO_2 g/mi x 0.118 + 30g CO_2 g/mi + 0.096 + 37g CO_2 g/mi x 0.091 + 55.7 CO_2 g/mi x 0.074 + 232.5 CO_2 g/mi + 0.070 + 249.2 CO_2 g/mi x 0.057 + 230 CO_2 g/mi x 0.054 + (1 − (0.125 + 0.118 + 0.096 + 0.091 + 0.074 + 0.070 + 0.057 + 0.054) x (Ycs). Where Ycs = 0.43 x (910 + 900)/(3.62 + 3.85) + 0.57 x (890 + 885)/(3.54 + 3.88) = 241g CO_2 g/mi. The total CO_2 g/mi, Ym, excluding any electricity CO_2 equivalence would then be 139 g/mi.

To determine electricity consumption one would apply utility factors in a similar fashion using equation VI.B.2–2 and Table VI.B.2–1. Em= 195.5 W hr/mi x 0.125 + 174.2 W hr/mi x 0.118 + 182.4 W hr/mi + 0.096 + 159.6 W hr/mi x 0.091 + 99.1 W hr/mi x 0.074 = 84.4 W hr/mi

The combined CO_2 from engine operation and the CO_2 from the electrical consumption could be calculated by summing the two values, given a CO_2 equivalency for electricity. For example, if the Watt hour CO_2 equivalent was 0.26g CO_2 per Watt hour, the total CO_2 emissions could then be expressed as the sum of the CO_2 and CO_2-equivalent emissions from both modes of operation. From the example above, the overall CO_2 emissions would be 139 gCO_2 per mile + (84.4 W hr/mi) 22gCO_2equiv per mile = 161g CO_2 per mile.

Utility factors can also be used to calculate a miles per gallon equivalent measurement similar to the CO_2 example above. Additional assumptions are required, however, when applying utility factors to a Corporate Average Fuel Economy and possibly a fuel economy labeling miles per gallon of gasoline equivalent measure.

Previously, when calculating PHEV CO_2 emissions, the CO_2 emissions were part of a manufacturer fleet average. The same is true of Corporate Average Fuel Economy. CAFE is a fleet average. Except where explicitly noted for dual fueled vehicles, both CAFÉ and CO_2 fleet calculations would use the cycle specific fleet utility factors. For the purposes of a possible label fuel economy, a fleet average is not the aim, but rather what the average driver would likely experience or expect. For this reason, the EPA is proposing the use of the cycle specific Multiday Individual Utility Factors. The individual utility factors do not weight vehicle miles traveled towards the longer trips like fleet utility factors. For a detailed explanation on utility factor development see SAEJ2841.

Similar to determining a total CO_2 emissions value for PHEVs, calculating a miles per gallon total for PHEVs will require an electricity to gasoline conversion. This miles per gallon equivalent of gasoline would be calculated differently for CAFÉ and label. For a FE label number, EPA would use a miles per gallon of gasoline equivalent energy factor for electricity of

33,705 watt hours per gallon.[182] This same gasoline equivalency would be used for CAFÉ calculation, if the PHEV did not meet the minimum distance requirements of a dual fueled vehicle.[183] In the case of PHEVs with diesel engines, EPA proposes to similarly require calculation of a miles per gallon equivalent for battery operation, but specifying instead to rely on a conversion using the energy content of diesel fuel. We propose to specify an energy content of 36,700 Watt hours per gallon of diesel fuel. This is based on the approximately 9 percent higher energy density for diesel fuel relative to gasoline. We request comment on this approach to calculating fuel economy values for diesel-fueled hybrid electric vehicles.

If the PHEV met the dual fuel range minimums for electricity a Petroleum Equivalency Factor would be used instead of the gasoline equivalent energy factor. For a PHEV without fuel fired accessories, the PEF would be 82,049 watt hours per gallon of gasoline. For details on PEF and gasoline equivalent energy content see 10 CFR 474.3. Using the procedure for calculating a dual fueled vehicle FE for CAFÉ the fuel economy of both modes of operation would be harmonically averaged 50/50 and a utility factor would not be necessary.[184]

4. Low Powered Vehicles

Vehicles using the low powered vehicle provision in 40 CFR 86.115–78(b)(4) shall use the actual distance driven in calculating cycle specific utility factors. The coefficients used in determining UF shall be as follows in table VI.B.2–5

TABLE VI.B.2–5—CITY/HIGHWAY SPECIFIC UTILITY FACTOR COEFFICIENTS

	City	Hwy
Norm_dist	399	399
C1	14.86	4.80
C2	2.97	13.00
C3	−84.05	−65.00
C4	153.70	120.00
C5	−43.59	−100.00
C6	−96.94	31.00
C7	14.47	
C8	91.70	
C9	−46.36	

Equation VI.B.2-5

$$UF_i = 1 - \left[e\left(\sum_{j=1}^{k} \left(\left(\frac{d_i}{ND} \right)^j \times C_j \right) \right) \right] - \sum_{i=1}^{n} UF_{i-1}$$

Where ND is the normalized distance (399), j is the coefficient index, k is the number of coefficients for city (9) and for highway (6), C are the coefficients listed in Table VI.B.2–5, d is distance driven in each cycle or phase, i is a counter representing each cycle or phase, and n is the number of cycles or phases needed to reach the end-of-test criterion.

The calculated cycle specific utility factors for low powered vehicles would be applied in the same manner as paragraph B.3, except that the utility factors would be calculated based on measured distance and not assigned based on phase or cycle distance.

C. Comparable Class Categories

EPCA requires that the label include the range of fuel economy of comparable vehicles of all manufacturers.[185] EPA's comparable class structure provides a basis for comparing a vehicle's fuel economy to that of other vehicles in its class.[186] The definitions of vehicle classes were last revised by EPA's 2006 labeling final rule. That action finalized two specific changes to the vehicle class structure. Separate new classes were added for sport utility vehicles (SUVs) and minivans (these were previously included in the Special Purpose Vehicle category), and the weight limit for Small Pickup Trucks was increased from 4,500 pounds gross vehicle weight rating (GVWR) to 6,000 pounds GVWR. These were non-controversial changes that were generally seen as a move to keep the class structure as current as possible given the changing vehicle market. The resulting structure is one that contains nine car categories, five truck categories, and a "special purpose vehicle" category. It should also be noted that the EPA-defined vehicle classes are used only to provide consumer information about fuel economy and serve no other regulatory purpose.

EPA is proposing one modification to the class categories. Consistent with the distinction currently made between small and large pickup trucks, EPA is proposing to divide the SUV class into small and large SUVs. We do not believe that it is appropriate, for example, to include a Toyota RAV4 in the same class as a Toyota Sequoia, or a Ford Escape in the same class as a Ford Expedition. The single SUV category currently described in the regulations would be replaced by the two following proposed categories:

- Small sport utility vehicles: Sport utility vehicles with a gross vehicle weight rating less than 6,000 pounds.
- Standard sport utility vehicles: Sport utility vehicles with a gross vehicle weight rating of 6,000 pounds up to 10,000 pounds.

Although the standard pickup truck class only goes up to 8,500 pounds GVWR, SUVs between 8,500 and 10,000 pounds GVWR are defined as medium-duty passenger vehicles, and they will be subject to fuel economy labeling starting with the 2011 model year. EPA requests comment on whether this is an appropriate way to distinguish the SUV classes.

Although EPA received many comments on the 2006 rule regarding the class structure, some of its inherent problems, and how people may or may not shop within classes, there were no specific suggestions on how to revise the structure to resolve the issues that were raised. We believe that with the refinement to the SUV category we are proposing, the comparable class structure would generally represent the physical distinctions between vehicle types offered in the fleet today. However, there may be other distinctions between vehicles not captured in these categories, such as the luxury vehicle segment. The DOE/EPA Web site (*http://www.fueleconomy.gov*) incorporates vehicle cost into the sedan category, for example, dividing sedans into "family," "upscale," and "luxury." EPA requests comment on incorporating such an approach into the comparable class categories, and specifically, how it might be done given the changing nature of vehicles and vehicle prices. We welcome interested parties to

[182] 65 FR 36990, June 12, 2000.

[183] 49 U.S.C. 32901(c) and 49 CFR 538.5 Minimum Driving Range.

[184] 49 U.S.C. 32905(b).

[185] 49 U.S.C. 32908(b)(1)(C).

[186] 40 CFR 600.315–08.

continue working with EPA in the future on how to ensure that the comparable classes are kept current with the dynamic vehicle fleet. If it becomes necessary in the future to further modify the comparable class structure, EPA would do so through a rulemaking. EPA requests general comments on the proposed modifications to comparable classes, and also welcomes comments on other possible ways to classify vehicles for comparison purposes. Comments should address how the classifications will be useful for the consumer who is comparison shopping.

D. Using Smartphone QR Codes® To Link to Fuel Economy Information

For all the label designs being considered, EPA is proposing that manufacturers place a QR Code on the label that will link the web browser of a properly configured smartphone to the mobile version of the EPA/DOE fuel economy information Web site, or alternatively, to the vehicle-specific information located on the EPA/DOE Web site.[187] (Note that although the proposed Label 1 design incorporates a different Web site URL, the intent would remain the same: to use the QR Code to directly link the users smartphone to vehicle-specific information while providing additional tools for making vehicle comparisons, learning more about the vehicle, etc.) Many focus group participants expressed excitement and interest in the prospects of being able to access information in this way using their mobile devices, and EPA believes it is a potentially useful and valuable tool for consumers.

QR Codes, like other two-dimensional bar codes, are simply used to store information. QR Codes were originally developed for use in tracking parts in vehicle manufacturing, and are now being used for other purposes, such as storing a Web site URL into an encoded graphic that can be scanned. These codes—the use of which is growing in popularity in the U.S.—are two-dimensional black and white codes (like a bar code) that eliminate the need to type a Web link into a mobile phone (an action that can be cumbersome and that many mobile users might prefer avoiding). Reading a QR Code requires that scanning software be installed on the mobile phone. Many smartphone manufacturers have begun to pre-install QR Code readers, but for those that do not, the readers are very easy to download, and many are available for free for nearly every type of mobile device. Once equipped with the correct scanning application, consumers can point and scan to instantly connect to information they actually want, versus information pushed to them.

For example, scanning the proposed code would link the phone's web browser to the mobile version of the DOE/EPA Web site. At that point the user could view additional information about the efficiency and environmental impacts of the vehicle, with available options such as creating customized estimates based on the user's personal driving habits and distances. The user could also look up other vehicles and compare those to the vehicle they are viewing.

EPA is proposing that the manufacturer place one of two QR Codes on the fuel economy label. These QR Codes would be determined based on an international standard that would be incorporated by reference in the regulations.[188] The default option would be to insert the QR Code that would take the user's web browser to the mobile version of the DOE/EPA fuel economy information Web site. The QR Code for this site, including the text that EPA proposes accompanies it, would look like this:

Smartphone Interactive
Scan QR Code for more information about this vehicle, to get customized estimates, or to compare it with other vehicles.



Alternatively and preferably, the manufacturer would use the QR Code that represents the URL where information for the specific labeled vehicle is available. However, this would depend upon resolving some specific data issues. For example, the manufacturer would have to know the vehicle-specific URL at the time the label is printed. This could require that EPA issue more frequent updates to the web site throughout the year, or that EPA assign a vehicle identification parameter early in the process. It may be the case that even if the vehicle is not yet included on the DOE/EPA Web site that a URL, and thus a QR Code, could be easily assigned or determined. EPA is confident that we can work with DOE to resolve any potential implementation issues prior to the 2012 model year.

E. Fuel Economy Information in the context of the "Monroney" Sticker

As noted in Section VIII, the Automobile Information Disclosure Act (AIDA) requires the affixing of a retail price sticker to the windshield or side window of new automobiles indicating the Manufacturer's Suggested Retail Price of the vehicle and other required vehicle information. AIDA is more commonly known as the Monroney Act (Senator Mike Monroney was the chief sponsor of AIDA) or Price Sticker Act. *See* 15 U.S.C. 1231–1233. This sticker is commonly called the "Monroney" label. EPCA states that EPA "may allow" a manufacturer to comply with the EPCA labeling requirements by placing the fuel economy information on the label required by AIDA, a practice that has been used by most manufacturers. *See* 49 U.S.C. 32908(b)(2). In fact, EPA regulations express a specific preference that manufacturers do this, "provided that the prominence and legibility of the fuel economy label is maintained." *See* 40 CFR 600.306–08(c).

In the third phase of focus groups we had participants consider the placement of the fuel economy on the Monroney label, and whether participants had a specific preference for where to locate the fuel economy information. Although participants expressed a variety of opinions, a slight preference emerged for displaying the fuel economy

[187] The term QR Code is a registered trademark of Denso Wave Incorporated, which owns the patent rights to the QR Code. However, the patent right is not exercised, allowing the specification of the QR Code to be disclosed and open for widespread use. For more information, *see http://www.denso-wave.com/en/adcd/index.html.*

[188] International Organization for Standardization, ISO/IEC 18004:2006, Information technology—automatic identification and data capture techniques—QR Code 2005 bar code symbology specification, August 31, 2006.

information in the upper right portion of the Monroney label.

The agencies recognize that EPCA does not require that the fuel economy information be on the Monroney label, and that there are instances when auto manufacturers may want to display the fuel economy information separately (*e.g.,* if window space is limited on a small vehicle and/or the Monroney label size needs to be reduced). EPA does not intend to preclude the option of placing the new label in any appropriate and prominent location on the vehicle. However, the agencies request comment on whether we should require that the fuel economy information be placed in a specific location on the Monroney label (such as the upper right corner, or on the right side) as a condition of allowing the information to be included on that label.[189] Although consumer preference for a specific location on the Monroney was vague, the agencies believe that consumers would be able to locate the new label information on the vehicle more easily if it appeared in a consistent location within the Monroney sticker.

The agencies also seek comment concerning the potential for the new label information to create confusion about other information found on the Monroney Label, in particular, the star safety ratings. Specifically, the agencies seek comment on whether consumers might interpret the large letter grade on Label 1 as applying to other aspects of the vehicle's performance (such as safety) besides fuel economy and environmental impacts. To mitigate this concern, the agencies have created a prominent black border and title indicating the purpose of the information. Nevertheless the agencies seek comment on whether additional measures should be required under 32908(b) and (g) to address this potential confusion.

The agencies also seek comment on whether the co-proposed labels, in particular Label 1 with its use of color and large font for the overall letter grade, might inadvertently distract consumers from the black-and-white star safety ratings. As one way of addressing this potential issue, NHTSA proposes to require under 49 CFR 575.301 that the star safety ratings be located as close as physically possible to the new fuel economy and environmental label to help ensure that the star safety ratings do not get "lost" on the Monroney Label. Similarly, the agencies seek comment on whether their regulations for the new fuel economy and environmental label should require that it be located as close as physically possible to the star safety ratings.

Another way of addressing this potential issue is by re-visiting the minimum size requirements for the safety rating label and the font of information on it. In a final rule[190] implementing the requirement in the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA–LU) for placing safety rating information on the Monroney vehicle price label, the agency interpreted that Act's specification of a minimum size for the label as indicating the agency did not have any discretion regarding minimum size, instead of interpreting the specification as merely establishing a floor on the discretion of the agency to specify a minimum size. In comments made in response to a subsequent proposal[191] to place an overall safety rating on the safety rating label, the Advocates for Highway and Auto Safety questioned that interpretation. In a recent meeting with Bosch, representatives of that company also questioned that interpretation. In light of the issues in this rulemaking and those questions, the agency is re-examining that interpretation.

F. Miscellaneous Amendments and Corrections

EPA is also proposing a number of non-controversial amendments and corrections to the existing regulations.

First, we are making a number of corrections to the recently finalized regulations for controlling automobile greenhouse gas emissions.[192] These changes include correcting typographical errors, correcting some regulatory references, and adding some simple clarifications.

Second, we are correcting an oversight from the 2006 labeling rule regarding the applicability of testing requirements to independent commercial importers (ICIs). Currently several vehicle categories (dedicated alternative fuel, dual fuel while operating on alternative fuel, and MDPVs) are exempted from having to perform full 5-cycle fuel economy testing. These categories are allowed to use the "derived 5-cycle" method, whereas other vehicles must use data from all five test cycles at certification to perform an evaluation that determines whether the test group can use the derived 5-cycle method or whether they must complete full 5-cycle testing. The reason for exempting these vehicles is that the evaluation required at certification requires the use of all 5 cycles as run for emissions certification, but these categories are not subject to the SFTP requirements, and thus such vehicles do not perform two of the five test procedures (the US06 high speed/acceleration test and the SC03 air conditioning test). Thus when EPA finalized the 2006 label rule we recognized that these categories would not have the data required to perform the certification evaluation, and we decided to exempt them from five cycle testing. However, this same exemption should have been applied to ICIs. Like the vehicle categories noted above, vehicles imported by ICIs are not required to perform the SFTP emission tests, and thus also won't have the necessary data to perform the 5-cycle certification evaluation. Therefore, we are proposing to extend the allowance to use the derived 5-cycle method to ICIs.

Third, we are taking steps to further clean up the regulatory language. This involves removing several sections that apply only for model years before 2008 and moving or combining several of the remaining sections to provide a clearer organization. We are also being more careful with regulatory references pointing to other sections within 40 CFR part 600 and to sections in 40 CFR part 86. This largely addresses the concern that regulatory sections numbered for certain model years can cause references to be incorrect or misleading over time. We are proposing to rely on the rounding convention as specified for engine testing in 40 CFR part 1065. Similarly, we are proposing to rely on the hearing procedures specified in 40 CFR part 1068. These changes allow us to centralize provisions that have general applicability to support our effort to have a consistent approach across programs. The proposed regulations also include a streamlined set of references to outside standards (such as SAE standards). For the final rule, we also intend to include the most recent updates for the ASTM standards we reference in part 600. We are not intending to make any substantive changes to the regulatory provisions affected by these administrative changes and are not reopening the rule for any of those provisions. Nevertheless, we request comment on these changes and on any further steps that would be

[189] Based on 49 U.S.C. 32908(b)(2), EPA currently conditions placement of the fuel economy label in the Monroney label on a general requirement that the prominence and legibility of the label be maintained. EPA is inviting comment on expanding the conditions for placement in the Monroney label through addition of more specific requirements related to the location of the fuel economy label in the Monroney label.

[190] 71 FR 53572, 53576, September 12, 2006.

[191] 75 FR 10740, March 9, 2010.

[192] 75 FR 25324, May 7, 2010.

appropriate for maintaining clear and concise regulatory provisions.

VII. Projected Impacts of the Proposed Requirements

Vehicle manufacturers have been required to provide fuel economy labels on vehicles since 1977. The costs and benefits of label revisions would be those associated with changes to the current label, not the costs and benefits associated with production of the label itself. The change in cost from this proposed rule comes in the physical revisions to the label itself and the possible efficiencies achieved by meeting EPCA and EISA labeling requirements in one label, as well as proposed modified vehicle testing procedures, and any revisions of currently provided information that consumers find useful in informing their purchase decisions. The benefits of the rule come from providing labels for mass-market advanced technology vehicles for the first time, and from any improvements in the effectiveness of labels for conventional vehicles in providing accurate and useful consumer information on fuel consumption and environmental performance.

A. Costs Associated With This Rule

Testing requirements for vehicles are not new. Advanced technology and alternative fuel vehicles have been required to undergo testing requirements in the past. For advanced technology vehicles, though, the test procedures have not previously been standardized; they have been handled on a case-by-case basis. Because EPA expects more advanced technology vehicles to come to market, we propose to codify testing procedures in a public process and are requesting comment on them. See section VI of this preamble. The testing costs described here therefore are not really new costs for manufacturers, since they would have to test the vehicles even in the absence of this rule. The cost estimates are provided here because they have previously not been presented, and EPA seeks comment on the analysis of costs presented here.

The analysis of the projected costs of this rule follows conceptually the approach in the 2006 ("five-cycle") fuel economy labeling rule. Increased on-going operations and maintenance (O&M) costs and labor hours result from the costs of printing the labels and increases in testing costs for electric vehicles (EVs) and plug-in hybrids (PHEVs). We also allow for the costs of increased facility capacity to accommodate the increased testing time involved for these two categories of vehicles. Startup costs are treated as capital costs, and are amortized over ten years at 7% interest. Startup costs for this rule include some one-time graphic design work for each manufacturer subject to the rule and updating information systems and testing equipment for those manufacturers subject to new testing. As an aid to the analysis and to help articulate the range of uncertainty, we include both low and high cost estimates for each of these cost and labor hour elements. The cost estimates are $649,000 per year for the low estimate, and $2.8 million per year for the high estimate. For details of this analysis, see the "Draft Supporting Statement for Information Collection Request, Fuel Economy Labeling of Motor Vehicles (Proposed Rule)," in the docket.[193]

1. Operations and Maintenance Costs and Labor Hours

a. New Testing Requirements for Electric Vehicles and Plug-In Hybrid Electric Vehicles

i. Testing Requirements for Electric Vehicles

As explained in Section VI of this Preamble, EPA currently has no federal test procedure for measuring fuel economy for electric vehicles (EVs). To date, EPA has performed some fuel economy testing connected with certification applications for electric vehicles using the procedures developed by the Society of Automotive Engineers (SAE), specifically SAE J1634, as cancelled in October 2002. This proposal spells out EV testing requirements that are similar to SAE J1634, as cancelled in October 2002, and allows continued use of that procedure.

In estimating the costs of this action, there is no clear baseline cost that manufacturers of EVs would have incurred in satisfying federal requirements, because existing fuel economy measurements are entirely specified in terms of exhaust and greenhouse gas emissions. For purposes of the analysis, we assume these EV costs are entirely new costs rather than increments to pre-existing costs. Here and in the facility costs section, this also means we assume no carry-over applications for EVs. Both these assumptions are more likely to lead to an overstatement of costs than an understatement.

In 2004 the Federal Trade Commission promulgated a rule requiring "alternative fueled vehicles" to include a consumer label indicating their estimated cruising ranges (69 FR 26926, April 9, 2004; 16 CFR part 309, subpart C). The covered vehicles include EVs but not plug-in hybrid electric vehicles (PHEVs). Estimated cruising range for an EV is the range determined according to SAE J1634 (16 CFR 309.22(a)(2)). Consequently, EV manufacturers selling vehicles in the United States have already been subject to the same SAE J1634 testing requirements allowed in this rulemaking for several years. However, for purposes of the analysis below we treat the costs of compliance for manufacturers subject to the proposed rule as new costs in order to insure that they are fully considered in this rulemaking,

The salient feature of SAE J1634 for cost purposes is that it requires, similar to a conventional vehicle, the Federal Test Procedure (FTP or City Test), preceded by vehicle preparation; this is followed by the Highway Test (HFET). The off-cycle tests (USO6, SCO3, cold FTP) are optional under EPA's proposal. Furthermore, cruising range determination requires that the FTP be repeated until the battery system is no longer able to maintain the FTP speed tolerances; the FTP in question is the full four-phase FTP, repeated as cold and hot start "UDDS" or "LA–4" cycles until that point is reached.

Preparation costs are estimated to be $3,163 and 30 hours per vehicle, per Information Collection Request (ICR) 0783.54 (OMB 2060–0104), the certification ICR for conventional vehicles. Preparation includes several coast downs, a UDDS, and a soak period. The low and high EV test distances for FTP and HFET tests are estimated as 50 to 250 miles. For purposes of this estimate, the cost of an FTP/HFET pair is $1,860, allocated 70% to the FTP and 30% to the HFET and incremented either by 50 or 250 divided by 7.45 (the distance of a normal FTP), or by 50 or 250 divided by 10.3 (the distance of the normal HFET). These increases are applied to an estimated five to eight EV families in the years through MY2013. Labor hours, estimated at 30 hours per FTP/HFET pair, are allocated and incremented in a similar manner. The bottom line is a cost between $75,300 and $486,784, and 1,073 to 7,625 hours, per year for the EV industry.

[193] U.S. Environmental Protection Agency, Office of Transportation and Air Quality. "Draft Supporting Statement for Information Collection Request, Fuel Economy Labeling of Motor Vehicles (Proposed Rule), EPA ICR 2392.01." Compliance and Innovative Strategies Division and Assessment and Standards Division, July, 2010.

ii. Testing Requirements for Plug-In Hybrid Electric Vehicles

As explained in Section VI, the proposed EPA test procedure for PHEVs is an extension of the existing test procedure for hybrid vehicles. Off-cycle tests are already required for test groups that do not meet the "litmus test;" others would use the derived five-cycle adjustment. Hybrid vehicles already do FTP and HFET tests for fuel economy determination. The new FTP procedure would essentially run repeated FTPs until the charge is depleted. This is the "charge-depleting" operation, when the vehicle is mainly running on its battery. The battery would then be recharged, and a single additional four-phase FTP would be conducted in what is denominated as the "charge-sustain" operation. Following this, the vehicle will be recharged, if necessary, by running any appropriate test cycle followed by HFET cycles in charge-depleting operation, followed by a cycle in charge-sustain operation.

For purposes of this cost analysis, the charge-sustain FTP and HFET cycles along with potential other cycles mandated by emissions and fuel economy testing requirements are considered to be continuations of existing requirements. The cost increment due to this proposal consequently derives entirely from the increased testing time in depleting mode. The duration of the depleting modes is estimated as 7.45 to 50 miles over the repeated 7.45 mile FTP or 10.3 mile HFET test cycles. These together, applied to 5 to 8 families with no carryovers, add an estimated $8,528 to $80,564 in operation and maintenance (O&M) costs and 138 to 923 labor hours to existing hybrid testing costs.

b. Printing Costs for New Labels

The primary variable cost for the new label design is the difference in cost between black-and-white and color printing. To estimate this cost difference, the agencies note two sources. First, in 2007 the California Air Resources Board (CARB) examined the effects of requiring an environmental label that included color printing. It estimated the combined capital and operating costs of color labels to be as low as $0.02 per vehicle for large manufacturers;[194] CARB expected small-scale manufacturers to switch to pre-printed color labels at an incremental cost of $0.05 per label, for a 4-by-6-inch label. Secondly, in 2006 Hewlett-Packard estimated the per-page cost of color printing on its HP Color LaserJet 4700n printer as $0.09 per letter-sized page, and black-and-white printing on a dedicated black-and-white printer as $0.015, for a cost difference of $0.075 per page.[195]

The existing fuel economy label measures 4.5 by 7 inches, slightly larger than the CARB label but about ⅓ the size of a standard page. For the cost estimates developed here, the agencies consider a low estimate of $0.03 per label in additional printing costs (based on the CARB label, adjusted for size), and a high estimate of $0.08 per label (based on the HP estimate, which may overestimate the cost based on page size). For the number of labels, we estimate the subject fleet from the April 20, 2010, U.S. Department of Transportation's Summary of Fuel Economy Performance,[196] taking MY2009's 9.83 million as the low and MY2005's 15.9 million as the high estimate. This yields a new printing cost of $294,690 to $1,274,634 per year.

The O&M costs and labor hours discussed above can be summarized as follows:

TABLE VII.A.1–1—TESTING COSTS

[Labor and O&M costs for running the Tests]

Vehicle type/test cycle	Increase in number of tests			Increase in hours		
	Min tests	Min cost increase	Max tests	Max cost increase	Min	Max
EV:						
Prep	5.0	$18,065	8.0	$28,904	150	240
FTP	5.0	43,691	8.0	349,530	705	5,638
HFET	5.0	13,544	8.0	108,350	218	1,748
EV Total	.....	75,300	.....	486,784	1,073	7,625
PHEV:						
FTP	5.0	6,510	8.0	50,563	105	705
HFET	5.0	2,018	8.0	30,001	33	218
PHEV Total	.....	8,528	.....	80,564	138	923
Total	.....	83,828	.....	567,348	1,211	8,548

PRINTING COSTS

	Number vehicles	Min@$0.03	Number vehicles	Max@$0.08
Color Labels	9, 832,000	$294,690	15,932,920	$1,274,634
Total O&M	.....	378,518	.....	1,841,981

[194] State of California, Air Resources Board. "Staff Report: Initial Statement of Reasons for Rulemaking: Proposed Amendments to the Smog Index Vehicle Emissions Label," May 4, 2007, *http://www.climatechange.ca.gov/publications/arb/2007–06–21_isor.pdf,* (last accessed May 3, 2010).

[195] Hewlett-Packard, "Head to head comparison: color versus black-and-white printing," *http://www.officeproductnews.net/files/hpc2447wpcolorvsbwgov.pdf,* (last accessed May 4, 2010).

[196] U.S. Department of Transportation, National Highway Traffic Safety Administration, "Summary of Fuel Economy Performance," *http://www.nhtsa.gov/staticfiles/rulemaking/pdf/cafe/CAFE_Performance_Report_April_2010.pdf,* accessed June 17, 2010.

2. Facility Costs

In addition to new equipment (treated as a startup cost, below), the new testing requirements for EVs and PHEVs will in theory require expanded testing facilities for those manufacturers choosing to produce and sell them in the U.S. Because the cost of new facility capacity is highly dependent on manufacturer-specific factors (the costs of capital, the availability of land, the structure of work shifts, the existing excess capacity, etc.), we use the approximation of unitizing increased test costs by assuming that a facility capable of performing 750 FTP/HFET pairs would cost $4 million. Here, the new tests are deemed to require these facilities in proportion to the increases in test time, and the costs are then annualized over ten years and amortized at 7% interest compounded monthly. This assumption is more likely to produce an overestimate of costs rather than an underestimate, since it does not attempt to account for the current excess capacity that exists in manufacturers' current test facilities. We assume that there is no excess capacity in our analysis. Note that other features of the EV and PHEV test cycles, such as recharging times, have been harmonized with existing test protocols. Furthermore, consistent with other information burden analyses for the emissions and fuel economy programs, we consider these as ongoing rather than startup costs (*i.e.,* as the facilities depreciate they are continually being replaced), another conservative assumption. Applying these costs to a low and high estimate of 5 to 8 EV families and 5 to 8 PHEV families per year yields an annualized facilities cost between $25,278 and $210,779 per year.

Facility costs can be summarized as in Table VII.A.2–1:

TABLE VII.A.2–1—INCREASE IN TEST FACILITIES

Undepreciated capital costs	Minimum	Maximum
EV test distance increase	$154,210	$1,233,683
PHEV test distance increase	22,977	246,737
Total	177,188	1,480,420
Amortized, 10yrs @ 7%	25,278	210,779

3. Startup Costs

Startup costs are counted as one-time costs that are amortized or discounted at an interest rate of 7% over ten years.

a. Updating Information Systems and Testing Equipment

The estimate includes the cost of upgrading information systems for the estimated 8 to 10 manufacturers who will need to comply with the new EV and PHEV testing requirements, such as recording multiple tests, recording battery charge data, and communicating the resulting data to the information system that gets it to EPA and the label. Both low and high estimates use 4 weeks for four IT staff for analysis and code, and 4 weeks for two IT staff for testing, at $100 per hour, for each manufacturer, resulting in an industry cost of $768,000 to $960,000. In addition, each manufacturer who has not previously produced hybrid-electric vehicles is assumed to need new testing equipment costing $25,000 for an ammeter and $50,000 for voltage stabilizers; we estimate that 5–8 manufacturers will fall in this category.

b. Label Redesign

The proposed label designs are presented in Section III. The changes being proposed in this rule would not affect either the existence or size of the label. Auto companies currently have significant flexibility in whether fuel economy label should be a stand-alone label or included in the "Monroney label" (which provides information on the price and options included for a specific vehicle), or where it is placed on the Monroney label. The agencies are not proposing any changes to this flexibility. The agencies estimate 16 to 24 hours at $100 per hour for this work, assuming at this time that no specific location or size within the Monroney label is required. This cost is applied to the universe of separate manufacturer entities subject to the rule. Many specific automotive brands are parts of marketing groups or are owned and managed by other, parent companies. Allowing for these relationships, the best guess is that the rule would apply to 24 manufacturers and 11 independent commercial importers (ICIs) importing nonconforming vehicles into the U.S. for sale. Applied to 35 companies, then, the label redesign cost is estimated to be $56,000 to $84,000.

c. Annualized Startup Costs

Total startup costs are between $1.2 and $1.6 million. When annualized and subjected to 7% loan repayment/discounting, the startup costs total $170,711 to $234,069 per year. These are summarized in Table VII.A.3–1:

TABLE VII.A.3–1—STARTUP COSTS

Item	Cost	
	Minimum	Maximum
Updating Information systems	$768,000	$960,000
Ammeter/stabilizer	375,000	600,000
Label redesign	56,000	84,000
Total	1,199,000	1,644,000
Amortized, 10 years at 7%	170,711	234,069

4. Cost Summary

Table VII.A.4–1 summarizes the costs presented here. The total costs of this rule, excluding labor, are estimated to be about $575,000 to $2,287,000 per year. Adding the cost of labor (estimated to be $61.49 per hour overall) to the above estimates brings the total cost to $648,952 to $2,812,465. Note that startup capital is not budgeted as labor. EPA and NHTSA request comment on the costs estimates, including any omitted costs and any other information regarding the costs of these requirements.

TABLE VII.A.4–1—TOTAL ANNUAL COST AND HOURS INCREASE

	Min	Max
COST BURDEN:		
O&M: Testing and label	$378,518	$1,841,981
Facility Capital	25,278	210,779
Startup: one-time IT, label redesign, and reg familiarization, 10 yrs 7%	170,711	234,069
Total	574,507	2,286,829
HOURS BURDEN:		
O&M: Testing and label	1,211	8,548
Facility Capital	0	0
Total	1,211	8,548
Labor Cost	74,446	525,635
Total Costs, Including Labor	648,952	2,812,465

B. Impact of Proposing One Label To Meet EPCA/EISA

As discussed in Section I.C., EPCA and EISA create similar but not identical requirements for labeling vehicles. EPA conducts a labeling program under EPCA, and NHTSA is required to conduct a labeling program under EISA, in consultation with EPA. While the agencies could require that manufacturers produce two separate labels to meet the requirements of the statutes, much of the information on the two labels would be duplicative. In addition, two different fuel economy labels might confuse vehicle purchasers, frustrating the purpose of providing fuel economy information to purchasers. Requiring that auto makers put two fuel economy labels on vehicles would also crowd the limited labeling space on vehicles. For these reasons, EPA and NHTSA are proposing to combine both the EPCA and the EISA requirements into one label.

Because NHTSA's labeling under EISA is a new requirement that has not previously been implemented, there is no cost reduction associated with the proposal to use a joint label. The use of the joint label avoids a cost increase that would result from two separate labels. EPA and NHTSA are not including this cost saving in the cost analysis because we believe that the benefits of coordinating labeling requirements outweigh any possible disadvantages.

C. Benefits of Label Changes

The benefits of this rule would come from improved provision of information to vehicle buyers, and more informed consumer decisions resulting from the changes. These benefits are difficult to estimate. Doing so would require predictions of changes in consumer behavior as a result of the label modifications. The internet survey discussed in Section IV.A.2 is intended to provide some insights into the comprehensibility and usefulness of the labels, but the results are not available at this time. We caution that insights into comprehensibility and usefulness may be limited in predicting changes in consumer behavior due to the proposed label change.

Improved fuel economy reduces costs of driving a mile, but the technology to improve fuel economy may increase the cost of a vehicle. Evaluating this tradeoff requires comparing future fuel savings based on expectations of future fuel prices and driving patterns with known and immediate increases in vehicle purchase price. Some evidence suggests that consumers may not accurately compare future fuel savings with the up-front costs of fuel-saving technology when buying vehicles.[197] As a result, consumers may buy less or more fuel-saving technology than is financially sensible for them to buy. This problem may be compounded by the presence of miles per gallon (MPG) as a primary metric for fuel economy comparison.[198] As discussed in Section II.A.2, consumers can save much more fuel by choosing a 1–MPG improvement in fuel economy for a low-MPG vehicle than by choosing a 1–MPG improvement for a high-MPG vehicle. However, research on the "MPG illusion" finds that consumers expect a 1–MPG improvement to produce the same fuel savings regardless of the efficiency of a vehicle.[199] Thus, the tendency of consumers to use MPG as a primary metric for fuel economy increases the difficulty of estimating the fuel savings resulting from increased fuel economy. As a result, consumers may not be able to find the most cost-effective amount of fuel economy for their driving habits. For gasoline vehicles, new metrics on the label, such as gallons per hundred miles, fuel savings over 5 years, or environmental metrics, may make it easier for consumers to identify the fuel savings they are likely to receive from a vehicle, and therefore to judge better between vehicles with different fuel savings, costs, and environmental impacts.

Finding the most cost-effective vehicle may be even more confusing with the advent of advanced technology vehicles such as EVs or PHEVs. Most consumers are not accustomed to shopping for vehicles that use energy sources other than gasoline. In addition, the cost effectiveness of different technologies depends on a person's driving patterns. A person with a short commute may have lower per-mile costs with a vehicle with some all-electric range, but someone with a long commute may have higher per-mile

[197] Turrentine, Thomas S., and Kenneth S. Kurani, "Car buyers and fuel economy?" *Energy Policy* 35 (2007): 1213–1223.

[198] Larrick, Richard P., and Jack B. Soll, "The MPG Illusion." *Science* 320 (5883) (June 20, 2008): 1593–94.

[199] Ibid.

costs or insufficient range with such a vehicle and may want to consider different technologies. For advanced technology vehicles, the label can help vehicle shoppers to understand the new technologies, and it can present metrics that allow consumers to make useful comparisons across different vehicle technologies.

EPA and NHTSA request comment on the benefits described here, and on any additional benefits.

D. Summary

The primary benefits associated with this proposed rule are associated with improved consumer decision-making resulting from improved presentation of information. At this time, EPA and NHTSA do not have data to quantify these impacts.

The primary costs associated with this proposed rule come from revisions to the fuel economy label and additional testing procedures. These costs are estimated to be $649,000–$2.8 million per year.

EPA and NHTSA request comment on this assessment of the benefits and costs.

VIII. Agencies' Statutory Authority and Executive Order Reviews

A. Relationship of EPA's Proposed Requirements With Other Statutes and Regulations

1. Automobile Disclosure Act

The Automobile Information Disclosure Act (AIDA) requires the affixing of a retail price sticker to the windshield or side window of new automobiles indicating the Manufacturer's Suggested Retail Price, the "sticker price." [200] Additional information, such as a list of any optional equipment offered or transportation charges, is also required. The Act prohibits the sticker from being removed or altered prior to sale to a consumer.

Under EPCA, EPA may allow manufacturers of new automobiles to comply with the EPCA labeling requirements by placing the fuel economy information on the label required by AIDA.[201] Normally, the price sticker label and EPA label are combined as one large label. Failure to maintain the EPA label on the vehicle is considered a violation of AIDA.

2. Internal Revenue Code

EPCA requires "Gas Guzzler" tax information to be included on the fuel economy label, under 26 U.S.C. 4064(c)(1). The Internal Revenue code contains the provisions governing the administration of the Gas Guzzler Tax. It contains the table of applicable taxes and defines which vehicles are subject to the taxes. The IRS code specifies that the fuel economy to be used to assess the amount of tax will be the combined city and highway fuel economy as determined by using the procedures in place in 1975, or procedures that give comparable results (similar to EPCA's requirements for determining CAFE for passenger automobiles). This proposal would not impact these provisions.

3. Clean Air Act

EPCA states that fuel economy tests shall, to the extent practicable, be carried out with the emissions tests required under Section 206 of the Clean Air Act.[202] EPA is not proposing additional emissions tests.

4. Federal Trade Commission Guide Concerning Fuel Economy Advertising for New Vehicles

In the mid-1970's when EPCA was passed, the Federal Trade Commission (FTC) "took note of the dramatic increase in the number of fuel economy claims then being made and of the proliferation of test procedures then being used as the basis for such claims." [203] They responded by promulgating regulations in 16 CFR part 259 entitled "Guide Concerning Fuel Economy Advertising for New Vehicles" ("Fuel Guide"). The Fuel Guide, adopted in 1975 and subsequently revised twice, provides guidance to automobile manufacturers to prevent deceptive advertising and to facilitate the use of fuel economy information in advertising. The Fuel Guide advises vehicle manufacturers and dealers how to disclose the established fuel economy of a vehicle, as determined by the Environmental Protection Agency's rules pursuant to the Automobile Information Disclosure Act (15 U.S.C. 2996), in advertisements that make representations regarding the fuel economy of a new vehicle.[204] The disclosure is tied to the claim made in the advertisement. If both city and highway fuel economy claims are made, both city and highway EPA figures should be disclosed. A claim regarding either city or highway fuel economy should be accompanied by the corresponding EPA figure. A general fuel economy claim would trigger disclosure of the EPA city figure, although the advertiser would be free to state the highway figure as well. The authority for the Fuel Guide is tied to the Federal Trade Commission Act (15 U.S.C. 41–58) which, briefly stated, makes it illegal for one to engage in "unfair methods of competition in or affecting commerce and unfair or deceptive acts or practices in or affecting commerce."

5. California Environmental Performance Label

California requires each new and used vehicle offered for sale in the state to affix a "Smog Index Number" and "Global Warming Index" decal to the car window which indicates the pollution standard that applies to that particular car, and its exhaust emissions.[205] This proposal would not impact California's regulations. The Global Warming index on California's label includes emissions from fuel production (*http://www.driveclean.ca.gov/images/ep_label_large.jpg*).

B. Statutory and Executive Order Reviews

1. Executive Order 12866: Regulatory Planning and Review and DOT Regulatory Policies and Procedures (NHTSA Only)

Under Executive Order (EO) 12866 (58 FR 51735, October 4, 1993), this action is a "significant regulatory action" because the action raises novel legal or policy issues. Accordingly, EPA and NHTSA submitted this action to the Office of Management and Budget (OMB) for review under E.O. 12866 and any changes made in response to OMB recommendations have been documented as OMB requests in the docket for this action.

NHTSA is also subject to the Department of Transportation's Regulatory Policies and Procedures. This proposed rule is also significant within the meaning of the DOT Regulatory Policies and Procedures. E.O. 12866 also requires NHTSA to submit this action to OMB for review and document any changes made in response to OMB recommendations

In addition, EPA and NHTSA both prepared an analysis of the potential costs and benefits associated with this action. This analysis is available in Section VII of this document.

[200] More commonly known as the Monroney Act (Senator Mike Monroney was the chief sponsor of the Act) or Price Sticker Act. *See* 15 U.S.C. 1231–1233.

[201] 49 U.S.C. 32908(b)(2).

[202] 49 U.S.C. 32904(c).

[203] 40 FR 42003, Sept. 10, 1975.

[204] 43 FR 55747, Nov. 29, 1978; and 60 FR 56230, Nov. 8, 1995.

[205] SB 2050 (Presley), Chapter 1192, Statutes of 1994, and AB 1229 (2005).

2. Paperwork Reduction Act

The information collection requirements in this proposed rule have been submitted for approval to the Office of Management and Budget (OMB) under the *Paperwork Reduction Act,* 44 U.S.C. 3501 *et seq.* The Information Collection Request (ICR) document prepared by EPA has been assigned EPA ICR number 2392.01. Since this is a joint proposal, the burden associated with these information collection requirements could be attributed to either agency. However, since a significant portion of the burden result from new EPA testing requirements, EPA has agreed to assume responsibility for the complete paperwork burden. Both agencies will consider the comments submitted regarding these potential costs as part of their decision in the final rule.

The information being collected is used by EPA to calculate the fuel economy estimates that appear on new automobile, light truck and medium-duty passenger vehicle sticker labels. EPA currently collects this information annually as part of its vehicle certification and fuel economy program, and will continue to do so. This proposed rule changes some of the content of the information submitted. Responses to this information collection are mandatory to obtain the benefit of vehicle certification under Title II of the Clean Air Act (42 U.S.C. 7521 *et seq.*) and as required under Title III of the Motor Vehicle Information and Cost Savings Act (15 U.S.C. 2001 *et seq.*). Information submitted by manufacturers is held as confidential until the specific vehicle to which it pertains is available for purchase. After vehicles are available for purchase, most information associated with the manufacturer's application is available to the public. Under section 208 of the Clean Air Act (42 U.S.C. 7542(c)), all information, other than trade secret processes or methods, must be publicly available. Proprietary information is granted confidentiality in accordance with the Freedom of Information Act, EPA regulations at 40 CFR part 2, and class determinations issued by EPA's Office of General Counsel.

The projected yearly increased cost within the three-year horizon of the pending information collection request is $2,812,000 including $2,286,000 in operations and maintenance costs and $526,000 in labor costs. The estimated number of likely respondent manufacturers is 35. Responses are submitted annually by engine family, with the number of responses per respondent varying widely depending on the number of engine families being certified. Under the current fuel economy information authorization, an average of 12.2 responses a year are approved for each of 33 respondents requiring 451.2 hours per response and 80 hours of recordkeeping at a total cost of $10,012 per response for an industry total of 184,127 hours and $4,274,932 million annually, including capital and operations and maintenance costs. 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.

To comment on the EPA's need for this information, the accuracy of the provided burden estimates, and any suggested methods for minimizing respondent burden, EPA has established a public docket for this rule, which includes this ICR, under Docket ID number EPA–HQ–OAR–2009–0865. Submit any comments related to the ICR to EPA and OMB. *See* **ADDRESSES** section at the beginning of this notice for where to submit comments to EPA. Send comments to OMB at the Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th Street, NW., Washington, DC 20503, Attention: Desk Office for EPA. Since OMB is required to make a decision concerning the ICR between 30 and 60 days after September 23, 2010, a comment to OMB is best assured of having its full effect if OMB receives it by October 25, 2010. The final rule will respond to any OMB or public comments on the information collection requirements contained in this proposal.

3. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) generally requires agencies 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 agencies certify 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 proposed rule on small entities, a small entity is defined as: (1) A small business as defined by the Small Business Administration (SBA) by category of business using North America Industrial Classification System (NAICS) and codified at 13 CFR 121.201; (2) a small governmental jurisdiction that is a government of a city, county, town, school district or special district with a population of less than 50,000; and (3) a small organization that is any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.

Table VIII.B.3–1 provides an overview of the primary SBA small business categories included in the light-duty vehicle sector that are subject to the proposed rule:

TABLE VIII.B.3–1—PRIMARY SBA SMALL BUSINESS CATEGORIES IN THE LIGHT-DUTY VEHICLE SECTOR

Industry	Defined as small entity by SBA if less than or equal to:	NAICS codes [a]
Light-duty vehicles:		
—vehicle manufacturers	1,000 employees	336111
—independent commercial importers	$7 million annual sales	811111, 811112, 811198
	$23 million annual sales	441120
	100 employees	423110
—automobile dealers	$29 million annual sales	441110
—stretch limousine manufacturers and hearse manufacturers	1,000 employees	336211

Notes:
[a] North American Industrial Classification System.

After considering the economic impacts of today's proposed rule on small entities, we certify that this action will not have a significant economic impact on a substantial number of small entities. The small entities directly

regulated by this proposed rule cover several types of small businesses including vehicle manufacturers, automobile dealers, limousine and hearse manufacturers, and independent commercial importers (ICIs). ICIs are companies that import used vehicles into the U.S. that must be certified for emissions compliance and labeled for fuel economy purposes. Small governmental jurisdictions and small organizations as described above will not be impacted. We have determined that the estimated effect of the proposed rule is to impact 1 small business vehicle manufacturer and 11 ICIs who currently certify vehicles with costs less than one percent of revenues. These 12 companies represent all of the small businesses impacted by the proposed regulations. The proposed regulations will have no new impacts on small business automobile dealers or small business limousine and hearse manufacturers. An analysis of the impacts of the proposed rule on small businesses has been prepared and placed in the docket for this rulemaking.[206]

Although this proposed rule will not have a significant impact on a substantial number of small entities, we nonetheless have tried to reduce the impact of this rule on small entities. EPA is proposing to reduce the testing burden on ICIs that would be needed for the fuel economy label. Under the proposal, ICIs would be allowed to test over two driving cycles when determining the fuel economy estimate for the fuel economy label instead of testing over five driving cycles as required for vehicle manufacturers.

Both agencies continue to be interested in the potential impacts of the proposed rule on small entities and welcome comments on the small business analysis and other issues related to impacts on small businesses.

4. Unfunded Mandates Reform Act

This proposed rule does not contain a Federal mandate that may result in expenditures of $100 million (adjusted for inflation) or more for State, local, and tribal governments, in the aggregate, or the private sector in any one year. This rule contains no federal mandates for state, local, or tribal governments as defined by the provisions of Title II of the UMRA. The rule imposes no enforceable duties on any of these governmental entities. Nothing in the rule would significantly or uniquely affect small governments. The proposed rule only affects vehicle manufacturers and the agencies estimate annual costs of less than $100 million (adjusted for inflation). EPA and NHTSA believe that the proposal represents the least costly, most cost-effective approach to achieve the statutory requirements of the rule. The agencies' estimated costs are provided in section VI. Thus, this rule is not subject to the requirements of sections 202 or 205 of UMRA.

This rule 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. As noted above, the proposed rule only affects vehicle manufacturers.

5. 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 rulemaking would apply to manufacturers of motor vehicles and not to state or local governments. Thus, Executive Order 13132 does not apply to this action. Although section 6 of Executive Order 13132 does not apply to this action, EPA and NHTSA did consult with representatives of state governments in developing this action.

In the spirit of Executive Order 13132, and consistent with the agencies' policy to promote communications between Federal, State and local governments, the agencies specifically solicits comment on this proposed action from State and local officials.

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

This action does not have tribal implications, as specified in Executive Order 13175 (65 FR 67249, November 9, 2000). This proposed rule would be implemented at the Federal level and imposes compliance costs only on vehicle manufacturers. Tribal governments would be affected only to the extent they purchase and use regulated vehicles. Thus, Executive Order 13175 does not apply to this action. The agencies specifically solicit additional comment on this proposed action from tribal officials.

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

EPA and NHTSA interpret E.O. 13045 (62 FR 19885, April 23, 1997) as applying only to those regulatory actions that concern health or safety risks, such that the analysis required under section 5–501 of the E.O. has the potential to influence the regulation. This action is not subject to E.O. 13045 because it does not establish an environmental standard intended to mitigate health or safety risks.

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

This action is not a "significant energy action" as defined in Executive Order 13211 (66 FR 28355 (May 22, 2001)), because it is not likely to have a significant adverse effect on the supply, distribution, or use of energy. The proposed regulations do not require manufacturers to improve or otherwise change the fuel economy of their vehicles. The purpose of this proposed regulation is to provide consumers with better information on which to base their vehicle purchasing decisions. Therefore, we have concluded that this rule is not likely to have any adverse energy effects.

9. National Technology Transfer Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 ("NTTAA"), Public Law No. 104–113 (15 U.S.C. 272 note) directs the agencies to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (*e.g.,* materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus standards bodies. NTTAA directs the agencies to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards.

EPA's portion of this proposed rulemaking involves technical standards. EPA proposes to use elements of testing standards developed with the Society of Automotive Engineers (SAE). Where possible, EPA proposes to incorporate by reference portions of SAEJ1711, SAE J2841, and SAE J1634. At the time of this proposal, all the above SAE documents are either open for update or in the process of balloting prior to publishing. SAE reference documents can be obtained at *http://www.SAE.org.* In the absence of final published reference documents, EPA is proposing procedures that may differ from final SAE procedures. Also, differences between EPA proposed

[206] "Screening Analysis: Small Business Impacts from Revisions to Motor Vehicle Fuel Economy Label," EPA report, August 12, 2010.

procedures and final SAE procedures may be due to statutory or existing regulatory EPA requirements, worst case emissions testing requirements by EPA, and the need for EPA to address policy concerns and concerns of manufacturers not involved in developing SAE procedures.

EPA welcomes comments on this aspect of the proposed rulemaking and, specifically, invites the public to identify potentially-applicable voluntary consensus standards and to explain why such standards should be used in this regulation.

10. Executive Order 12898: Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations

Executive Order (EO) 12898 (59 FR 7629 (Feb. 16, 1994)) establishes federal executive policy on environmental justice. Its main provision directs federal agencies, to the greatest extent practicable and permitted by law, to make environmental justice part of their mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects of their programs, policies, and activities on minority populations and low-income populations in the United States.

The agencies have determined that this proposed rule will not have disproportionately high and adverse human health or environmental effects on minority or low-income populations because it does not affect the level of protection provided to human health or the environment. The proposed regulations do not require manufacturers to improve or otherwise change the emissions control or fuel economy of their vehicles. The purpose of this proposed regulation is to provide consumers with better information on which to base their vehicle purchasing decisions.

List of Subjects

40 CFR Part 85

Confidential business information, Imports, Labeling, Motor vehicle pollution, Reporting and recordkeeping requirements, Research, Warranties.

40 CFR Part 86

Administrative practice and procedure, Confidential business information, Labeling, Motor vehicle pollution, Reporting and recordkeeping requirements.

40 CFR Part 600

Administrative practice and procedure, Electric power, Fuel economy, Labeling, Reporting and recordkeeping requirements.

49 CFR Part 575

Administrative practice and procedure, Consumer protection, Fuel economy, Motor vehicles, Motor vehicle safety, Reporting and recordkeeping requirements.

Environmental Protection Agency

40 CFR Chapter I

For the reasons set forth in the preamble, the Environmental Protection Agency proposes to amend parts 85, 86 and 600 of title 40, Chapter I of the Code of Federal Regulations as follows:

PART 85—CONTROL OF AIR POLLUTION FROM MOBILE SOURCES

1. The authority citation for part 85 continues to read as follows:

Authority: 42 U.S.C. 7401–7671q.

Subpart T—[Amended]

2. Section 85.1902 is amended by revising paragraph (b)(2) to read as follows:

§ 85.1902 Definitions.

* * * * *

(b) * * *

(2) A defect in the design, materials, or workmanship in one or more emissions control or emission-related parts, components, systems, software or elements of design which must function properly to ensure continued compliance with vehicle greenhouse gas emission requirements, including compliance with CO_2, CH_4, N_2O, and carbon-related exhaust emission standards;

* * * * *

PART 86—CONTROL OF EMISSIONS FROM NEW AND IN–USE HIGHWAY VEHICLES AND ENGINES

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

Authority: 42 U.S.C. 7401–7671q.

Subpart B—[Amended]

4. Section 86.165–12 is amended by revising paragraph (d)(4) to read as follows:

§ 86.165–12 Air conditioning idle test procedure.

* * * * *

(d) * * *

(4) Measure and record the continuous CO_2 concentration for 600 seconds. Measure the CO_2concentration continuously using raw or dilute sampling procedures. Multiply this concentration by the continuous (raw or dilute) flow rate at the emission sampling location to determine the CO_2 flow rate. Calculate the CO_2 cumulative flow rate continuously over the test interval. This cumulative value is the total mass of the emitted CO_2. Alternatively, CO_2 may be measured and recorded using a constant velocity sampling system as described in §§ 86.106–96(a)(2) and 86.109–94.

* * * * *

Subpart S—[Amended]

5. Section 86.1818–12 is amended by adding paragraph (b)(3) and revising paragraphs (c)(1) and (d) to read as follows:

§ 86.1818–12 Greenhouse gas emission standards for light-duty vehicles, light-duty trucks, and medium-duty passenger vehicles.

* * * * *

(b) * * *

(3) Manufacturer has the meaning given by the Department of Transportation at 49 CFR 531.4.

(c) * * *

(1) For a given individual model year's production of passenger automobiles and light trucks, manufacturers must comply with a full useful life fleet average CO_2 standard calculated according to the provisions of this paragraph (c). Manufacturers must calculate separate full useful life fleet average CO_2 standards for their passenger automobile and light truck fleets, as those terms are defined in this section. Each manufacturer's fleet average CO_2 standards determined in this paragraph (c) shall be expressed in whole grams per mile, in the model year specified as applicable. Manufacturers eligible for and choosing to participate in the Temporary Leadtime Allowance Alternative Standards for qualifying manufacturers specified in paragraph (e) of this section shall not include vehicles subject to the Temporary Leadtime Allowance Alternative Standards in the calculations of their primary passenger automobile or light truck standards determined in this paragraph (c). Manufacturers shall demonstrate compliance with the applicable standards according to the provisions of § 86.1865–12.

* * * * *

(d) *In-use CO_2 exhaust emission standards.* The in-use exhaust CO_2 emission standard shall be the combined city/highway carbon-related exhaust emission value calculated for the appropriate vehicle carline/subconfiguration according to the provisions of § 600.113–12(g)(4) of this chapter multiplied by 1.1 and rounded

to the nearest whole gram per mile. For in-use vehicle carlines/subconfigurations for which a combined city/highway carbon-related exhaust emission value was not determined under § 600.113–12(g)(4) of this chapter, the in-use exhaust CO_2 emission standard shall be the combined city/highway carbon-related exhaust emission value calculated according to the provisions of § 600.208–12 of this chapter for the vehicle model type (except that total model year production data shall be used instead of sales projections) multiplied by 1.1 and rounded to the nearest whole gram per mile. For vehicles that are capable of operating on multiple fuels, including but not limited to alcohol dual fuel, natural gas dual fuel and plug-in hybrid electric vehicles, a separate in-use standard shall be determined for each fuel that the vehicle is capable of operating on. These standards apply to in-use testing performed by the manufacturer pursuant to regulations at §§ 86.1845–04 and 86.1846–01 and to in-use testing performed by EPA.

* * * * *

6. Section 86.1823–08 is amended by revising paragraphs (m)(2)(iii) and (m)(3) to read as follows:

§ 86.1823–08 Durability demonstration procedures for exhaust emissions.

* * * * *

(m) * * *

(2) * * *

(iii) For the 2012 through 2014 model years only, manufacturers may use alternative deterioration factors. For N_2O, the alternative deterioration factor to be used to adjust FTP and HFET emissions is the additive or multiplicative deterioration factor determined for (or derived from) NO_X emissions according to the provisions of this section. For CH_4, the alternative deterioration factor to be used to adjust FTP and HFET emissions is the additive or multiplicative deterioration factor determined for (or derived from) NMOG or NMHC emissions according to the provisions of this section.

(3) *Other carbon-related exhaust emissions.* Deterioration factors shall be determined according to the provisions of paragraphs (a) through (l) of this section. Optionally, in lieu of determining emission-specific FTP and HFET deterioration factors for CH_3OH (methanol), HCHO (formaldehyde), C_2H_5OH (ethanol), and C_2H_4O (acetaldehyde), manufacturers may use the additive or multiplicative deterioration factor determined for (or derived from) NMOG or NMHC emissions according to the provisions of this section.

* * * * *

7. Section 86.1841–01 is amended by revising paragraph (a)(3) to read as follows:

§ 86.1841–01 Compliance with emission standards for the purpose of certification.

(a) * * *

(3) Compliance with full useful life CO_2 exhaust emission standards shall be demonstrated at certification by the certification levels on the FTP and HFET tests for carbon-related exhaust emissions determined according to § 600.113–12 of this chapter.

* * * * *

8. Section 86.1848–10 is amended by revising the section heading and paragraph (c)(9)(i) to read as follows:

§ 86.1848–10 Compliance with emission standards for the purpose of certification.

* * * * *

(c) * * *

(9) * * *

(i) Failure to meet the fleet average CO_2 requirements will be considered a failure to satisfy the terms and conditions upon which the certificate(s) was (were) issued and the vehicles sold in violation of the fleet average CO_2 standard will not be covered by the certificate(s). The vehicles sold in violation will be determined according to § 86.1865–12(k)(8).

* * * * *

9. Section 86.1865–12 is amended by revising paragraphs (a)(1) introductory text, (d), (j)(1), (k)(8)(iii) through (v), and (k)(9)(iv)(B) to read as follows:

§ 86.1865–12 How to comply with the fleet average CO_2 standards.

(a) * * *

(1) Unless otherwise exempted under the provisions of § 86.1801–12(j) or (k), CO_2 fleet average exhaust emission standards apply to:

* * * * *

(d) *Small volume manufacturer certification procedures.* Certification procedures for small volume manufacturers are provided in § 86.1838–01. Small businesses meeting certain criteria may be exempted from the greenhouse gas emission standards in § 86.1818–12 according to the provisions of § 86.1801–12(j) or (k).

* * * * *

(j) * * *

(1) Compliance and enforcement requirements are provided in this section and § 86.1848–10(c)(9).

* * * * *

(k) * * *

(8) * * *

(iii) EPA will determine the vehicles not covered by a certificate because the condition on the certificate was not satisfied by designating vehicles in those test groups with the highest carbon-related exhaust emission values first and continuing until reaching a number of vehicles equal to the calculated number of noncomplying vehicles as determined in paragraph (k)(8) of this section. If this calculation determines that only a portion of vehicles in a test group contribute to the debit situation, then EPA will designate actual vehicles in that test group as not covered by the certificate, starting with the last vehicle produced and counting backwards.

(iv)(A) If a manufacturer ceases production of passenger cars and light trucks, the manufacturer continues to be responsible for offsetting any debits outstanding within the required time period. Any failure to offset the debits will be considered a violation of paragraph (k)(8)(i) of this section and may subject the manufacturer to an enforcement action for sale of vehicles not covered by a certificate, pursuant to paragraphs (k)(8)(ii) and (iii) of this section.

(B) If a manufacturer is purchased by, merges with, or otherwise combines with another manufacturer, the controlling entity is responsible for offsetting any debits outstanding within the required time period. Any failure to offset the debits will be considered a violation of paragraph (k)(8)(i) of this section and may subject the manufacturer to an enforcement action for sale of vehicles not covered by a certificate, pursuant to paragraphs (k)(8)(ii) and (iii) of this section.

(v) For purposes of calculating the statute of limitations, a violation of the requirements of paragraph (k)(8)(i) of this section, a failure to satisfy the conditions upon which a certificate(s) was issued and hence a sale of vehicles not covered by the certificate, all occur upon the expiration of the deadline for offsetting debits specified in paragraph (k)(8)(i) of this section.

(9) * * *

(iv) * * *

(B) Failure to offset the debits within the required time period will be considered a failure to satisfy the conditions upon which the certificate(s) was issued and will be addressed pursuant to paragraph (k)(8) of this section.

* * * * *

10. Section 86.1867–12 is amended by revising paragraphs (a)(3)(iv)(A), (a)(3)(iv)(F), (a)(3)(vi), (a)(4), and (b)(2) to read as follows:

§ 86.1867–12 Optional early CO_2 credit programs.

* * * * *

(a) * * *

(3) * * *

(iv) * * *

(A) Total model year sales data will be used, instead of production data, except that vehicles sold in California and the section 177 states determined in paragraph (a)(2)(i) of this section shall not be included.

* * * * *

(F) Electric, fuel cell, and plug-in hybrid electric model type carbon-related exhaust emission values shall be included in the fleet average determined under paragraph (a)(1) of this section only to the extent that such vehicles are not being used to generate early advanced technology vehicle credits under paragraph (c) of this section.

* * * * *

(vi) Credits are earned on the last day of the model year. Manufacturers must calculate, for a given model year, the number of credits or debits it has generated according to the following equation, rounded to the nearest megagram:

CO_2 Credits or Debits (Mg) = [(CO_2 Credit Threshold—Manufacturer's Sales Weighted Fleet Average CO_2 Emissions) × (Total Number of Vehicles Sold) × (Vehicle Lifetime Miles)] ÷ 1,000,000

Where:

CO_2 Credit Threshold = the applicable credit threshold value for the model year and vehicle averaging set as determined by paragraph (a)(3)(vii) of this section; Manufacturer's Sales Weighted Fleet Average CO_2 Emissions = average calculated according to paragraph (a)(3)(vi) of this section; Total Number of Vehicles Sold = The number of vehicles domestically sold as defined in § 600.511–80 of this chapter except that vehicles sold in California and the section 177 states determined in paragraph (a)(2)(i) of this section shall not be included; and Vehicle Lifetime Miles is 195,264 for the LDV/LDT1 averaging set and 225,865 for the LDT2/HLDT/MDPV averaging set.

* * * * *

(4) Pathway 4. Pathway 4 credits are those credits earned under Pathway 3 as described in paragraph (a)(3) of this section in the set of states that does not include California and the section 177 states determined in paragraph (a)(2)(i) of this section and calculated according to paragraph (a)(3) of this section. Credits may only be generated by vehicles sold in the set of states that does not include California and the section 177 states determined in paragraph (a)(2)(i) of this section.

(b) * * *

(2) Manufacturers that select Pathway 4 as described in paragraph (a)(4) of this section may not generate early air conditioning credits for vehicles sold in California and the section 177 states as determined in paragraph (a)(2)(i) of this section.

* * * * *

PART 600—FUEL ECONOMY AND CARBON-RELATED EXHAUST EMISSIONS OF MOTOR VEHICLES

11. The authority citation for part 600 continues to read as follows:

Authority: 49 U.S.C. 32901–23919q, Public Law 109–58.

Subpart A—General Provisions

12. The heading for subpart A is revised as set forth above.

§ 600.001–08, § 600.001–86, § 600.001–93, § 600.002–85, § 600.002–93, § 600.004–77, § 600.006–86, § 600.006–87, § 600.006–89, § 600.007–80, § 600.008–01, § 600.008–77, § 600.010–86 [Removed]

13. Subpart A is amended by removing the following sections:

§ 600.001–08
§ 600.001–86
§ 600.001–93
§ 600.002–85
§ 600.002–93
§ 600.004–77
§ 600.006–86

14. Redesignate §§ 600.001–12 through 600.011–93 as follows:

Old section	New section
§ 600.001–12	§ 600.001
§ 600.002–08	§ 600.002
§ 600.003–77	§ 600.003
§ 600.005–81	§ 600.005
§ 600.006–08	§ 600.006
§ 600.007–08	§ 600.007
§ 600.008–08	§ 600.008
§ 600.009–85	§ 600.009
§ 600.010–08	§ 600.010
§ 600.011–93	§ 600.011

15. The redesignated § 600.001 is revised to read as follows:

§ 600.001 General applicability.

(a) The provisions of this part apply for 2008 and later model year automobiles that are not medium duty passenger vehicles, and to 2011 and later model year automobiles including medium-duty passenger vehicles.

(b) The provisions of subparts A, D, and F of this part are optional through the 2011 model year in the following cases:

(1) Manufacturers that produce only electric vehicles are exempt from the requirements of this subpart, except with regard to the requirements in those sections pertaining specifically to electric vehicles.

(2) Manufacturers with worldwide production (excluding electric vehicle production) of less than 10,000 gasoline-fueled and/or diesel powered passenger automobiles and light trucks may optionally comply with the electric vehicle requirements in this subpart.

(c) Unless stated otherwise, references to fuel economy or fuel economy data in this part shall also be interpreted to mean the related exhaust emissions of CO_2, HC, and CO, and where applicable for alternative fuel vehicles, CH_3OH, C_2H_5OH, C_2H_4O, HCHO, NMHC and CH_4. References to average fuel economy shall be interpreted to also mean average carbon-related exhaust emissions. References to fuel economy data vehicles shall also be meant to refer to vehicles tested for carbon-related exhaust emissions for the purpose of demonstrating compliance with fleet average CO_2 standards in § 86.1818 of this chapter.

(d) The model year of initial applicability for sections in this part is indicated by the section number. The two digits following the hyphen designate the first model year for which a section is applicable. An individual section continues to apply for later model years until it is replaced by a different section that applies starting in a later model year. Sections that have no two-digit suffix apply for all 2008 and later model year vehicles, except as noted in those sections. If a section has a two-digit suffix but the regulation references that section without including the two-digit suffix, this refers to the section applicable for the appropriate model year. This also applies for references to part 86 of this chapter.

Example 1 to paragraph (d). Section 600.113–08 applies to the 2008 and subsequent model years until § 600.113–12 is applicable beginning with the 2012 model year. Section 600.111–08 would then apply only for 2008 through 2011 model year vehicles.

16. The redesignated § 600.002 is revised to read as follows:

§ 600.002 Definitions.

The following definitions apply throughout this part:

3-bag FTP means the Federal Test Procedure specified in part 86 of this chapter, with three sampling portions consisting of the cold-start transient ("Bag 1"), stabilized ("Bag 2"), and hot-start transient phases ("Bag 3").

4-bag FTP means the 3-bag FTP, with the addition of a sampling portion for the hot-start stabilized phase ("Bag 4").

5-cycle means the FTP, HFET, US06, SC03 and cold temperature FTP tests as described in subparts B and C of this part.

Administrator means the Administrator of the Environmental Protection Agency or his authorized representative.

Alcohol means a mixture containing 85 percent or more by volume methanol, ethanol, or other alcohols, in any combination.

Alcohol-fueled automobile means an automobile designed to operate exclusively on alcohol.

Alcohol dual fuel automobile means an automobile:

(1) Which is designed to operate on alcohol and on gasoline or diesel fuel; and

(2) Which provides equal or greater energy efficiency as calculated in accordance with § 600.510–08(g)(1) or § 600.510–12(g)(1) while operating on alcohol as it does while operating on gasoline or diesel fuel; and

(3) Which, in the case of passenger automobiles, meets or exceeds the minimum driving range established by the Department of Transportation in 49 CFR part 538.

Automobile has the meaning given by the Department of Transportation at 49 CFR 523.3. This includes "passenger automobiles" and "non-passenger automobiles" (or "light trucks").

Auxiliary emission control device (AECD) means an element of design as defined in § 86.1803 of this chapter.

Average fuel economy means the unique fuel economy value as computed under § 600.510 for a specific class of automobiles produced by a manufacturer that is subject to average fuel economy standards.

Axle ratio means the number of times the input shaft to the differential (or equivalent) turns for each turn of the drive wheels.

Base level means a unique combination of basic engine, inertia weight class and transmission class.

Base tire means the tire specified as standard equipment by the manufacturer.

Base vehicle means the lowest priced version of each body style that makes up a car line.

Basic engine means a unique combination of manufacturer, engine displacement, number of cylinders, fuel system (*e.g.,* type of fuel injection), catalyst usage, and other engine and emission control system characteristics specified by the Administrator. For electric vehicles, basic engine means a unique combination of manufacturer and electric traction motor, motor controller, battery configuration, electrical charging system, energy storage device, and other components as specified by the Administrator.

Battery configuration means the electrochemical type, voltage, capacity (in Watt-hours at the c/3 rate), and physical characteristics of the battery used as the tractive energy device.

Body style means a level of commonality in vehicle construction as defined by number of doors and roof treatment (*e.g.,* sedan, convertible, fastback, hatchback) and number of seats (*i.e.,* front, second, or third seat) requiring seat belts pursuant to National Highway Traffic Safety Administration safety regulations in 49 CFR part 571. Station wagons and light trucks are identified as car lines.

Calibration means the set of specifications, including tolerances, unique to a particular design, version of application of a component, or component assembly capable of functionally describing its operation over its working range.

Carbon-related exhaust emissions (CREE) means the summation of the carbon-containing constituents of the exhaust emissions, with each constituent adjusted by a coefficient representing the carbon weight fraction of each constituent relative to the CO_2 carbon weight fraction, as specified in § 600.113. For example, carbon-related exhaust emissions (weighted 55 percent city and 45 percent highway) are used to demonstrate compliance with fleet average CO_2 emission standards outlined in § 86.1818 of this chapter.

Car line means a name denoting a group of vehicles within a make or car division which has a degree of commonality in construction (*e.g.,* body, chassis). Car line does not consider any level of decor or opulence and is not generally distinguished by characteristics as roof line, number of doors, seats, or windows, except for station wagons or light-duty trucks. Station wagons and light-duty trucks are considered to be different car lines than passenger cars.

Certification vehicle means a vehicle which is selected under § 86.1828 of this chapter and used to determine compliance under § 86.1848 of this chapter for issuance of an original certificate of conformity.

City fuel economy means the city fuel economy determined by operating a vehicle (or vehicles) over the driving schedule in the Federal emission test procedure, or determined according to the vehicle-specific 5-cycle or derived 5-cycle procedures.

Cold temperature FTP means the test performed under the provisions of subpart C of part 86 of this chapter.

Combined fuel economy means:

(1) The fuel economy value determined for a vehicle (or vehicles) by harmonically averaging the city and highway fuel economy values, weighted 0.55 and 0.45 respectively.

(2) For electric vehicles, the term means the equivalent petroleum-based fuel economy value as determined by the calculation procedure promulgated by the Secretary of Energy.

Dealer means a person who resides or is located in the United States, any territory of the United States, or the District of Columbia and who is engaged in the sale or distribution of new automobiles to the ultimate purchaser.

Derived 5-cycle fuel economy means the 5-cycle fuel economy derived from the FTP-based city and HFET-based highway fuel economy by means of the equation provided in § 600.210.

Diesel equivalent gallon means an amount of electricity or fuel with the energy equivalence of one gallon of diesel fuel. For purposes of this part, one gallon of gasoline is equivalent to 36.7 kilowatt-hours of electricity.

Drive system is determined by the number and location of drive axles (*e.g.,* front wheel drive, rear wheel drive, four wheel drive) and any other feature of the drive system if the Administrator determines that such other features may result in a fuel economy difference.

Electrical charging system means a device to convert 60 Hz alternating electric current, as commonly available in residential electric service in the United States, to a proper form for recharging the energy storage device.

Electric traction motor means an electrically powered motor which provides tractive energy to the wheels of a vehicle.

Electric vehicle has the meaning given in § 86.1803 of this chapter.

Energy storage device means a rechargeable means of storing tractive energy on board a vehicle such as storage batteries or a flywheel.

Engine code means a unique combination, within an engine-system combination (as defined in § 86.1803 of this chapter), of displacement, fuel injection (or carburetion or other fuel delivery system), calibration, distributor calibration, choke calibration, auxiliary emission control devices, and other engine and emission control system components specified by the Administrator. For electric vehicles, engine code means a unique combination of manufacturer, electric traction motor, motor configuration, motor controller, and energy storage device.

Federal emission test procedure (FTP) refers to the dynamometer driving

schedule, dynamometer procedure, and sampling and analytical procedures described in part 86 of this chapter for the respective model year, which are used to derive city fuel economy data.

Footprint has the meaning given in § 86.1803 of this chapter.

FTP-based city fuel economy means the fuel economy determined in § 600.113 of this part, on the basis of FTP testing.

Fuel means:

(1) Gasoline and diesel fuel for gasoline- or diesel-powered automobiles; or

(2) Electrical energy for electrically powered automobiles; or

(3) Alcohol for alcohol-powered automobiles; or

(4) Natural gas for natural gas-powered automobiles; or

(5) Liquid Petroleum Gas (LPG), commonly referred to as "propane," for LPG-powered automobiles; or

(6) Hydrogen for hydrogen fuel cell automobiles and for automobiles equipped with hydrogen internal combustion engines.

Fuel cell has the meaning given in § 86.1803 of this chapter.

Fuel cell vehicle has the meaning given in § 86.1803 of this chapter.

Fuel economy means:

(1) The average number of miles traveled by an automobile or group of automobiles per volume of fuel consumed as calculated in this part; or

(2) For the purpose of calculating average fuel economy pursuant to the provisions of part 600, subpart F, fuel economy for electrically powered automobiles means the equivalent petroleum-based fuel economy as determined by the Secretary of Energy in accordance with the provisions of 10 CFR 474.

Fuel economy data vehicle means a vehicle used for the purpose of determining fuel economy which is not a certification vehicle.

Gasoline equivalent gallon means an amount of electricity or fuel with the energy equivalence of one gallon of gasoline. For purposes of this part, one gallon of gasoline is equivalent to 33.705 kilowatt-hours of electricity or 121.5 standard cubic feet of natural gas.

Good engineering judgment has the meaning given in § 1068.30 of this chapter. *See* § 1068.5 of this chapter for the administrative process we use to evaluate good engineering judgment.

Gross vehicle weight rating means the manufacturer's gross weight rating for the individual vehicle.

Hatchback means a passenger automobile where the conventional luggage compartment, *i.e.,* trunk, is replaced by a cargo area which is open to the passenger compartment and accessed vertically by a rear door which encompasses the rear window.

Highway fuel economy means the highway fuel economy determined either by operating a vehicle (or vehicles) over the driving schedule in the Federal highway fuel economy test procedure, or determined according to either the vehicle-specific 5-cycle equation or the derived 5-cycle equation for highway fuel economy.

Highway fuel economy test procedure (HFET) refers to the dynamometer driving schedule, dynamometer procedure, and sampling and analytical procedures described in subpart B of this part and which are used to derive highway fuel economy data.

HFET-based fuel economy means the highway fuel economy determined in § 600.113 of this part, on the basis of HFET testing.

Hybrid electric vehicle (HEV) has the meaning given in § 86.1803 of this chapter.

Independent Commercial Importer has the meaning given in § 85.1502 of this chapter.

Inertia weight class means the class, which is a group of test weights, into which a vehicle is grouped based on its loaded vehicle weight in accordance with the provisions of part 86 of this chapter.

Label means a sticker that contains fuel economy information and is affixed to new automobiles in accordance with subpart D of this part.

Light truck means an automobile that is not a passenger automobile, as defined by the Secretary of Transportation at 49 CFR 523.5. This term is interchangeable with "non-passenger automobile." The term the "light truck" includes medium-duty passenger vehicles which are manufactured during 2011 and later model years.

Medium-duty passenger vehicle means a vehicle which would satisfy the criteria for light trucks as defined by the Secretary of Transportation at 49 CFR 523.5 but for its gross vehicle weight rating or its curb weight, which is rated at more than 8,500 lbs GVWR or has a vehicle curb weight of more than 6,000 pounds or has a basic vehicle frontal area in excess of 45 square feet, and which is designed primarily to transport passengers, but does not include a vehicle that:

(1) Is an "incomplete truck" as defined in this subpart; or

(2) Has a seating capacity of more than 12 persons; or

(3) Is designed for more than 9 persons in seating rearward of the driver's seat; or

(4) Is equipped with an open cargo area (for example, a pick-up truck box or bed) of 72.0 inches in interior length or more. A covered box not readily accessible from the passenger compartment will be considered an open cargo area for purposes of this definition.

Minivan means a light truck which is designed primarily to carry no more than eight passengers, having an integral enclosure fully enclosing the driver, passenger, and load-carrying compartments, and rear seats readily removed, folded, stowed, or pivoted to facilitate cargo carrying. A minivan typically includes one or more sliding doors and a rear liftgate. Minivans typically have less total interior volume or overall height than full sized vans and are commonly advertised and marketed as "minivans."

Model type means a unique combination of car line, basic engine, and transmission class.

Model year means the manufacturer's annual production period (as determined by the Administrator) which includes January 1 of such calendar year. If a manufacturer has no annual production period, the term "model year" means the calendar year.

Motor controller means an electronic or electro-mechanical device to convert energy stored in an energy storage device into a form suitable to power the traction motor.

Natural gas-fueled automobile means an automobile designed to operate exclusively on natural gas.

Natural gas dual fuel automobile means an automobile:

(1) Which is designed to operate on natural gas and on gasoline or diesel fuel;

(2) Which provides equal or greater energy efficiency as calculated in § 600.510–08(g)(1) while operating on natural gas as it does while operating on gasoline or diesel fuel; and

(3) Which, in the case of passenger automobiles, meets or exceeds the minimum driving range established by the Department of Transportation in 49 CFR part 538.

Non-passenger automobile has the meaning given by the Department of Transportation at 49 CFR 523.5. This term is synonymous with "light truck."

Passenger automobile has the meaning given by the Department of Transportation at 49 CFR 523.4.

Pickup truck means a nonpassenger automobile which has a passenger compartment and an open cargo bed.

Plug-in hybrid electric vehicle (PHEV) has the meaning given in § 86.1803 of this chapter.

Production volume means, for a domestic manufacturer, the number of vehicle units domestically produced in a particular model year but not exported, and for a foreign manufacturer, means the number of vehicle units of a particular model imported into the United States.

QR Code means Quick Response Code, which is a registered trademark of Denso Wave, Incorporated.

Round has the meaning given in 40 CFR 1065.1001, unless specified otherwise.

SC03 means the test procedure specified in § 86.160 of this chapter.

Secretary of Energy means the Secretary of Energy or his authorized representative.

Secretary of Transportation means the Secretary of Transportation or his authorized representative.

Sport utility vehicle (SUV) means a light truck with an extended roof line to increase cargo or passenger capacity, cargo compartment open to the passenger compartment, and one or more rear seats readily removed or folded to facilitate cargo carrying.

Station wagon means a passenger automobile with an extended roof line to increase cargo or passenger capacity, cargo compartment open to the passenger compartment, a tailgate, and one or more rear seats readily removed or folded to facilitate cargo carrying.

Subconfiguration means a unique combination within a vehicle configuration of equivalent test weight, road-load horsepower, and any other operational characteristics or parameters which the Administrator determines may significantly affect fuel economy within a vehicle configuration.

Test weight means the weight within an inertia weight class which is used in the dynamometer testing of a vehicle, and which is based on its loaded vehicle weight in accordance with the provisions of part 86 of this chapter.

Track width has the meaning given in § 86.1803 of this chapter.

Transmission class means a group of transmissions having the following common features: Basic transmission type (manual, automatic, or semi-automatic); number of forward gears used in fuel economy testing (*e.g.,* manual four-speed, three-speed automatic, two-speed semi-automatic); drive system (*e.g.,* front wheel drive, rear wheel drive; four wheel drive), type of overdrive, if applicable (*e.g.,* final gear ratio less than 1.00, separate overdrive unit); torque converter type, if applicable (*e.g.,* non-lockup, lockup, variable ratio); and other transmission characteristics that may be determined to be significant by the Administrator.

Transmission configuration means the Administrator may further subdivide within a transmission class if the Administrator determines that sufficient fuel economy differences exist. Features such as gear ratios, torque converter multiplication ratio, stall speed, shift calibration, or shift speed may be used to further distinguish characteristics within a transmission class.

Ultimate consumer means the first person who purchases an automobile for purposes other than resale or leases an automobile.

US06 means the test procedure as described in § 86.159 of this chapter.

US06–City means the combined periods of the US06 test that occur before and after the US06–Highway period.

US06–Highway means the period of the US06 test that begins at the end of the deceleration which is scheduled to occur at 130 seconds of the driving schedule and terminates at the end of the deceleration which is scheduled to occur at 495 seconds of the driving schedule.

Van means any light truck having an integral enclosure fully enclosing the driver compartment and load carrying compartment. The distance from the leading edge of the windshield to the foremost body section of vans is typically shorter than that of pickup trucks and SUVs.

Vehicle configuration means a unique combination of basic engine, engine code, inertia weight class, transmission configuration, and axle ratio within a base level.

Vehicle-specific 5-cycle fuel economy means the fuel economy calculated according to the procedures in § 600.114.

Wheelbase has the meaning given in § 86.1803 of this chapter.

17. The redesignated § 600.003 is revised to read as follows:

§ 600.003 Abbreviations.

The abbreviations and acronyms used in this part have the same meaning as those in part 86 of this chapter, with the addition of the following:

(a) "MPG" or "mpg" means miles per gallon. This may be used to generally describe fuel economy as a quantity, or it may be used as the units associated with a particular value.

(b) MPGe means miles per gallon equivalent. This is generally used to quantify a fuel economy value for vehicles that use a fuel other than gasoline. The value represents miles the vehicle can drive with the energy equivalent of one gallon of gasoline.

(c) SCF means standard cubic feet.

(d) SUV means sport utility vehicle.

(e) CREE means carbon-related exhaust emissions.

18. The redesignated § 600.005 is amended by revising the introductory text and paragraph (a) to read as follows:

§ 600.005 Maintenance of records and rights of entry.

The provisions of this section are applicable to all fuel economy data vehicles. Certification vehicles are required to meet the provisions of § 86.1844 of this chapter.

(a) The manufacturer of any new motor vehicle subject to any of the standards or procedures prescribed in this part shall establish, maintain, and retain the following adequately organized and indexed records:

(1) *General records.* (i) Identification and description of all vehicles for which data are submitted to meet the requirements of this part.

(ii) A description of all procedures used to test each vehicle.

(iii) A copy of the information required to be submitted under § 600.006 fulfills the requirements of paragraph (a)(1)(i) of this section.

(2) *Individual records.* (i) A brief history of each vehicle for which data are submitted to meet the requirements of this part, in the form of a separate booklet or other document for each separate vehicle, in which must be recorded:

(A) The steps taken to ensure that the vehicle with respect to its engine, drive train, fuel system, emission control system components, exhaust after treatment device, vehicle weight, or any other device or component, as applicable, will be representative of production vehicles. In the case of electric vehicles, the manufacturer should describe the steps taken to ensure that the vehicle with respect to its electric traction motor, motor controller, battery configuration, or any other device or component, as applicable, will be representative of production vehicles.

(B) A complete record of all emission tests performed under part 86 of this chapter, all fuel economy tests performed under this part 600 (except tests actually performed by EPA personnel), and all electric vehicle tests performed according to procedures promulgated by DOE, including all individual worksheets and other documentation relating to each such test or exact copies thereof; the date, time, purpose, and location of each test; the number of miles accumulated on the vehicle when the tests began and ended; and the names of supervisory personnel responsible for the conduct of the tests.

(C) A description of mileage accumulated since selection of buildup of such vehicles including the date and time of each mileage accumulation listing both the mileage accumulated and the name of each driver, or each operator of the automatic mileage accumulation device, if applicable. Additionally, a description of mileage accumulated prior to selection or buildup of such vehicle must be maintained in such detail as is available.

(D) If used, the record of any devices employed to record the speed or mileage, or both, of the test vehicle in relationship to time.

(E) A record and description of all maintenance and other servicing performed, within 2,000 miles prior to fuel economy testing under this part, giving the date and time of the maintenance or service, the reason for it, the person authorizing it, and the names of supervisory personnel responsible for the conduct of the maintenance or service. A copy of the maintenance information to be submitted under § 600.006 fulfills the requirements of this paragraph (a)(2)(i)(E).

(F) A brief description of any significant events affecting the vehicle during any of the period covered by the history not described in an entry under one of the previous headings including such extraordinary events as vehicle accidents or driver speeding citations or warnings.

(3) The manufacturer shall retain all records required under this part for five years after the end of the model year to which they relate. Records may be retained as hard copy or some alternative storage medium, provided that in every case all the information contained in hard copy shall be retained.

* * * * *

19. The redesignated § 600.006 is amended by revising paragraphs (c), (e), and (g) to read as follows:

§ 600.006 Data and information requirements for fuel economy data vehicles.

* * * * *

(c) The manufacturer shall submit the following fuel economy data:

(1) For vehicles tested to meet the requirements of part 86 of this chapter (other than those chosen in accordance with the provisions related to durability demonstration in § 86.1829 of this chapter or in-use verification testing in § 86.1845 of this chapter), the FTP, highway, US06, SC03 and cold temperature FTP fuel economy results, as applicable, from all tests on that vehicle, and the test results adjusted in accordance with paragraph (g) of this section.

(2) For each fuel economy data vehicle, all individual test results (excluding results of invalid and zero mile tests) and these test results adjusted in accordance with paragraph (g) of this section.

(3) For diesel vehicles tested to meet the requirements of part 86 of this chapter, data from a cold temperature FTP, performed in accordance with § 600.111–08(e), using the fuel specified in § 600.107–08(c).

(4) For all vehicles tested in paragraph (c)(1) through (3) of this section, the individual fuel economy results measured on a per-phase basis, that is, the individual phase results for all sample phases of the FTP, cold temperature FTP and US06 tests.

(5) Starting with the 2012 model year, the data submitted according to paragraphs (c)(1) through (4) of this section shall include total HC, CO, CO_2, and, where applicable for alternative fuel vehicles, CH_3OH, C_2H_5OH, C_2H_4O, HCHO, NMHC and CH_4. Manufacturers incorporating N_2O and CH_4 emissions in their fleet average carbon-related exhaust emissions as allowed under § 86.1818 of this chapter shall also submit N_2O and CH_4 emission data where applicable. The fuel economy and CO_2 emission test results shall be adjusted in accordance with paragraph (g) of this section.

* * * * *

(e) In lieu of submitting actual data from a test vehicle, a manufacturer may provide fuel economy, CO_2 emissions, and carbon-related exhaust emission values derived from a previously tested vehicle, where the fuel economy, CO_2 emissions, and carbon-related exhaust emissions are expected to be equivalent (or less fuel-efficient and with higher CO_2 emissions and carbon-related exhaust emissions). Additionally, in lieu of submitting actual data from a test vehicle, a manufacturer may provide fuel economy, CO_2 emissions, and carbon-related exhaust emission values derived from an analytical expression, e.g., regression analysis. In order for fuel economy, CO_2 emissions, and carbon-related exhaust emission values derived from analytical methods to be accepted, the expression (form and coefficients) must have been approved by the Administrator.

* * * * *

(g)(1) The manufacturer shall adjust all test data used for fuel economy label calculations in subpart D and average fuel economy calculations in subpart F for the classes of automobiles within the categories identified in paragraphs of § 600.510(a)(1) through (4). The test data shall be adjusted in accordance with paragraph (g)(3) or (4) of this section as applicable.

(2) [Reserved]

(3)(i) The manufacturer shall adjust all fuel economy test data generated by vehicles with engine-drive system combinations with more than 6,200 miles by using the following equation:

$$FE_{4,000mi} = FE_T[0.979 + 5.25 \times 10^{-6}(mi)]^{-1}$$

Where:

$FE_{4,000mi}$ = Fuel economy data adjusted to 4,000-mile test point rounded to the nearest 0.1 mpg.

FE_T = Tested fuel economy value rounded to the nearest 0.1 mpg.

mi = System miles accumulated at the start of the test rounded to the nearest whole mile. (ii)(A)

The manufacturer shall adjust all CO_2 test data generated by vehicles with engine-drive system combinations with more than 6,200 miles by using the following equation:

$$CO2_{4,000mi} = CO2_T[0.979 + 5.25 \cdot 10^{-6} \cdot (mi)]$$

Where:

$CO2_{4,000mi}$ = CO_2 emission data adjusted to 4,000-mile test point.

$CO2_T$ = Tested emissions value of CO_2 in grams per mile.

mi = System miles accumulated at the start of the test rounded to the nearest whole mile.

(B) Emissions test values and results used and determined in the calculations in this paragraph (g)(3)(ii) shall be rounded in accordance with § 86.1837 of this chapter as applicable. CO_2 and CREE values shall be rounded to the nearest gram per mile.

(4) For vehicles with 6,200 miles or less accumulated, the manufacturer is not required to adjust the data.

20. The redesignated § 600.007 is amended by revising paragraphs (a), (b), and (e) to read as follows:

§ 600.007 Vehicle acceptability.

(a) All certification vehicles and other vehicles tested to meet the requirements of part 86 of this chapter (other than those chosen under the durability-demonstration provisions in § 86.1829 of this chapter), are considered to have met the requirements of this section.

(b) Any vehicle not meeting the provisions of paragraph (a) of this section must be judged acceptable by the Administrator under this section in order for the test results to be reviewed for use in subpart C or F of this part. The Administrator will judge the acceptability of a fuel economy data vehicle on the basis of the information supplied by the manufacturer under § 600.006(b). The criteria to be met are:

(1) A fuel economy data vehicle may have accumulated not more than 10,000 miles. A vehicle will be considered to have met this requirement if the engine and drivetrain have accumulated 10,000 or fewer miles. The components installed for a fuel economy test are not required to be the ones with which the mileage was accumulated, *e.g.,* axles, transmission types, and tire sizes may be changed. The Administrator will determine if vehicle/engine component changes are acceptable.

(2) A vehicle may be tested in different vehicle configurations by change of vehicle components, as specified in paragraph (b)(1) of this section, or by testing in different inertia weight classes. Also, a single vehicle may be tested under different test conditions, *i.e.,* test weight and/or road load horsepower, to generate fuel economy data representing various situations within a vehicle configuration. For purposes of this part, data generated by a single vehicle tested in various test conditions will be treated as if the data were generated by the testing of multiple vehicles.

(3) The mileage on a fuel economy data vehicle must be, to the extent possible, accumulated according to § 86.1831 of this chapter.

(4) Each fuel economy data vehicle must meet the same exhaust emission standards as certification vehicles of the respective engine-system combination during the test in which the city fuel economy test results are generated. This may be demonstrated using one of the following methods:

(i) The deterioration factors established for the respective engine-system combination per § 86.1841 of this chapter as applicable will be used; or

(ii) The fuel economy data vehicle will be equipped with aged emission control components according to the provisions of § 86.1823 of this chapter.

(5) The calibration information submitted under § 600.006(b) must be representative of the vehicle configuration for which the fuel economy and carbon-related exhaust emissions data were submitted.

(6) Any vehicle tested for fuel economy or carbon-related exhaust emissions purposes must be representative of a vehicle which the manufacturer intends to produce under the provisions of a certificate of conformity.

(7) For vehicles imported under § 85.1509 or § 85.1511(b)(2), (b)(4), (c)(2), (c)(4) of this chapter, or (e)(2) (when applicable) only the following requirements must be met:

(i) For vehicles imported under § 85.1509 of this chapter, a highway fuel economy value must be generated contemporaneously with the emission tests used for purposes of demonstrating compliance with § 85.1509 of this chapter. No modifications or adjustments should be made to the vehicles between the highway fuel economy, FTP, US06, SC03 and Cold temperature FTP tests.

(ii) For vehicles imported under § 85.1509 or § 85.1511(b)(2), (b)(4), (c)(2), or (c)(4) of this chapter (when applicable) with over 10,000 miles, the equation in § 600.006(g)(3) shall be used as though only 10,000 miles had been accumulated.

(iii) Any required fuel economy testing must take place after any safety modifications are completed for each vehicle as required by regulations of the Department of Transportation.

(iv) Every vehicle imported under § 85.1509 or § 85.1511(b)(2), (b)(4), (c)(2), or (c)(4) of this chapter (when applicable) must be considered a separate type for the purposes of calculating a fuel economy label for a manufacturer's average fuel economy.

* * * * *

(e) If, based on a review of the emission data for a fuel economy data vehicle, submitted under § 600.006(b), or emission data generated by a vehicle tested under § 600.008(e), the Administrator finds an indication of non-compliance with section 202 of the Clean Air Act, 42 U.S.C. 1857 *et seq.* of the regulation thereunder, he may take such investigative actions as are appropriate to determine to what extent emission non-compliance actually exists.

(1) The Administrator may, under the provisions of § 86.1830 of this chapter, request the manufacturer to submit production vehicles of the configuration(s) specified by the Administrator for testing to determine to what extent emission noncompliance of a production vehicle configuration or of a group of production vehicle configurations may actually exist.

(2) If the Administrator determines, as a result of his investigation, that substantial emission non-compliance is exhibited by a production vehicle configuration or group of production vehicle configurations, he may proceed with respect to the vehicle configuration(s) as provided under § 600.206–08(b), § 600.206–12(b), § 600.207–08(c), or § 600.207–12(c) as applicable of the Clean Air Act, 42 U.S.C. 1857 *et seq.*

* * * * *

21. The redesignated § 600.008 is amended by revising the section heading and paragraphs (a)(1) and (a)(2)(i) to read as follows:

§ 600.008 Review of fuel economy, CO_2 emissions, and carbon-related exhaust emission data, testing by the Administrator.

(a) * * *

(1)(i) The Administrator may require that any one or more of the test vehicles be submitted to the Agency, at such place or places as the Agency may designate, for the purposes of conducting fuel economy tests. The Administrator may specify that such testing be conducted at the manufacturer's facility, in which case instrumentation and equipment specified by the Administrator shall be made available by the manufacturer for test operations. The tests to be performed may comprise the FTP, highway fuel economy test, US06, SC03, or Cold temperature FTP or any combination of those tests. Any testing conducted at a manufacturer's facility pursuant to this paragraph shall be scheduled by the manufacturer as promptly as possible.

(ii) Starting with the 2012 model year, evaluations, testing, and test data described in this section pertaining to fuel economy shall also be performed for CO_2 emissions and carbon-related exhaust emissions, except that CO_2 emissions and carbon-related exhaust emissions shall be arithmetically averaged instead of harmonically averaged, and in cases where the manufacturer selects the lowest of several fuel economy results to represent the vehicle, the manufacturer shall select the CO_2 emissions and carbon-related exhaust emissions value from the test results associated with the lowest selected fuel economy results.

(2) * * *

(i) The manufacturer's fuel economy data (or harmonically averaged data if more than one test was conducted) will be compared with the results of the Administrator's test.

* * * * *

22. The redesignated § 600.009 is revised to read as follows:

§ 600.009 Hearing on acceptance of test data.

(a) The manufacturer may request a hearing on the Administrator's decision if the Administrator rejects any of the following:

(1) The use of a manufacturer's fuel economy data vehicle, in accordance with § 600.008(e) or (g), or

(2) The use of fuel economy data, in accordance with § 600.008(c), or (f), or

(3) The determination of a vehicle configuration, in accordance with § 600.206(a), or

(4) The identification of a car line, in accordance with § 600.002(a)(20), or

(5) The fuel economy label values determined by the manufacturer under § 600.312(a), then:

(b) The request for a hearing must be filed in writing within 30 days after being notified of the Administrator's decision. The request must be signed by an authorized representative of the manufacturer and include a statement specifying the manufacturer's objections to the Administrator's determinations, with data in support of such objection.

(c) If, after the review of the request and supporting data, the Administrator finds that the request raises one or more substantial factual issues, the Administrator shall provide the manufacturer with a hearing in accordance with the provisions of 40 CFR part 1068, subpart G.

(d) A manufacturer's use of any fuel economy data which the manufacturer challenges pursuant to this section shall not constitute final acceptance by the manufacturer nor prejudice the manufacturer in the exercise of any appeal pursuant to this section challenging such fuel economy data.

23. The redesignated § 600.010 is amended by revising paragraphs (a) introductory text, (c), and (d) to read as follows:

§ 600.010 Vehicle test requirements and minimum data requirements.

(a) Unless otherwise exempted from specific emission compliance requirements, for each certification vehicle defined in this part, and for each vehicle tested according to the emission test procedures in part 86 of this chapter for addition of a model after certification or approval of a running change (§ 86.1842 of this chapter, as applicable):

* * * * *

(c) *Minimum data requirements for labeling.* (1) In order to establish fuel economy label values under § 600.301, the manufacturer shall use only test data accepted in accordance with § 600.008 meeting the minimum coverage of:

(i) Data required for emission certification under §§ 86.1828 and 86.1842 of this chapter.

(ii)(A) FTP and HFET data from the highest projected model year sales subconfiguration within the highest projected model year sales configuration for each base level, and

(B) If required under § 600.115–08, for 2011 and later model year vehicles, US06, SC03 and cold temperature FTP data from the highest projected model year sales subconfiguration within the highest projected model year sales configuration for each base level. Manufacturers may optionally generate this data for any 2008 through 2010 model years, and, 2011 and later model year vehicles, if not otherwise required.

(iii) For additional model types established under § 600.208–08(a)(2), § 600.208–12(a)(2), § 600.209–08(a)(2), or § 600.209–12(a)(2) FTP and HFET data, and if required under § 600.115, US06, SC03 and Cold temperature FTP data from each subconfiguration included within the model type.

(2) For the purpose of recalculating fuel economy label values as required under § 600.314–08(b), the manufacturer shall submit data required under § 600.507.

(d) Minimum data requirements for the manufacturer's average fuel economy and average carbon-related exhaust emissions. For the purpose of calculating the manufacturer's average fuel economy and average carbon-related exhaust emissions under § 600.510, the manufacturer shall submit FTP (city) and HFET (highway) test data representing at least 90 percent of the manufacturer's actual model year production, by configuration, for each category identified for calculation under § 600.510–08(a)(1) or § 600.510–12(a)(1).

24. The redesignated § 600.011 is revised to read as follows:

§ 600.011 Reference materials.

(a) *Incorporation by reference.* The documents referenced in this section have been incorporated by reference in this part. The incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be inspected at the U.S. Environmental Protection Agency, Office of Air and Radiation, 1200 Pennsylvania Ave., NW., Washington, DC 20460, phone (202) 272–0167, 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* and is available from the sources listed below:

(b) *ASTM.* The following material is available from the American Society for Testing and Materials. Copies of these materials may be obtained from American Society for Testing and Materials, ASTM International, 100 Barr Harbor Drive, P.O. Box C700, West Conshohocken, PA 19428–2959, phone 610–832–9585. *http://www.astm.org/.*

(1) [Reserved]

(2) ASTM D 1298–99 (Reapproved 2005) Standard Practice for Density, Relative Density (Specific Gravity), or API Gravity of Crude Petroleum and Liquid Petroleum Products by Hydrometer Method, IBR approved for §§ 600.113–08, 600.510–08, and 600.510–12.

(3) ASTM D 3343–05 Standard Test Method for Estimation of Hydrogen Content of Aviation Fuels, IBR approved for § 600.113–08.

(4) ASTM D 3338–09 Standard Test Method for Estimation of Net Heat of Combustion of Aviation Fuels, IBR approved for § 600.113–08.

(5) ASTM D 240–09 Standard Test Method for Heat of Combustion of Liquid Hydrocarbon Fuels by Bomb Calorimeter, IBR approved for §§ 600.113–08, and 600.510–08.

(6) ASTM D 975–10 Standard Specification for Diesel Fuel Oils, IBR approved for § 600.107–08.

(7) ASTM D 1945–03 (Reapproved 2010) Standard Test Method for Analysis of Natural Gas By Gas Chromatography, IBR approved for § 600.113–08.

(c) *SAE Material.* The following material is available from the Society of Automotive Engineers. Copies of these materials may be obtained from Society of Automotive Engineers World Headquarters, 400 Commonwealth Dr., Warrendale, PA 15096–0001, phone (877) 606–7323 (U.S. and Canada) or (724) 776–4970 (outside the U.S. and Canada), or at *http://www.sae.org.*

(1) Motor Vehicle Dimensions—Recommended Practice SAE 1100a (Report of Human Factors Engineering Committee, Society of Automotive Engineers, approved September 1973 as revised September 1975), IBR approved for § 600.315–08.

(2) SAE J1634, Electric Vehicle Energy Consumption and Range Test Procedure, October 2002, IBR approved for §§ 600.116–12 and 600.311–12.

(3) SAE J1711, Recommended Practice for Measuring the Exhaust Emissions and Fuel Economy of Hybrid-Electric Vehicles, Including Plug-In Hybrid Vehicles, June 2010, IBR approved for §§ 600.116–12 and 600.311–12.

(d) *ISO Material.* The following material is available from the International Organization for Standardization. Copies of these materials may be obtained from the International Organization for Standardization, Case Postale 56, CH–1211 Geneva 20, Switzerland or *http://www.iso.org.*

(1) ISO/IEC 18004:2006, "Information technology—Automatic identification and data capture techniques—QR Code 2005 bar code symbology specification."

(2) [Reserved]

Subpart B—Fuel Economy and Carbon-Related Exhaust Emission Test Procedures

25. The heading for subpart B is revised as set forth above.

§ 600.101–08, § 600.101–12, § 600.101–86, § 600.101–93, § 600.102–78, § 600.103–78, § 600.104–78, § 600.105–78, § 600.106–78, § 600.107–78, § 600.107–93, § 600.109–78, § 600.110–78, § 600.111–80, § 600.111–93, § 600.112–78, § 600.113–78, § 600.113–88, § 600.113–93 [Removed]

26. Subpart B is amended by removing the following sections:

§ 600.101–08
§ 600.101–12
§ 600.101–86
§ 600.101–93
§ 600.102–78
§ 600.103–78
§ 600.104–78
§ 600.105–78
§ 600.106–78
§ 600.107–78
§ 600.107–93
§ 600.109–78
§ 600.110–78
§ 600.111–80
§ 600.111–93
§ 600.112–78
§ 600.113–78
§ 600.113–88
§ 600.113–93

27. Section § 600.106–08 is revised to read as follows:

§ 600.106–08 Equipment requirements.

The requirements for test equipment to be used for all fuel economy testing are given in subparts B and C of part 86 of this chapter.

28. Section § 600.107–08 is revised to read as follows:

§ 600.107–08 Fuel specifications.

(a) The test fuel specifications for gasoline, diesel, methanol, and methanol-petroleum fuel mixtures are given in § 86.113 of this chapter, except for cold temperature FTP fuel requirements for diesel and alternative fuel vehicles, which are given in paragraph (b) of this section.

(b)(1) Diesel test fuel used for cold temperature FTP testing must comprise a winter-grade diesel fuel as specified in ASTM D975–10 (incorporated by reference in § 600.011). Alternatively, EPA may approve the use of a different diesel fuel, provided that the level of kerosene added shall not exceed 20 percent.

(2) The manufacturer may request EPA approval of the use of an alternative fuel for cold temperature FTP testing.

(c) Test fuels representing fuel types for which there are no specifications provided in § 86.113 of this chapter may be used if approved in advance by the Administrator.

29. Redesignate § 600.108–78 as § 600.108–08.

30. Section § 600.109–08 is amended by revising paragraph (b)(3) to read as follows:

§ 600.109–08 EPA driving cycles.

* * * * *

(b) * * *

(3) A graphic representation of the range of acceptable speed tolerances is found in § 86.115 of this chapter.

* * * * *

31. Section 600.111–08 is revised to read as follows:

§ 600.111–08 Test procedures.

This section provides test procedures for the FTP, highway, US06, SC03, and the cold temperature FTP tests. Testing shall be performed according to test procedures and other requirements contained in this part 600 and in part 86 of this chapter, including the provisions of part 86, subparts B, C, and S.

(a) *FTP testing procedures.* The test procedures to be followed for conducting the FTP test are those prescribed in §§ 86.127 through 86.138 of this chapter, as applicable, except as provided for in paragraph (b)(5) of this section. (The evaporative loss portion of the test procedure may be omitted unless specifically required by the Administrator.)

(b) *Highway fuel economy testing procedures.* (1) The Highway Fuel Economy Dynamometer Procedure (HFET) consists of preconditioning highway driving sequence and a measured highway driving sequence.

(2) The HFET is designated to simulate non-metropolitan driving with an average speed of 48.6 mph and a maximum speed of 60 mph. The cycle is 10.2 miles long with 0.2 stop per mile and consists of warmed-up vehicle operation on a chassis dynamometer through a specified driving cycle. A proportional part of the diluted exhaust emission is collected continuously for subsequent analysis of hydrocarbons, carbon monoxide, carbon dioxide using a constant volume (variable dilution) sampler. Diesel dilute exhaust is continuously analyzed for hydrocarbons using a heated sample line and analyzer. Methanol and formaldehyde samples are collected and individually analyzed for methanol-fueled vehicles (measurement of methanol and formaldehyde may be omitted for 1993 through 1994 model year methanol-fueled vehicles provided a HFID calibrated on methanol is used for measuring HC plus methanol).

(3) Except in cases of component malfunction or failure, all emission control systems installed on or incorporated in a new motor vehicle must be functioning during all procedures in this subpart. The Administrator may authorize maintenance to correct component malfunction or failure.

(4) The provisions of § 86.128 of this chapter apply for vehicle transmission operation during highway fuel economy testing under this subpart.

(5) Section 86.129 of this chapter applies for determination of road load power and test weight for highway fuel economy testing. The test weight for the testing of a certification vehicle will be that test weight specified by the Administrator under the provisions of part 86 of this chapter. The test weight for a fuel economy data vehicle will be that test weight specified by the Administrator from the test weights covered by that vehicle configuration. The Administrator will base his selection of a test weight on the relative projected sales volumes of the various test weights within the vehicle configuration.

(6) The HFET is designed to be performed immediately following the Federal Emission Test Procedure, §§ 86.127 through 86.138 of this chapter. When conditions allow, the tests should be scheduled in this sequence. In the event the tests cannot be scheduled within three hours of the Federal Emission Test Procedure (including one hour hot soak evaporative loss test, if applicable) the vehicle should be preconditioned as in paragraph (b)(6)(i) or (ii) of this section, as applicable.

(i) If the vehicle has experienced more than three hours of soak (68 °F–86 °F) since the completion of the Federal Emission Test Procedure, or has experienced periods of storage outdoors, or in environments where soak temperature is not controlled to 68 °F–86 °F, the vehicle must be preconditioned by operation on a dynamometer through one cycle of the EPA Urban Dynamometer Driving Schedule, § 86.115 of this chapter.

(ii) EPA may approve a manufacturer's request for additional preconditioning in unusual circumstances

(7) Use the following procedure to determine highway fuel economy:

(i) The dynamometer procedure consists of two cycles of the Highway Fuel Economy Driving Schedule (§ 600.109–08(b)) separated by 15 seconds of idle. The first cycle of the

Highway Fuel Economy Driving Schedule is driven to precondition the test vehicle and the second is driven for the fuel economy measurement.

(ii) The provisions of § 86.135 of this chapter, except for the overview and the allowance for practice runs, apply for highway fuel economy testing.

(iii) Only one exhaust sample and one background sample are collected and analyzed for hydrocarbons (except diesel hydrocarbons which are analyzed continuously), carbon monoxide, and carbon dioxide. Methanol and formaldehyde samples (exhaust and dilution air) are collected and analyzed for methanol-fueled vehicles (measurement of methanol and formaldehyde may be omitted for 1993 through 1994 model year methanol-fueled vehicles provided a HFID calibrated on methanol is used for measuring HC plus methanol).

(iv) The fuel economy measurement cycle of the test includes two seconds of idle indexed at the beginning of the second cycle and two seconds of idle indexed at the end of the second cycle.

(8) If the engine is not running at the initiation of the highway fuel economy test (preconditioning cycle), the start-up procedure must be according to the manufacturer's recommended procedures. False starts and stalls during the preconditioning cycle must be treated as in § 86.136 of this chapter. If the vehicle stalls during the measurement cycle of the highway fuel economy test, the test is voided, corrective action may be taken according to § 86.1834 of this chapter, and the vehicle may be rescheduled for testing. The person taking the corrective action shall report the action so that the test records for the vehicle contain a record of the action.

(9) The following steps must be taken for each test:

(i) Place the drive wheels of the vehicle on the dynamometer. The vehicle may be driven onto the dynamometer.

(ii) Open the vehicle engine compartment cover and position the cooling fan(s) required. Manufacturers may request the use of additional cooling fans or variable speed fan(s) for additional engine compartment or under-vehicle cooling and for controlling high tire or brake temperatures during dynamometer operation. With prior EPA approval, manufacturers may perform the test with the engine compartment closed, *e.g.* to provide adequate air flow to an intercooler (through a factory installed hood scoop). Additionally, the Administrator may conduct fuel economy testing using the additional cooling set-up approved for a specific vehicle.

(iii) Preparation of the CVS must be performed before the measurement highway driving cycle.

(iv) *Equipment preparation.* The provisions of § 86.137–94(b)(3) through (6) of this chapter apply for highway fuel economy test, except that only one exhaust sample collection bag and one dilution air sample collection bag need to be connected to the sample collection systems.

(v) Operate the vehicle over one Highway Fuel Economy Driving Schedule cycle according to the dynamometer driving schedule specified in § 600.109–08(b).

(vi) When the vehicle reaches zero speed at the end of the preconditioning cycle, the driver has 17 seconds to prepare for the emission measurement cycle of the test.

(vii) Operate the vehicle over one Highway Fuel Economy Driving Schedule cycle according to the dynamometer driving schedule specified in § 600.109–08(b) while sampling the exhaust gas.

(viii) Sampling must begin two seconds before beginning the first acceleration of the fuel economy measurement cycle and must end two seconds after the end of the deceleration to zero. At the end of the deceleration to zero speed, the roll or shaft revolutions must be recorded.

(10) For alcohol-based dual fuel automobiles, the procedures of § 600.111–08(a) and (b) shall be performed for each of the fuels on which the vehicle is designed to operate.

(c) *US06 Testing procedures.* The test procedures to be followed for conducting the US06 test are those prescribed in § 86.159 of this chapter, as applicable.

(d) *SC03 testing procedures.* The test procedures to be followed for conducting the SC03 test are prescribed in §§ 86.160 and 161 of this chapter, as applicable.

(e) *Cold temperature FTP procedures.* The test procedures to be followed for conducting the cold temperature FTP test are generally prescribed in subpart C of part 86 of this chapter, as applicable. For the purpose of fuel economy labeling, diesel vehicles are subject to cold temperature FTP testing, but are not required to measure particulate matter, as described in § 86.210 of this chapter.

(f) *Special test procedures.* The Administrator may prescribe test procedures, other than those set forth in this subpart B, for any vehicle which is not susceptible to satisfactory testing and/or testing results by the procedures set forth in this part. For example, special test procedures may be used for advanced technology vehicles, including, but not limited to fuel cell vehicles, hybrid electric vehicles using hydraulic energy storage, and vehicles equipped with hydrogen internal combustion engines. Additionally, the Administrator may conduct fuel economy and carbon-related exhaust emission testing using the special test procedures approved for a specific vehicle.

32. Section 600.113–12 is revised to read as follows:

§ 600.113–12 Fuel economy, CO_2 emissions, and carbon-related exhaust emission calculations for FTP, HFET, US06, SC03 and cold temperature FTP tests.

The Administrator will use the calculation procedure set forth in this paragraph for all official EPA testing of vehicles fueled with gasoline, diesel, alcohol-based or natural gas fuel. The calculations of the weighted fuel economy and carbon-related exhaust emission values require input of the weighted grams/mile values for total hydrocarbons (HC), carbon monoxide (CO), and carbon dioxide (CO_2); and, additionally for methanol-fueled automobiles, methanol (CH_3OH) and formaldehyde (HCHO); and, additionally for ethanol-fueled automobiles, methanol (CH_3OH), ethanol (C_2H_5OH), acetaldehyde (C_2H_4O), and formaldehyde (HCHO); and additionally for natural gas-fueled vehicles, non-methane hydrocarbons (NMHC) and methane (CH_4). For manufacturers selecting the fleet averaging option for N_2O and CH_4 as allowed under § 86.1818 of this chapter the calculations of the carbon-related exhaust emissions require the input of grams/mile values for nitrous oxide (N_2O) and methane (CH_4). Emissions shall be determined for the FTP, HFET, US06, SC03 and cold temperature FTP tests. Additionally, the specific gravity, carbon weight fraction and net heating value of the test fuel must be determined. The FTP, HFET, US06, SC03 and cold temperature FTP fuel economy and carbon-related exhaust emission values shall be calculated as specified in this section. An example fuel economy calculation appears in Appendix II of this part.

(a) Calculate the FTP fuel economy as follows:

(1) Calculate the weighted grams/mile values for the FTP test for CO_2, HC, and CO, and where applicable, CH_3OH, C_2H_5OH, C_2H_4O, HCHO, NMHC, N_2O and CH_4 as specified in § 86.144–94(b) of this chapter. Measure and record the

test fuel's properties as specified in paragraph (f) of this section.

(2) Calculate separately the grams/mile values for the cold transient phase, stabilized phase and hot transient phase of the FTP test. For vehicles with more than one source of propulsion energy, one of which is a rechargeable energy storage system, or vehicles with special features that the Administrator determines may have a rechargeable energy source, whose charge can vary during the test, calculate separately the grams/mile values for the cold transient phase, stabilized phase, hot transient phase and hot stabilized phase of the FTP test.

(b) Calculate the HFET fuel economy as follows:

(1) Calculate the mass values for the highway fuel economy test for HC, CO and CO_2, and where applicable, CH_3OH, C_2H_5OH, C_2H_4O, HCHO, NMHC, N_2O and CH_4 as specified in § 86.144–94(b) of this chapter. Measure and record the test fuel's properties as specified in paragraph (f) of this section.

(2) Calculate the grams/mile values for the highway fuel economy test for HC, CO and CO_2, and where applicable CH_3OH, C_2H_5OH, C_2H_4O, HCHO, NMHC, N_2O and CH_4 by dividing the mass values obtained in paragraph (b)(1) of this section, by the actual driving distance, measured in miles, as specified in § 86.135 of this chapter.

(c) Calculate the cold temperature FTP fuel economy as follows:

(1) Calculate the weighted grams/mile values for the cold temperature FTP test for HC, CO and CO_2, and where applicable, CH_3OH, C_2H_5OH, C_2H_4O, HCHO, NMHC, N_2O and CH_4 as specified in § 86.144–94(b) of this chapter. For 2008 through 2010 diesel-fueled vehicles, HC measurement is optional.

(2) Calculate separately the grams/mile values for the cold transient phase, stabilized phase and hot transient phase of the cold temperature FTP test in § 86.244 of this chapter.

(3) Measure and record the test fuel's properties as specified in paragraph (f) of this section.

(d) Calculate the US06 fuel economy as follows:

(1) Calculate the total grams/mile values for the US06 test for HC, CO and CO_2, and where applicable, CH_3OH, C_2H_5OH, C_2H_4O, HCHO, NMHC, N_2O and CH_4 as specified in § 86.144–94(b) of this chapter.

(2) Calculate separately the grams/mile values for HC, CO and CO_2, and where applicable, CH_3OH, C_2H_5OH, C_2H_4O, HCHO, NMHC, N_2O and CH_4, for both the US06 City phase and the US06 Highway phase of the US06 test as specified in § 86.164 of this chapter. In lieu of directly measuring the emissions of the separate city and highway phases of the US06 test according to the provisions of § 86.159 of this chapter, the manufacturer may, with the advance approval of the Administrator and using good engineering judgment, optionally analytically determine the grams/mile values for the city and highway phases of the US06 test. To analytically determine US06 City and US06 Highway phase emission results, the manufacturer shall multiply the US06 total grams/mile values determined in paragraph (d)(1) of this section by the estimated proportion of fuel use for the city and highway phases relative to the total US06 fuel use. The manufacturer may estimate the proportion of fuel use for the US06 City and US06 Highway phases by using modal CO_2, HC, and CO emissions data, or by using appropriate OBD data (*e.g.,* fuel flow rate in grams of fuel per second), or another method approved by the Administrator.

(3) Measure and record the test fuel's properties as specified in paragraph (f) of this section.

(e) Calculate the SC03 fuel economy as follows:

(1) Calculate the grams/mile values for the SC03 test for HC, CO and CO_2, and where applicable, CH_3OH, C_2H_5OH, C_2H_4O, HCHO, NMHC, N_2O and CH_4 as specified in § 86.144–94(b) of this chapter.

(2) Measure and record the test fuel's properties as specified in paragraph (f) of this section.

(f) Analyze and determine fuel properties as follows:

(1) Gasoline test fuel properties shall be determined by analysis of a fuel sample taken from the fuel supply. A sample shall be taken after each addition of fresh fuel to the fuel supply. Additionally, the fuel shall be resampled once a month to account for any fuel property changes during storage. Less frequent resampling may be permitted if EPA concludes, on the basis of manufacturer-supplied data, that the properties of test fuel in the manufacturer's storage facility will remain stable for a period longer than one month. The fuel samples shall be analyzed to determine the following fuel properties:

(i) Specific gravity measured using ASTM D 1298–99 (incorporated by reference in § 600.011).

(ii) Carbon weight fraction measured using ASTM D 3343–05 (incorporated by reference in § 600.011).

(iii) Net heating value (Btu/lb) determined using ASTM D 3338–09 (incorporated by reference in § 600.011).

(2) Methanol test fuel shall be analyzed to determine the following fuel properties:

(i) Specific gravity using either ASTM D 1298–99 (incorporated by reference in § 600.011) for the blend, or ASTM D 1298–99 (incorporated by reference at § 600.011) for the gasoline fuel component and also for the methanol fuel component and combining as follows.

$$SG = SGg \times \text{volume fraction gasoline} + SGm \times \text{volume fraction methanol.}$$

(ii)(A) Carbon weight fraction using the following equation:

$$CWF = CWFg \times MFg + 0.375 \times MFm$$

Where:

CWFg = Carbon weight fraction of gasoline portion of blend measured using ASTM D 3343–05 (incorporated by reference in § 600.011).

$MFg = \text{Mass fraction gasoline} = (G \times SGg)/(G \times SGg + M \times SGm)$

$MFm = \text{Mass fraction methanol} = (M \times SGm)/(G \times SGg + M \times SGm)$

Where:

G = Volume fraction gasoline.

M = Volume fraction methanol.

SGg = Specific gravity of gasoline as measured using ASTM D 1298–99 (incorporated by reference in § 600.011).

SGm = Specific gravity of methanol as measured using ASTM D 1298–99 (incorporated by reference in § 600.011).

(B) Upon the approval of the Administrator, other procedures to measure the carbon weight fraction of the fuel blend may be used if the manufacturer can show that the procedures are superior to or equally as accurate as those specified in this paragraph (f)(2)(ii).

(3) Natural gas test fuel shall be analyzed to determine the following fuel properties:

(i) Fuel composition measured using ASTM D 1945–03 (incorporated by reference in § 600.011).

(ii) Specific gravity measured as based on fuel composition per ASTM D 1945–03 (incorporated by reference in § 600.011).

(iii) Carbon weight fraction, based on the carbon contained only in the hydrocarbon constituents of the fuel. This equals the weight of carbon in the hydrocarbon constituents divided by the total weight of fuel.

(iv) Carbon weight fraction of the fuel, which equals the total weight of carbon in the fuel (*i.e.,* includes carbon contained in hydrocarbons and in CO_2) divided by the total weight of fuel.

(4) Ethanol test fuel shall be analyzed to determine the following fuel properties:

(i) Specific gravity using either ASTM D 1298–99 (incorporated by reference in § 600.011) for the blend, or ASTM D

1298–99 (incorporated by reference at § 600.011) for the gasoline fuel component and also for the methanol fuel component and combining as follows:

SG = SGg × volume fraction gasoline + SGm × volume fraction ethanol.

(ii)(A) Carbon weight fraction using the following equation:

CWF = CWFg × MFg + 0.521 × MFe

Where:

CWFg = Carbon weight fraction of gasoline portion of blend measured using ASTM D 3343–05 (incorporated by reference in § 600.011).

MFg = Mass fraction gasoline=(G × SGg)/(G × SGg + E × SGm)

MFe = Mass fraction ethanol=(E × SGm)/(G × SGg + E × SGm)

Where:

G = Volume fraction gasoline.

E = Volume fraction ethanol.

SGg = Specific gravity of gasoline as measured using ASTM D 1298–99 (incorporated by reference in § 600.011).

SGm = Specific gravity of ethanol as measured using ASTM D 1298–99 (incorporated by reference in § 600.011).

(B) Upon the approval of the Administrator, other procedures to measure the carbon weight fraction of the fuel blend may be used if the manufacturer can show that the procedures are superior to or equally as accurate as those specified in this paragraph (f)(4)(ii).

(g) Calculate separate FTP, highway, US06, SC03 and Cold temperature FTP fuel economy and carbon-related exhaust emissions from the grams/mile values for total HC, CO, CO_2 and, where applicable, CH_3OH, C_2H_5OH, C_2H_4O, HCHO, NMHC, N_2O, and CH_4, and the test fuel's specific gravity, carbon weight fraction, net heating value, and additionally for natural gas, the test fuel's composition.

(1) *Emission values for fuel economy calculations.* The emission values (obtained per paragraph (a) through (e) of this section, as applicable) used in the calculations of fuel economy in this section shall be rounded in accordance with § 86.1837 of this chapter. The CO_2 values (obtained per this section, as applicable) used in each calculation of fuel economy in this section shall be rounded to the nearest gram/mile.

(2) *Emission values for carbon-related exhaust emission calculations.* (i) If the emission values (obtained per paragraph (a) through (e) of this section, as applicable) were obtained from testing with aged exhaust emission control components as allowed under § 86.1823 of this chapter, then these test values shall be used in the calculations of carbon-related exhaust emissions in this section.

(ii) If the emission values (obtained per paragraph (a) through (e) of this section, as applicable) were not obtained from testing with aged exhaust emission control components as allowed under § 86.1823 of this chapter, then these test values shall be adjusted by the appropriate deterioration factor determined according to § 86.1823 of this chapter before being used in the calculations of carbon-related exhaust emissions in this section. For vehicles within a test group, the appropriate NMOG deterioration factor may be used in lieu of the deterioration factors for CH_3OH, C_2H_5OH, and/or C_2H_4O emissions.

(iii) The emission values determined in paragraph (g)(2)(i) or (ii) of this section shall be rounded in accordance with § 86.1837 of this chapter. The CO_2 values (obtained per this section, as applicable) used in each calculation of carbon-related exhaust emissions in this section shall be rounded to the nearest gram/mile.

(iv) For manufacturers complying with the fleet averaging option for N_2O and CH_4 as allowed under § 86.1818 of this chapter, N_2O and CH_4 emission values for use in the calculation of carbon-related exhaust emissions in this section shall be the values determined according to paragraph (g)(2)(iv)(A), (B), or (C) of this section.

(A) The FTP and HFET test values as determined for the emission data vehicle according to the provisions of § 86.1835 of this chapter. These values shall apply to all vehicles tested under this section that are included in the test group represented by the emission data vehicle and shall be adjusted by the appropriate deterioration factor determined according to § 86.1823 of this chapter before being used in the calculations of carbon-related exhaust emissions in this section, except that in-use test data shall not be adjusted by a deterioration factor.

(B) The FTP and HFET test values as determined according to testing conducted under the provisions of this subpart. These values shall be adjusted by the appropriate deterioration factor determined according to § 86.1823 of this chapter before being used in the calculations of carbon-related exhaust emissions in this section, except that in-use test data shall not be adjusted by a deterioration factor.

(C) For the 2012 through 2014 model years only, manufacturers may use an assigned value of 0.010 g/mi for N_2O FTP and HFET test values. This value is not required to be adjusted by a deterioration factor.

(3) The specific gravity and the carbon weight fraction (obtained per paragraph (f) of this section) shall be recorded using three places to the right of the decimal point. The net heating value (obtained per paragraph (f) of this section) shall be recorded to the nearest whole Btu/lb.

(4) For the purpose of determining the applicable in-use CO_2 exhaust emission standard under § 86.1818 of this chapter, the combined city/highway carbon-related exhaust emission value for a vehicle subconfiguration is calculated by arithmetically averaging the FTP-based city and HFET-based highway carbon-related exhaust emission values, as determined in § 600.113–12(a) and (b) of this section for the subconfiguration, weighted 0.55 and 0.45 respectively, and rounded to the nearest tenth of a gram per mile.

(h)(1) For gasoline-fueled automobiles tested on a test fuel specified in § 86.113 of this chapter, the fuel economy in miles per gallon is to be calculated using the following equation and rounded to the nearest 0.1 miles per gallon:

mpg = $(5174 \times 10^4 \times CWF \times SG)/[((CWF \times HC) + (0.429 \times CO) + (0.273 \times CO_2)) \times ((0.6 \times SG \times NHV) + 5471)]$

Where:

HC = Grams/mile HC as obtained in paragraph (g) of this section.

CO = Grams/mile CO as obtained in paragraph (g) of this section.

CO_2 = Grams/mile CO_2 as obtained in paragraph (g) of this section.

CWF = Carbon weight fraction of test fuel as obtained in paragraph (g) of this section.

NHV = Net heating value by mass of test fuel as obtained in paragraph (g) of this section.

SG = Specific gravity of test fuel as obtained in paragraph (g) of this section.

(2)(i) For 2012 and later model year gasoline-fueled automobiles tested on a test fuel specified in § 86.113 of this chapter, the carbon-related exhaust emissions in grams per mile is to be calculated using the following equation and rounded to the nearest 1 gram per mile:

CREE = $(CWF/0.273 \times HC) + (1.571 \times CO) + CO_2$

Where:

CREE means the carbon-related exhaust emissions as defined in § 600.002.

HC = Grams/mile HC as obtained in paragraph (g) of this section.

CO = Grams/mile CO as obtained in paragraph (g) of this section.

CO_2 = Grams/mile CO_2 as obtained in paragraph (g) of this section.

CWF = Carbon weight fraction of test fuel as obtained in paragraph (g) of this section.

(ii) For manufacturers complying with the fleet averaging option for N_2O and CH_4 as allowed under § 86.1818 of this chapter, the carbon-related exhaust

emissions in grams per mile for 2012 and later model year gasoline-fueled automobiles tested on a test fuel specified in § 86.113 of this chapter is to be calculated using the following equation and rounded to the nearest 1 gram per mile:

$CREE = [(CWF/0.273) \times NMHC] + (1.571 \times CO) + CO_2 + (298 \times N_2O) + (25 \times CH_4)$

Where:

CREE means the carbon-related exhaust emissions as defined in § 600.002–08.
NMHC = Grams/mile NMHC as obtained in paragraph (g) of this section.
CO = Grams/mile CO as obtained in paragraph (g) of this section.
CO_2 = Grams/mile CO_2 as obtained in paragraph (g) of this section.
N_2O = Grams/mile N_2O as obtained in paragraph (g) of this section.
CH_4 = Grams/mile CH_4 as obtained in paragraph (g) of this section.
CWF = Carbon weight fraction of test fuel as obtained in paragraph (g) of this section.

(i)(1) For diesel-fueled automobiles, calculate the fuel economy in miles per gallon of diesel fuel by dividing 2,778 by the sum of three terms and rounding the quotient to the nearest 0.1 mile per gallon:

(i)(A) 0.866 multiplied by HC (in grams/miles as obtained in paragraph (g) of this section), or

(B) Zero, in the case of cold FTP diesel tests for which HC was not collected, as permitted in § 600.113–08(c);

(ii) 0.429 multiplied by CO (in grams/mile as obtained in paragraph (g) of this section); and

(iii) 0.273 multiplied by CO_2 (in grams/mile as obtained in paragraph (g) of this section).

(2)(i) For 2012 and later model year diesel-fueled automobiles, the carbon-related exhaust emissions in grams per mile is to be calculated using the following equation and rounded to the nearest 1 gram per mile:

$CREE = (3.172 \times HC) + (1.571 \times CO) + CO_2$

Where:

CREE means the carbon-related exhaust emissions as defined in § 600.002–08.
HC = Grams/mile HC as obtained in paragraph (g) of this section.
CO = Grams/mile CO as obtained in paragraph (g) of this section.
CO_2 = Grams/mile CO_2 as obtained in paragraph (g) of this section.

(ii) For manufacturers complying with the fleet averaging option for N_2O and CH_4 as allowed under § 86.1818 of this chapter, the carbon-related exhaust emissions in grams per mile for 2012 and later model year diesel-fueled automobiles is to be calculated using the following equation and rounded to the nearest 1 gram per mile:

$CREE = (3.172 \times NMHC) + (1.571 \times CO) + CO_2 + (298 \times N_2O) + (25 \times CH_4)$

Where:

CREE means the carbon-related exhaust emissions as defined in § 600.002–08.
NMHC = Grams/mile NMHC as obtained in paragraph (g) of this section.
CO = Grams/mile CO as obtained in paragraph (g) of this section.
CO_2 = Grams/mile CO_2 as obtained in paragraph (g) of this section.
N_2O= Grams/mile N_2O as obtained in paragraph (g) of this section.
CH_4 = Grams/mile CH_4 as obtained in paragraph (g) of this section.

(j)(1) For methanol-fueled automobiles and automobiles designed to operate on mixtures of gasoline and methanol, the fuel economy in miles per gallon is to be calculated using the following equation:

$mpg = (CWF \times SG \times 3781.8)/((CWF_{exHC} \times HC) + (0.429 \times CO) + (0.273 \times CO_2) + (0.375 \times CH_3OH) + (0.400 \times HCHO))$

Where:

CWF = Carbon weight fraction of the fuel as determined in paragraph (f)(2)(ii) of this section.
SG = Specific gravity of the fuel as determined in paragraph (f)(2)(i) of this section.
CWF_{exHC} = Carbon weight fraction of exhaust hydrocarbons = CWF as determined in paragraph (f)(2)(ii) of this section (for M100 fuel, $CWF_{exHC} = 0.866$).
HC = Grams/mile HC as obtained in paragraph (g) of this section.
CO = Grams/mile CO as obtained in paragraph (g) of this section.
CO_2 = Grams/mile CO_2 as obtained in paragraph (g) of this section.
CH_3OH = Grams/mile CH_3OH (methanol) as obtained in paragraph (d) of this section.
HCHO = Grams/mile HCHO (formaldehyde) as obtained in paragraph (g) of this section.

(2)(i) For 2012 and later model year methanol-fueled automobiles and automobiles designed to operate on mixtures of gasoline and methanol, the carbon-related exhaust emissions in grams per mile is to be calculated using the following equation and rounded to the nearest 1 gram per mile:

$CREE = (CWF_{exHC}/0.273 \times HC) + (1.571 \times CO) + (1.374 \times CH_3OH) + (1.466 \times HCHO) + CO_2$

Where:

CREE means the carbon-related exhaust emission value as defined in § 600.002–08.
CWF_{exHC} = Carbon weight fraction of exhaust hydrocarbons = CWF as determined in paragraph (f)(2)(ii) of this section (for M100 fuel, $CWF_{exHC} = 0.866$).
HC = Grams/mile HC as obtained in paragraph (g) of this section.
CO = Grams/mile CO as obtained in paragraph (g) of this section.
CO_2 = Grams/mile CO_2 as obtained in paragraph (g) of this section.
CH_3OH = Grams/mile CH_3OH (methanol) as obtained in paragraph (d) of this section.
HCHO = Grams/mile HCHO (formaldehyde) as obtained in paragraph (g) of this section.

(ii) For manufacturers complying with the fleet averaging option for N_2O and CH_4 as allowed under § 86.1818 of this chapter, the carbon-related exhaust emissions in grams per mile for 2012 and later model year methanol-fueled automobiles and automobiles designed to operate on mixtures of gasoline and methanol is to be calculated using the following equation and rounded to the nearest 1 gram per mile:

$CREE = [(CWF_{exHC}/0.273) \times NMHC] + (1.571 \times CO) + (1.374 \times CH_3OH) + (1.466 \times HCHO) + CO_2 + (298 \times N_2O) + (25 \times CH_4)$

Where:

CREE means the carbon-related exhaust emissions as defined in § 600.002–08.
CWF_{exHC} = Carbon weight fraction of exhaust hydrocarbons = CWF as determined in paragraph (f)(2)(ii) of this section (for M100 fuel, $CWF_{exHC} = 0.866$).
HC = Grams/mile HC as obtained in paragraph (g) of this section.
CO = Grams/mile CO as obtained in paragraph (g) of this section.
CO_2 = Grams/mile CO_2 as obtained in paragraph (g) of this section.
CH_3OH = Grams/mile CH_3OH (methanol) as obtained in paragraph (d) of this section.
HCHO = Grams/mile HCHO (formaldehyde) as obtained in paragraph (g) of this section.
N_2O= Grams/mile N_2O as obtained in paragraph (g) of this section.
CH_4 = Grams/mile CH_4 as obtained in paragraph (g) of this section.

(k)(1) For automobiles fueled with natural gas, the fuel economy in miles per gallon of natural gas is to be calculated using the following equation:

$$mpg_e = \frac{CWF_{HC/NG} \times D_{NG} \times 121.5}{(0.749 \times CH_4) + (CWF_{NMHC} \times NMHC) + (0.429 \times CO) + (0.273 \times (CO_2 - CO_{2NG}))}$$

Where:

mpg_e = miles per gasoline gallon equivalent of natural gas.

$CWF_{HC/NG}$ = carbon weight fraction based on the hydrocarbon constituents in the natural gas fuel as obtained in paragraph (g) of this section

D_{NG} = density of the natural gas fuel [grams/ft^3 at 68 °F (20 °C) and 760 mm Hg (101.3 kPa)] pressure as obtained in paragraph (g) of this section.

CH_4, NMHC, CO, and CO_2 = weighted mass exhaust emissions [grams/mile] for methane, non-methane HC, carbon monoxide, and carbon dioxide as calculated in § 600.113.

CWF_{NMHC} = carbon weight fraction of the non-methane HC constituents in the fuel as determined from the speciated fuel composition per paragraph (f)(3) of this section.

CO_{2NG} = grams of carbon dioxide in the natural gas fuel consumed per mile of travel.

$$CO_{2NG} = FC_{NG} \times D_{NG} \times WF_{CO2}$$

Where:

$$FC_{NG} = \frac{(0.749 \times CH_4) + (CWF_{NMHC} \times NMHC) + (0.429 \times CO) + (0.273 \times CO_2)}{CWF_{NG} \times D_{NG}}$$

= cubic feet of natural gas fuel consumed per mile

Where:

CWF_{NG} = the carbon weight fraction of the natural gas fuel as calculated in paragraph (f) of this section.

WF_{CO2} = weight fraction carbon dioxide of the natural gas fuel calculated using the mole fractions and molecular weights of the natural gas fuel constituents per ASTM D 1945–03 (incorporated by reference in § 600.011).

(2)(i) For automobiles fueled with natural gas, the carbon-related exhaust emissions in grams per mile is to be calculated for 2012 and later model year vehicles using the following equation and rounded to the nearest 1 gram per mile:

$$CREE = 2.743 \times CH_4 + CWF_{NMHC}/0.273 \times NMHC + 1.571 \times CO + CO_2$$

Where:

CREE means the carbon-related exhaust emission value as defined in § 600.002–08.

CH_4 = Grams/mile CH_4 as obtained in paragraph (g) of this section.

NMHC = Grams/mile NMHC as obtained in paragraph (g) of this section.

CO = Grams/mile CO as obtained in paragraph (g) of this section.

CO_2 = Grams/mile CO_2 as obtained in paragraph (g) of this section.

CWF_{NMHC} = carbon weight fraction of the non-methane HC constituents in the fuel as determined from the speciated fuel composition per paragraph (f)(3) of this section.

(ii) For manufacturers complying with the fleet averaging option for N_2O and CH_4 as allowed under § 86.1818 of this chapter, the carbon-related exhaust emissions in grams per mile for 2012 and later model year automobiles fueled with natural gas is to be calculated using the following equation and rounded to the nearest 1 gram per mile:

$$CREE = (25 \times CH_4) + [(CWF_{NMHC}/0.273) \times NMHC] + (1.571 \times CO) + CO_2 + (298 \times N_2O)$$

Where:

CREE means the carbon-related exhaust emission value as defined in § 600.002–08.

CH_4 = Grams/mile CH_4 as obtained in paragraph (g) of this section.

NMHC = Grams/mile NMHC as obtained in paragraph (g) of this section.

CO = Grams/mile CO as obtained in paragraph (g) of this section.

CO_2 = Grams/mile CO_2 as obtained in paragraph (g) of this section.

CWF_{NMHC} = carbon weight fraction of the non-methane HC constituents in the fuel as determined from the speciated fuel composition per paragraph (f)(3) of this section.

N_2O = Grams/mile N_2O as obtained in paragraph (g) of this section.

(l)(1) For ethanol-fueled automobiles and automobiles designed to operate on mixtures of gasoline and ethanol, the fuel economy in miles per gallon is to be calculated using the following equation:

$$mpg = (CWF \times SG \times 3781.8)/((CWF_{exHC} \times HC) + (0.429 \times CO) + (0.273 \times CO_2) + (0.375 \times CH_3OH) + (0.400 \times HCHO) + (0.521 \times C_2H_5OH) + (0.545 \times C_2H_4O))$$

Where:

CWF = Carbon weight fraction of the fuel as determined in paragraph (f)(4) of this section.

SG = Specific gravity of the fuel as determined in paragraph (f)(4) of this section.

CWF_{exHC} = Carbon weight fraction of exhaust hydrocarbons = CWF as determined in paragraph (f)(4) of this section.

HC = Grams/mile HC as obtained in paragraph (g) of this section.

CO = Grams/mile CO as obtained in paragraph (g) of this section.

CO_2= Grams/mile CO_2 as obtained in paragraph (g) of this section.

CH_3OH = Grams/mile CH_3OH (methanol) as obtained in paragraph (d) of this section.

HCHO = Grams/mile HCHO (formaldehyde) as obtained in paragraph (g) of this section.

C_2H_5OH = (ethanol) as obtained in paragraph (d) of this section.

C_2H_4O = Grams/mile C_2H_4O (acetaldehyde) as obtained in paragraph (d) of this section.

(2)(i) For 2012 and later model year methanol-fueled automobiles and automobiles designed to operate on mixtures of gasoline and methanol, the carbon-related exhaust emissions in grams per mile is to be calculated using the following equation and rounded to the nearest 1 gram per mile:

$$CREE = (CWF_{exHC}/0.273 \times HC) + (1.571 \times CO) + (1.374 \times CH_3OH) + (1.466 \times HCHO) + (1.911 \times C_2H_5OH) + (1.998 \times C_2H_4O) + CO_2$$

Where:

CREE means the carbon-related exhaust emission value as defined in § 600.002–08.

CWF_{exHC} = Carbon weight fraction of exhaust hydrocarbons = CWF as determined in paragraph (f)(4) of this section.

HC = Grams/mile HC as obtained in paragraph (g) of this section.

CO = Grams/mile CO as obtained in paragraph (g) of this section.

CO_2 = Grams/mile CO_2 as obtained in paragraph (g) of this section.

CH_3OH = Grams/mile CH_3OH (methanol) as obtained in paragraph (d) of this section.

HCHO = Grams/mile HCHO (formaldehyde) as obtained in paragraph (g) of this section.

C_2H_5OH = Grams/mile C_2H_5OH (ethanol) as obtained in paragraph (d) of this section.

C_2H_4O = Grams/mile C_2H_4O (acetaldehyde) as obtained in paragraph (d) of this section.

(ii) For manufacturers complying with the fleet averaging option for N_2O and CH_4 as allowed under § 86.1818 of this chapter, the carbon-related exhaust emissions in grams per mile for 2012 and later model year methanol-fueled automobiles and automobiles designed to operate on mixtures of gasoline and methanol is to be calculated using the following equation and rounded to the nearest 1 gram per mile:

$$CREE = [(CWF_{exHC}/0.273) \times NMHC] + (1.571 \times CO) + (1.374 \times CH_3OH) + (1.466 \times HCHO) + (1.911 \times C_2H_5OH) + (1.998 \times C_2H_4O) + CO_2 + (298 \times N_2O) + (25 \times CH_4)$$

Where:

CREE means the carbon-related exhaust emission value as defined in § 600.002–08.

CWF_{exHC} = Carbon weight fraction of exhaust hydrocarbons = CWF as determined in paragraph (f)(4) of this section.

NMHC = Grams/mile HC as obtained in paragraph (g) of this section.

CO = Grams/mile CO as obtained in paragraph (g) of this section.

CO_2 = Grams/mile CO_2 as obtained in paragraph (g) of this section.
CH_3OH = Grams/mile CH_3OH (methanol) as obtained in paragraph (d) of this section.
HCHO = Grams/mile HCHO (formaldehyde) as obtained in paragraph (g) of this section.
C_2H_5OH = Grams/mile C_2H_5OH (ethanol) as obtained in paragraph (d) of this section.
C_2H_4O = Grams/mile C_2H_4O (acetaldehyde) as obtained in paragraph (d) of this section.
N_2O = Grams/mile N_2O as obtained in paragraph (g) of this section.
CH_4 = Grams/mile CH_4 as obtained in paragraph (g) of this section.

(m) Manufacturers shall determine CO_2 emissions and carbon-related exhaust emissions for electric vehicles, fuel cell vehicles, and plug-in hybrid electric vehicles according to the provisions of this paragraph (m). Subject to the limitations on the number of vehicles produced and delivered for sale as described in § 86.1866 of this chapter, the manufacturer may be allowed to use a value of 0 grams/mile to represent the emissions of fuel cell vehicles and the proportion of electric operation of electric vehicles and plug-in hybrid electric vehicles that is derived from electricity that is generated from sources that are not onboard the vehicle, as described in paragraphs (m)(1) through (3) of this section. For purposes of labeling under this part, the CO_2 emissions for electric vehicles shall be 0 grams per mile. Similarly, the CO_2 emissions for plug-in hybrid electric vehicles shall be 0 grams per mile for the proportion of electric operation that is derived from electricity that is generated from sources that are not onboard the vehicle.

(1) For 2012 and later model year electric vehicles, but not including fuel cell vehicles, the carbon-related exhaust emissions in grams per mile is to be calculated using the following equation and rounded to the nearest one gram per mile:

$$CREE = CREE_{UP} - CREE_{GAS}$$

Where:

CREE means the carbon-related exhaust emission value as defined in § 600.002, which may be set equal to zero for eligible 2012 through 2016 model year electric vehicles for a certain number of vehicles produced and delivered for sale as described in § 86.1866–12(a) of this chapter.

$CREE_{UP} = 0.7670 \times EC$, and

$CREE_{GAS} = 0.2485 \times TargetCO_2$,

Where:

EC = The vehicle energy consumption in watt-hours per mile, determined according to procedures established by the Administrator under § 600.111–08(f).

$TargetCO_2$ = The CO_2 Target Value determined according to § 86.1818 of this chapter for passenger automobiles and light trucks, respectively.

(2) For 2012 and later model year plug-in hybrid electric vehicles, the carbon-related exhaust emissions in grams per mile is to be calculated using the following equation and rounded to the nearest one gram per mile:

$$CREE = CREE_{CD} + CREE_{CS},$$

Where:

CREE means the carbon-related exhaust emission value as defined in § 600.002–08.

$CREE_{CS}$ = The carbon-related exhaust emissions determined for charge-sustaining operation according to procedures established by the Administrator under § 600.111–08(f); and

$$CREE_{CD} = (ECF \times CREE_{CDEC}) + [(1 - ECF) \times CREE_{CDGAS}]$$

Where:

$CREE_{CD}$ = The carbon-related exhaust emissions determined for charge-depleting operation determined according to the provisions of this section for the applicable fuel and according to procedures established by the Administrator under § 600.111–08(f);

$CREE_{CDEC}$ = The carbon-related exhaust emissions determined for electricity consumption during charge-depleting operation, which shall be determined using the method specified in paragraph (m)(1) of this section and according to procedures established by the Administrator under § 600.111–08(f), and which may be set equal to zero for a certain number of 2012 through 2016 model year vehicles produced and delivered for sale as described in § 86.1866 of this chapter;

$CREE_{CDGAS}$ = The carbon-related exhaust emissions determined for charge-depleting operation determined according to the provisions of this section for the applicable fuel and according to procedures established by the Administrator under § 600.111–08(f); and

ECF = Electricity consumption factor as determined by the Administrator under § 600.111–08(f).

(3) For 2012 and later model year fuel cell vehicles, the carbon-related exhaust emissions in grams per mile shall be calculated using the method specified in paragraph (m)(1) of this section, except that $CREE_{UP}$ shall be determined according to procedures established by the Administrator under § 600.111–08(f). As described in § 86.1866 of this chapter the value of CREE may be set equal to zero for a certain number of 2012 through 2016 model year fuel cell vehicles.

(n) Equations for fuels other than those specified in paragraphs (h) through (l) of this section may be used with advance EPA approval. Alternate calculation methods for fuel economy and carbon-related exhaust emissions may be used in lieu of the methods described in this section if shown to yield equivalent or superior results and if approved in advance by the Administrator.

33. A new § 600.114–12 is added to read as follows:

§ 600.114–12 Vehicle-specific 5-cycle fuel economy and carbon-related exhaust emission calculations.

Paragraphs (a) through (c) of this section apply to data used for fuel economy labeling under subpart D of this part. Paragraphs (d) through (f) of this section are used to calculate 5-cycle CO_2 and carbon-related exhaust emission values for the purpose of determining optional credits for CO_2-reducing technologies under § 86.1866 of this chapter.

(a) *City fuel economy.* For each vehicle tested under § 600.010(c)(i) and (ii), determine the 5-cycle city fuel economy using the following equation:

$$(1)\ CityFE = 0.905 \times \frac{1}{Start\ FC + Running\ FC}$$

Where:

$$(i)\ StartFC(gallonspermile) = 0.33 \times \left(\frac{(0.76 \times StartFuel_{75} + 0.24 \times StartFuel_{20})}{4.1} \right)$$

Where:

$$\text{Start Fuel}_x = 3.6 \times \left(\frac{1}{\text{Bag 1 FE}_x} - \frac{1}{\text{Bag 3 FE}_x} \right)$$

Where:

Bag Y FE_X = the fuel economy in miles per gallon of fuel during the specified bag of the FTP test conducted at an ambient temperature of 75 °F or 20 °F, and,

$$\text{(ii) } RunningFC = 0.82 \times \left[\frac{0.48}{Bag2_{75}FE} + \frac{0.41}{Bag3_{75}FE} + \frac{0.11}{US06CityFE} \right] + 0.18 \times \left[\frac{0.5}{Bag2_{75}FE} + \frac{0.5}{Bag3_{20}FE} \right]$$
$$+ 0.133 \times 1.083 \times \left[\frac{1}{SC03FE} - \left(\frac{0.61}{Bag3_{75}FE} + \frac{0.39}{Bag2_{75}} \right) \right]$$

Where:

US06 City FE = fuel economy in miles per gallon over the "city" portion of the US06 test,

HFET FE = fuel economy in miles per gallon over the HFET test,

SC03 FE = fuel economy in miles per gallon over the SC03 test.

(b) *Highway fuel economy.* (1) For each vehicle tested under § 600.010–08(a) and (c)(1)(ii)(B), determine the 5-cycle highway fuel economy using the following equation:

$$\text{Highway FE} = 0.905 \times \frac{1}{\text{Start FC} + \text{Running FC}}$$

Where:

$$\text{(i) } StartFC = 0.33 \times \left(\frac{(0.76 \times StartFuel_{75}) + (0.24 \times StartFuel_{20})}{60} \right)$$

Where:

$$\text{Start Fuel}_x = 3.6 \times \left(\frac{1}{\text{Bag 1 FE}_x} - \frac{1}{\text{Bag 3 FE}_x} \right)$$

and,

$$\text{(ii) } RunningFC = 1.007 \times \left[\frac{0.79}{US06HighwayFE} + \frac{0.21}{HFETFE} \right] + 0.133 \times 0.377 \times \left[\frac{1}{SC03FE} - \left(\frac{0.61}{Bag3_{75}FE} + \frac{0.39}{Bag2_{75}FE} \right) \right]$$

Where:

US06 Highway FE = fuel economy in mile per gallon over the highway portion of the US06 test,

HFET FE = fuel economy in mile per gallon over the HFET test,

SC03 FE = fuel economy in mile per gallon over the SC03 test.

(2) If the condition specified in § 600.115–08(b)(2)(iii)(B) is met, in lieu of using the calculation in paragraph (b)(1) of this section, the manufacturer may optionally determine the highway fuel economy using the following modified 5-cycle equation which utilizes data from FTP, HFET, and US06 tests, and applies mathematic adjustments for Cold FTP and SC03 conditions:

(i) Perform a US06 test in addition to the FTP and HFET tests.

(ii) Determine the 5-cycle highway fuel economy according to the following formula:

$$\text{Highway FE} = 0.905 \times \frac{1}{\text{Start FC} + \text{Running FC}}$$

Where:

$$\text{(A) } StartFC = 0.33 \times \frac{\left(0.005515 + 1.13637 \times StartFuel_{75}\right)}{60}$$

Where:

$$StartFuel_{75} = 3.6 \times \left(\frac{1}{Bag\ 1\ FE_{75}} - \frac{1}{Bag\ 3\ FE_{75}} \right)$$

Bag y FE_{75} = the fuel economy in miles per gallon of fuel during the specified bag of the FTP test conducted at an ambient temperature of 75 °F.

(B)

$$\text{(B) } RunningFC = 1.007 \times \left[\frac{0.79}{US06HighwayFE} + \frac{0.21}{HFETFE} \right] + \left[0.377 \times 0.133 \times \left(0.00540 + \frac{0.1357}{US06FE} \right) \right]$$

Where:

US06 Highway FE = fuel economy in miles per gallon over the highway portion of the US06 test.

HFET FE = fuel economy in miles per gallon over the HFET test.

US06 FE = fuel economy in miles per gallon over the entire US06 test.

(c) *Fuel economy calculations for hybrid electric vehicles.* Under the requirements of § 86.1811, hybrid electric vehicles are subject to California test methods which require FTP emission sampling for the 75 °F FTP test over four phases (bags) of the UDDS (cold-start, transient, warm-start, transient). Optionally, these four phases may be combined into two phases (phases 1 + 2 and phases 3 + 4). Calculations for these sampling methods follow.

(1) *Four-bag FTP equations.* If the 4-bag sampling method is used, manufacturers may use the equations in paragraphs (a) and (b) of this section to determine city and highway fuel economy estimates. If this method is chosen, it must be used to determine both city and highway fuel economy. Optionally, the following calculations may be used, provided that they are used to determine both city and highway fuel economy:

(i) *City fuel economy.*

$$\text{City FE} = 0.905 \times \frac{1}{(\text{Start FC} + \text{Running FC})}$$

Where:

$$\text{(A) } StartFC(gallonspermile) = 0.33 \times \left(\frac{\left(0.76 \times StartFuel_{75} + 0.24 \times StartFuel_{20}\right)}{4.1} \right)$$

Where:

$$\textit{(1) } StartFuel_{75} = 3.6 \times \left[\frac{1}{Bag1FE_{75}} - \frac{1}{Bag3FE_{75}} \right] + 3.9 \times \left[\frac{1}{Bag2FE_{75}} - \frac{1}{Bag4FE_{75}} \right]$$

and

$$\textit{(2) } StartFuel20 = 3.6 \times \left[\frac{1}{Bag1FE_{20}} - \frac{1}{Bag3FE_{20}} \right]$$

$$\text{(B) } RunningFC(gallonspermile) = 0.82\times\left[\frac{0.48}{Bag4_{75}FE}+\frac{0.41}{Bag3_{75}FE}+\frac{0.11}{US06CityFE}\right]+0.18\times\left[\frac{0.5}{Bag2_{20}FE}+\frac{0.5}{Bag3_{20}FE}\right]$$

$$+\ 0.133\times1.083\times\left[\frac{1}{SC03FE}-\left(\frac{0.61}{Bag3_{75}FE}+\frac{0.39}{Bag4_{75}FE}\right)\right]$$

Where:

$Bag Y_X FE$ = the fuel economy in miles per gallon of fuel during the specified bag Y of the FTP test conducted at an ambient temperature X of 75 °F or 20 °F.

US06 City FE = fuel economy in miles per gallon over the city portion of the US06 test.

SC03 FE = fuel economy in miles per gallon over the SC03 test.

(ii) *Highway fuel economy.*

$$\text{Highway FE} = 0.905\times\frac{1}{\text{Start FC} + \text{Running FC}}$$

Where:

$$\text{(A) } StartFC = 0.33\times\left(\frac{(0.76\times StartFuel_{75})+(0.24\times StartFuel_{20})}{60}\right)$$

Where:

$$\text{Start Fuel}_{75} = 3.6\times\left[\frac{1}{\text{Bag 1 FE}_{75}}-\frac{1}{\text{Bag 3 FE}_{75}}\right]+3.9\times\left[\frac{1}{\text{Bag 2 FE}_{75}}-\frac{1}{\text{Bag 4 FE}_{75}}\right]$$

$$\text{Start Fuel}_{20} = 3.6\times\left[\frac{1}{\text{Bag 1 FE}_{20}}-\frac{1}{\text{Bag 3 FE}_{20}}\right]$$

$$\text{(B) } RunningFC = 1.007\times\left[\frac{0.79}{US06HighwayFE}+\frac{0.21}{HFETFE}\right]+0.133\times1.083\times\left[\frac{1}{SC03FE}-\left(\frac{0.61}{Bag3_{75}FE}+\frac{0.39}{Bag4_{75}FE}\right)\right]$$

Where:

US06 Highway FE = fuel economy in miles per gallon over the Highway portion of the US06 test.

HFET FE = fuel economy in miles per gallon over the HFET test.

SC03 FE = fuel economy in miles per gallon over the SC03 test.

(2) *Two-bag FTP equations.* If the 2-bag sampling method is used for the 75 °F FTP test, it must be used to determine both city and highway fuel economy. The following calculations must be used to determine both city and highway fuel economy:

(i) *City fuel economy.*

$$\text{CityFE} = 0.905\times\frac{1}{\text{Start FC} + \text{Running FC}}$$

Where:

$$\text{(A) } StartFC = 0.33\times\left(\frac{(0.76\times StartFuel_{75})+(0.24\times StartFuel_{20})}{4.1}\right)$$

Where:

$$\text{Start Fuel}_{75} = 7.5\times\left[\frac{1}{\text{Bag 1/2 FE}_{75}}-\frac{1}{\text{Bag 3/4 FE}_{75}}\right]$$

$$\text{Start Fuel}_{20} = 3.6 \times \left[\frac{1}{\text{Bag 1 FE}_{20}} - \frac{1}{\text{Bag 3 FE}_{20}} \right]$$

Where:

Bag y FE_{20}= the fuel economy in miles per gallon of fuel during Bag 1 or Bag 3 of the 20 °F FTP test.

Bag x/y FE_X= fuel economy in miles per gallon of fuel during combined phases 1 and 2 or phases 3 and 4 of the FTP test conducted at an ambient temperature of 75 °F.

$$\text{(B) } RunningFC = 0.82 \times \left[\frac{0.90}{Bag3/4_{75}FE} + \frac{0.10}{US06CityFE} \right] + 0.18 \times \left[\frac{0.5}{Bag2_{20}FE} + \frac{0.5}{Bag3_{20}FE} \right] + 0.133 \times 1.083 \times \left[\frac{1}{SC03FE} - \left(\frac{1.0}{Bag3/4_{75}FE} \right) \right]$$

Where:

US06 City FE = fuel economy in miles per gallon over the city portion of the US06 test,

SC03 FE = fuel economy in miles per gallon over the SC03 test.

Bag x/y FE_X= fuel economy in miles per gallon of fuel during combined phases 1 and 2 or phases 3 and 4 of the FTP test conducted at an ambient temperature of 75 °F.

(ii) *Highway fuel economy.*

$$\text{HighwayFE} = 0.905 \times \frac{1}{\text{Start FC} + \text{Running FC}}$$

Where:

$$\text{(A) } StartFC = 0.33 \times \left(\frac{(0.76 \times StartFuel_{75}) + (0.24 \times StartFuel_{20})}{60} \right)$$

Where:

$$\text{Start Fuel}_{75} = 7.5 \times \left[\frac{1}{\text{Bag 1/2 FE}_{75}} - \frac{1}{\text{Bag 3/4 FE}_{75}} \right]$$

and

$$\text{Start Fuel}_{20} = 3.6 \times \left[\frac{1}{\text{Bag 1 FE}_{20}} - \frac{1}{\text{Bag 3 FE}_{20}} \right]$$

and

$$\text{(B) } RunningFC = 1.007 \times \left[\frac{0.79}{US06HighwayFE} + \frac{0.21}{HFETFE} \right] + 0.133 \times 1.083 \times \left[\frac{1}{SC03FE} - \left(\frac{1.0}{Bag3/4_{75}FE} \right) \right]$$

Where:

US06 Highway FE = fuel economy in miles per gallon over the city portion of the US06 test,

SC03 FE = fuel economy in miles per gallon over the SC03 test.

Bag y FE_{20}= the fuel economy in miles per gallon of fuel during Bag 1 or Bag 3 of the 20 °F FTP test.

Bag x/y FE_X= fuel economy in miles per gallon of fuel during phases 1 and 2 or phases 3 and 4 of the FTP test conducted at an ambient temperature of 75 °F.

(3) For hybrid electric vehicles using the modified 5-cycle highway calculation in paragraph (b)(2) of this section, the equation in paragraph (b)(2)(ii)(A) of this section, applies except that the equation for Start $Fuel_{75}$ will be replaced with one of the following:

(i) The equation for Start $Fuel_{75}$ for hybrids tested according to the 4-bag FTP is:

$$\text{Start Fuel}_{75} = 3.6 \times \left[\frac{1}{\text{Bag 1 FE 75}_{75}} - \frac{1}{\text{Bag 3 FE}_{75}} \right] + 3.9 \times \left[\frac{1}{\text{Bag 2 FE}_{75}} - \frac{1}{\text{Bag 4 FE}_{75}} \right]$$

(ii) The equation for Start $Fuel_{75}$ for hybrids tested according to the 2-bag FTP is:

$$\text{Start Fuel}_{75} = 7.5 \times \left[\frac{1}{\text{Bag 1/2 FE}_{75}} - \frac{1}{\text{Bag 3/4 FE}_{75}} \right]$$

(d) *City CO_2 emissions and carbon-related exhaust emissions.* For each vehicle tested, determine the 5-cycle city CO_2 emissions and carbon-related exhaust emissions using the following equation:

(1) CityCREE = 0.905 × (StartCREE + RunningCREE)

Where:

(i) StartCREE =

$$0.33 \times \left(\frac{(0.76 \times \text{StartCREE}_{75} + 0.24 \times \text{StartCREE}_{20})}{4.1} \right)$$

Where:

Start $CREE_X$ = 3.6 × (Bag 1 $CREE_X$ − Bag 3 $CREE_X$)

Where:

Bag Y $CREE_X$ = the carbon-related exhaust emissions in grams per mile during the specified bag of the FTP test conducted at an ambient temperature of 75 °F or 20 °F.

(ii) Running CREE = 0.82 × [(0.48 × $Bag2_{75}$CREE) + (0.41 × $Bag3_{75}$CREE) + (0.11 × US06 City CREE)] + 0.18 × [(0.5 × $Bag2_{20}$CREE) + (0.5 × $Bag3_{20}$CREE)] + 0.144 × [SC03 CREE − ((0.61 × $Bag3_{75}$CREE) + (0.39 × $Bag2_{75}$CREE))]

Where:

$BagY_X$CREE = carbon-related exhaust emissions in grams per mile over Bag Y at temperature X.

US06 City CREE = carbon-related exhaust emissions in grams per mile over the "city" portion of the US06 test.

SC03 CREE = carbon-related exhaust emissions in grams per mile over the SC03 test.

(2) To determine the City CO_2 emissions, use the appropriate CO_2 grams/mile values instead of CREE values in the equations in paragraph (d)(1) of this section.

(e) *Highway CO_2 emissions and carbon-related exhaust emissions.* For each vehicle tested, determine the 5-cycle highway carbon-related exhaust emissions using the following equation:

HighwayCREE = 0.905 × (StartCREE + RunningCREE)

Where:

(1) StartCREE =

$$= 0.33 \times \left(\frac{(0.76 \times \text{StartCREE}_{75} + 0.24 \times \text{StartCREE}_{20})}{60} \right)$$

Where:

Start $CREE_X$ = 3.6 × (Bag1 $CREE_X$ − Bag3 $CREE_X$)

(2) Running CREE = 1.007 × [(0.79 × *US06 HighwayCREE*) + (0.21 × *HFETCREE*)] + 0.045 × [*SC03CREE* − ((0.61 × $Bag3_{75}$CREE) + (0.39 × *$Bag2_{75}$CREE*))]

Where:

$BagY_X$CREE = carbon-related exhaust emissions in grams per mile over Bag Y at temperature X,

US06 Highway CREE = carbon-related exhaust emissions in grams per mile over the highway portion of the US06 test,

HFET CREE = carbon-related exhaust emissions in grams per mile over the HFET test,

SC03 CREE = carbon-related exhaust emissions in grams per mile over the SC03 test.

(3) To deterine the Highway CO_2 emissions, use the appropriate CO_2 grams/mile values instead of CREE values in the equations in paragraphs (e)(1) and (2) of this section.

(f) *CO_2 and carbon-related exhaust emissions calculations for hybrid electric vehicles.* Hybrid electric vehicles shall be tested according to California test methods which require FTP emission sampling for the 75 °F FTP test over four phases (bags) of the UDDS (cold-start, transient, warm-start, transient). Optionally, these four phases may be combined into two phases (phases 1 + 2 and phases 3 + 4). Calculations for these sampling methods follow.

(1) *Four-bag FTP equations.* If the 4-bag sampling method is used, manufacturers may use the equations in paragraphs (a) and (b) of this section to determine city and highway CO_2 and carbon-related exhaust emissions values. If this method is chosen, it must be used to determine both city and highway CO_2 emissions and carbon-related exhaust emissions. Optionally, the following calculations may be used, provided that they are used to determine both city and highway CO_2 and carbon-related exhaust emissions values:

(i) *City CO_2 emissions and carbon-related exhaust emissions.*

CityCREE = 0.905 × (StartCREE + RunningCREE)

Where:

(A) StartCREE =

$$0.33\times\left(\frac{(0.76\times\text{StartCREE}_{75}+0.24\times\text{StartCREE}_{20})}{4.1}\right)$$

Where:

(*1*) StartCREE_{75} = $3.6\times(\text{Bag 1}\mathit{CREE}_{75}-\mathit{Bag3CREE}75)+3.9\times(\mathit{Bag2CREE}_{75}-\mathit{Bag4CREE}_{75})$

and

(*2*) $\text{StartCREE}_{20}0$ = $=3.6\times(\mathit{Bag1CREE}_{20}-\mathit{Bag3CREE}_{20})$

(B) RunningCREE = $0.82\times[(0.48\times\mathit{Bag4}_{75}\mathit{CREE})+(0.41\times\mathit{Bag3}_{75}\mathit{CREE})+(0.11\times\mathit{US06\ CityCREE})]+0.18\times[(0.5\times\text{Bag2}_{20}\mathit{CREE})+(0.5\times\mathit{Bag3}_{20}\ \mathit{CREE})]+0.144\times[\mathit{SC03CREE}-((0.61\times\mathit{Bag3}_{75}\mathit{CREE})(0.39\times\mathit{Bag4}_{75}\mathit{CREE}))]$

Where:

US06 Highway CREE = carbon-related exhaust emissions in grams per mile over the city portion of the US06 test.

US06 Highway CREE = carbon-related exhaust emissions in grams per miles per gallon over the Highway portion of the US06 test.

HFET CREE = carbon-related exhaust emissions in grams per mile over the HFET test.

SC03 CREE = carbon-related exhaust emissions in grams per mile over the SC03 test.

(ii) *Highway CO_2 emissions and carbon-related exhaust emissions.*

HighwayCREE = 0.905 × (StartCREE + RunningCREE)

Where:

(A) StartCREE =

$$=0.33\times\left(\frac{(0.76\times\text{StartCREE}_{75}+0.24\times\text{StartCREE}_{20})}{60}\right)$$

Where:

Start CREE_{75} = $3.6\times(\text{Bag1CREE}_{75}-\text{Bag3CREE75})+3.9\times(\text{Bag2CREE}_{75}-\text{Bag4CREE}_{75})$

and

Start CREE_{20} = $3.6\times(\text{Bag1CREE}_{20}-\text{Bag3CREE}_{20})$

(B) RunningCREE = $1.007\times[(0.79\times\mathit{US06\ Highway\ CREE})+(0.21\times\mathit{HFET\ CREE})]+0.045\times[\mathit{SC03CREE}-((0.61\times\mathit{Bag3}_{75}\mathit{CREE})+(0.39\times\mathit{Bag4}_{75}\mathit{CREE}))]$

Where:

US06 Highway CREE = carbon-related exhaust emissions in grams per mile over the Highway portion of the US06 test,

HFET CREE = carbon-related exhaust emissions in grams per mile over the HFET test,

SC03 CREE = carbon-related exhaust emissions in grams per mile over the SC03 test.

(2) *Two-bag FTP equations.* If the 2-bag sampling method is used for the 75 °F FTP test, it must be used to determine both city and highway CO_2 emissions and carbon-related exhaust emissions. The following calculations must be used to determine both city and highway CO_2 emissions and carbon-related exhaust emissions:

(i) *City CO_2 emissions and carbon-related exhaust emissions.*

CityCREE = 0.905 × (StartCREE + RunningCREE)

Where:

(A) StartCREE =

$$=0.33\times\left(\frac{(0.76\times\text{StartCREE}_{75}+0.24\times\text{StartCREE}_{20})}{4.1}\right)$$

Where:

StartCREE_{75} = $3.6\times(\text{Bag1/2CREE}_{75}-\text{Bag3/4CREE}_{75})$

and

StartCREE_{20} = $3.6\times(\text{Bag1CREE}_{20}-\text{Bag3CREE}_{20})$

Where:

Bag Y FE_{20} = the carbon-related exhaust emissions in grams per mile of fuel during Bag 1 or Bag 3 of the 20 °F FTP test, and

Bag X/Y FE_{75} = carbon-related exhaust emissions in grams per mile of fuel during combined phases 1 and 2 or phases 3 and 4 of the FTP test conducted at an ambient temperature of 75 °F.

(B) RunningCREE = $0.82\times[(0.90\times\text{Bag3/4}_{75}\text{CREE})+(0.10\times\text{US06CityCREE})]+0.18\times[(0.5\times\text{Bag2}_{20}\text{CREE})+(0.5\times\text{Bag3}_{20}\text{CREE})]+0.144\times[\text{SC03CREE}-(\text{Bag3/4}_{75}\text{CREE})]$

Where:

US06 City CREE = carbon-related exhaust emissions in grams per mile over the city portion of the US06 test, and

SC03 CREE = carbon-related exhaust emissions in grams per mile over the SC03 test, and

Bag X/Y FE_{75} = carbon-related exhaust emissions in grams per mile of fuel during combined phases 1 and 2 or phases 3 and 4 of the FTP test conducted at an ambient temperature of 75 °F.

(ii) *Highway CO_2 emissions and carbon-related exhaust emissions.*

HighwayCREE = 0.905 × (StartCREE + RunningCREE)

Where:

(A) StartCREE =

$$0.33\times\left(\frac{(0.76\times\text{StartCREE}_{75}+0.24\times\text{StartCREE}_{20})}{60}\right)$$

Where:

StartCREE_{75} = $7.5\times(\text{Bag1/2CREE}_{75}-\text{Bag3/4CREE}_{75})$

and

StartCREE_{20} = $3.6\times(\text{Bag1CREE}_{20}-\text{Bag3CREE}_{20})$

(B) RunningCREE = $1.007\times[(0.79\times\text{US06HighwayCREE})+(0.21\times\text{HFETCREE})]+0.045\times[\text{SC03CREE}-\text{Bag3/4}_{75}\text{CREE}]$

Where:

US06 Highway CREE = carbon-related exhaust emissions in grams per mile over the city portion of the US06 test, and

SC03 CREE = carbon-related exhaust emissions in gram per mile over the SC03 test, and

Bag Y FE_{20} = the carbon-related exhaust emissions in grams per mile of fuel during Bag 1 or Bag 3 of the 20 °F FTP test, and

Bag X/Y FE_{75} = carbon-related exhaust emissions in grams per mile of fuel during phases 1 and 2 or phases 3 and 4 of the FTP test conducted at an ambient temperature of 75 °F.

(3) To determine the City and Highway CO_2 emissions, use the appropriate CO_2 grams/mile values instead of CREE values in the equations in paragraphs (f)(1) and (2) of this section.

34. Section 600.115–08 is redesignated as § 600.115–11 and is revised to read as follows:

§ 600.115–11 Criteria for determining the fuel economy label calculation method.

This section provides the criteria to determine if the derived 5-cycle method for determining fuel economy label values, as specified in § 600.210–08(a)(2) or (b)(2) or § 600.210–12(a)(2) or (b)(2), as applicable, may be used to determine label values. Separate criteria apply to city and highway fuel economy for each test group. The provisions of this section are optional. If this option is not chosen, or if the criteria provided in this section are not met, fuel economy label values must be determined according to the vehicle-specific 5-cycle method specified in § 600.210–08(a)(1) or (b)(1) or § 600.210–12(a)(1) or (b)(1), as applicable. However, dedicated alternative-fuel vehicles, dual fuel vehicles when operating on the alternative fuel, plug-in hybrid electric vehicles, MDPVs, and vehicles imported by Independent Commercial Importers may use the derived 5-cycle method for determining fuel economy label values whether or not the criteria provided in this section are met.

(a) *City fuel economy criterion.* (1) For each test group certified for emission compliance under § 86.1848 of this chapter, the FTP, HFET, US06, SC03 and Cold FTP tests determined to be official under § 86.1835 of this chapter are used to calculate the vehicle-specific 5-cycle city fuel economy which is then compared to the derived 5-cycle city fuel economy, as follows:

(i) The vehicle-specific 5-cycle city fuel economy from the official FTP, HFET, US06, SC03 and Cold FTP tests for the test group is determined according to the provisions of § 600.114–08(a) or (c) or § 600.114–12(a) or (c) and rounded to the nearest one tenth of a mile per gallon.

(ii) Using the same FTP data as used in paragraph (a)(1)(i) of this section, the corresponding derived 5-cycle city fuel economy is calculated according to the following equation:

$$\text{Derived 5-cycle city fuel economy} = \frac{1}{\left(\{City\ Intercept\} + \frac{\{City\ Slope\}}{FTP\ FE}\right)}$$

Where:

City Intercept = Intercept determined by the Administrator. See § 600.210–08(a)(2)(iii) or § 600.210–12(a)(2)(iii).

City Slope = Slope determined by the Administrator. See § 600.210–08(a)(2)(iii) or § 600.210–12(a)(2)(ii).

FTP FE = the FTP-based city fuel economy from the official test used for certification compliance, determined under § 600.113–08(a), rounded to the nearest tenth.

(2) The derived 5-cycle fuel economy value determined in paragraph (a)(1)(ii) of this section is multiplied by 0.96 and rounded to the nearest one tenth of a mile per gallon.

(3) If the vehicle-specific 5-cycle city fuel economy determined in paragraph (a)(1)(i) of this section is greater than or equal to the value determined in paragraph (a)(2) of this section, then the manufacturer may base the city fuel economy estimates for the model types covered by the test group on the derived 5-cycle method specified in § 600.210–08(a)(2) or (b)(2) or § 600.210–12(a)(2) or (b)(2), as applicable.

(b) *Highway fuel economy criterion.* The determination for highway fuel economy depends upon the outcome of the determination for city fuel economy in paragraph (a)(3) of this section for each test group.

(1) If the city determination for a test group made in paragraph (a)(3) of this section does not allow the use of the derived 5-cycle method, then the highway fuel economy values for all model types represented by the test group are likewise not allowed to be determined using the derived 5-cycle method, and must be determined according to the vehicle-specific 5-cycle method specified in § 600.210–08(a)(1) or (b)(1) or § 600.210–12(a)(1) or (b)(1), as applicable.

(2) If the city determination made in paragraph (a)(3) of this section allows the use of the derived 5-cycle method, a separate determination is made for the highway fuel economy labeling method as follows:

(i) For each test group certified for emission compliance under § 86.1848 of this chapter, the FTP, HFET, US06, SC03 and Cold FTP tests determined to be official under § 86.1835 of this chapter are used to calculate the vehicle-specific 5-cycle highway fuel economy, which is then compared to the derived 5-cycle highway fuel economy, as follows:

(A) The vehicle-specific 5-cycle highway fuel economy from the official FTP, HFET, US06, SC03 and Cold FTP tests for the test group is determined according to the provisions of § 600.114–08(b)(1) or § 600.114–12(b)(1) and rounded to the nearest one tenth of a mile per gallon.

(B) Using the same HFET data as used in paragraph (b)(2)(i)(A) of this section, the corresponding derived 5-cycle highway fuel economy is calculated using the following equation:

$$\text{Derived 5-cycle highway fuel economy} = \frac{1}{\left(\{\text{Highway Intercept}\} + \frac{\{\text{Highway Slope}\}}{\text{HFET FE}}\right)}$$

Where:

Highway Intercept = Intercept determined by the Administrator. See § 600.210–08(a)(2)(iii) or § 600.210–12(a)(2)(iii).

Highway Slope = Slope determined by the Administrator. See § 600.210–08(a)(2)(iii) or § 600.210–12(a)(2)(iii).

HFET FE = the HFET-based highway fuel economy determined under § 600.113–08(b), rounded to the nearest tenth.

(ii) The derived 5-cycle highway fuel economy calculated in paragraph (b)(2)(i)(B) of this section is multiplied by 0.95 and rounded to the nearest one tenth of a mile per gallon.

(iii)(A) If the vehicle-specific 5-cycle highway fuel economy of the vehicle tested in paragraph (b)(2)(i)(A) of this section is greater than or equal to the value determined in paragraph (b)(2)(ii) of this section, then the manufacturer may base the highway fuel economy estimates for the model types covered by the test group on the derived 5-cycle method specified in § 600.210–08(a)(2) or (b)(2) or § 600.210–12(a)(2) or (b)(2), as applicable.

(B) If the vehicle-specific 5-cycle highway fuel economy determined in paragraph (b)(2)(i)(A) of this section is less than the value determined in paragraph (b)(2)(ii) of this section, the manufacturer may determine the highway fuel economy for the model types covered by the test group on the modified 5-cycle equation specified in § 600.114–08(b)(2) or § 600.114–12(b)(2).

(c) The manufacturer will apply the criteria in paragraph (a) and (b) of this section to every test group for each model year.

(d) The tests used to make the evaluations in paragraphs (a) and (b) of this section will be the procedures for official test determinations under § 86.1835. Adjustments and/or substitutions to the official test data may be made with advance approval of the Administrator.

35. A new § 600.116–12 is added to subpart B to read as follows:

§ 600.116–12 Special procedures related to electric vehicles and plug-in hybrid electric vehicles.

(a) Determine fuel economy label values for electric vehicles as specified in §§ 600.210 and 600.311 using the procedures of SAE J1634 (incorporated by reference in § 600.011), with the following clarifications and modifications:

(1) Use one of the following approaches to define end-of-test criteria for vehicles whose maximum speed is less than the maximum speed specified in the driving schedule, where the vehicle's maximum speed is determined, to the nearest 0.1 mph, from observing the highest speed over the first duty cycle (FTP, HFET, etc.):

(i) If the vehicle can follow the driving schedule within the speed tolerances specified in § 86.115 of this chapter up to its maximum speed, the end-of-test criterion is based on the point at which the vehicle can no longer meet the specified speed tolerances up to and including its maximum speed.

(ii) If the vehicle cannot follow the driving schedule within the speed tolerances specified in § 86.115 of this chapter up to its maximum speed, the end-of-test criterion is based on the following procedure:

(A) Measure and record the vehicle's speed (to the nearest 0.1 mph) while making a best effort to follow the specified driving schedule.

(B) This recorded sequence of driving speeds becomes the driving schedule for the test vehicle. Apply the end-of-test criterion based on point at which the vehicle can no longer meet the specified speed tolerances over this new driving schedule. The driving to establish the new driving schedule may be done separately, or as part of the measurement procedure.

(2) Soak time between repeat duty cycles (four-bag FTP, HFET, etc.) may be up to 30 minutes. No recharging may occur during the soak time.

(3) Recharging the vehicle's battery must start within three hours after the end of testing.

(4) Do not apply the C coefficient adjustment specified in Section 4.4.2.

(5) We may approve alternate measurement procedures with respect to electric vehicles if they are necessary or appropriate for meeting the objectives of this part.

(b) Determine fuel economy label values for plug-in hybrid electric vehicles as specified in §§ 600.210 and 600.311 using the procedures of SAE J1711 (incorporated by reference in § 600.011), with the following clarifications and modifications:

(1) Calculate a composite value for fuel economy and CO2 emissions representing combined operation during charge-deplete and charge-sustain operation as follows:

(i) Apply the following utility factors except as specified in this paragraph (b)(1):

TABLE 1 OF § 600.116–12—FTP PHASE-SPECIFIC UTILITY FACTORS

Phase	Urban Driving, "City"		Seq. UF
	Distance, mi	Cumulative UF	
1	3.59	0.125	0.125
2	7.45	0.243	0.118
3	11.04	0.340	0.096
4	14.9	0.431	0.091
5	18.49	0.505	0.074
6	22.35	0.575	0.070
7	25.94	0.632	0.057
8	29.8	0.685	0.054
9	33.39	0.729	0.044
10	37.25	0.770	0.041
11	40.84	0.803	0.033
12	44.7	0.834	0.031
13	48.29	0.859	0.025
14	52.15	0.882	0.023
15	55.74	0.900	0.018
16	59.6	0.917	0.017

TABLE 2 OF § 600.116–12—HFED CYCLE-SPECIFIC UTILITY FACTORS

HFEDS	Highway Driving		Seq. UF
	Distance, mi	Cumulative UF	
1	10.3	0.125	0.125
2	20.6	0.252	0.127
3	30.9	0.378	0.126
4	41.2	0.500	0.121
5	51.5	0.610	0.111
6	61.8	0.707	0.097
7	72.1	0.787	0.080

(ii) You may combine phases during FTP testing. For example, you may treat the first 7.45 miles as a single phase by adding the individual utility factors for that portion of driving and assigning emission levels to the combined phase. Do this consistently throughout a test run.

(iii) Calculate utility factors using the following equation for vehicles whose maximum speed is less than the maximum speed specified in the driving schedule, where the vehicle's maximum speed is determined, to the nearest 0.1 mph, from observing the highest speed over the first duty cycle (FTP, HFET, etc.):

$$UF_i = 1 - \left[e \left(\sum_{j=1}^{k} \left(\left(\frac{d_i}{ND} \right)^j \times C_j \right) \right) \right] - \sum_{i=1}^{n} UF_{i-1}$$

Where:

UF_i = the utility factor for phase *i*. Let $UF_0 = 0$.

j = A counter to identify the appropriate term in the summation (with terms numbered consecutively).

k = the number of terms in the equation (see Table 3 of this section).

d_i = the distance driven in phase *i*.

ND = the normalized distance. Use 399 for both FTP and HFET operation.

C_j = the coefficient for term j from the following table:

TABLE 3 OF § 600.116–12—CITY/HIGHWAY SPECIFIC UTILITY FACTOR COEFFICIENTS

Coefficient	City	Hwy
C_1	14.86	4.80
C_2	2.97	13.00
C_3	−84.05	−65.00
C_4	153.70	120.00
C_5	−43.59	−100.00
C_6	−96.94	31.00
C_7	14.47	
C_8	91.70	
C_9	−46.36	

n = the number of test phases (or bag measurements) before the vehicle reaches the end-of-test criterion.

(2) The end-of-test criterion is based on a 1 percent Net Energy Change as specified in Section 3.8. The Administrator may approve alternate Net Energy Change tolerances as specified in Section 3.9.1 or Appendix C if the 1 percent threshold is insufficient or inappropriate for marking the end of charge-deplete operation.

(3) Use the vehicle's Actual Charge-Depleting Range, R_{cda}, as specified in Section 6.1.3 for evaluating the end-of-test criterion.

(4) Measure and record AC watt-hours throughout the recharging procedure. Position the measurement downstream of all charging devices to account for any losses in the charging system.

(5) We may approve alternate measurement procedures with respect to plug-in hybrid electric vehicles if they are necessary or appropriate for meeting the objectives of this part.

Subpart C— Procedures for Calculating Fuel Economy and Carbon-Related Exhaust Emission Values

36. The heading for subpart C is revised as set forth above.

§ 600.201–08, § 600.201–12, § 600.201–86, § 600.201–93, § 600.202–77, § 600.203–77, § 600.204–77, § 600.205–77, § 600.206–86, § 600.206–93, § 600.207–86, § 600.207–93, § 600.208–77, § 600.209–85, § 600.209–95 [Removed]

37. Subpart C is amended by removing the following sections:

§ 600.201–08
§ 600.201–12
§ 600.201–86
§ 600.201–93
§ 600.202–77
§ 600.203–77
§ 600.204–77
§ 600.205–77
§ 600.206–86
§ 600.206–93
§ 600.207–86
§ 600.207–93
§ 600.208–77
§ 600.209–85
§ 600.209–95
§ 600.211–08

38. Section 600.206–12 is revised to read as follows:

§ 600.206–12 Calculation and use of FTP-based and HFET-based fuel economy, CO_2 emissions, and carbon-related exhaust emission values for vehicle configurations.

(a) Fuel economy, CO_2 emissions, and carbon-related exhaust emissions values determined for each vehicle under § 600.113–08(a) and (b) and as approved in § 600.008(c), are used to determine FTP-based city, HFET-based highway, and combined FTP/Highway-based fuel economy, CO_2 emissions, and carbon-related exhaust emission values for each vehicle configuration for which data are available.

(1) If only one set of FTP-based city and HFET-based highway fuel economy values is accepted for a vehicle configuration, these values, rounded to the nearest tenth of a mile per gallon, comprise the city and highway fuel economy values for that configuration. If only one set of FTP-based city and HFET-based highway CO_2 emissions and carbon-related exhaust emission values is accepted for a vehicle configuration, these values, rounded to the nearest gram per mile, comprise the city and highway CO_2 emissions and carbon-related exhaust emission values for that configuration.

(2) If more than one set of FTP-based city and HFET-based highway fuel economy and/or carbon-related exhaust emission values are accepted for a vehicle configuration:

(i) All data shall be grouped according to the subconfiguration for which the data were generated using sales projections supplied in accordance with § 600.208–12(a)(3).

(ii) Within each group of data, all fuel economy values are harmonically averaged and rounded to the nearest 0.0001 of a mile per gallon and all CO_2 emissions and carbon-related exhaust emission values are arithmetically averaged and rounded to the nearest tenth of a gram per mile in order to determine FTP-based city and HFET-based highway fuel economy, CO_2 emissions, and carbon-related exhaust emission values for each subconfiguration at which the vehicle configuration was tested.

(iii) All FTP-based city fuel economy, CO_2 emissions, and carbon-related exhaust emission values and all HFET-based highway fuel economy and carbon-related exhaust emission values calculated in paragraph (a)(2)(ii) of this section are (separately for city and highway) averaged in proportion to the sales fraction (rounded to the nearest 0.0001) within the vehicle configuration (as provided to the Administrator by the manufacturer) of vehicles of each tested subconfiguration. Fuel economy values shall be harmonically averaged, and CO_2 emissions and carbon-related exhaust emission values shall be arithmetically averaged. The resultant fuel economy values, rounded to the nearest 0.0001 mile per gallon, are the FTP-based city and HFET-based highway fuel economy values for the vehicle configuration. The resultant CO_2 emissions and carbon-related exhaust emission values, rounded to the nearest tenth of a gram per mile, are the FTP-based city and HFET-based highway CO_2 emissions and carbon-related exhaust emission values for the vehicle configuration.

(3)(i) For the purpose of determining average fuel economy under § 600.510, the combined fuel economy value for a vehicle configuration is calculated by harmonically averaging the FTP-based city and HFET-based highway fuel economy values, as determined in paragraph (a)(1) or (2) of this section, weighted 0.55 and 0.45 respectively, and rounded to the nearest 0.0001 mile per gallon. A sample of this calculation appears in Appendix II of this part.

(ii) For the purpose of determining average carbon-related exhaust emissions under § 600.510, the combined carbon-related exhaust emission value for a vehicle configuration is calculated by arithmetically averaging the FTP-based city and HFET-based highway carbon-related exhaust emission values, as determined in paragraph (a)(1) or (2) of this section, weighted 0.55 and 0.45 respectively, and rounded to the nearest tenth of gram per mile.

(4) For alcohol dual fuel automobiles and natural gas dual fuel automobiles the procedures of paragraphs (a)(1) or (2) of this section, as applicable, shall be used to calculate two separate sets of FTP-based city, HFET-based highway, and combined values for fuel economy, CO_2 emissions, and carbon-related exhaust emissions for each configuration.

(i) Calculate the city, highway, and combined fuel economy, CO_2 emissions, and carbon-related exhaust emission values from the tests performed using gasoline or diesel test fuel.

(ii) Calculate the city, highway, and combined fuel economy, CO_2 emissions, and carbon-related exhaust emission values from the tests performed using alcohol or natural gas test fuel.

(b) If only one equivalent petroleum-based fuel economy value exists for an electric vehicle configuration, that value, rounded to the nearest tenth of a mile per gallon, will comprise the petroleum-based fuel economy for that configuration.

(c) If more than one equivalent petroleum-based fuel economy value exists for an electric vehicle configuration, all values for that vehicle configuration are harmonically averaged and rounded to the nearest 0.0001 mile per gallon for that configuration.

39. A new § 600.207–12 is added to read as follows:

§ 600.207–12 Calculation and use of vehicle-specific 5-cycle-based fuel economy and CO_2 emission values for vehicle configurations.

(a) Fuel economy and CO_2 emission values determined for each vehicle under § 600.114 and as approved in § 600.008(c), are used to determine vehicle-specific 5-cycle city and highway fuel economy and CO_2 emission values for each vehicle configuration for which data are available.

(1) If only one set of 5-cycle city and highway fuel economy and CO_2 emission values is accepted for a vehicle configuration, these values, where fuel economy is rounded to the nearest tenth of a mile per gallon and the CO_2 emission value in grams per mile is rounded to the nearest whole number, comprise the city and highway fuel economy and CO_2 emission values for that configuration.

(2) If more than one set of 5-cycle city and highway fuel economy and CO_2 emission values are accepted for a vehicle configuration:

(i) All data shall be grouped according to the subconfiguration for which the data were generated using sales projections supplied in accordance with § 600.209–12(a)(3).

(ii) Within each subconfiguration of data, all fuel economy values are harmonically averaged and rounded to the nearest 0.0001 of a mile per gallon in order to determine 5-cycle city and highway fuel economy values for each subconfiguration at which the vehicle configuration was tested, and all CO_2 emissions values are arithmetically averaged and rounded to the nearest tenth of gram per mile to determine 5-cycle city and highway CO_2 emission values for each subconfiguration at which the vehicle configuration was tested.

(iii) All 5-cycle city fuel economy values and all 5-cycle highway fuel economy values calculated in paragraph (a)(2)(ii) of this section are (separately for city and highway) averaged in proportion to the sales fraction (rounded to the nearest 0.0001) within the vehicle configuration (as provided to the Administrator by the manufacturer) of vehicles of each tested subconfiguration. The resultant values, rounded to the nearest 0.0001 mile per gallon, are the 5-cycle city and 5-cycle highway fuel economy values for the vehicle configuration.

(iv) All 5-cycle city CO_2 emission values and all 5-cycle highway CO_2 emission values calculated in paragraph (a)(2)(ii) of this section are (separately for city and highway) averaged in proportion to the sales fraction (rounded to the nearest 0.0001) within the vehicle configuration (as provided to the Administrator by the manufacturer) of vehicles of each tested subconfiguration. The resultant values, rounded to the nearest 0.1 grams per mile, are the 5-cycle city and 5-cycle highway CO_2 emission values for the vehicle configuration.

(3) [Reserved]

(4) For alcohol dual fuel automobiles and natural gas dual fuel automobiles the procedures of paragraphs (a)(1) and (2) of this section shall be used to calculate two separate sets of 5-cycle city and highway fuel economy and CO_2 emission values for each configuration.

(i) Calculate the 5-cycle city and highway fuel economy and CO_2 emission values from the tests performed using gasoline or diesel test fuel.

(ii)(A) Calculate the 5-cycle city and highway fuel economy and CO_2

emission values from the tests performed using alcohol or natural gas test fuel, if 5-cycle testing has been performed. Otherwise, the procedure in § 600.210–12(a)(3) or (b)(3) applies.

(b) If only one equivalent petroleum-based fuel economy value exists for an electric configuration, that value, rounded to the nearest tenth of a mile per gallon, will comprise the petroleum-based 5-cycle fuel economy for that configuration.

(c) If more than one equivalent petroleum-based 5-cycle fuel economy value exists for an electric vehicle configuration, all values for that vehicle configuration are harmonically averaged and rounded to the nearest 0.0001 mile per gallon for that configuration.

40. Section 600.208–12 is revised to read as follows:

§ 600.208–12 Calculation of FTP-based and HFET-based fuel economy, CO_2 emissions, and carbon-related exhaust emissions for a model type.

(a) Fuel economy, CO_2 emissions, and carbon-related exhaust emissions for a base level are calculated from vehicle configuration fuel economy, CO_2 emissions, and carbon-related exhaust emissions as determined in § 600.206–12(a), (b), or (c) as applicable, for low-altitude tests.

(1) If the Administrator determines that automobiles intended for sale in the State of California and in section 177 states are likely to exhibit significant differences in fuel economy, CO_2 emissions, and carbon-related exhaust emissions from those intended for sale in other states, she will calculate fuel economy, CO_2 emissions, and carbon-related exhaust emissions for each base level for vehicles intended for sale in California and in section 177 states and for each base level for vehicles intended for sale in the rest of the states.

(2) In order to highlight the fuel efficiency, CO_2 emissions, and carbon-related exhaust emissions of certain designs otherwise included within a model type, a manufacturer may wish to subdivide a model type into one or more additional model types. This is accomplished by separating subconfigurations from an existing base level and placing them into a new base level. The new base level is identical to the existing base level except that it shall be considered, for the purposes of this paragraph, as containing a new basic engine. The manufacturer will be permitted to designate such new basic engines and base level(s) if:

(i) Each additional model type resulting from division of another model type has a unique car line name and that name appears on the label and on the vehicle bearing that label;

(ii) The subconfigurations included in the new base levels are not included in any other base level which differs only by basic engine (*i.e.,* they are not included in the calculation of the original base level fuel economy values); and

(iii) All subconfigurations within the new base level are represented by test data in accordance with § 600.010(c)(1)(ii).

(3) The manufacturer shall supply total model year sales projections for each car line/vehicle subconfiguration combination.

(i) Sales projections must be supplied separately for each car line-vehicle subconfiguration intended for sale in California and each car line/vehicle subconfiguration intended for sale in the rest of the states if required by the Administrator under paragraph (a)(1) of this section.

(ii) Manufacturers shall update sales projections at the time any model type value is calculated for a label value.

(iii) The provisions of paragraph (a)(3) of this section may be satisfied by providing an amended application for certification, as described in § 86.1844 of this chapter.

(4) Vehicle configuration fuel economy, CO_2 emissions, and carbon-related exhaust emissions, as determined in § 600.206–12 (a), (b) or (c), as applicable, are grouped according to base level.

(i) If only one vehicle configuration within a base level has been tested, the fuel economy, CO_2 emissions, and carbon-related exhaust emissions from that vehicle configuration will constitute the fuel economy, CO_2 emissions, and carbon-related exhaust emissions for that base level.

(ii) If more than one vehicle configuration within a base level has been tested, the vehicle configuration fuel economy values are harmonically averaged in proportion to the respective sales fraction (rounded to the nearest 0.0001) of each vehicle configuration and the resultant fuel economy value rounded to the nearest 0.0001 mile per gallon; and the vehicle configuration CO_2 emissions and carbon-related exhaust emissions are arithmetically averaged in proportion to the respective sales fraction (rounded to the nearest 0.0001) of each vehicle configuration and the resultant carbon-related exhaust emission value rounded to the nearest tenth of a gram per mile.

(5) The procedure specified in paragraph (a)(1) through (4) of this section will be repeated for each base level, thus establishing city, highway, and combined fuel economy, CO_2 emissions, and carbon-related exhaust emissions for each base level.

(6) [Reserved]

(7) For alcohol dual fuel automobiles and natural gas dual fuel automobiles, the procedures of paragraphs (a)(1) through (6) of this section shall be used to calculate two separate sets of city, highway, and combined fuel economy, CO_2 emissions, and carbon-related exhaust emissions for each base level.

(i) Calculate the city, highway, and combined fuel economy, CO_2 emissions, and carbon-related exhaust emissions from the tests performed using gasoline or diesel test fuel.

(ii) Calculate the city, highway, and combined fuel economy, CO_2 emissions, and carbon-related exhaust emissions from the tests performed using alcohol or natural gas test fuel.

(b) For each model type, as determined by the Administrator, a city, highway, and combined fuel economy value, CO_2 emission value, and a carbon-related exhaust emission value will be calculated by using the projected sales and values for fuel economy, CO_2 emissions, and carbon-related exhaust emissions for each base level within the model type. Separate model type calculations will be done based on the vehicle configuration fuel economy, CO_2 emissions, and carbon-related exhaust emissions as determined in § 600.206–12 (a), (b) or (c), as applicable.

(1) If the Administrator determines that automobiles intended for sale in the State of California and in section 177 states are likely to exhibit significant differences in fuel economy, CO_2 emissions, and carbon-related exhaust emissions from those intended for sale in other states, he or she will calculate values for fuel economy, CO_2 emissions, and carbon-related exhaust emissions for each model type for vehicles intended for sale in California and in section 177 states and for each model type for vehicles intended for sale in the rest of the states.

(2) The sales fraction for each base level is calculated by dividing the projected sales of the base level within the model type by the projected sales of the model type and rounding the quotient to the nearest 0.0001.

(3)(i) The FTP-based city fuel economy values of the model type (calculated to the nearest 0.0001 mpg) are determined by dividing one by a sum of terms, each of which corresponds to a base level and which is a fraction determined by dividing:

(A) The sales fraction of a base level; by

(B) The FTP-based city fuel economy value for the respective base level.

(ii) The FTP-based city carbon-related exhaust emission value of the model type (calculated to the nearest gram per mile) are determined by a sum of terms, each of which corresponds to a base level and which is a product determined by multiplying:

(A) The sales fraction of a base level; by

(B) The FTP-based city carbon-related exhaust emission value for the respective base level.

(iii) The FTP-based city CO_2 emissions of the model type (calculated to the nearest gram per mile) are determined by a sum of terms, each of which corresponds to a base level and which is a product determined by multiplying:

(A) The sales fraction of a base level; by

(B) The FTP-based city CO2 emissions for the respective base level.

(4) The procedure specified in paragraph (b)(3) of this section is repeated in an analogous manner to determine the highway and combined fuel economy, CO_2 emissions, and carbon-related exhaust emissions for the model type.

(5) For alcohol dual fuel automobiles and natural gas dual fuel automobiles, the procedures of paragraphs (b)(1) through (4) of this section shall be used to calculate two separate sets of city, highway, and combined fuel economy values and two separate sets of city, highway, and combined CO_2 and carbon-related exhaust emission values for each model type.

(i) Calculate the city, highway, and combined fuel economy, CO_2 emissions, and carbon-related exhaust emission values from the tests performed using gasoline or diesel test fuel.

(ii) Calculate the city, highway, and combined fuel economy, CO_2 emissions, and carbon-related exhaust emission values from the tests performed using alcohol or natural gas test fuel.

41. A new § 600.209–12 is added to read as follows:

§ 600.209–12 Calculation of vehicle-specific 5-cycle fuel economy and CO_2 emission values for a model type.

(a) *Base level.* 5-cycle fuel economy and CO_2 emission values for a base level are calculated from vehicle configuration 5-cycle fuel economy and CO_2 emission values as determined in § 600.207 for low-altitude tests.

(1) If the Administrator determines that automobiles intended for sale in the State of California are likely to exhibit significant differences in fuel economy and CO_2 emissions from those intended for sale in other states, he will calculate fuel economy and CO_2 emission values for each base level for vehicles intended for sale in California and for each base level for vehicles intended for sale in the rest of the states.

(2) In order to highlight the fuel efficiency and CO_2 emissions of certain designs otherwise included within a model type, a manufacturer may wish to subdivide a model type into one or more additional model types. This is accomplished by separating subconfigurations from an existing base level and placing them into a new base level. The new base level is identical to the existing base level except that it shall be considered, for the purposes of this paragraph, as containing a new basic engine. The manufacturer will be permitted to designate such new basic engines and base level(s) if:

(i) Each additional model type resulting from division of another model type has a unique car line name and that name appears on the label and on the vehicle bearing that label;

(ii) The subconfigurations included in the new base levels are not included in any other base level which differs only by basic engine (*i.e.,* they are not included in the calculation of the original base level fuel economy values); and

(iii) All subconfigurations within the new base level are represented by test data in accordance with § 600.010(c)(ii).

(3) The manufacturer shall supply total model year sales projections for each car line/vehicle subconfiguration combination.

(i) Sales projections must be supplied separately for each car line-vehicle subconfiguration intended for sale in California and each car line/vehicle subconfiguration intended for sale in the rest of the states if required by the Administrator under paragraph (a)(1) of this section.

(ii) Manufacturers shall update sales projections at the time any model type value is calculated for a label value.

(iii) The provisions of this paragraph (a)(3) may be satisfied by providing an amended application for certification, as described in § 86.1844 of this chapter.

(4) 5-cycle vehicle configuration fuel economy and CO_2 emission values, as determined in § 600.207–12(a), (b), or (c), as applicable, are grouped according to base level.

(i) If only one vehicle configuration within a base level has been tested, the fuel economy and CO_2 emission values from that vehicle configuration constitute the fuel economy and CO_2 emission values for that base level.

(ii) If more than one vehicle configuration within a base level has been tested, the vehicle configuration fuel economy values are harmonically averaged in proportion to the respective sales fraction (rounded to the nearest 0.0001) of each vehicle configuration and the resultant fuel economy value rounded to the nearest 0.0001 mile per gallon.

(iii) If more than one vehicle configuration within a base level has been tested, the vehicle configuration CO_2 emission values are arithmetically averaged in proportion to the respective sales fraction (rounded to the nearest 0.0001) of each vehicle configuration and the resultant CO_2 emission value rounded to the nearest 0.1 gram per mile.

(5) The procedure specified in § 600.209–12 (a) will be repeated for each base level, thus establishing city and highway fuel economy and CO_2 emission values for each base level.

(6) [Reserved]

(7) For alcohol dual fuel automobiles and natural gas dual fuel automobiles, the procedures of paragraphs (a)(1) through (6) of this section shall be used to calculate two separate sets of city, highway, and combined fuel economy and CO_2 emission values for each base level.

(i) Calculate the city and highway fuel economy and CO_2 emission values from the tests performed using gasoline or diesel test fuel.

(ii) If 5-cycle testing was performed on the alcohol or natural gas test fuel, calculate the city and highway fuel economy and CO_2 emission values from the tests performed using alcohol or natural gas test fuel.

(b) *Model type.* For each model type, as determined by the Administrator, city and highway fuel economy and CO_2 emissions values will be calculated by using the projected sales and fuel economy and CO_2 emission values for each base level within the model type. Separate model type calculations will be done based on the vehicle configuration fuel economy and CO_2 emission values as determined in § 600.207, as applicable.

(1) If the Administrator determines that automobiles intended for sale in the State of California are likely to exhibit significant differences in fuel economy and CO_2 emissions from those intended for sale in other states, he will calculate fuel economy and CO_2 emission values for each model type for vehicles intended for sale in California and for each model type for vehicles intended for sale in the rest of the states.

(2) The sales fraction for each base level is calculated by dividing the projected sales of the base level within the model type by the projected sales of the model type and rounding the quotient to the nearest 0.0001.

(3)(i) The 5-cycle city fuel economy values of the model type (calculated to the nearest 0.0001 mpg) are determined by dividing one by a sum of terms, each of which corresponds to a base level and which is a fraction determined by dividing:

(A) The sales fraction of a base level; by

(B) The 5-cycle city fuel economy value for the respective base level.

(ii) The 5-cycle city CO_2 emissions of the model type (calculated to the nearest tenth of a gram per mile) are determined by a sum of terms, each of which corresponds to a base level and which is a product determined by multiplying:

(A) The sales fraction of a base level; by

(B) The 5-cycle city CO_2 emissions for the respective base level.

(4) The procedure specified in paragraph (b)(3) of this section is repeated in an analogous manner to determine the highway and combined fuel economy and CO_2 emission values for the model type.

(5) For alcohol dual fuel automobiles and natural gas dual fuel automobiles the procedures of paragraphs (b)(1) through (4) of this section shall be used to calculate two separate sets of city and highway fuel economy and CO_2 emission values for each model type.

(i) Calculate the city and highway fuel economy and CO_2 emission values from the tests performed using gasoline or diesel test fuel.

(ii) Calculate the city, highway, and combined fuel economy and CO_2 emission values from the tests performed using alcohol or natural gas test fuel, if 5-cycle testing was performed on the alcohol or natural gas test fuel. Otherwise, the procedure in § 600.210–12(a)(3) or (b)(3) applies.

42. Section 600.210–08 is amended by adding paragraph (f) to read as follows:

§ 600.210–08 Calculation of fuel economy values for labeling.

* * * * *

(f) *Sample calculations.* An example of the calculation required in this subpart is in Appendix III of this part.

43. A new § 600.210–12 is added to read as follows:

§ 600.210–12 Calculation of fuel economy and CO_2 emission values for labeling.

(a) *General labels.* Except as specified in paragraphs (d) and (e) of this section, fuel economy and CO_2 emissions for general labels may be determined by one of two methods. The first is based on vehicle-specific model-type 5-cycle data as determined in § 600.209–12(b). This method is available for all vehicles and is required for vehicles that do not qualify for the second method as described in § 600.115 (other than electric vehicles). The second method, the derived 5-cycle method, is based on fuel economy and CO_2 emissions that are derived from vehicle-specific 5-cycle model type data as determined in paragraph (a)(2) of this section. Manufacturers may voluntarily lower fuel economy values and raise CO_2 values if they determine that the label values from any method are not representative of the fuel economy or CO_2 emissions for that model type.

(1) *Vehicle-specific 5-cycle labels.* The city and highway model type fuel economy determined in § 600.209–12(b), rounded to the nearest mpg, and the city and highway model type CO_2 emissions determined in § 600.209–12(b), rounded to the nearest gram per mile, comprise the fuel economy and CO_2 emission values for general fuel economy labels, or, alternatively;

(2) *Derived 5-cycle labels.* Derived 5-cycle city and highway label values are determined according to the following method:

(i)(A) For each model type, determine the derived five-cycle city fuel economy using the following equation and coefficients determined by the Administrator:

$$\text{Derived 5-cycle City Fuel Economy} = \frac{1}{\left(\{\text{City Intercept}\} + \frac{\{\text{City Slope}\}}{\text{MT FTP FE}}\right)}$$

Where:

City Intercept = Intercept determined by the Administrator based on historic vehicle-specific 5-cycle city fuel economy data.

City Slope = Slope determined by the Administrator based on historic vehicle-specific 5-cycle city fuel economy data.

MT FTP FE = the model type FTP-based city fuel economy determined under § 600.208–12(b), rounded to the nearest 0.0001 mpg.

(B) For each model type, determine the derived five-cycle city CO_2 emissions using the following equation and coefficients determined by the Administrator:

$$\text{Derived 5-cycle City } CO_2 = \{\text{City Intercept}\} + \{\text{City Slope}\} \times \text{MT FTP } CO_2$$

Where:

City Intercept = Intercept determined by the Administrator based on historic vehicle-specific 5-cycle city fuel economy data.

City Slope = Slope determined by the Administrator based on historic vehicle-specific 5-cycle city fuel economy data.

MT FTP CO_2 = the model type FTP-based city CO_2 emissions determined under § 600.208–12(b), rounded to the nearest 0.1 grams per mile.

(ii)(A) For each model type, determine the derived five-cycle highway fuel economy using the equation below and coefficients determined by the Administrator:

$$\text{Derived 5-cycle Highway Fuel Economy} = \frac{1}{\left(\{\text{Highway Intercept}\} + \frac{\{\text{Highway Slope}\}}{\text{MT HFET FE}}\right)}$$

Where:

Highway Intercept = Intercept determined by the Administrator based on historic vehicle-specific 5-cycle highway fuel economy data.

Highway Slope = Slope determined by the Administrator based on historic vehicle-specific 5-cycle highway fuel economy data.

MT HFET FE = the model type highway fuel economy determined under § 600.208–12(b), rounded to the nearest 0.0001 mpg.

(B) For each model type, determine the derived five-cycle highway CO_2 emissions using the equation below and

coefficients determined by the Administrator:

Derived 5−cycle Highway CO_2 = {Highway Intercept} + {Highway Slope} × MT HFET CO_2

Where:

Highway Intercept = Intercept determined by the Administrator based on historic vehicle-specific 5-cycle highway fuel economy data.

Highway Slope = Slope determined by the Administrator based on historic vehicle-specific 5-cycle highway fuel economy data.

MT HFET CO_2 = the model type highway CO_2 emissions determined under § 600.208–12(b), rounded to the nearest 0.1 grams per mile.

(iii) Unless and until superseded by written guidance from the Administrator, the following intercepts and slopes shall be used in the equations in paragraphs (a)(2)(i) and (a)(2)(ii) of this section:

City Intercept = 0.003259.

City Slope = 1.1805.

Highway Intercept = 0.001376.

Highway Slope = 1.3466.

(iv) The Administrator will periodically update the slopes and intercepts through guidance and will determine the model year that the new coefficients must take effect. The Administrator will issue guidance no later than six months prior to the earliest starting date of the effective model year (*e.g.,* for 2011 models, the earliest start of the model year is January 2, 2010, so guidance would be issued by July 1, 2009). Until otherwise instructed by written guidance from the Administrator, manufacturers must use the coefficients that are currently in effect.

(3) *General alternate fuel economy and CO_2 emissions label values for dual fuel vehicles.* (i)(A) City and Highway fuel economy label values for dual fuel alcohol-based and natural gas vehicles when using the alternate fuel are separately determined by the following calculation:

$$Derived\ FE_{alt} = FE_{alt} \times \frac{5cycle_{gas}}{FE_{gas}}$$

Where:

FE_{alt} = The unrounded FTP-based model-type city or HFET-based model-type highway fuel economy from the alternate fuel, as determined in § 600.208–12(b)(5)(ii).

5cycle FE_{gas} = The unrounded vehicle-specific or derived 5-cycle model-type city or highway fuel economy, as determined in paragraph (a)(1) or (a)(2) of this section.

FE_{gas} = The unrounded FTP-based city or HFET-based model type highway fuel economy from gasoline (or diesel), as determined in § 600.208–12(b)(5)(i).

The result, rounded to the nearest whole number, is the alternate fuel label value for dual fuel vehicles.

(B) City and Highway CO_2 label values for dual fuel alcohol-based and natural gas vehicles when using the alternate fuel are separately determined by the following calculation:

$$Derived\ CO2_{alt} = CO2_{alt} \times \frac{5cycle\ CO2_{gas}}{CO2_{gas}}$$

Where:

$CO2_{alt}$ = The unrounded FTP-based model-type city or HFET-based model-type CO_2 emissions value from the alternate fuel, as determined in § 600.208–12(b)(5)(ii).

5cycle $CO2_{gas}$ = The unrounded vehicle-specific or derived 5-cycle model-type city or highway CO_2 emissions value, as determined in paragraph (a)(1) or (a)(2) of this section.

$CO2_{gas}$ = The unrounded FTP-based city or HFET-based model type highway CO_2 emissions value from gasoline (or diesel), as determined in § 600.208–12(b)(5)(i).

The result, rounded to the nearest whole number, is the alternate fuel CO_2 emissions label value for dual fuel vehicles.

(ii) Optionally, if complete 5-cycle testing has been performed using the alternate fuel, the manufacturer may choose to use the alternate fuel label city or highway fuel economy and CO_2 emission values determined in § 600.209–12(b)(5)(ii), rounded to the nearest whole number.

(4) *General alternate fuel economy and CO_2 emissions label values for electric vehicles.* Determine FTP-based city and HFET-based highway fuel economy label values for electric vehicles as described in § 600.116. Convert W-hour/mile results to miles per kW-hr and miles per gasoline gallon equivalent gallon. CO_2 label information is based on tailpipe emissions only, so CO_2 emissions from electric vehicles are assumed to be zero.

(b) *Specific labels.* Except as specified in paragraphs (d) and (e) of this section, fuel economy and CO_2 emissions for specific labels may be determined by one of two methods. The first is based on vehicle-specific configuration 5-cycle data as determined in § 600.207. This method is available for all vehicles and is required for vehicles that do not qualify for the second method as described in § 600.115 (other than electric vehicles). The second method, the derived 5-cycle method, is based on fuel economy and CO_2 emissions that are derived from vehicle-specific 5-cycle configuration data as determined in paragraph (b)(2) of this section. Manufacturers may voluntarily lower fuel economy values and raise CO_2 values if they determine that the label values from either method are not representative of the fuel economy or CO_2 emissions for that model type.

(1) *Vehicle-specific 5-cycle labels.* The city and highway configuration fuel economy determined in § 600.207, rounded to the nearest mpg, and the city and highway configuration CO_2 emissions determined in § 600.207, rounded to the nearest gram per mile, comprise the fuel economy and CO_2 emission values for specific fuel economy labels, or, alternatively;

(2) *Derived 5-cycle labels.* Specific city and highway label values from derived 5-cycle are determined according to the following method:

(i)(A) Determine the derived five-cycle city fuel economy of the configuration using the equation below and coefficients determined by the Administrator:

$$\text{Derived 5-cycle City Fuel Economy} = \frac{1}{\left(\{\text{City Intercept}\} + \frac{\{\text{City Slope}\}}{\text{Config FTP FE}}\right)}$$

Where:

City Intercept = Intercept determined by the Administrator based on historic vehicle-specific 5-cycle city fuel economy data.

City Slope = Slope determined by the Administrator based on historic vehicle-specific 5-cycle city fuel economy data.

Config FTP FE = the configuration FTP-based city fuel economy determined under § 600.206, rounded to the nearest 0.0001 mpg.

(B) Determine the derived five-cycle city CO_2 emissions of the configuration using the equation below and coefficients determined by the Administrator:

Derived 5-cycle City CO_2 = {City Intercept} + {City Slope} × Config FTP CO_2

Where:

City Intercept = Intercept determined by the Administrator based on historic vehicle-specific 5-cycle city fuel economy data.
City Slope = Slope determined by the Administrator based on historic vehicle-specific 5-cycle city fuel economy data.
Config FTP CO_2 = the configuration FTP-based city CO_2 emissions determined under § 600.206, rounded to the nearest 0.1 grams per mile.

(ii)(A) Determine the derived five-cycle highway fuel economy of the configuration using the equation below and coefficients determined by the Administrator:

$$\text{Derived 5-cycle Highway Fuel Economy} = \frac{1}{\left(\{\text{Highway Intercept}\} + \frac{\{\text{Highway Slope}\}}{\text{Config HFET FE}}\right)}$$

Where:
Highway Intercept = Intercept determined by the Administrator based on historic vehicle-specific 5-cycle highway fuel economy data.
Highway Slope = Slope determined by the Administrator based on historic vehicle-specific 5-cycle highway fuel economy data.
Config HFET FE = the configuration highway fuel economy determined under § 600.206, rounded to the nearest tenth.

(B) Determine the derived five-cycle highway CO_2 emissions of the configuration using the equation below and coefficients determined by the Administrator:

Derived 5-cycle City CO_2 = {Highway Intercept} + {Highway Slope} × Config HFET CO_2

Where:
Highway Intercept = Intercept determined by the Administrator based on historic vehicle-specific 5-cycle highway fuel economy data.
Highway Slope = Slope determined by the Administrator based on historic vehicle-specific 5-cycle highway fuel economy data.
Config HFET CO_2 = the configuration highway fuel economy determined under § 600.206, rounded to the nearest tenth.

(iii) The slopes and intercepts of paragraph (a)(2)(iii) of this section apply.

(3) *Specific alternate fuel economy and CO_2 emissions label values for dual fuel vehicles.* (i)(A) Specific city and highway fuel economy label values for dual fuel alcohol-based and natural gas vehicles when using the alternate fuel are separately determined by the following calculation:

$$\text{Derived } FE_{alt} = FE_{alt} \times \frac{5\ \text{cycle}_{gas}}{FE_{gas}}$$

Where:
FE_{alt} = The unrounded FTP-based configuration city or HFET-based configuration highway fuel economy from the alternate fuel, as determined in § 600.206.
5cycle FE_{gas} = The unrounded vehicle-specific or derived 5-cycle configuration city or highway fuel economy as determined in paragraph (b)(1) or (b)(2) of this section.
FE_{gas} = The unrounded FTP-based city or HFET-based configuration highway fuel economy from gasoline, as determined in § 600.206.

The result, rounded to the nearest whole number, is the alternate fuel label value for dual fuel vehicles.

(B) Specific city and highway CO_2 emission label values for dual fuel alcohol-based and natural gas vehicles when using the alternate fuel are separately determined by the following calculation:

$$Derived\ CO2_{alt} = CO2_{alt} \times \frac{5cycle\ CO2_{gas}}{CO2_{gas}}$$

$$\text{Derived } FE_{alt} = FE_{alt} \times \frac{5\ \text{cycle}_{gas}}{FE_{gas}}$$

Where:
$CO2_{alt}$ = The unrounded FTP-based configuration city or HFET-based configuration highway CO_2 emissions value from the alternate fuel, as determined in § 600.206.
5cycle $CO2_{gas}$ = The unrounded vehicle-specific or derived 5-cycle configuration city or highway CO_2 emissions value as determined in paragraph (b)(1) or (b)(2) of this section.
$CO2_{gas}$ = The unrounded FTP-based city or HFET-based configuration highway CO_2 emissions value from gasoline, as determined in § 600.206.

The result, rounded to the nearest whole number, is the alternate fuel CO_2 emissions label value for dual fuel vehicles.

(ii) Optionally, if complete 5-cycle testing has been performed using the alternate fuel, the manufacturer may choose to use the alternate fuel label city or highway fuel economy and CO_2 emission values determined in § 600.207–12(a)(4)(ii), rounded to the nearest whole number.

(4) *Specific alternate fuel economy and CO_2 emissions label values for electric vehicles.* Determine FTP-based city and HFET-based highway fuel economy label values for electric vehicles as described in § 600.116. Determine these values by running the appropriate repeat test cycles. Convert W-hour/mile results to miles per kW-hr and miles per gasoline gallon equivalent. CO_2 label information is based on tailpipe emissions only, so CO_2 emissions from electric vehicles are assumed to be zero.

(c) *Calculating combined fuel economy.* (1) For the purposes of calculating the combined fuel economy for a model type, to be used in displaying on the label and for determining annual fuel costs under subpart D of this part, the manufacturer shall use one of the following procedures:

(i) For gasoline-fueled, diesel-fueled, alcohol-fueled, and natural gas-fueled automobiles, and for dual fuel automobiles operated on gasoline or diesel fuel, harmonically average the unrounded city and highway fuel economy values, determined in paragraphs (a)(1) or (2) of this section and (b)(1) or (2) of this section, weighted 0.55 and 0.45 respectively, and round to the nearest whole mpg. (An example of this calculation procedure appears in Appendix II of this part).

(ii) For alcohol dual fuel and natural gas dual fuel automobiles operated on the alternate fuel, harmonically average the unrounded city and highway values from the tests performed using the alternative fuel as determined in paragraphs (a)(3) and (b)(3) of this section, weighted 0.55 and 0.45 respectively, and round to the nearest whole mpg.

(iii) For electric vehicles, calculate the combined fuel economy, in miles per kW-hr and miles per gasoline gallon equivalent, by harmonically averaging the unrounded city and highway values, weighted 0.55 and 0.45 respectively. Round miles per kW-hr to the nearest 0.001 and round miles per gallon gasoline equivalent to the nearest whole number.

(iv) For plug-in hybrid electric vehicles, calculate a combined fuel economy value, in miles per gasoline gallon equivalent as follows:

(A) Determine city and highway fuel economy values for vehicle operation after the battery has been fully discharged ("gas only operation" or "charge-sustaining mode") as described in paragraphs (a) and (b) of this section.

(B) Determine city and highway fuel economy values for vehicle operation starting with a full battery charge ("all-electric operation" or "gas plus electric operation", as appropriate, or "charge-depleting mode") as described in § 600.116–12. For battery energy, convert W-hour/mile results to miles per gasoline gallon equivalent or miles per diesel gallon equivalent, as applicable. Note that you must also convert battery-based fuel economy values to miles per kW-hr for calculating annual fuel cost as described in § 600.311–12.

(C) Calculate a composite city fuel economy value and a composite highway fuel economy value by combining the separate results for battery and engine operation using the procedures described in § 600.116–12). Apply the derived 5-cycle adjustment to these composite values. Use these values to calculate the vehicle's combined fuel economy as described in paragraph (c)(1)(i) of this section.

(2) For the purposes of calculating the combined CO_2 emissions value for a model type, to be used in displaying on the label under subpart D of this part, the manufacturer shall:

(i) For gasoline-fueled, diesel-fueled, alcohol-fueled, and natural gas-fueled automobiles, and for dual fuel automobiles operated on gasoline or diesel fuel, arithmetically average the unrounded city and highway values, determined in paragraphs (a)(1) or (2) of this section and (b)(1) or (2) of this section, weighted 0.55 and 0.45 respectively, and round to the nearest whole gram per mile; or

(ii) For alcohol dual fuel and natural gas dual fuel automobiles operated on the alternate fuel, arithmetically average the unrounded city and highway CO_2 emission values from the tests performed using the alternative fuel as determined in paragraphs (a)(3) and (b)(3) of this section, weighted 0.55 and 0.45 respectively, and round to the nearest whole gram per mile.

(iii) CO_2 label information is based on tailpipe emissions only, so CO_2 emissions from electric vehicles are assumed to be zero.

(iv) For plug-in hybrid electric vehicles, calculate combined CO_2 emissions as follows:

(A) Determine city and highway CO_2 emission rates for vehicle operation after the battery has been fully discharged ("gas only operation" or "charge-sustaining mode") as described in paragraphs (a) and (b) of this section.

(B) Determine city and highway CO_2 emission rates for vehicle operation starting with a full battery charge ("all-electric operation" or "gas plus electric operation", as appropriate, or "charge-depleting mode") as described in § 600.116–12. Note that CO_2 label information is based on tailpipe emissions only, so CO_2 emissions from electric vehicles are assumed to be zero.

(C) Calculate a composite city CO_2 emission rate and a composite CO_2 emission rate by combining the separate results for battery and engine operation using the procedures described in § 600.116–12. Use these values to calculate the vehicle's combined fuel economy as described in paragraph (c)(1)(i) of this section.

(d) *Calculating combined fuel economy and CO_2 emissions.* (1) If the criteria in § 600.115–11(a) are met for a model type, both the city and highway fuel economy and CO_2 emissions values must be determined using the vehicle-specific 5-cycle method. If the criteria in § 600.115–11(b) are met for a model type, the city fuel economy and CO_2 emissions values may be determined using either method, but the highway fuel economy and CO_2 emissions values must be determined using the vehicle-specific 5-cycle method (or modified 5-cycle method as allowed under § 600.114–12(b)(2)).

(2) If the criteria in § 600.115 are not met for a model type, the city and highway fuel economy and CO_2 emission label values must be determined by using the same method, either the derived 5-cycle or vehicle-specific 5-cycle.

(3) Manufacturers may use any of the following methods for determining 5-cycle values for fuel economy and CO_2 emissions for electric vehicles:

(i) Generate 5-cycle data as described in paragraph (a)(1) of this section.

(ii) Decrease fuel economy values by 30 percent and increase CO_2 emission values by 30 percent relative to data generated from 2-cycle testing.

(iii) Manufacturers may ask the Administrator to approve adjustment factors for deriving 5-cycle fuel economy results from 2-cycle test data based on operating data from their in-use vehicles. Such data should be collected from multiple vehicles with different drivers over a range of representative driving routes and conditions. The Administrator may approve such an adjustment factor for any of the manufacturer's vehicle models that are properly represented by the collected data.

(e) *Fuel economy values and other information for advanced technology vehicles.* (1) The Administrator may prescribe an alternative method of determining the city and highway model type fuel economy and CO_2 emission values for general, unique or specific fuel economy labels other than those set forth in this subpart C for advanced technology vehicles including, but not limited to fuel cell vehicles, hybrid electric vehicles using hydraulic energy storage, and vehicles equipped with hydrogen internal combustion engines.

(2) For advanced technology vehicles, the Administrator may prescribe special methods for determining information other than fuel economy that is required to be displayed on fuel economy labels as specified in § 600.302–12(e).

(f) *Sample calculations.* An example of the calculation required in this subpart is in Appendix III of this part.

Subpart D—Fuel Economy Labeling

44. The heading for subpart D is revised as set forth above.

§ 600.301–08, § 600.301–12, § 600.301–86, § 600.301–95, § 600.302–77, § 600.303–77, § 600.304–77, § 600.305–77, § 600.306–86, § 600.307–86, § 600.307–95, § 600.310–86, § 600.311–86, § 600.313–86, § 600.314–01, § 600.314–86, § 600.315–82 [Removed]

45. Subpart D is amended by removing the following sections:

§ 600.301–08
§ 600.301–12
§ 600.301–86
§ 600.301–95
§ 600.302–77
§ 600.303–77
§ 600.304–77
§ 600.305–77
§ 600.306–86
§ 600.307–86
§ 600.307–95
§ 600.310–86
§ 600.311–86
§ 600.313–86
§ 600.314–01
§ 600.314–86
§ 600.315–82

46. Redesignate specific sections in subpart D as follows:

Old section	New section
600.306–08	600.301–08
600.307–08	600.302–08
600.312–86	600.312–08
600.313–01	600.313–08
600.316–78	600.316–08

47. The redesignated § 600.301–08 is revised to read as follows:

§ 600.301–08 Labeling requirements.

(a) Prior to being offered for sale, each manufacturer shall affix or cause to be

affixed and each dealer shall maintain or cause to be maintained on each automobile:

(1) A general fuel economy label (initial, or updated as required in § 600.314) as described in § 600.303 or:

(2) A specific label, for those automobiles manufactured or imported before the date that occurs 15 days after general labels have been determined by the manufacturer, as described in § 600.210–08(b) or § 600.210–12(b).

(i) If the manufacturer elects to use a specific label within a model type (as defined in § 600.002, he shall also affix specific labels on all automobiles within this model type, except on those automobiles manufactured or imported before the date that labels are required to bear range values as required by paragraph (b) of this section, or determined by the Administrator, or as permitted under § 600.310.

(ii) If a manufacturer elects to change from general to specific labels or vice versa within a model type, the manufacturer shall, within five calendar days, initiate or discontinue as applicable, the use of specific labels on all vehicles within a model type at all facilities where labels are affixed.

(3) For any vehicle for which a specific label is requested which has a combined FTP/HFET-based fuel economy value, as determined in § 600.513, at or below the minimum tax-free value, the following statement must appear on the specific label: "[Manufacturer's name] may have to pay IRS a Gas Guzzler Tax on this vehicle because of the low fuel economy."

(4)(i) At the time a general fuel economy value is determined for a model type, a manufacturer shall, except as provided in paragraph (a)(4)(ii) of this section, relabel, or cause to be relabeled, vehicles which:

(A) Have not been delivered to the ultimate purchaser, and

(B) Have a combined FTP/HFET-based model type fuel economy value (as determined in § 600.208–08(b) or § 600.208–12(b) of 0.1 mpg or more below the lowest fuel economy value at which a Gas Guzzler Tax of $0 is to be assessed.

(ii) The manufacturer has the option of re-labeling vehicles during the first five working days after the general label value is known.

(iii) For those vehicle model types which have been issued a specific label and are subsequently found to have tax liability, the manufacturer is responsible for the tax liability regardless of whether the vehicle has been sold or not or whether the vehicle has been relabeled or not.

(b) *Fuel economy range of comparable vehicles.* The manufacturer shall include the current range of fuel economy of comparable automobiles (as described in §§ 600.311 and 600.314) in the label of each vehicle manufactured or imported more than 15 calendar days after the current range is made available by the Administrator.

(1) Automobiles manufactured or imported before a date 16 or more calendar days after the initial label range is made available under § 600.311 shall include the range from the previous model year.

(2) Automobiles manufactured or imported more than 15 calendar days after the label range is made available under § 600.311 shall be labeled with the current range of fuel economy of comparable automobiles as approved for that label.

(c) The fuel economy label must be readily visible from the exterior of the automobile and remain affixed until the time the automobile is delivered to the ultimate consumer.

(1) It is preferable that the fuel economy label information be incorporated into the Automobile Information Disclosure Act label, provided that the prominence and legibility of the fuel economy label is maintained. For this purpose, all fuel economy label information must be placed on a separate section in the Automobile Information Disclosure Act label and may not be intermixed with that label information, except for vehicle descriptions as noted in § 600.303–08(d)(1).

(2) The fuel economy label must be located on a side window. If the window is not large enough to contain both the Automobile Information Disclosure Act label and the fuel economy label, the manufacturer shall have the fuel economy label affixed on another window and as close as possible to the Automobile Information Disclosure Act label.

(3) The manufacturer shall have the fuel economy label affixed in such a manner that appearance and legibility are maintained until after the vehicle is delivered to the ultimate consumer.

§ 600.302–08 [Revised]

48. The redesignated § 600.302–08 is amended by removing and reserving paragraphs (h) through (j).

49. A new § 600.302–12 is added to subpart D to read as follows:

§ 600.302–12 Fuel economy label—general provisions.

This section describes labeling requirements and specifications that apply to all vehicles.

The requirements and specifications in this section and those in §§ 600.304 through 600.310 are illustrated in Appendix VI of this part. Manufacturers must make a good faith effort to conform to the formats illustrated in Appendix VI of this part. Label templates are available for download at website.here.

(a) *Basic format.* Fuel economy labels must be rectangular in shape with a minimum height of 178 mm and a minimum width of 114 mm. Fuel economy labels must be printed on white or very light paper with the colors specified in Appendix VI of this part; any label markings for which colors are not specified must be in black and white. The required label can be divided into six separate fields outlined by a continuous border, as described in paragraphs (b) through (g) of this section.

(b) *Border.* Use a thin line to create an outline border for the label.

(c) *Fuel economy grade.* Include the following elements in the uppermost portion of the label:

(1) At the top left portion of the field, include "EPA" and "DOT" with a horizontal line inbetween ("EPA divided by DOT"). To the right of these characters, place a thin vertical line.

(2) At the top right portion of the field, include the heading "Fuel Economy and Environmental Comparison".

(3) Below the heading, include a large circle containing the appropriate letter grade characterizing the vehicle's fuel economy, as described in § 600.311–12.

(4) Include the following statement below the letter grade: The above grade reflects fuel economy and greenhouse gases. Grading system ranges from A+ to D.

(5) Manufacturers may optionally include an additional item to allow for accessing interactive information with mobile electronic devices. To do this, include an image of an QR code that will direct mobile electronic devices to a Web site with fuel economy information that is specific to the vehicle or, if this Web site is unavailable, to *http://fueleconomy.gov/m/.* Generate the QR code as specified in ISO/IEC 18004:2006 (incorporated by reference in § 600.011). Above the QR code, include the caption "Smartphone".

(d) *Web site.* In the field directly below the fuel economy grade, include the following Web site reference: "website.here".

(e) *Fuel savings.* Include one of the following statements in the field directly below the Web site reference:

(1) For vehicles with calculated fuel savings relative to the average vehicle as specified in § 600.311–12: "Over five

years, this vehicle saves $x in fuel costs compared to the average vehicle." Complete the statement by including the calculated fuel savings as specified in § 600.311–12.

(2) For vehicles with calculated fuel costs higher than the average vehicle as specified in § 600.311–12: "Over five years, you will spend $x more in fuel costs compared to the average vehicle." Complete the statement by including the calculated increase in fuel costs as specified in § 600.311–12.

(3) For vehicles with calculated fuel costs no different than the average vehicle as specified in § 600.311–12: "Your fuel cost will be the same as that estimated for the average vehicle."

(f) *Fuel economy and consumption data.* Include the following elements in the field directly below the fuel savings statement:

(1) Identify the vehicle's fuel type in a header bar as follows:

(i) For vehicles designed to operate on a single fuel, identify the appropriate fuel. For example, identify the vehicle as "Gasoline Vehicle", "Diesel Vehicle", "Ethanol (E85) Vehicle", "Compressed Natural Gas Vehicle", etc. This includes hybrid electric vehicles that do not have plug-in capability. Include a fuel pump logo to the left of this designation. For natural gas vehicles, use the fuel pump logo appropriate for natural gas and add a "CNG" logo.

(ii) Identify flexible-fuel vehicles and dual-fuel vehicles as "Dual Fuel Vehicle (Gasoline& Natural Gas)", "Dual Fuel Vehicle: (Diesel & Ethanol E85)", etc. Include a fuel pump logo to the left of this designation. Also include a CNG logo, as appropriate.

(iii) Identify plug-in hybrid electric vehicles as "Dual Fuel Vehicle: Plug-in Hybrid Electric". Include a fuel pump logo to the left of this designation and an electric plug logo to the right of this designation.

(iv) Identify electric vehicles as "Electric Vehicle". Include an electric plug logo to the left of this designation.

(2) Create a table below the header bar as described in this paragraph (f)(2) for vehicles that run on gasoline or diesel fuel with no plug-in capability. *See* §§ 600.306 through 600.310 for specifications that apply for other vehicles. Create the table with five data values in the following sequence of columns:

(i) Below the heading "Gallons/100 Miles", include the value for the fuel consumption rate as described in § 600.311–12.

(ii) Below the heading "MPG City", include the value for the city fuel economy as described in § 600.311–12. For dual-fuel vehicles and flexible-fuel vehicles, include the heading "Gasoline MPG City" or "Diesel MPG City", as appropriate.

(iii) Below the heading "MPG Highway", include the value for the highway fuel economy as described in § 600.311–12. For dual-fuel vehicles and flexible-fuel vehicles, include the heading "Gasoline MPG Highway" or "Diesel MPG Highway", as appropriate.

(iv) Below the heading "CO_2 g/mile (tailpipe only)", include the value for the CO_2 emission rate as described in § 600.311–12.

(v) Below the heading "Annual fuel cost", include the value for the annual fuel cost as described in § 600.311–12.

(3) Include scale bars directly below the table of values as follows:

(i) Create a scale bar in the left portion of the field to characterize the vehicle's combined city and highway fuel economy relative to the range of combined fuel economy values for all vehicles. Position a box with a downward-pointing arrow above the scale bar positioned to show where that vehicle's combined fuel economy falls relative to the total range. Include the vehicle's combined fuel economy (as described in § 600.210–12(c)) inside the box. Include the number representing the value at the low end of the MPG or MPGe range and the term "Worst" inside the border at the left end of the scale bar. Include the number representing the value at the high end of the MPG or MPGe range and the term "Best" inside the border at the right end of the scale bar. EPA will periodically calculate and publish updated range values as described in § 600.311. Include the expression "Combined MPGe" directly below the scale bar.

(ii) Create a scale bar in the middle portion of the field to characterize the vehicle's CO_2 emission rate relative to the range of CO_2 emission rates for all vehicles. Position a box with a downward-pointing arrow above the scale bar positioned to show where that vehicle's CO_2 emission rate falls relative to the total range. Include the vehicle's CO_2 emission rate (as described in § 600.210–12(c)) inside the box. Include the number representing the value at the high end of the CO_2 emission range and the term "Worst" inside the border at the left end of the scale bar. Include the number representing the value at the low end of the CO_2 emission range and the term "Best" inside the border at the right end of the scale bar. EPA will periodically calculate and publish updated range values as described in § 600.311. Include the expression "CO_2 g/mile" directly below the scale bar.

(iii) Create a scale bar in the right portion of the field to characterize the vehicle's level of emission control for other air pollutants relative to that of all vehicles. Position a box with a downward-pointing arrow above the scale bar positioned to show where that vehicle's emission rating falls relative to the total range. Include the vehicle's emission rating (as described in § 600.311–12) inside the box. Include "1 Worst" in the border at the left end of the scale bar and include "10 Best" in the border at the right end of the scale bar. EPA will periodically calculate and publish updated range values as described in § 600.311. Include the expression "Other Air Pollutants" directly below the scale bar.

(4) Below the scale bars, include two statements as follows:

(i) Include one of the following statements to identify the range of MPG values, which EPA will periodically calculate and publish as described in § 600.311:

(A) For dedicated gasoline or diesel vehicles: "Fuel economy for all [mid-size cars, SUVs, etc., as applicable] ranges from *x* to *y* MPG."

(B) For dual-fuel vehicles and flexible-fuel vehicles: "Fuel economy for all [mid-size cars, SUVs, etc., as applicable] ranges from *x* to *y* MPGequivalent. Ratings are based on [GASOLINE or DIESEL FUEL] and do not reflect performance and ratings using [ALTERNATE FUEL]. See the Fuel Economy Guide or *website.here* for more information."

(ii) Include the following additional statement: "Annual fuel cost is based on *x* miles per year at $*y* per gallon." For the value of *x,* insert the annual mileage rate established by EPA. For the value of *y,* insert the estimated cost per gallon established by EPA for gasoline or diesel fuel.

(g) *Footer.* Include the following elements in the lowest portion of the label:

(1) In the left portion of the field, include the statement: "Visit *http://www.fueleconomy.gov* to calculate estimates personalized for your driving, and to download the Fuel Economy Guide (also available at dealers)."

(2) In the right portion of the field, include the logos for EPA, the Department of Transportation, and the Department of Energy.

(h) *Vehicle description.* Where the fuel economy label is physically incorporated with the Motor Vehicle Information and Cost Savings Act label, no further vehicle description is needed. If the fuel economy label is separate from the Automobile Information Disclosure Act label, describe the vehicle in a location on the label that does not interfere with the other

required information. In cases where the vehicle description may not easily fit on the label, the manufacturer may request Administrator approval of modifications to the label format to accommodate this information. Include the following items in the vehicle description, if applicable:

(1) Model year.

(2) Vehicle car line.

(3) Engine displacement, in cubic inches, cubic centimeters, or liters whichever is consistent with the customary description of that engine.

(4) Transmission class.

(5) Other descriptive information, as necessary, such as number of engine cylinders, to distinguish otherwise identical model types or, in the case of specific labels, vehicle configurations, as approved by the Administrator.

(i) [Reserved]

(j) *Gas guzzler provisions.* For vehicles requiring a tax statement under § 600.513, add the phrase "Gas Guzzler Tax" followed by the dollar amount. The tax value required by this paragraph (j) is based on the combined fuel economy value for the model type calculated according to § 600.513 and rounded to the nearest 0.1 mpg.

(k) *Alternative label provisions for special cases.* The Administrator may approve modifications to the style guidelines if space is limited. The Administrator may also prescribe special label format and information requirements for vehicles that are not specifically described in this subpart, such as vehicles powered by fuel cells or hydrogen-fueled engines, or hybrid electric vehicles that have engines operating on fuels other than gasoline or diesel fuel. The revised labeling specifications will conform to the principles established in this subpart, with any appropriate modifications or additions to reflect the vehicle's unique characteristics. *See* 49 U.S.C. 32908(b)(1)(F).

(l) *Rounding.* Unless the regulation specifies otherwise, do not round intermediate values, but round final calculated values identified in this subpart to the nearest whole number.

(m) *Updating information.* EPA will periodically publish updated information that is needed to comply with the labeling requirements in this subpart. This includes the annual mileage rates and fuel-cost information, the "best and worst" values needed for calculating relative ratings for individual vehicles, and the fuel-economy grade criteria as specified in § 600.311.

50. A new § 600.306–12 is added to subpart D to read as follows:

§ 600.306–12 Fuel economy label—special requirements for natural gas vehicles.

Fuel economy labels for dedicated natural gas vehicles must meet the specifications described in § 600.302, with the following modifications:

(a) Create a table with six data values in the following sequence of columns instead of the table described in § 600.302–12(f)(2):

(1) Below the heading "Range (miles)", include the value for the vehicle's driving range as described in § 600.311–12.

(2) Below the heading "eGallons/100 Miles", include the value for the fuel consumption rate as described in § 600.311–12.

(3) Below the heading "MPGe City", include the value for the city fuel economy as described in § 600.311–12.

(4) Below the heading "MPGe Highway", include the value for the highway fuel economy as described in § 600.311–12.

(5) Below the heading "CO_2 g/mile (tailpipe only)", include the value for the CO_2 emission rate as described in § 600.311–12.

(6) Below the heading "Annual fuel cost", include the value for the annual fuel cost as described in § 600.311–12.

(b) Include the following two statements instead of those specified in § 600.302–12(f)(4):

(1) "Fuel economy for all [mid-size cars, SUVs, etc., as applicable] ranges from *x* to *y* MPG equivalent. MPGequivalent: 121.5 cubic feet CNG = 1 gallon of gasoline energy." EPA will periodically calculate and publish updated values for completing this statement as described in § 600.311.

(2) "Annual fuel cost is based on *x* miles per year at $*y* per gasoline gallon equivalent." EPA will periodically calculate and publish updated values for completing this statement as described in § 600.311.

51. A new § 600.308–12 is added to subpart D to read as follows:

§ 600.308–12 Fuel economy label format requirements—plug-in hybrid electric vehicles.

Fuel economy labels for plug-in hybrid electric vehicles must meet the specifications described in § 600.302, with the exceptions and additional specifications described in this section. This section describes how to label vehicles that with gasoline engines. If the vehicle has a diesel engine, all the references to "gas" or "gasoline" in this section are understood to refer to "diesel" or "diesel fuel", respectively.

(a) Create a table with data values in the following sequence of columns instead of the table specified in § 600.302–12(f)(2):

(1) If the vehicle's engine starts only after the battery is fully discharged, include the following heading statement: "All Electric (first x miles only)". If the vehicle uses combined power from the battery and the engine before the battery is fully discharged, include the following heading statement: "Blended Electric + Gas (first x miles only)". Complete the statement using the value of x to represent the distance the vehicle drives before the battery is fully discharged, as described in § 600.311–12. Include the following data items below this heading statement:

(i) Below the heading "eGallons/100 miles", include the value for the fuel consumption rate as described in § 600.311–12.

(ii) Below the heading "Combined MPGe", include the value for the combined fuel economy as described in § 600.311–12.

(2) Include the following heading statement: "Gas only" and include the following items below this heading statement:

(i) Below the heading "Gallons/100 miles", include the value for the appropriate fuel consumption rate as described in § 600.311–12.

(ii) Below the heading "Combined MPG", include the value for the appropriate combined fuel economy as described in § 600.311–12.

(3) If the vehicle's engine starts only after the battery is fully discharged, include the following heading statement: "All-Electric and Gas-Only Combined". If the vehicle uses combined power from the battery and the engine before the battery is fully discharged, include the following heading statement: "Blended and Gas-Only Combined". Include the following data items below this heading statement:

(i) Below the heading "CO_2 g/mile (tailpipe only)", include the value for the CO_2 emission rate as described in § 600.311–12.

(ii) Below the heading "Annual fuel cost", include the value for the annual fuel cost as described in § 600.311–12.

(b) Include the following two statements instead of those specified in § 600.302–12(f)(4):

(1) "Fuel economy for all [mid-size cars, SUVs, etc., as applicable] ranges from x to y MPGequivalent. MPGequivalent: 33.7 kW-hrs = 1 gallon gasoline energy." EPA will periodically calculate and publish updated values for completing this statement as described in § 600.311.

(2) "Annual fuel cost is based on x miles per year at $y per gallon and z cents per kW-hr." EPA will periodically

calculate and publish updated values for completing this statement as described in § 600.311.

52. A new § 600.310–12 is added to subpart D to read as follows:

§ 600.310–12 Fuel economy label format requirements—electric vehicles.

Fuel economy labels for electric vehicles must meet the specifications described in § 600.302, with the following exceptions and additional specifications:

(a) Create a table with data values in the following sequence of columns instead of the table specified in § 600.302–12(f)(2):

(1) Below the heading "Range (miles)", include the value for the maximum estimated driving distance as described in § 600.311–12.

(2) Below the heading "kW-hrs/100 Miles", include the value for the fuel consumption rate as described in § 600.311–12.

(3) Below the heading "MPGe City", include the value for the city fuel economy as described in § 600.311–12.

(4) Below the heading "MPGe Highway", include the value for the highway fuel economy as described in § 600.311–12.

(5) Below the heading "CO_2 g/mile (tailpipe only)", include the number 0.

(6) Below the heading "Annual fuel cost", include the value for the annual fuel cost as described in § 600.311–12.

(b) Include the following two statements instead of those specified in § 600.302–12(f)(4):

(1) "Fuel economy for all [mid-size cars, SUVs, etc., as applicable] ranges from x to y MPGequivalent. MPGequivalent: 33.7 kW-hrs = 1 gallon gasoline energy." EPA will periodically calculate and publish updated values for completing this statement as described in § 600.311.

(2) "Annual fuel cost is based on x miles per year at y cents per kW-hr." EPA will periodically calculate and publish updated values for completing this statement as described in § 600.311.

53. A new § 600.311–12 is added to subpart D to read as follows:

§ 600.311–12 Determination of values for fuel economy labels.

(a) *Fuel economy.* Determine city and highway fuel economy values as described in § 600.210–12(a) and (b). Determine combined fuel economy values as described in § 600.210–12(c). Note that the label for plug-in hybrid electric vehicles requires separate values for combined fuel economy for vehicle operation before and after the vehicle's battery is fully discharged; we generally refer to these modes as "Blended Electric+Gas" (or "Electric Only", as applicable) and "Gas only".

(b) *CO_2 emission rate.* Determine the engine-related CO_2 emission rate as described in § 600.210–12(d).

(c) *Fuel economy grade.* Determine a vehicle's fuel economy grade as follows:

(1) Determine the grade that applies based on combined CO_2 emission rates from paragraph (b) of this section according to the following table:

TABLE 1 OF § 600.311–12—CRITERIA TO DEFINE FUEL ECONOMY GRADE

Combined CO_2 (g/mi)	Grade
0–76	A+
77–152	A
153–229	A−
230–305	B+
306–382	B
383–458	B−
459–535	C+
536–611	C
612–688	C−
689–764	D+
765+	D

(2) We may update the grading scale periodically based on the median CO_2 emission rate for all model types. We would do this by doubling the median value from a given model year to establish the nominal full range of CO_2 values, then dividing this full range into eleven equal intervals, after rounding to the nearest whole number. For reference, the grade distribution in paragraph (c)(1) of this section is based on a median value of 421 g/mi CO_2.

(d) *Fuel consumption rate.* Calculate the fuel consumption rate as follows:

(1) For vehicles with engines that are not plug-in hybrid electric vehicles, calculate the fuel consumption rate in gallons per 100 miles (or gasoline gallon equivalent per 100 miles for fuels other than gasoline or diesel fuel) with the following formula, rounded to the first decimal place:

Fuel Consumption Rate = 100/MPG

Where:

MPG = The combined fuel economy value from paragraph (a) of this section.

(2) For plug-in hybrid electric vehicles, calculate two separate fuel consumption rates as follows:

(i) Calculate the fuel consumption rate based on engine operation after the battery is fully discharged as described in paragraph (d)(1) of this section.

(ii) Calculate the fuel consumption rate during operation before the battery is fully discharged in gasoline gallon equivalent per 100 miles as described in SAE J1711 (incorporated by reference in § 600.011), as described in § 600.116.

(3) For electric vehicles, calculate the fuel consumption rate in kW-hours per 100 miles with the following formula, rounded to the nearest whole number:

Fuel Consumption Rate = 100/MPG

Where:

MPG = The combined fuel economy value from paragraph (a) of this section, in miles per kW-hour.

(e) *Annual fuel cost.* Calculate annual fuel costs as follows:

(1) Calculate the total annual fuel cost with the following formula, rounded to nearest whole number:

$$\text{Annual Fuel Cost} = [f_1 \times \text{Fuel Price}_1/\text{MPG}_1 + f_2 \times \text{Fuel Price}_2/\text{MPG}_2] \times \text{Average Annual Miles}$$

Where:

f_i = The fraction of the vehicle's overall driving distance that is projected to occur for fuel *i*. For vehicles that operate on only one fuel, $f_1 = 1$ and $f_2 = 0$. For plug-in hybrid electric vehicles, determine the values of f_i from SAE J 2841 (incorporated by reference in § 600.011). For dual fuel vehicles and flexible fuel vehicles, disregard operation on the alternative fuel.

Fuel Price_i = The estimated fuel price provided by EPA for fuel *i*. The units are dollars per gallon for gasoline and diesel fuel, dollars per gasoline gallon equivalent for natural gas, and dollars per kW-hr for plug-in electricity.

MPG_i = The combined fuel economy value from paragraph (a) of this section for fuel *i*. The units are miles per gallon for gasoline and diesel fuel, miles per gasoline gallon equivalent for natural gas, and miles per kW-hr for plug-in electricity.

Average Annual Miles = The estimated annual mileage figure provided by EPA, in miles.

(2) For plug-in hybrid electric vehicles, calculate a separate annual cost estimate using the equation in paragraph (e)(1) of this section by assuming the battery is never charged from an external power source. Similarly, calculate an annual cost estimate by assuming the battery is regularly charged from an external power source such that it is never fully discharged.

(f) *Fuel savings.* Calculate an estimated five-year cost increment relative to an average vehicle by multiplying the rounded annual fuel cost from paragraph (e) of this section by 5 and subtracting this value from the median five-year fuel cost. We will calculate the median five-year fuel cost from the annual fuel cost equation in paragraph (e) of this section based on a gasoline-fueled vehicle with a median fuel economy value. The median five-year fuel cost is $10,000 for a 21-mpg vehicle that drives 15,000 miles per year with gasoline priced at $2.80 per gallon. We may periodically update this median five-year fuel cost to better

characterize the fuel economy for an average vehicle. Round the calculated five-year cost increment to the nearest $100. Negative values represent a cost increase compared to the average vehicle.

(g) *Other air pollutant score.* Establish a score for exhaust emissions other than CO_2 based on the applicable emission standards as shown in Table 2 of this section. For Independent Commercial Importers that import vehicles not subject to Tier 2 emissions standards, the air pollutant score for the vehicle is 1.

TABLE 2 OF § 600.311–12—CRITERIA FOR ESTABLISHING AIR POLLUTION SCORE

Score	U.S. EPA Tier 2 emission standard	California Air Resources Board LEV II emission standard
1		ULEV & LEV II large trucks.
2	Bin 8	SULEV II large trucks.
3	Bin 7	
4	Bin 6	LEV II, option 1
5	Bin 5	LEV II
6	Bin 4	ULEV II
7	Bin 3	
8	Bin 2	SULEV II
9		PZEV
10	Bin 1	ZEV

(h) *Ranges of fuel economy and CO_2 emission values.* We will determine the range of combined fuel economy and CO_2 emission values for each vehicle class identified in § 600.315. We will generally update these range values before the start of each model year based on the lowest and highest values within each vehicle class. We will also use this same information to establish a range of fuel economy values for all vehicles. Continue to use the most recently published numbers until we update them, even if you start a new model year before we publish the range values for the new model year.

(i) *Driving range.* Determine the driving range for certain vehicles as follows:

(1) For electric vehicles, determine the vehicle's overall driving range as described in Section 8 of SAE J1634 (incorporated by reference in § 600.011), as described in § 600.116. Determine separate range values for FTP-based city and HFET-based highway driving, then calculate a combined value by arithmetically averaging the two values, weighted 0.55 and 0.45 respectively, and round to the nearest whole number.

(2) For natural gas vehicles, determine the vehicle's driving range in miles by multiplying the combined fuel economy described in paragraph (a) of this section by the vehicle's fuel tank capacity, rounded to the nearest whole number.

(3) For plug-in hybrid electric vehicles, determine the battery driving range and overall driving range as described in SAE J1711 (incorporated by reference in § 600.011), as described in § 600.116, as follows:

(i) Determine the vehicle's Actual Charge-Depleting Range, R_{cda}. Determine separate range values for FTP-based city and HFET-based highway driving, then calculate a combined value by arithmetically averaging the two values, weighted 0.55 and 0.45 respectively, and round to the nearest whole number.

(ii) Use good engineering judgment to calculate the vehicle's operating distance before the fuel tank is empty when starting with a full fuel tank and a fully charged battery, consistent with the procedure and calculation specified in paragraph (i)(3)(i) of this section and the fuel economy values as described in paragraph (a) of this section.

(j) [Reserved]

(k) *Charge time.* For electric vehicles, determine the time it takes to fully charge the battery from a standard 110 volt power source to the point that the battery meets the manufacturer's end-of-charge criteria, consistent with the procedures specified in SAE J1634 (incorporated by reference in § 600.011) for electric vehicles and in SAE J1711 (incorporated by reference in § 600.011) for plug-in hybrid electric vehicles, as described in § 600.116. This value may be more or less than the 12-hour minimum charging time specified for testing. You may alternatively specify the charge time based on a 220 volt power source if your owners manual recommends charging with the higher voltage; you must then identify the voltage associated with the charge time on the fuel economy label.

(l) *California-specific values.* If the Administrator determines that automobiles intended for sale in California are likely to exhibit significant differences in fuel economy or other label values from those intended for sale in other states, the Administrator will compute separate values for each class of automobiles for California and for the other states.

54. § 600.314–08 is revised to read as follows:

§ 600.314–08 Updating label values, annual fuel cost, Gas Guzzler Tax, and range of fuel economy for comparable automobiles.

(a) The label values established in § 600.312 shall remain in effect for the model year unless updated in accordance with paragraph (b) of this section.

(b)(1) The manufacturer shall recalculate the model type fuel economy values for any model type containing base levels affected by running changes specified in § 600.507.

(2) For separate model types created in § 600.209–08(a)(2) or § 600.209–12(a)(2), the manufacturer shall recalculate the model type values for any additions or deletions of subconfigurations to the model type. Minimum data requirements specified in § 600.010(c) shall be met prior to recalculation.

(3) Label value recalculations shall be performed as follows:

(i) The manufacturer shall use updated total model year projected sales for label value recalculations.

(ii) All model year data approved by the Administrator at the time of the recalculation for that model type shall be included in the recalculation.

(iii) Using the additional data under paragraph (b) of this section, the manufacturer shall calculate new model type city and highway values in accordance with § 600.210 except that the values shall be rounded to the nearest 0.1 mpg.

(iv) The existing label values, calculated in accordance with § 600.210, shall be rounded to the nearest 0.1 mpg.

(4)(i) If the recalculated city or highway fuel economy value in paragraph (b)(3)(iii) of this section is less than the respective city or highway value in paragraph (b)(3)(iv) of this

section by 1.0 mpg or more, the manufacturer shall affix labels with the recalculated model type values (rounded to the nearest whole mpg) to all new vehicles of that model type beginning on the day of implementation of the running change.

(ii) If the recalculated city or highway fuel economy value in paragraph (b)(3)(iii) of this section is higher than the respective city or highway value in paragraph (b)(3)(iv) of this section by 1.0 mpg or more, then the manufacturer has the option to use the recalculated values for labeling the entire model type beginning on the day of implementation of the running change.

(c) For fuel economy labels updated using recalculated fuel economy values determined in accordance with paragraph (b) of this section, the manufacturer shall concurrently update all other label information (*e.g.,* the annual fuel cost, range of comparable vehicles and the applicability of the Gas Guzzler Tax as needed).

(d) The Administrator shall periodically update the range of fuel economies of comparable automobiles based upon all label data supplied to the Administrator.

(e) The manufacturer may request permission from the Administrator to calculate and use label values based on test data from vehicles which have not completed the Administrator-ordered confirmatory testing required under the provisions of § 600.008–08(b). If the Administrator approves such a calculation the following procedures shall be used to determine if relabeling is required after the confirmatory testing is completed.

(1) The Administrator-ordered confirmatory testing shall be completed as quickly as possible.

(2) Using the additional data under paragraph (e)(1) of this section, the manufacturer shall calculate new model type city and highway values in accordance with §§ 600.207 and 600.210 except that the values shall be rounded to the nearest 0.1 mpg.

(3) The existing label values, calculated in accordance with § 600.210, shall be rounded to the nearest 0.1 mpg.

(4) The manufacturer may need to revise fuel economy labels as follows:

(i) If the recalculated city or highway fuel economy value in paragraph (b)(3)(iii) of this section is less than the respective city or highway value in paragraph (b)(3)(iv) of this section by 0.5 mpg or more, the manufacturer shall affix labels with the recalculated model type MPG values (rounded to the nearest whole number) to all new vehicles of that model type beginning 15 days after the completion of the confirmatory test.

(ii) If both the recalculated city or highway fuel economy value in paragraph (b)(3)(iii) of this section is less than the respective city or highway value in paragraph (b)(3)(iv) of this section by 0.1 mpg or more and the recalculated gas guzzler tax rate determined under the provisions of § 600.513–08 is larger, the manufacturer shall affix labels with the recalculated model type values and gas guzzler tax statement and rates to all new vehicles of that model type beginning 15 days after the completion of the confirmatory test.

(5) For fuel economy labels updated using recalculated fuel economy values determined in accordance with paragraph (e)(4) of this section, the manufacturer shall concurrently update all other label information (e.g., the annual fuel cost, range of comparable vehicles and the applicability of the Gas Guzzler Tax if required by Department of Treasury regulations).

55. Section 600.315–08 is amended by revising paragraphs (a)(2) and (c) introductory text to read as follows:

§ 600.315–08 Classes of comparable automobiles.

(a) * * *

(2) The Administrator will classify light trucks (nonpassenger automobiles) into the following classes: Small pickup trucks, standard pickup trucks, vans, minivans, and SUVs. Starting in the 2012 model year, SUVs will be divided between small sport utility vehicles and standard sport utility vehicles. Pickup trucks and SUVs are separated by car line on the basis of gross vehicle weight rating (GVWR). For a product line with more than one GVWR, establish the characteristic GVWR value for the product line by calculating the arithmetic average of all distinct GVWR values less than or equal to 8,500 pounds available for that product line. The Administrator may determine that specific light trucks should be most appropriately placed in a different class or in the special purpose vehicle class as provided in paragraph (a)(3)(i) and (ii) of this section, based on the features and characteristics of the specific vehicle, consumer information provided by the manufacturer, and other information available to consumers.

(i) Small pickup trucks. Pickup trucks with a GVWR below 6000 pounds.

(ii) Standard pickup trucks. Pickup trucks with a GVWR at or above 6000 pounds and at or below 8,500 pounds.

(iii) Vans.

(iv) Minivans.

(v) Small sport utility vehicles. Sport utility vehicles with a GVWR below 6000 pounds.

(vi) Standard sport utility vehicles. Sport utility vehicles with a GVWR at or above 6000 pounds and at or below 10,000 pounds.

* * * * *

(c) All interior and cargo dimensions are measured in inches to the nearest 0.1 inch. All dimensions and volumes shall be determined from the base vehicles of each body style in each car line, and do not include optional equipment. The dimensions H61, W3, W5, L34, H63, W4, W6, L51, H201, L205, L210, L211, H198, W201, and volume V1 are to be determined in accordance with the procedures outlined in Motor Vehicle Dimensions SAE J1100a (incorporated by reference in § 600.011), except as follows:

* * * * *

56. The redesignated § 600.316–08 is revised to read as follows:

§ 600.316–08 Multistage manufacture.

Where more than one person is the manufacturer of a vehicle, the final stage manufacturer (as defined in 49 CFR 529.3) is treated as the vehicle manufacturer for purposes of compliance with this subpart.

Subpart E—Dealer Availability of Fuel Economy Information

57. The heading for subpart E is revised as set forth above.

§ 600.401–77, § 600.402–77, § 600.403–77, § 600.404–77, § 600.405–77, § 600.406–77, § 600.407–77—[Removed]

58. Subpart E is amended by removing the following sections:

§ 600.401–77
§ 600.402–77
§ 600.403–77
§ 600.404–77
§ 600.405–77
§ 600.406–77
§ 600.407–77

Subpart F—Procedures for Determining Manufacturer's Average Fuel Economy and Manufacturer's Average Carbon-related Exhaust Emissions

59. The heading for subpart F is revised as set forth above.

§ 600.501–12, § 600.501–85, § 600.501–86, § 600.501–93, § 600.503–78, § 600.504–78, § 600.505–78, § 600.507–86, § 600.510–86, § 600.510–93, § 600.512–01, § 600.512–86, § 600.513–81, § 600.513–91 [Removed]

60. Subpart F is amended by removing the following sections:

§ 600.501–12

§ 600.501–85
§ 600.501–86
§ 600.501–93
§ 600.503–78
§ 600.504–78
§ 600.505–78
§ 600.507–86
§ 600.510–86
§ 600.510–93
§ 600.512–01
§ 600.512–86
§ 600.513–81
§ 600.513–91

61. Redesignate § 600.502–81 as § 600.502.

62. The redesignated § 600.502 is revised to read as follows:

§ 600.502 Definitions.

The following definitions apply to this subpart in addition to those in § 600.002:

(a) The *Declared value* of imported components shall be:

(1) The value at which components are declared by the importer to the U.S. Customs Service at the date of entry into the customs territory of the United States; or

(2) With respect to imports into Canada, the declared value of such components as if they were declared as imports into the United States at the date of entry into Canada; or

(3) With respect to imports into Mexico, the declared value of such components as if they were declared as imports into the United States at the date of entry into Mexico.

(b) *Cost of production of a car line* shall mean the aggregate of the products of:

(1) The average U.S. dealer wholesale price for such car line as computed from each official dealer price list effective during the course of a model year, and

(2) The number of automobiles within the car line produced during the part of the model year that the price list was in effect.

(c) *Equivalent petroleum-based fuel economy value* means a number representing the average number of miles traveled by an electric vehicle per gallon of gasoline.

63. § 600.507–12 is amended by revising paragraph (a) introductory text and paragraph (c) to read as follows:

§ 600.507–12 Running change data requirements.

(a) Except as specified in paragraph (d) of this section, the manufacturer shall submit additional running change fuel economy and carbon-related exhaust emissions data as specified in paragraph (b) of this section for any running change approved or implemented under § 86.1842 of this chapter, which:

* * * * *

(c) The manufacturer shall submit the fuel economy data required by this section to the Administrator in accordance with § 600.314.

* * * * *

64. Redesignate § 600.509–86 as § 600.509–08.

65. § 600.510–12 is amended by revising paragraphs (b)(2) introductory text, (b)(3) introductory text, (c)(2)(iv)(B), (g)(1), (i) introductory text, and (j)(2) to read as follows:

§ 600.510–12 Calculation of average fuel economy and average carbon-related exhaust emissions.

* * * * *

(b) * * *

(2) The combined city/highway fuel economy and carbon-related exhaust emission values will be calculated for each model type in accordance with § 600.208 except that:

* * * * *

(3) The fuel economy and carbon-related exhaust emission values for each vehicle configuration are the combined fuel economy and carbon-related exhaust emissions calculated according to § 600.206–12(a)(3) except that:

* * * * *

(c) * * *

(2) * * *

(iv) * * *

(B) The combined model type fuel economy value for operation on alcohol fuel as determined in § 600.208–12(b)(5)(ii) divided by 0.15 provided the requirements of paragraph (g) of this section are met; or

* * * * *

(g)(1) Alcohol dual fuel automobiles and natural gas dual fuel automobiles must provide equal or greater energy efficiency while operating on alcohol or natural gas as while operating on gasoline or diesel fuel to obtain the CAFE credit determined in paragraphs (c)(2)(iv) and (v) of this section or to obtain the carbon-related exhaust emissions credit determined in paragraphs (j)(2)(ii) and (iii) of this section. The following equation must hold true:

$E_{alt}/E_{pet} \geq 1$

Where:

$E_{alt} = [FE_{alt}/(NHV_{alt} \times D_{alt})] \times 10^6$ = energy efficiency while operating on alternative fuel rounded to the nearest 0.01 miles/million BTU.

$E_{pet} = [FE_{pet}/(NHV_{pet} \times D_{pet})] \times 10^6$ = energy efficiency while operating on gasoline or diesel (petroleum) fuel rounded to the nearest 0.01 miles/million BTU.

FE_{alt} is the fuel economy [miles/gallon for liquid fuels or miles/100 standard cubic feet for gaseous fuels] while operated on the alternative fuel as determined in § 600.113–12(a) and (b).

FE_{pet} is the fuel economy [miles/gallon] while operated on petroleum fuel (gasoline or diesel) as determined in § 600.113–12(a) and (b).

NHV_{alt} is the net (lower) heating value [BTU/lb] of the alternative fuel.

NHV_{pet} is the net (lower) heating value [BTU/lb] of the petroleum fuel.

D_{alt} is the density [lb/gallon for liquid fuels or lb/100 standard cubic feet for gaseous fuels] of the alternative fuel.

D_{pet} is the density [lb/gallon] of the petroleum fuel.

(i) The equation must hold true for both the FTP city and HFET highway fuel economy values for each test of each test vehicle.

(ii)(A) The net heating value for alcohol fuels shall be premeasured using a test method which has been approved in advance by the Administrator.

(B) The density for alcohol fuels shall be premeasured using ASTM D 1298–99 (incorporated by reference at § 600.011).

(iii) The net heating value and density of gasoline are to be determined by the manufacturer in accordance with § 600.113.

* * * * *

(i) For model years 2012 through 2015, and for each category of automobile identified in paragraph (a)(1) of this section, the maximum decrease in average carbon-related exhaust emissions determined in paragraph (j) of this section attributable to alcohol dual fuel automobiles and natural gas dual fuel automobiles shall be calculated using the following formula, and rounded to the nearest tenth of a gram per mile:

$$\text{Maximum Decrease} = \frac{8887}{\left[\frac{8887}{FltAvg} - MPG_{MAX}\right]} - FltAvg$$

Where:

FltAvg = The fleet average CREE value in grams per mile, rounded to the nearest whole number, for passenger automobiles or light trucks determined for the applicable model year according to paragraph (j) of this section, except by assuming all alcohol dual fuel and natural gas dual fuel automobiles are operated exclusively on gasoline (or diesel) fuel.

MPG_{MAX} = The maximum increase in miles per gallon determined for the appropriate model year in paragraph (h) of this section.

* * * * *

(j) * * *

(2) A sum of terms, each of which corresponds to a model type within that category of automobiles and is a product determined by multiplying the number of automobiles of that model type produced by the manufacturer in the model year by:

(i) For gasoline-fueled and diesel-fueled model types, the carbon-related exhaust emissions value calculated for that model type in accordance with paragraph (b)(2) of this section; or

(ii)(A) For alcohol-fueled model types, for model years 2012 through 2015, the carbon-related exhaust emissions value calculated for that model type in accordance with paragraph (b)(2) of this section multiplied by 0.15 and rounded to the nearest gram per mile, except that manufacturers complying with the fleet averaging option for N_2O and CH_4 as allowed under § 86.1818 of this chapter must perform this calculation such that N_2O and CH_4 values are not multiplied by 0.15; or

(B) For alcohol-fueled model types, for model years 2016 and later, the carbon-related exhaust emissions value calculated for that model type in accordance with paragraph (b)(2) of this section; or

(iii)(A) For natural gas-fueled model types, for model years 2012 through 2015, the carbon-related exhaust emissions value calculated for that model type in accordance with paragraph (b)(2) of this section multiplied by 0.15 and rounded to the nearest gram per mile, except that manufacturers complying with the fleet averaging option for N_2O and CH_4 as allowed under § 86.1818 of this chapter must perform this calculation such that N_2O and CH_4 values are not multiplied by 0.15; or

(B) For natural gas-fueled model types, for model years 2016 and later, the carbon-related exhaust emissions value calculated for that model type in accordance with paragraph (b)(2) of this section; or

(iv) For alcohol dual fuel model types, for model years 2012 through 2015, the arithmetic average of the following two terms, the result rounded to the nearest gram per mile:

(A) The combined model type carbon-related exhaust emissions value for operation on gasoline or diesel fuel as determined in § 600.208–12(b)(5)(i); and

(B) The combined model type carbon-related exhaust emissions value for operation on alcohol fuel as determined in § 600.208–12(b)(5)(ii) multiplied by 0.15 provided the requirements of paragraph (g) of this section are met, except that manufacturers complying with the fleet averaging option for N_2O and CH_4 as allowed under § 86.1818 of this chapter must perform this calculation such that N_2O and CH_4 values are not multiplied by 0.15; or

(v) For natural gas dual fuel model types, for model years 2012 through 2015, the arithmetic average of the following two terms; the result rounded to the nearest gram per mile:

(A) The combined model type carbon-related exhaust emissions value for operation on gasoline or diesel as determined in § 600.208–12(b)(5)(i); and

(B) The combined model type carbon-related exhaust emissions value for operation on natural gas as determined in § 600.208–12(b)(5)(ii) multiplied by 0.15 provided the requirements of paragraph (g) of this section are met, except that manufacturers complying with the fleet averaging option for N_2O and CH_4 as allowed under § 86.1818 of this chapter must perform this calculation such that N_2O and CH_4 values are not multiplied by 0.15.

(vi) For alcohol dual fuel model types, for model years 2016 and later, the combined model type carbon-related exhaust emissions value determined according to the following formula and rounded to the nearest gram per mile:

$$CREE = (F \times CREE_{alt}) + ((1 - F) \times CREE_{gas})$$

Where:

F = 0.00 unless otherwise approved by the Administrator according to the provisions of paragraph (k) of this section;

$CREE_{alt}$ = The combined model type carbon-related exhaust emissions value for operation on alcohol fuel as determined in § 600.208–12(b)(5)(ii); and

$CREE_{gas}$ = The combined model type carbon-related exhaust emissions value for operation on gasoline or diesel fuel as determined in §600.208–12(b)(5)(i).

(vii) For natural gas dual fuel model types, for model years 2016 and later, the combined model type carbon-related exhaust emissions value determined according to the following formula and rounded to the nearest gram per mile:

$$CREE = (F \times CREE_{alt}) + ((1 - F) \times CREE_{gas})$$

Where:

F = 0.00 unless otherwise approved by the Administrator according to the provisions of paragraph (k) of this section;

$CREE_{alt}$ = The combined model type carbon-related exhaust emissions value for operation on alcohol fuel as determined in § 600.208–12(b)(5)(ii); and

$CREE_{gas}$ = The combined model type carbon-related exhaust emissions value for operation on gasoline or diesel fuel as determined in § 600.208–12(b)(5)(i).

* * * * *

66. Redesignate § 600.511–80 as § 600.511–08.

67. § 600.512–12 is amended by revising paragraph (c) to read as follows:

§ 600.512–12 Model year report.

* * * * *

(c) The model year report must include the following information:

(1)(i) All fuel economy data used in the FTP/HFET-based model type calculations under § 600.208–12, and subsequently required by the Administrator in accordance with § 600.507;

(ii) All carbon-related exhaust emission data used in the FTP/HFET-based model type calculations under § 600.208–12, and subsequently required by the Administrator in accordance with § 600.507;

(2)(i) All fuel economy data for certification vehicles and for vehicles tested for running changes approved under § 86.1842 of this chapter;

(ii) All carbon-related exhaust emission data for certification vehicles and for vehicles tested for running changes approved under § 86.1842 of this chapter;

(3) Any additional fuel economy and carbon-related exhaust emission data submitted by the manufacturer under § 600.509;

(4)(i) A fuel economy value for each model type of the manufacturer's product line calculated according to § 600.510–12(b)(2);

(ii) A carbon-related exhaust emission value for each model type of the manufacturer's product line calculated according to § 600.510–12(b)(2);

(5)(i) The manufacturer's average fuel economy value calculated according to § 600.510–12(c);

(ii) The manufacturer's average carbon-related exhaust emission value calculated according to § 600.510(j);

(6) A listing of both domestically and nondomestically produced car lines as determined in § 600.511 and the cost information upon which the determination was made; and

(7) The authenticity and accuracy of production data must be attested to by the corporation, and shall bear the

signature of an officer (a corporate executive of at least the rank of vice-president) designated by the corporation. Such attestation shall constitute a representation by the manufacturer that the manufacturer has established reasonable, prudent procedures to ascertain and provide production data that are accurate and authentic in all material respects and that these procedures have been followed by employees of the manufacturer involved in the reporting process. The signature of the designated officer shall constitute a representation by the required attestation.

(8) [Reserved]

(9) The "required fuel economy level" pursuant to 49 CFR parts 531 or 533, as applicable. Model year reports shall include information in sufficient detail to verify the accuracy of the calculated required fuel economy level, including but is not limited to, production information for each unique footprint within each model type contained in the model year report and the formula used to calculate the required fuel economy level. Model year reports shall include a statement that the method of measuring vehicle track width, measuring vehicle wheelbase and calculating vehicle footprint is accurate and complies with applicable Department of Transportation requirements.

(10) The "required fuel economy level" pursuant to 49 CFR parts 531 or 533 as applicable, and the applicable fleet average CO_2 emission standards. Model year reports shall include information in sufficient detail to verify the accuracy of the calculated required fuel economy level and fleet average CO_2 emission standards, including but is not limited to, production information for each unique footprint within each model type contained in the model year report and the formula used to calculate the required fuel economy level and fleet average CO_2 emission standards. Model year reports shall include a statement that the method of measuring vehicle track width, measuring vehicle wheelbase and calculating vehicle footprint is accurate and complies with applicable Department of Transportation and EPA requirements.

(11) A detailed (but easy to understand) list of vehicle models and the applicable in-use CREE emission standard. The list of models shall include the applicable carline/subconfiguration parameters (including carline, equivalent test weight, road-load horsepower, axle ratio, engine code, transmission class, transmission configuration and basic engine); the test parameters (ETW and a, b, c, dynamometer coefficients) and the associated CREE emission standard. The manufacturer shall provide the method of identifying EPA engine code for applicable in-use vehicles.

68. § 600.513–08 is revised to read as follows:

§ 600.513–08 Gas Guzzler Tax.

(a) This section applies only to passenger automobiles sold after December 27, 1991, regardless of the model year of those vehicles. For alcohol dual fuel and natural gas dual fuel automobiles, the fuel economy while such automobiles are operated on gasoline will be used for Gas Guzzler Tax assessments.

(1) The provisions of this section do not apply to passenger automobiles exempted for Gas Guzzler Tax assessments by applicable federal law and regulations. However, the manufacturer of an exempted passenger automobile may, in its discretion, label such vehicles in accordance with the provisions of this section.

(2) For 1991 and later model year passenger automobiles, the combined FTP/HFET-based model type fuel economy value determined in § 600.208 used for Gas Guzzler Tax assessments shall be calculated in accordance with the following equation, rounded to the nearest 0.1 mpg:

$$FE_{adj} = FE[((0.55 \times a_g \times c) + (0.45 \times c) + (0.5556 \times a_g) + 0.4487)/((0.55 \times a_g) + 0.45)] + IW_g$$

Where:

FE_{adj} = Fuel economy value to be used for determination of gas guzzler tax assessment rounded to the nearest 0.1 mpg.

FE = Combined model type fuel economy calculated in accordance with § 600.208, rounded to the nearest 0.0001 mpg.

a_g = Model type highway fuel economy, calculated in accordance with § 600.208, rounded to the nearest 0.0001 mpg divided by the model type city fuel economy calculated in accordance with § 600.208, rounded to the nearest 0.0001 mpg. The quotient shall be rounded to 4 decimal places.

c = gas guzzler adjustment factor = 1.300×10^{-3} for the 1986 and later model years.

$IW_g = (9.2917 \times 10^{-3} \times SF_{3IWCG} FE_{3IWCG}) - (3.5123 \times 10^{-3} \times SF_{4ETWG} \times FE_{4IWCG})$.

Note: Any calculated value of IW less than zero shall be set equal to zero.

SF_{3IWCG} = The 3,000 lb. inertia weight class sales in the model type divided by the total model type sales; the quotient shall be rounded to 4 decimal places.

SF_{4ETWG} = The 4,000 lb. equivalent test weight sales in the model type divided by the total model type sales, the quotient shall be rounded to 4 decimal places.

FE_{3IWCG} = The 3,000 lb. inertial weight class base level combined fuel economy used to calculate the model type fuel economy rounded to the nearest 0.0001 mpg.

FE_{4IWCG} = The 4,000 lb. inertial weight class base level combined fuel economy used to calculate the model type fuel economy rounded to the nearest 0.001 mpg.

(b)(1) For passenger automobiles sold after December 31, 1990, with a combined FTP/HFET-based model type fuel economy value of less than 22.5 mpg (as determined in § 600.208), calculated in accordance with paragraph (a)(2) of this section and rounded to the nearest 0.1 mpg, each vehicle fuel economy label shall include a Gas Guzzler Tax statement pursuant to 49 U.S.C. 32908(b)(1)(E). The tax amount stated shall be as specified in paragraph (b)(2) of this section.

(2) For passenger automobiles with a combined general label model type fuel economy value of:

At least * * *	but less than * * *	the Gas Guzzler Tax statement shall show a tax of * * *
(i) 22.5		$0
(ii) 21.5	22.5	1,000
(iii) 20.5	21.5	1,300
(iv) 19.5	20.5	1,700
(v) 18.5	19.5	2,100
(vi) 17.5	18.5	2,600
(vii) 16.5	17.5	3,000
(viii) 15.5	16.5	3,700
(ix) 14.5	15.5	4,500
(x) 13.5	14.5	5,400
(xi) 12.5	13.5	6,400
(xii)	12.5	7,700

69. The heading for Appendix I to Part 600 is revised to read as follows:

Appendix I to Part 600—Highway Fuel Economy Driving Schedule

* * * * *

70. Appendix II to Part 600 is amended by revising paragraph (b)(4) to read as follows:

Appendix II to Part 600—Sample Fuel Economy Calculations

* * * * *

(b) * * *

(4) Assume that the same vehicle was tested by the Federal Highway Fuel Economy Test Procedure and a calculation similar to that shown in (b)(3) of this section resulted in a highway fuel economy of MPG_h of 36.9. According to the procedure in § 600.210–08(c) or § 600.210–12(c), the combined fuel economy (called MPG_{comb}) for the vehicle may be calculated by substituting the city and highway fuel economy values into the following equation:

$$MPG_{comb} = \frac{1}{\frac{0.55}{MPG_c} + \frac{0.45}{MPG_h}}$$

$$MPG_{comb} = \frac{1}{\frac{0.55}{27.9} + \frac{0.45}{36.9}}$$

$MPG_{comb} = 31.3$

71. The heading for Appendix IV to Part 600 is revised to read as follows:

Appendix IV to Part 600—Sample Fuel Economy Labels for 2008 Through 2011 Model Year Vehicles

* * * * *

72. The heading for Appendix V to Part 600 is revised to read as follows:

Appendix V to Part 600—Fuel Economy Label Style Guidelines for 2008 Through 2011 Model Year Vehicles

* * * * *

73. Appendix VI to Part 600 is added to read as follows:

Appendix VI to Part 600—Sample Fuel Economy Labels and Style Guidelines for 2012 and Later Model Years

BILLING CODE 6560–50–P

A. Gasoline-fueled or diesel-fueled vehicles, including hybrid electric vehicles with no plug-in capabilities.



B. Dual Fuel Vehicle Label (Ethanol/Gasoline)



C. Natural Gas Vehicle Label



D. Plug-in Hybrid Electric Vehicle Label



E. Electric Vehicle Label



BILLING CODE 6560–50–C

Appendix VIII to Part 600—[Removed]

74. Appendix VIII to Part 600 is removed.

Department of Transportation

National Highway Traffic Safety Administration

49 CFR Chapter V

In consideration of the foregoing, under the authority of 15 U.S.C. 1232 and 49 U.S.C. 32908 and delegation of authority at 49 CFR 1.50, NHTSA proposes to amend 49 CFR chapter V as follows:

PART 575—CONSUMER INFORMATION

1. Revise the authority citation for part 575 to read as follows:

Authority: 49 U.S.C. 32302, 30111, 30115, 30117, 30166, 20168, and 32908, Public Law 104–414, 114 Stat. 1800, Public Law 109–59, 119 Stat. 1144, 15 U.S.C. 1232(g), Public Law 110–140; delegation of authority at 49 CFR 1.50.

Subpart D—Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA–LU); Consumer Information

2. Amend § 575.301 by revising the section heading and adding and reserving paragraph (d)(6) to read as follows:

§ 575.301 Vehicle labeling of safety rating information.

* * * * *

(d) * * *

(6) [Reserved]

* * * * *

3. Add and reserve new Subpart E to part 575 to read as follows:

Subpart E—Fuel Economy, Greenhouse Gas Emissions, and Other Pollutant Emissions Labeling for New Passenger Cars and Light Trucks; Consumer Information [Reserved]

Dated: August 30, 2010.

Lisa P. Jackson,

Administrator, Environmental Protection Agency.

Dated: August 27, 2010.

Ray LaHood,

Secretary, Department of Transportation.

[FR Doc. 2010–22321 Filed 9–22–10; 8:45 am]

BILLING CODE 6560–50–P

Federal Register

Thursday,
September 23, 2010

Part IV

Department of Health and Human Services

Centers for Medicare & Medicaid Services

42 CFR Parts 405, 424, 438, et al.

Medicare, Medicaid, and Children's Health Insurance Programs; Additional Screening Requirements, Application Fees, Temporary Enrollment Moratoria, Payment Suspensions and Compliance Plans for Providers and Suppliers; Proposed Rule

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

42 CFR Parts 405, 424, 438, 447, 455, 457, 498, and 1007

[CMS–6028–P]

RIN 0938–AQ20

Medicare, Medicaid, and Children's Health Insurance Programs; Additional Screening Requirements, Application Fees, Temporary Enrollment Moratoria, Payment Suspensions and Compliance Plans for Providers and Suppliers

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

ACTION: Proposed rule.

SUMMARY: This proposed rule would implement provisions of the Affordable Care Act that establish: Procedures under which screening is conducted for providers of medical or other services and suppliers in the Medicare program, providers in the Medicaid program, and providers in the Children's Health Insurance Program (CHIP); an application fee to be imposed on providers and suppliers; temporary moratoria that may be imposed if necessary to prevent or combat fraud, waste, and abuse under the Medicare and Medicaid programs, and CHIP; guidance for States regarding termination of providers from Medicaid and CHIP if terminated by Medicare or another Medicaid State plan or CHIP; guidance regarding the termination of providers and suppliers from Medicare if terminated by a Medicaid State agency; and requirements for suspension of payments pending credible allegations of fraud in the Medicare and Medicaid programs. This proposed rule would also present an approach and request comments on the provisions of the Affordable Care Act that require providers of medical or other items or services or suppliers within a particular industry sector or category to establish compliance programs.

DATES: To be assured consideration, comments must be received at one of the addresses provided below, no later than 5 p.m. on November 16, 2010.

ADDRESSES: In commenting, please refer to file code CMS–6028–P. Because of staff and resource limitations, we cannot accept comments by facsimile (FAX) transmission.

You may submit comments in one of four ways (please choose only one of the ways listed):

1. *Electronically.* You may submit electronic comments on this regulation to *http://www.regulations.gov.* Follow the "Submit a comment" instructions.

2. *By regular mail.* You may mail written comments to the following address only:

Centers for Medicare & Medicaid Services, Department of Health and Human Services, Attention: CMS–6028–P, P.O. Box 8020, Baltimore, MD 21244–8020.

Please allow sufficient time for mailed comments to be received before the close of the comment period.

3. *By express or overnight mail.* You may send written comments to the following address only:

Centers for Medicare & Medicaid Services, Department of Health and Human Services, Attention: CMS–6028–P, Mail Stop C4–26–05, 7500 Security Boulevard, Baltimore, MD 21244–1850

4. *By hand or courier.* If you prefer, you may deliver (by hand or courier) your written comments before the close of the comment period to either of the following addresses:

a. For delivery in Washington, DC—Centers for Medicare & Medicaid Services, Department of Health and Human Services, Room 445–G, Hubert H. Humphrey Building, 200 Independence Avenue, SW., Washington, DC 20201.

(Because access to the interior of the Hubert H. Humphrey Building is not readily available to persons without Federal government identification, commenters are encouraged to leave their comments in the CMS drop slots located in the main lobby of the building. A stamp-in clock is available for persons wishing to retain a proof of filing by stamping in and retaining an extra copy of the comments being filed.)

b. For delivery in Baltimore, MD—Centers for Medicare & Medicaid Services, Department of Health and Human Services, 7500 Security Boulevard, Baltimore, MD 21244–1850.

If you intend to deliver your comments to the Baltimore address, please call telephone number (410) 786–9994 in advance to schedule your arrival with one of our staff members.

Comments mailed to the addresses indicated as appropriate for hand or courier delivery may be delayed and received after the comment period.

Submission of comments on paperwork requirements. You may submit comments on this document's paperwork requirements by following the instructions at the end of the "Collection of Information Requirements" section in this document.

For information on viewing public comments, see the beginning of the **SUPPLEMENTARY INFORMATION** section.

FOR FURTHER INFORMATION CONTACT: Patricia Peyton (410) 786–1812 for Medicare enrollment issues. Claudia Simonson (312) 353–2115 for Medicaid and CHIP enrollment and Medicaid payment suspension issues.

Joseph Strazzire (410) 786–2775 for Medicare payment suspension issues.

Laura Minassian-Kiefel (410) 786–4641 for compliance program issues.

SUPPLEMENTARY INFORMATION: *Inspection of Public Comments:* All comments received before the close of the comment period are available for viewing by the public, including any personally identifiable or confidential business information that is included in a comment. We post all comments received before the close of the comment period on the following Web site as soon as possible after they have been received: *http://www.regulations.gov.* Follow the search instructions on that Web site to view public comments.

Comments received timely will also be available for public inspection as they are received, generally beginning approximately 3 weeks after publication of a document, at the headquarters of the Centers for Medicare & Medicaid Services, 7500 Security Boulevard, Baltimore, Maryland 21244, Monday through Friday of each week from 8:30 a.m. to 4 p.m. To schedule an appointment to view public comments, phone 1–800–743–3951.

I. Background

The Medicare program (title XVIII of the Social Security Act (the Act)) is the primary payer of health care for 45 million enrolled beneficiaries. Under section 1802 of the Act, a beneficiary may obtain health services from an individual or an organization qualified to participate in the Medicare program. Qualifications to participate are specified in statute and in regulations (*see,* for example, sections 1814, 1815, 1819, 1833, 1834, 1842, 1861, 1866, and 1891 of the Act; and 42 CFR chapter IV, subchapter G, which concerns standards and certification requirements).

Providers and suppliers furnishing services must comply with the Medicare requirements stipulated in the Act and in our regulations. These requirements are meant to ensure compliance with applicable statutes, as well as to promote the furnishing of high quality care. As Medicare program expenditures have grown, we have increased our efforts to ensure that only qualified individuals and organizations are

allowed to enroll or maintain their Medicare billing privileges.

The Medicaid program (title XIX of the Act) is a joint Federal and State health care program for eligible low-income individuals. States have considerable flexibility in how they administer their Medicaid programs within a broad Federal framework and programs vary from State to State.

The Children's Health Insurance Program (CHIP) (title XXI of the Act) is a joint Federal and State health care program that provides health care coverage to more than 7.7 million otherwise uninsured children.

Historically, States, in operating Medicaid and CHIP, have permitted the enrollment of providers who meet the State requirements for program enrollment.

The Patient Protection and Affordable Care Act (Pub. L. 111–148), as amended by the Health Care and Education Reconciliation Act of 2010 (Pub. L. 111–152) (collectively known as the Affordable Care Act) (the ACA) makes a number of changes to the Medicare and Medicaid programs and CHIP that enhance the provider and supplier enrollment process to improve the integrity of the programs to reduce fraud, waste, and abuse in the programs.

A. Statutory Authority

The following is an overview of some of the statutory authority relevant to enrollment in Medicare, Medicaid, and CHIP:

- Sections 1102 and 1871 of the Act provide general authority for the Secretary of Health and Human Services (the Secretary) to prescribe regulations for the efficient administration of the Medicare program. Section 1102 of the Act also provides general authority for the Secretary to prescribe regulations for the efficient administration of the Medicaid program and CHIP.
- Section 4313 of the Balanced Budget Act of 1997 (BBA) (Pub. L. 105–33) amended sections 1124(a)(1) and 1124A of the Act to require disclosure of both the Employer Identification Number (EIN) and Social Security Number (SSN) of each provider or supplier, each person with ownership or control interest in the provider or supplier, any subcontractor in which the provider or supplier directly or indirectly has a 5 percent or more ownership interest, and any managing employees including directors and officers of corporations and non-profit organizations and charities. The "Report to Congress on Steps Taken to Assure Confidentiality of Social Security Account Numbers as required by the Balanced Budget Act" was signed by the Secretary and sent to the Congress on January 26, 1999. This report outlines the provisions of a mandatory collection of SSNs and EINs effective on or after April 26, 1999.
- Section 936(a)(2) of the Medicare Prescription Drug, Improvement, and Modernization Act of 2003 (MMA) (Pub. L. 108–173) amended the Act to require the Secretary to establish a process for the enrollment of providers of services and suppliers. We are authorized to collect information on the Medicare enrollment application (that is, the CMS–855, (Office of Management and Budget (OMB) approval number 0938–0685)) to ensure that correct payments are made to providers and suppliers under the Medicare program as established by title XVIII of the Act.
- Section 1902(a)(27) of the Act provides general authority for the Secretary to require provider agreements under the Medicaid State Plans with every person or institution providing services under the State plan. Under these agreements, the Secretary may require information regarding any payments claimed by such person or institution for providing services under the State plan.
- Section 2107(e) of the Act, which provides that certain title XIX and title XI provisions apply to States under title XXI, including 1902(a)(4)(C) of the Act, relating to conflict of interest standards.
- Section 1903(i)(2) of the Act relating to limitations on payment.
- Section 1124 of the Act relating to disclosure of ownership and related information.
- Sections 6401, 6402, 6501,10603, and 1304 of the ACA amended the Act by establishing: (1) Procedures under which screening is conducted for providers of medical or other services and suppliers in the Medicare program, providers in the Medicaid program, and providers in the CHIP; (2) an application fee to be imposed on providers and suppliers; (3) temporary moratoria that the Secretary may impose if necessary to prevent or combat fraud, waste, and abuse under the Medicare and Medicaid programs and CHIP; (4) procedures to terminate providers if terminated by Medicare or another State plan; (5) requirements for suspensions of payments pending credible allegations of fraud in both the Medicare and Medicaid programs.

II. Provisions of the Proposed Regulations

A. Provider Screening Under Medicare, Medicaid, and CHIP

1. Statutory Changes

Section 6401(a) of the ACA, as amended by section 10603 of the ACA, amends section 1866(j) of the Act to add a new paragraph, paragraph "(2) Provider Screening." Section 1866(j)(2)(A) of the Act requires the Secretary, in consultation with the Department of Health of Human Services' Office of the Inspector General (HHS OIG), to establish procedures under which screening is conducted with respect to providers of medical or other items or services and suppliers under Medicare, Medicaid, and CHIP. Section 1866(j)(2)(B) of the Act requires the Secretary to determine the level of screening to be conducted according to the risk of fraud, waste, and abuse with respect to the category of provider of medical or other items or services or supplier. The provision states that the screening shall include a licensure check, which may include such checks across State lines; and the screening may, as the Secretary determines appropriate based on the risk of fraud, waste, and abuse, include a criminal background check; fingerprinting; unscheduled or unannounced site visits, including pre-enrollment site visits; database checks, including such checks across State lines; and such other screening as the Secretary determines appropriate. Section 1866(j)(2)(C) of the Act requires the Secretary to impose a fee on each institutional provider of medical or other items or services or supplier that would be used by the Secretary for program integrity efforts including to cover the cost of screening and to carry out the provisions of sections 1866(j) and 1128J of the Act. We discuss the fee in section II.B. of this proposed rule.

Section 6401(b) of the ACA amends section 1902 of the Act to add new paragraphs (a)(77)(i) and (ii), which require States to comply with the process for screening providers and suppliers as established by the Secretary under 1866(j)(2) of the Act.[1]

[1] We believe that the reference to section 1886(j)(2) of the Act in section 6401(b)(1) of the Affordable Care Act is a scrivener's error. We believe the Congress intended to refer to section 1866(j)(2) of the Act, which, as amended by section 6401(a) of the Affordable Care Act, requires the Secretary to establish a process for screening providers and suppliers. Because the drafting error is apparent, and a literal reading of the reference to section 1886(j)(2) of the Act would produce absurd results, we propose to interpret the cross-reference

Continued

We note that the statute uses the terms "providers of medical or other items or services," "institutional providers," and "suppliers." The Medicare program enrolls a variety of providers and suppliers, some of which are referred to as "providers of services," "institutional providers," "certified providers," "certified suppliers," and "suppliers." In Medicare, the term "providers of services" under section 1861(u) of the Act means health care entities that furnish services primarily payable under Part A of Medicare, such as hospitals, home health agencies (including home health agencies providing services under Part B), hospices, and skilled nursing facilities. The term "suppliers" defined in section 1861(d) of the Act refers to health care entities that furnish services primarily payable under Part B of Medicare, such as independent diagnostic testing facilities (IDTFs), durable medical equipment prosthetics, orthotics, and supplies (DMEPOS) suppliers, and eligible professionals, which refers to health care suppliers who are individuals, that is, physicians and the other professionals listed in section 1848(k)(3)(B) of the Act. For Medicaid and CHIP, we use the terms "providers" or "Medicaid providers" or "CHIP providers" when referring to all Medicaid or CHIP health care providers, including individual practitioners, institutional providers, and providers of medical equipment or goods related to care. The term "supplier" has no meaning in the Medicaid program or CHIP.

Section 424.502 contains additional definitions that apply to these and other terms used throughout this proposed rule including the following:

- Authorized official means an appointed official (for example, chief executive officer, chief financial officer, general partner, chairman of the board, or direct owner) to whom the organization has granted the legal authority to enroll it in the Medicare program, to make changes or updates to the organization's status in the Medicare program, and to commit the organization to fully abide by the statutes, regulations, and program instructions of the Medicare program.
- Delegated official means an individual who is delegated by the "Authorized Official," the authority to report changes and updates to the enrollment record. The delegated official must be an individual with ownership or control interest in, or be a W–2 managing employee of the provider or supplier.
- Managing employee means a general manager, business manager, administrator, director, or other individual that exercises operational or managerial control over, or who directly or indirectly conducts, the day-to-day operation of the provider or supplier, either under contract or through some other arrangement, whether or not the individual is a W–2 employee of the provider or supplier.
- Owner means any individual or entity that has any partnership interest in, or that has 5 percent or more direct or indirect ownership of the provider or supplier as defined in sections 1124 and 1124A(A) of the Act.
- Physician or nonphysician practitioner organization means any physician or nonphysician practitioner entity that enrolls in the Medicare program as a sole proprietorship or organizational entity.

The new screening procedures implemented pursuant to new section 1866(j)(2) of the Act would be applicable to newly enrolling providers and suppliers, including eligible professionals, beginning on March 23, 2011. These new procedures would be applicable to currently enrolled Medicare, Medicaid, and CHIP providers, suppliers, and eligible professionals beginning on March 23, 2012. These new screening procedures implemented pursuant to new section 1866(j)(2) of the Act would be applicable beginning on March 23, 2011 for those providers and suppliers currently enrolled in Medicare, Medicaid, and CHIP who revalidate their enrollment information. Within Medicare, the March 23, 2011 implementation date will impact those current providers and suppliers whose 5-year revalidation cycle (or 3-year revalidation cycle for DMEPOS suppliers) results in revalidation occurring on or after March 23, 2011 and before March 23, 2012.

2. Summary of Existing Screening Measures

Before we outline the new measures we are proposing under the ACA, it may be helpful to provide a summary of some of the screening measures already being utilized in Medicare, Medicaid, and CHIP. Pursuant to other authority, but with the notable exceptions of criminal background checks and fingerprinting, Medicare, generally through private contractors, already employs a number of the screening practices described in section 1866(j)(2)(B) of the Act to determine if a provider or supplier is in compliance with Federal and State requirements to enroll or to maintain enrollment in the Medicare program.

a. Licensure Requirements—Medicare and Medicaid

Over the past several years, we have taken a number of steps to strengthen our ability to deny or revoke Medicare billing privileges when providers or suppliers do not have or do not maintain the applicable State licensure requirements for their provider or supplier type or profession. We established reporting responsibilities for all providers, suppliers, and eligible professionals in earlier regulations at § 424.516(b) through (e). Today, to ensure that only qualified providers and suppliers remain in the Medicare fee-for-service (FFS) program, we require that Medicare contractors review State licensing board data on a monthly basis to determine if providers and suppliers remain in compliance with State licensure requirements. Medicare billing privileges would be revoked for those providers and suppliers who do not report a final adverse action (for example, license revocation or suspension, felony conviction) within the applicable reporting period, as required in § 424.516(b) through (e). Medicare suppliers of DMEPOS and IDTFs are already subject to similar provisions in § 424.57(c) and § 410.33(g), respectively. DMEPOS suppliers are also subject to additional requirements including accreditation and surety bonding, pursuant to 42 CFR 424.57(c)(22) through (26) and 42 CFR 424.57(d).

Medicare Advantage organizations (MAOs) are required to verify licensure of providers and suppliers, including physicians and other health care professionals, in accordance with § 422.204.

For Medicaid and CHIP, most States do some checking of in-State provider licenses. For example, in some States, the existence of the license may be verified, but little attention might be given to any restrictions on the license.

b. Site Visits—Medicare

Pursuant to § 424.517, Medicare conducts the following site visits and takes the following actions, generally through private contractors under CMS direction:

- The National Supplier Clearinghouse (NSC) Medicare Administrative Contractor (the Medicare contractor that processes enrollment applications for suppliers of DMEPOS) conducts pre-enrollment site visits to DMEPOS suppliers that are not associated with a chain supplier of

to section 1886(j)(2) in the new section 1902(ii) of the Act as if the reference were to section 1866(j)(2).

DMEPOS (a chain supplier of DMEPOS is a supplier with 25 or more distinct practice locations.)

- The NSC also conducts unannounced post-enrollment site visits to DMEPOS suppliers for which CMS or the NSC believes there is a likelihood of fraudulent or abusive activities to ensure those DMEPOS suppliers remain in compliance with the supplier standards found at § 424.57(c).
- CMS at times exercises its right to—
- Have the NSC conduct ad hoc pre- and post-enrollment site visits to any DMEPOS supplier;
- Have Medicare contractors conduct pre-enrollment site visits to all IDTFs; and
- Conduct ad hoc pre-and post enrollment site visits to any prospective Medicare provider and supplier or any enrolled Medicare provider or supplier.

In addition, under 42 CFR parts 488 and 489, a State survey agency or an approved national accreditation organization with deeming authority conducts pre-enrollment surveys for certified providers and suppliers to determine whether they meet the applicable Federal conditions and requirements for their provider or supplier type before they can participate in the Medicare program.

We believe these efforts need to be expanded to include additional site visits and site visits to additional provider and supplier types in order to protect the Medicare FFS program from unscrupulous or potentially fraudulent providers and suppliers.

We note that the site visits discussed here and elsewhere within this preamble and the proposed regulations are separate and apart from the site visits that are conducted pursuant to the Clinical Laboratory Improvement Amendments (CLIA). We intend to work with our State survey agency partners in coordinating these site visits so as to avoid duplication and burden on providers.

c. Database Checks—Medicare

Today, Medicare contractors employ database checks of eligible professionals, owners, authorized officials, delegated officials, managing employees, medical directors, and supervising physicians (at IDTFs and laboratories) as part of the Medicare provider and supplier enrollment process. These include database checks with the Social Security Administration (SSA) (to verify an individual's SSN), the National Plan and Provider Enumeration System (NPPES) to verify the National Provider Identifier (NPI) of an eligible professional, and State licensing board checks to determine if an eligible professional is appropriately licensed to furnish medical services within a given State. These checks also include checking a provider or supplier against the HHS OIG's List of Excluded Individuals/Entities (LEIE) and the General Service Administration's Excluded Parties List System (EPLS). All of the database checks are used to assess the eligibility and qualifications of providers and suppliers to enroll in the Medicare program, to confirm the identity of an eligible professional to ensure that he or she may be considered for enrollment in the Medicare program.

Also, on a monthly basis, CMS' Medicare contractors systematically compare enrolled providers, suppliers, and eligible professionals against the information in the Medicare Exclusions Database. The Medicare Exclusions Database identifies providers, suppliers, and eligible professionals who have been excluded from the Medicare and Medicaid programs by the HHS OIG. When a match is found, the HHS OIG exclusion information is systematically noted in the Medicare enrollment record of the provider, supplier, or eligible professional. In the Medicare program today, we deny or revoke the billing privileges of providers, suppliers, and eligible professionals who have been excluded by the HHS OIG. If the HHS OIG lifts the exclusion, the provider, supplier or eligible professional must reapply for enrollment in the Medicare program. In addition, Medicare contractors also review State licensure Web sites on a monthly basis to ensure that eligible professionals continue to meet State licensing requirements.

In addition, since January 2009, we have compared date of death information obtained from the Social Security Administration Death Master File (SSA DMF) with the information maintained in the National Plan and Provider Enumeration System (NPPES), the system that assigns a NPI to individual and organizations. Based on this comparison and the subsequent verification, we have deactivated the NPIs of more than 11,500 individuals who were previously assigned a type 1 (individual) NPI. We automatically transfer this information from NPPES to the Provider Enrollment, Chain, and Ownership System (PECOS), CMS' national Medicare enrollment repository to deactivate a deceased individual's Medicare billing privileges. In addition, Medicare contractors are required to review and act upon monthly files that contain a list of nonpractitioner individuals enrolled in the Medicare program who have been reported to the SSA as deceased. These individuals include: Owners, authorized officials, and delegated officials.

MAOs, as required by § 422.204, generally use database checks to verify licensure and licensure sanctions and limitations with State licensing boards and the Federation of State Medical Boards, DEA certificates with the National Technical Information Service (NTIS), history of adverse professional review actions and malpractice from the National Practitioner Data Bank (NPDB), accreditation status of institutional providers and suppliers with national accrediting boards, such as The Joint Commission (TJC), and search for HHS OIG exclusions using the HHS OIG Web site *http://www.oig.hhs.gov/fraud/exclusions/list of excluded.html.*

d. Criminal Background Checks—Medicare

As described in § 424.530(a) and § 424.535(a), CMS or its designated Medicare contractor may deny or revoke the Medicare billing privileges of the owner of a provider or supplier, a physician or nonphysician practitioner, and terminate any corresponding provider or supplier agreement for a number of reasons, including an exclusion from the Medicare, Medicaid, and any other Federal health care program, a felony within the preceding 10 years that is considered detrimental to the Medicare program, and/or submission of false or misleading information on the Medicare enrollment application. While we currently require our Medicare contractors to verify data submitted on, and as part of, the Medicare provider/supplier enrollment application, our contractors are not able to verify information that may have been purposefully omitted or changed in a manner to obfuscate any previous criminal activity. In addition, criminal background checks are not routinely used in the FFS Medicare screening process.

e. Medicare MAO Requirements

As mentioned earlier in this section, MAOs already employ a number of screening procedures in accordance with regulations and CMS manual instructions. Specifically, under § 422.204(b)(3) in the case of providers meeting the definition of "provider of services" in section 1861(u) of the Act, basic benefits may only be provided through providers if they have a provider agreement with CMS permitting them to furnish services under original Medicare. With respect to other entities like suppliers, § 422.204(b)(3) requires that they "meet the applicable requirements of title XVIII and Part A of title XI of the Act."

Given these requirements we are considering to what extent MAOs should be required to apply the identical screening requirements we are proposing for the original Medicare program or whether substantively similar alternative approaches adopted by MAOs would be acceptable. Accordingly, we solicit public comments on whether or to what extent MAOs should be required to implement the same enhanced screening requirements for providers, suppliers and physicians that we are proposing for the original Medicare program.

f. Fingerprinting—Medicare

We do not currently use fingerprinting in the Medicare screening process.

g. Screening—Medicaid and CHIP

States vary in the degree to which they employ screening methods such as unscheduled and unannounced site visits and database checks, including such checks across State lines, criminal background checks, and fingerprinting. However, there are at least a few States that utilize each of those methods.

States also vary in what they require their managed care entities (MCEs) [2] to do in terms of screening network-level providers that are not also enrolled in the Medicaid program as FFS providers. We are considering to what extent States must require their MCEs to apply the identical screening requirements we are proposing for the States or whether substantively similar alternative approaches adopted by MCEs would be acceptable. Accordingly, we solicit public comments on whether or to what extent MCEs should be required to implement the same enhanced screening requirements for Medicaid and CHIP providers that we are proposing for State Medicaid and CHIP programs.

3. Proposed Screening Requirements

a. Medicare

Section 1866(j)(2)(B) of the Act requires the Secretary to determine the level of screening applicable to providers and suppliers according to the risk of fraud, waste, and abuse the Secretary determines is posed by particular categories of providers and suppliers.

In considering how to establish consistent screening standards, we are proposing to designate provider and supplier categories that would be subject to certain screening procedures based on CMS' assessment of fraud, waste and abuse risk of the provider or supplier category, taking into consideration a variety of factors including studies conducted by the HHS OIG and the GAO and other sources. We would designate categories of providers or suppliers (for example, "newly enrolling DME suppliers" or "currently enrolled home health agencies") that would be subject to screening procedures in each category based on our assessment of the level of risk presented by the category of provider. There will be 3 levels of risk: "limited," "moderate" and "high," and each provider/supplier category will be assigned to one of these 3 levels. The screening procedures applicable to each risk level will be set by us and are included in this proposed rule. The categories described below and associated risk levels assigned are designed to identify those categories of providers and suppliers that pose a risk of fraud, waste, and abuse.

Under this proposed approach, the relevant Medicare contractor (for example, fiscal intermediary, regional home health intermediary, carriers, Part A or Part B Medicare Administrative Contractor (A/B MAC), or the NSC Administrative Contractor) would utilize the screening tools mandated by us for the risk level assigned to a particular provider or supplier category.

We are soliciting comments on the proposed assignment of specific provider and supplier types to established risk levels, including what criteria should be considered in making such assignments, whether such assignments should be released publicly, whether they should be subject to agency review and updated according to an established schedule (that is, annually, bi-annually), and the extent to which they should be updated according to evolving risks. We are also soliciting comments on any additional database checks that we should consider as a type of screening.

Based on the level of risk assigned, we propose that the Medicare contractors would establish and conduct the following categorical screenings.

TABLE 1—CATEGORY OF RISK AND REQUIRED SCREENING FOR MEDICARE PHYSICIANS, NON-PHYSICIAN PRACTITIONERS, PROVIDERS, AND SUPPLIERS

Type of screening required	Limited	Moderate	High
Verification of any provider/supplier-specific requirements established by Medicare	X	X	X
Conduct license verifications, (may include licensure checks across States)	X	X	X
Database Checks (to verify Social Security Number (SSN), the National Provider Identifier (NPI), the National Practitioner Data Bank (NPDB) licensure, an OIG exclusion, taxpayer identification number, tax delinquency, death of individual practitioner, owner, authorized official, delegated official, or supervising physician)	X	X	X
Unscheduled or Unannounced Site Visits	.....	X	X
Criminal Background Check	.....	.....	X
Fingerprinting	.....	.....	X

As described above, we already require Medicare contractors to ensure that every provider or supplier meets any applicable Federal regulations or State requirements, including applicable licensure requirements [3] for the provider or supplier type prior to making an enrollment determination. In addition, we also require that Medicare

[2] For purposes of this preamble and the proposed regulations, "managed care entity" and "MCE" will have the meaning Medicaid managed care organization (MCO), primary care case manager (PCCM), prepaid inpatient health plan (PIHP), prepaid ambulatory health plan (PAHP), and health insuring organization (HIO). This definition differs from the meaning in section 1932(a)(1)(B) of the Social Security Act, which limits MCEs to Medicaid MCOs and PCCMs. We propose a more inclusive definition for the regulation so that all those entities in States' managed care programs will provide disclosure information.

[3] We note that under section 408 of the reauthorized Indian Health Care Improvement Act, "[a]ny requirement for participation as a provider of health care services under a Federal health care program that an entity be licensed or recognized under the State or local law where the entity is located to furnish health care services shall be deemed to have been met in the case of an entity operated by the [Indian Health] Service, an Indian tribe, tribal organization, or urban Indian organization if the entity meets all the applicable standards for such licensure or recognition, regardless of whether the entity obtains a license or other documentation under such State or local law."

contractors conduct monthly reviews of State licensing board actions to determine if an individual practitioner, such as a physician or non-physician practitioner continues to meet State licensing requirements. In the case of organizational entities, we also require our Medicare contractors to conduct monthly or periodic checks to determine if an organizational entity continues to meet the Federal and State requirements for its provider or supplier type. Such verifications help ensure that a prospective provider or supplier is eligible to participate in the Medicare program or that an existing provider or supplier is eligible to maintain its Medicare billing privileges.

Currently in the Medicare program, DMEPOS suppliers are required to re-enroll every 3 years, and other providers are required to revalidate their enrollment every 5 years. The terms revalidation and re-enrollment are often used interchangeably, but are actually specific to these provider types. To eliminate any confusion about which term applies to which provider or supplier, we are proposing language at 42 CFR 424.57(e) to change all references to re-enroll or re-enrollment to revalidate or revalidation. In addition, the ACA requires that no provider or supplier shall be allowed to enroll in Medicare or revalidate its enrollment in Medicare after March 23, 2013 without being screened pursuant to the authorities covered by this proposed rule. To assist CMS in assuring that the statutory effective date is met, we are proposing at 42 CFR 424.515 to permit CMS to require that a provider or supplier revalidate its enrollment at any time. After the revalidation, the current cycle for revalidation (3 years for DMEPOS, and 5 years for all other providers) would apply.

(1) Limited

In general, we consider physicians, nonphysician practitioners, and medical clinics and group practices to pose limited risk because these professionals are State licensed and we are not aware of any recent studies or other evidence that indicates that these suppliers, as a category, pose an elevated risk to the Medicare program.

Similarly, we believe that a provider or supplier that is publicly traded on the New York Stock Exchange (NYSE) or the National Association of Securities Dealers Automated Quotation System (NASDAQ) poses a limited risk because of the financial oversight provided by investors, corporate boards of directors, and the Security and Exchange Commission. Finally, based on our own data analysis including analysis of historical trends and CMS's own experience with provider screening and enrollment we believe that the following providers and suppliers currently pose a limited risk to the Medicare program: Ambulatory surgical centers (ASCs); end-stage renal disease (ERSD) facilities; Federally qualified health centers (FQHCs); histocompatibility laboratories; hospitals, including critical access hospitals (CAHs); Indian Health Service (IHS) facilities; mammography screening centers; organ procurement organizations (OPOs); mass immunization roster billers, portable x-ray suppliers; religious nonmedical health care institutions (RNHCIs); rural health clinics (RHCs); radiation therapy centers; public or government owned or affiliated ambulance services suppliers (defined as an ambulance supplier owned in whole or in part by a State or local government), and skilled nursing facilities (SNFs). Accordingly, we propose to include the categories of providers and suppliers listed above within the "limited" level of risk. We think the additional government oversight of "government owned or affiliated" ambulance service providers justifies placing these providers in the limited category.

In § 424.518(a), we propose that the following screening tools will apply to providers and suppliers in categories designated as "limited" risk: (1) Verification that a provider or supplier meets any applicable Federal regulations, or State requirements for the provider or supplier type prior to making an enrollment determination; (2) verification that a provider or supplier meets applicable licensure requirements; and (3) database checks on a pre- and post-enrollment basis to ensure that providers and suppliers continue to meet the enrollment criteria for their provider/supplier type.

To assist readers in understanding the type of providers and suppliers that we propose to include in the "limited" risk level, we are providing the following table.

TABLE 2—MEDICARE PROVIDERS AND SUPPLIERS DESIGNATED AS A "LIMITED" CATEGORICAL RISK FOR SCREENING PURPOSES

Provider/supplier category
Physician or non-physician practitioners and medical groups or clinics.
Providers or suppliers that are publicly traded on the NYSE or NASDAQ.
Ambulatory surgical centers, end-stage renal disease facilities, Federally qualified health centers, histocompatibility laboratories, hospitals, including critical access hospitals, Indian Health Service facilities, mammography screening centers, organ procurement organizations, mass immunization roster billers, portable x-ray supplier, religious non-medical health care institutions, rural health clinics, radiation therapy centers, public or government owned or affiliated ambulance services suppliers, and skilled nursing facilities.

(2) Moderate

For those provider and supplier categories with a "moderate" level of risk, we propose that Medicare contractors will conduct unannounced pre- and/or post-enrollment site visits in addition to those screening tools applicable to the "limited" level of risk. Based on the success of pre- and/or post-enrollment site visits conducted by the NSC during the enrollment process for suppliers of DMEPOS and a similar process established by carriers and A/B MACs during the enrollment of IDTFs, we believe that unscheduled and unannounced pre- and post-enrollment site visits help ensure that suppliers are operational and meet applicable supplier standards or performance standards. In addition, we believe that unscheduled and unannounced pre- and post-enrollment site visits are an essential tool in determining whether a provider or supplier is in compliance with its reporting responsibilities, including the requirement in § 424.516 to notify the Medicare contractor of any change of practice location.

Moreover, § 424.530(a)(5) and § 424.535(a)(5) give CMS and its Medicare contractors the authority to deny or revoke Medicare billing privileges for providers and suppliers respectively if the provider or supplier is not operational or the provider does not maintain the established provider or supplier performance standards. And while we do not believe that unscheduled or unannounced site visits are necessary for all providers and

suppliers, we do believe that a number of businesses, like the ones mentioned below, pose an increased risk to the Medicare program, due at least in part to the lack of individual professional licensure.

Moreover, as discussed below, we have found that certain types of providers and suppliers that easily enter a line or business without clinical or business experience, for example by leasing minimal office space and equipment, present a higher risk of possible fraud to our programs. As such, we believe that because these types of providers pose an increased risk of fraud they should be subject to substantial scrutiny before being permitted to enroll and bill Medicare, Medicaid, or CHIP. This type of pre-enrollment scrutiny will help us move away from the "pay and chase" approach. With the exception of providers and suppliers that are publicly traded on the NYSE or NASDAQ and therefore considered "limited" risk, we propose that the following prospective provider and supplier types be considered a "moderate" risk for the purpose of determining the appropriate level of screening: nonpublic, non-government owned or affiliated ambulance service suppliers, community mental health centers (CMHCs), comprehensive outpatient rehabilitation facilities (CORFs), hospice organizations, IDTFs, and independent clinical laboratories.

Most of these provider and supplier types are generally highly dependent on Medicare, Medicaid, or CHIP to pay their salaries and other operating expenses and are subject to less additional other government or professional oversight than the providers and suppliers in the limited risk category. Accordingly, we believe it is appropriate and necessary to conduct unscheduled and unannounced pre-enrollment site visits to ensure that these prospective providers and suppliers meet CMS' enrollment requirements prior to enrolling in the Medicare program. Moreover, we believe that post-enrollment site visits are also important to ensure that the enrolled provider or supplier remains a viable health care provider or supplier in the Medicare program.

Accordingly, we propose in § 424.518(b)(i) that in addition to the categorical screening tools used with respect to limited risk providers and suppliers that Medicare contractors shall conduct unannounced and unscheduled site visits prior to enrolling the following prospective providers and suppliers with the exception of providers and suppliers that are publicly traded on the NYSE or NASDAQ and therefore considered "limited" risk: Nonpublic, nongovernment owned or affiliated ambulance services suppliers, CMHCs, CORFs, hospice organizations, IDTFs, and independent clinical laboratories. In addition, we propose that the following currently enrolled Medicare providers should be categorized as "moderate": Currently enrolled (revalidating) home health agencies or suppliers of DMEPOS. (Except that any such provider that is publicly traded on the NYSE or NASDAQ is considered "limited" risk.)

We believe that the providers and suppliers described above have the similar risk level as suppliers of DMEPOS and IDTFs, for both of which we already require a pre-enrollment site visit prior to completing the enrollment process.

We are also proposing in § 424.518(b)(ii) that the Medicare contractor shall conduct an unannounced and unscheduled pre-enrollment and/or post-enrollment on-site visit for the following providers and suppliers that are not publicly traded on the NYSE or NASDAQ during the revalidation process: non-public, non-government owned or affiliated ambulance services suppliers; CMHCs, CORFs, DMEPOS suppliers, HHAs, hospice organizations, IDTFs, and independent clinical laboratories. For the same reasons that we believe that a Medicare contractor should conduct a pre-enrollment site visit, we believe that Medicare contractors should conduct post-enrollment site visits during the revalidation process for the provider and supplier types described above.

HHS OIG and GAO have issued studies indicating that several of the provider and supplier types cited above have an elevated risk. In an October 2007 report titled, "Growth in Advanced Imaging Paid under the Medicare Physician Fee Schedule" (OEI–01–06–00260), the HHS OIG recommended that CMS consider conducting site visits to monitor IDTFs' compliance with Medicare requirements." In addition, in an April 2007 report titled, "Medicare Hospices: Certification and Centers for Medicare & Medicaid Services Oversight" (OEI–06–05–00260), the HHS OIG recommended that CMS seek legislation to establish additional enforcement remedies for poor hospice performance. In response to this recommendation, CMS stated that it was considering whether to pursue new enforcement remedies for poor hospice performance. While the Medicare enrollment process is not designed to verify the conditions of participation, we do believe that more frequent onsite visits may help identify those hospice organizations that are no longer operational at the practice location identified on the Medicare enrollment application.

In a January 2006 report titled, "Medicare Payments for Ambulance Transports" (OEI–05–02–000590), the HHS OIG found that "twenty-five percent of ambulance transports did not meet Medicare's program requirements, resulting in an estimated $402 million in improper payments."

In an August 2004 report titled, "Comprehensive Outpatient Rehabilitation Facilities: High Medicare Payments in Florida Raise Program Integrity Concerns" (GAO–04–709), the GAO concluded that, "[s]izeable disparities between Medicare therapy payments per patient to Florida CORFs and other facility-based outpatient therapy providers in 2002—with no clear indication of differences in patient needs—raise questions about the appropriateness of CORF billing practices. After finding high rates of medically unnecessary therapy services to CORFs, CMS's claims administration contractor for Florida took steps to ensure appropriate claim payments for a small, targeted group of CORF patients. Despite its limited success, billing irregularities continued among some CORFs and many CORFs continued to receive relatively high payments the following year. This suggests that the contractor's efforts were too limited in scope to be effective with all CORF providers."

In addition to GAO and HHS OIG studies and reports, a number of Zone Program Integrity Contractors (ZPIC) and Program Safeguard Contractors (PSC), organizations used by CMS in helping to fight fraud in Medicare, have taken a number of administrative actions including payment suspensions and increased medical review, for the provider and supplier types shown above. For example, the Zone 7 ZPIC contractor in South Florida has conducted onsite reviews at 62 CORFs since January 2010 and recommended revocation for 51 CORFs, or 82 percent of the CORFS in the area. The same contractor has conducted an onsite reviews at 38 CMHCs located in Dade, Broward and Palm Beach County since January 2010, and recommended that 30 CMHCs be revoked for noncompliance (79 percent of the CMHCs in the area). In each instance where the ZPIC requested a revocation, the CMHC was also placed on prepay review. We have also conducted an analysis of IDTF licensure requirements and have found several circumstances that indicate

irregularity and potential risk of fraud. Although independent clinical laboratories are subject to survey against CLIA requirements, there are nonetheless a number of potentials for fraud, not the least of which is the sheer volume of service and associated billing generated by these entities.

Also, while we believe that prospective suppliers of DMEPOS that are not publicly-traded on the NYSE or NASDAQ are a "high" categorical risk (see discussion below), we believe that there is ample evidence to support the use of post-enrollment site visits as a reliable and effective tool to ensure that a current supplier of DMEPOS remains operational and continues to meet the supplier standards found in § 424.57(c). In a March 2007 report titled, "Medical Equipment Suppliers Compliance with Medicare Enrollment Requirements" (OEI–04–05–00380), the HHS OIG concluded that, "By helping to ensure the legitimacy of DMEPOS suppliers, out-of cycle site visits may help to prevent fraud, waste, and abuse in the Medicare program. CMS may want to consider the findings of our study as they determine how and to what extent out-of-cycle site visits of DMEPOS suppliers will occur." Today, the NSC MAC utilizes on post-enrollment site visits as the primary screening to determine ongoing compliance with the enrollment criteria set forth in § 424.57(c). Therefore, we have included currently enrolled DMEPOS suppliers in the "moderate" category.

We also note that, in addition to the new screening measures being proposed in this rule, under the existing regulation at § 424.517, a Medicare contractor may conduct an unannounced or unscheduled site visit at any time for any provider or supplier type prior to enrolling a prospective provider or supplier or for any existing provider or supplier enrolled in the Medicare program. While the primary purpose of an unannounced and unscheduled site visit is to ensure that a provider or supplier is operational at the practice location found on the Medicare enrollment application, a Medicare contractor may also verify established supplier standards or performance standards other than conditions of participation (CoP) subject to survey and certification by the State Survey agency, where applicable, to ensure that the supplier remains in compliance with program requirements.

To assist readers in understanding the type of providers and suppliers that we propose to include in the "moderate" risk level, we are providing the following table.

TABLE 3—MEDICARE PROVIDERS AND SUPPLIERS DESIGNATED AS A "MODERATE" CATEGORICAL RISK FOR SCREENING PURPOSES

Provider/supplier category
Community mental health centers; Comprehensive outpatient rehabilitation facilities; Hospice organizations; Independent diagnostic testing facilities; Independent clinical laboratories; and Nonpublic, Nongovernment owned or affiliated ambulance services suppliers. (Except that any such provider or supplier that is publicly traded on the NYSE or NASDAQ is considered "limited" risk.)
Currently enrolled (revalidating) home health agencies. (Except that any such provider that is publicly traded on the NYSE or NASDAQ is considered "limited" risk.)
Currently enrolled (re-validating) suppliers of DMEPOS.(Except that any such supplier that is publicly traded on the NYSE or NASDAQ is considered "limited" risk.)

(3) High

For those provider and supplier categories within the "high" level of risk, we propose that, in addition to the screening tools applicable to the "limited" and "moderate" levels of risk, Medicare contractors would use the following screening tools in the enrollment process: (1) Criminal background check; and (2) submission of fingerprints using the FD–258 standard fingerprint card. (The FD–258 fingerprint card is recognized nationally and can be found at local, county or State law enforcement agencies where, for a fee, agencies will supply the card and take the fingerprints.) We propose that these tools would be applied to owners, authorized or delegated officials or managing employees of any provider or supplier within the "high" level of risk. We believe that criminal background checks will assist CMS in determining if an individual, such as an owner, authorized official, or delegated official, or managing employee of a high-risk provider or supplier type, submitted a complete and truthful Medicare enrollment application and whether an individual is eligible to enroll in the Medicare program or maintain Medicare billing privileges. We also believe that use of fingerprinting will help in verification of an individual's identity and help resolve issues associated with identity theft as discussed below. We believe that this position is supported by testimony of the GAO before the subcommittees for Health and Oversight and Ways and Means within the House of Representatives on June 15, 2010, stating in part that "[c]hecking the background of providers at the time they apply to become Medicare providers is a crucial step to reduce the risk of enrolling providers intent on defrauding or abusing the program. In particular, we have recommended stricter scrutiny of enrollment processes for two types of providers whose services and items CMS has identified as especially vulnerable to improper payments—home health agencies (HHAs) and suppliers of durable medical equipment, prosthetics, orthotics, and supplies (DMEPOS)."

In § 424.518(c)(1), we are proposing that, unless they are publicly traded on the NYSE or NASDAQ, newly enrolling HHAs and suppliers of DMEPOS are within the "high" risk level. Based on our experience and on work conducted by the HHS OIG and the GAO, and because we do not have the monitoring experience with newly enrolling DMEPOS suppliers or HHAs that we have with those currently enrolled, we have placed these providers and suppliers in the "high" risk category. We are especially concerned about newly enrolling HHAs and suppliers of DMEPOS because of the high number of HHAs and suppliers of DMEPOS already enrolled in the Medicare program and program vulnerabilities that these entities pose to the Medicare program. Below is a list of HHS OIG and GAO reports identifying home health agencies and suppliers of DMEPOS as posing an elevated risk to the Medicare program.

- In a December 2009 report titled, "Aberrant Medicare Home Health Outlier Payment Patterns in Miami-Dade County and Other Geographic Areas in 2008" (OEI–04–08–00570), the HHS OIG recommended that CMS continue with efforts to strengthen enrollment standards for home health providers to prevent illegitimate HHAs from obtaining billing privileges.

• In a February 2009 report titled, "Medicare: Improvements Needed to Address Improper Payments in Home Health" (GAO–09–185), the GAO concluded that the Medicare enrollment process does not routinely include verification of the criminal history of applicants, and without this information individuals and businesses that misrepresent their criminal histories or have a history of relevant convictions, such as for fraud, could be allowed to enter the Medicare program. In addition, the GAO recommended that CMS assess the feasibility of verifying the criminal history of all key officials named on the Medicare enrollment application.

• In a February 2008 report titled, "Los Angeles County Suppliers' Compliance with Medicare Standards: Results from Unannounced Visits" (OEI–09–07–00550) and in a March 2007 report titled, "South Florida Suppliers' Compliance with Medicare Standards: Results from Unannounced Visits (OEI–03–07–00150), the HHS OIG recommended that CMS strengthen the Medicare DMEPOS supplier enrollment process and ensure that suppliers meet Medicare supplier standards. The HHS OIG provided several options to implement this recommendation including: (1) Conducting more unannounced site visits to suppliers; (2) performing more rigorous background checks on applicants; (3) assessing the fraud risk of suppliers; and (4) targeting, monitoring, and enforcement of high-risk suppliers.

• In a September 2005 report titled, "Medicare: More Effective Screening and Stronger Enrollment Standards Needed for Medical Equipment Suppliers" (GAO–05–656), the GAO concluded that,

> CMS is responsible for assuring that Medicare beneficiaries have access to the equipment, supplies, and services they need, and at the same time, for protecting the program from abusive billing and fraud. The supplier standards and NSC's gate keeping activities were intended to provide assurance that potential suppliers are qualified and would comply with Medicare rules. However, there is overwhelming evidence—in the form of criminal convictions, revocations, and recoveries—that the enrollment processes and the standards are not strong enough to thoroughly protect the program from fraudulent entities. We believe that CMS must focus on strengthening the standards and overseeing the supplier enrollment process. It needs to better focus on ways to scrutinize suppliers to ensure that they are responsible businesses, analogous to Federal standards for evaluating potential contractors.

We recognize that there may also be circumstances where a particular provider or supplier or group of providers and suppliers may pose a higher risk of fraud, waste, and abuse than the level identified for their category generally. Therefore, in § 424.518(c)(3), we are proposing specific criteria that we would use to adjust the classification of a provider or supplier into a higher risk level than would generally apply to the category of provider or supplier, in order to address specific program vulnerabilities. We are soliciting comments on specific additional circumstances that might justify shifting a provider or supplier into a higher risk level than would generally apply to its category. We are also soliciting comment on the criteria that we could use to shift the risk level back down.

In § 424.518(c)(3)(i), we are proposing to adjust a provider or supplier from the "limited" or "moderate" risk level to the "high" risk level when CMS has evidence from or concerning a physician or nonphysician practitioner that another individual is using their identity within the Medicare program. While our Medicare contractors have implemented procedures to reduce the possibility of identity theft and use of physician's identity for the purposes of enrolling and fraudulently billing the Medicare program, we believe that we have a responsibility to all individuals participating in the Medicare program to take the necessary steps to investigate and resolve any allegations of identity theft. We do not intend to fingerprint the individual physician or other eligible professional who has been the victim of identity or provider number theft.

In § 424.518(c)(3), we are proposing to adjust a provider or supplier from the "limited" or "moderate" level of risk to the "high" level of risk based on: the provider or supplier having been placed on a previous payment suspension; or the provider or supplier has been excluded by the HHS OIG or had its Medicare billing privileges denied or revoked by a Medicare contractor within the previous 10 years and is attempting to establish additional Medicare billing privileges for a new practice location or by enrolling as a new provider or supplier. In addition, we believe that providers that have been terminated or otherwise precluded from billing Medicaid should be adjusted from the "limited" or "moderate" category to the "high" category. We believe that such providers or suppliers pose an elevated level of risk to the Medicare program.

In § 424.518(c)(3)(iv), we are proposing to adjust providers or suppliers from the "limited" or "moderate" level of risk to the "high" level of risk for 6 months after CMS lifts a temporary moratorium (see section II.C. of this proposed rule) applicable to such providers or suppliers. This would include providers and suppliers revalidating their enrollment if the moratorium is applicable to the provider or supplier type. We are seeking comments on criteria that would justify recategorization of providers or suppliers from the "limited" or "moderate" category to the "high" category. We are also seeking comment on criteria appropriate to the recategorization from "high" to "moderate" or "limited." We are seeking comment on the applicability of geographical circumstances as a possible criterion for adjusting providers or suppliers from one risk level to another. We are also seeking comments on whether non-practitioner-owned facilities and suppliers should be subject to a higher level of screening than their practitioner-owned counterparts or, whether there is an appropriate corresponding trigger for non-practitioner owned facilities and suppliers. We are seeking comment on whether providers and suppliers should be subject to higher levels of screening when the provider specialty does not match clinic type on an enrollment application. We are seeking comment on what objective conditions might support a broad category of circumstances or factors that would allow us to determine that provider screening levels of risk should be based on "other conditions or factors that CMS determines are necessary to combat fraud, waste, and abuse."

We are seeking public comment on the appropriateness of using criminal background checks in the provider enrollment screening process, including the instances when such background checks might be appropriate, the process of notifying a provider, supplier or individual that a criminal background check is to be performed, and the frequency of such checks.

We are also seeking comment on the use of fingerprinting as a screening measure in our programs. We recognize that requesting, collecting, analyzing, and checking fingerprints from providers and suppliers are complex and sensitive undertakings that place certain burdens on affected individuals. There are privacy concerns and operational concerns about how to assure individual privacy, how to check fingerprints against appropriate law enforcement fingerprint databases, and how to store the results of the query of the data bases and also how to handle the subsequent analysis of the results. As a result, we are soliciting comments on how CMS or an approved contractor

should maintain and store fingerprints, what security processes and measures are needed to protect the privacy of individuals, and any other issues related to the use of fingerprints in the enrollment screening process. As indicated in other portions of the document, we think fingerprints would be useful in situations where a provider's identity has been compromised or potentially compromised. We are interested in comments on this and other possible circumstances in which fingerprinting would be potentially useful in provider screening or other fraud prevention efforts. Our proposed screening approach contemplates requesting fingerprints from providers and suppliers categorized as presenting a "high" risk of fraud. We are seeking comment on this requirement, the circumstances under which it is appropriate, limitations on its use and any alternatives to the proposed approach regarding fingerprints. Our proposed approach would allow denial of billing privileges to newly enrolled providers and suppliers and revocation of billing privileges for revalidating providers and suppliers if owners or officials of providers or suppliers refuse to submit fingerprints when requested to do so. We are seeking comments on this proposal including its appropriateness and utility as a fraud prevention tool. In addition, we are also seeking comment on the applicability and appropriateness of using, in addition to or in lieu of fingerprinting, other enhanced identification techniques and secure forms of identification including but not limited to other biological or biometric techniques, passports, United States Military identification, or Real ID drivers licenses. As technology and secure identification techniques change, the tools we use may change to reflect improvements or shifts in technology or in risk identification. We are seeking comment on the appropriate uses of these techniques

We note that any physician or non-physician practitioner or organizational provider or supplier that is denied enrollment into the Medicare program or whose Medicare billing privileges are revoked is afforded due process rights under § 405.874.

To assist readers in understanding the type of providers and suppliers that we propose to include in the "high" risk level, we are providing the following table.

TABLE 4—MEDICARE PROVIDERS AND SUPPLIERS DESIGNATED AS A "HIGH" CATEGORICAL RISK FOR SCREENING PURPOSES

Provider/supplier category
Prospective (newly enrolling) home health agencies and suppliers of DMEPOS. (Except that any such provider or supplier that is publicly traded on the NYSE or NASDAQ is considered "limited" risk.)

The new screening procedures implemented pursuant to new section 1866(j)(2) of the Act would be applicable to newly enrolling providers and suppliers, beginning on March 23, 2011. These new screening procedures would also be applicable beginning on March 23, 2011 for those providers and suppliers currently enrolled in Medicare, Medicaid, and CHIP who revalidate their enrollment information. For Medicare, this will impact those providers and suppliers whose revalidation cycle results in revalidation occurring between March 23, 2011 and March 23, 2012. Finally, these new procedures would be applicable to currently enrolled Medicare, Medicaid, and CHIP providers and suppliers beginning on March 23, 2012, in accordance with section 1866(j)(2)(ii) of the Act. As such, some providers and suppliers may be required to revalidate their enrollment outside of their regular revalidation cycle.

b. General Screening of Providers—Medicaid and CHIP

Section 1902(ii)(1) of the Act requires that States comply with the process for screening providers established by the Secretary under section 1866(j)(2) of the Act [4]. Section 2107(e)(1) of the Act provides that all provisions that apply to Medicaid under sections 1902(a)(77) and 1902(ii) of the Act apply to CHIP. We propose in new regulation § 457.990 that all the provider screening, provider application, and moratorium regulations that apply to Medicaid providers will apply to providers that participate in CHIP. In addition, in this proposed rule, we refer to State Medicaid agencies as responsible for screening Medicaid-only providers. CHIP is often not administered by the Medicaid agency. Throughout this proposed rule, with respect to those instances, "State Medicaid agency" should be read as "Children's Health Insurance Program agency."

Because it would be inefficient and costly to require States to conduct the same screening activities that Medicare contractors perform for dually-enrolled providers, we are proposing that a State may rely on the results of the screening conducted by a Medicare contractor to meet the provider screening requirements under Medicaid and CHIP. Similarly, we propose in § 455.410 that State Medicaid agencies may rely on the results of the provider screening performed by their sister State Medicaid programs and CHIP. For Medicaid-only providers or CHIP-only providers, we are proposing that States follow the same screening procedures that CMS or its contractors follow with respect to Medicare providers and suppliers.

As noted above, section 1902(ii)(1) of the Act requires that State screening methods follow those performed under the Medicare program. For the sake of brevity, we will not restate those methods verbatim. We propose that States follow the rationale that we have set forth for Medicare in section II.A.3. of this proposed rule, and that we use as the basis for § 455.450. For the types of providers that are recognized as a provider or supplier under the Medicare program, States will use the same risk level that is assigned to that category of provider by Medicare. For those Medicaid and CHIP provider types that are not recognized by Medicare, States will assess the risk posed by a particular provider or provider type. States should examine their programs to identify specific providers or provider types that may present increased risks of fraud, waste or abuse to their Medicaid programs or CHIP. States are uniquely qualified to understand issues involved with balancing beneficiaries' access to medical assistance and ensuring the fiscal integrity of the Medicaid programs and CHIP. However, where applicable, we expect that States will assess the risk of fraud, waste, and abuse using similar criteria to those used in Medicare. For example, physicians and non-physician practitioners, medical groups and

[4] As noted previously, we believe that the reference to section 1886(j)(2) of the Act in section 6401(b)(1) of the Affordable Care Act is a scrivener's error, and that the Congress intended to refer instead to section 1866(j)(2) of the Act.

clinics that are State-licensed or State-regulated would generally be categorized as limited risk, as would providers publicly traded on the NYSE or NASDAQ. Those provider types that are generally highly dependent on Medicare, Medicaid and CHIP to pay salaries and other operating expenses and which are not subject to additional government or professional oversight would be considered moderate risk, and those provider types identified by the State as being especially vulnerable to improper payments would be considered high risk. States will then screen the provider using the screening tools applicable to that risk assigned. However, we are not proposing to limit or otherwise preclude the ability of States to engage in provider screening activities beyond those required under section 1866(j)(2) of the Act, including, but not limited to, assigning a particular provider type to a higher risk level than the level assigned by Medicare.

As with the proposed screening provisions for Medicare, we are soliciting comments on the applicability of these proposals for Medicaid as well. We are seeking comment on the proposed assignment of specific provider types to established risk categories, including whether such assignments should be released publicly, whether they should be reconsidered and updated according to an established schedule, and what criteria should be considered in making such assignments.

Based on the level of risk assigned to a provider or provider type, we propose that States conduct the following screenings:

TABLE 5—CATEGORY OF RISK AND REQUIRED SCREENING FOR MEDICAID AND CHIP PROVIDERS

Type of Screening Required	Limited	Moderate	High
Verification of any provider/supplier-specific requirements established by Medicaid/CHIP	X	X	X
Conduct license verifications (may include licensure checks across State lines)	X	X	X
Database Checks (to verify SSN and NPI, the NPDB, licensure, a HHS OIG exclusion, taxpayer identification number, tax delinquency, death of individual practitioner, and persons with an ownership or control interest or who are agents or managing employees of the provider)	X	X	X
Unscheduled or Unannounced Site Visits		X	X
Criminal Background Check			X
Fingerprinting			X

All States do not routinely require persons with an ownership or control interest or who are agents or managing employees of the provider to submit SSNs or dates of birth (DOBs). Without such critical personal identifiers, it is difficult to be certain of the identity of persons with an ownership or control interest or who are agents or managing employees of the provider, and it may be difficult for States to conduct the screening proposed under this rule. Accordingly, and to be consistent with Medicare requirements, pursuant to our general rulemaking authority under section 1102 of the Act, we propose in § 455.104 to require that States will require submission of SSNs and DOBs for all persons with an ownership or control interest in a provider. In addition to the amendment to § 455.104, we are proposing to revise that section for the sake of clarity both for the disclosing entities' provision and the States' collection of the disclosures. We recognize that there may be privacy concerns raised by the submission of this personally identifiable information as well as concerns about how the States will assure individual privacy as appropriate; however, we believe this personally identifiable information is necessary for States to adequately conduct the provider screening activities under this proposed rule. We are seeking comment specifically on this issue.

Although the level of screening may vary depending on the risk of fraud, waste or abuse the provider represents to the Medicaid program or CHIP, under section 1866(j)(2)(B)(i) of the Act, all providers would be subject to licensure checks. Therefore, we are proposing that States be required to verify the status of a provider's license by the State of issuance and whether there are any current limitations on that license.

As stated above, pursuant to section 2107(e)(1) of the Act, all provisions that apply to Medicaid under sections 1902(a)(77) and 1902(ii) of the Act apply to CHIP. Because we are proposing a new regulation in Part 457 under which all provider screening requirements that apply to Medicaid providers will apply to providers that participate in CHIP, these requirements for provider screening and assigning of categories of risk of fraud, waste, or abuse, as well as verification of licensure, under § 455.412 and § 455.450 will apply in CHIP.

1. Database Checks—Medicaid and CHIP

States employ several database checks, including database checks with the Social Security Administration and the NPPES, to confirm the identity of an individual or to ensure that a person with an ownership or control interest is eligible to participate in the Medicaid program.

A critical element of Medicaid program integrity is the assurance that persons with an ownership or control interest or who are agents or managing employees of the provider do not receive payments when excluded or debarred from such payments. Accordingly, in § 455.436, we propose that States be required to screen all persons disclosed under § 455.104 against the OIG's LEIE and the General Services Administration's EPLS. We propose that States be required to conduct such screenings upon initial enrollment and monthly thereafter for as long as that provider is enrolled in the Medicaid program.

We also propose at § 455.450, as well as § 455.436, that database checks be conducted on all providers on a pre- and post-enrollment basis to ensure that providers continue to meet the enrollment criteria for their provider type.

As stated above, pursuant to section 2107(e)(1) of the Act, all provisions that apply to Medicaid under sections 1902(a)(77) and 1902(ii) of the Act apply to CHIP. Because we are proposing a new regulation in Part 457 under which all provider screening requirements that apply to Medicaid providers will apply to providers that participate in CHIP, this requirement for database checks under § 455.436 will apply in CHIP.

2. Unscheduled and Unannounced Site Visits—Medicaid and CHIP

Section 1866(j)(2)(B)(ii)(III) of the Act states that the Secretary, based on the level of fraud, waste, and abuse, may conduct unscheduled and unannounced site visits, including pre-enrollment site visits, for prospective providers and those providers already enrolled in the

Medicare and Medicaid programs and CHIP.

Some States already require site visits, often for provider categories at increased risk of fraud, waste or abuse such as home health and non-emergency transportation. According to FY 08 State Program Integrity Assessment (SPIA) data, at least 16 States report that they perform some type of site visits. However, such efforts vary widely across the country and are subject to budget shortfalls.

We are also proposing to require in § 455.432 and § 455.450(b) that States must conduct pre-enrollment and post-enrollment site visits for those categories of providers the State designates as being in the "moderate" or "high" level of risk.

Further, in § 455.432, pursuant to our general rulemaking authority under section 1102 of the Act, we are proposing that any enrolled provider must permit the State Medicaid agency and CMS, including CMS' agents or its designated contractors, to conduct unannounced on-site inspections to ensure that the provider is operational at any and all provider locations.

We maintain that site visits are essential in determining whether a provider is operational at the practice location found on the Medicaid enrollment agreement. We expect these requirements to increase the number of both pre-enrollment and post-enrollment site visits for those provider types that pose an increased financial risk of fraud, waste, or abuse to the Medicaid program.

We propose that failure to permit access for site visits would be a basis for denial or termination of Medicaid enrollment as specified in § 455.416.

As stated above, pursuant to section 2107(e)(1) of the Act, all provisions that apply to Medicaid under sections 1902(a)(77) and 1902(ii) of the Act apply to CHIP. Because we are proposing a new regulation in Part 457 under which all provider screening requirements that apply to Medicaid providers will apply to providers that participate in CHIP, this requirement for site visits under § 455.432 will apply in CHIP.

3. Provider Enrollment and Provider Termination—Medicaid and CHIP

States may refuse to enroll or may terminate the enrollment agreement of providers for a number of reasons related to a provider's status or history, including an exclusion from Medicare, Medicaid, or any other Federal health care program, conviction of a criminal offense related to Medicare or Medicaid, or submission of false or misleading information on the Medicaid enrollment application. Failure to provide disclosures is another reason for termination from participation in the Medicaid program.

Federal regulations beginning at § 455.100 require certain disclosures by providers to States before enrollment. States require additional disclosures prior to enrollment. Some States require periodic re-enrollment and disclosure at that time. However, States vary in the frequency of such re-disclosures. Providers are also inconsistent in keeping their enrollment information current, including items as elementary as their address.

We are proposing, at § 455.414, pursuant to our general rulemaking authority under section 1102 of the Act, that all providers undergo screening pursuant to the procedures outlined herein at least once every 5 years, consistent with current Medicare requirements for revalidation.

In § 455.416, we propose to establish termination provisions, requiring States to deny or terminate the enrollment of providers: (1) Where any person with an ownership or control interest or who is an agent or managing employee of the provider does not submit timely and accurate disclosure information or fails to cooperate with all required screening methods; (2) that are terminated on or after January 1, 2011 by Medicare or any other Medicaid program or CHIP (see section II.F. of this proposed rule); and (3) where the provider or any person with an ownership or control interest or who is an agent or managing employee of the provider fails to submit sets of fingerprints within 30 days of a State agency or CMS request. We propose to permit States to deny enrollment to a provider if the provider has falsified any information on an application if CMS or the State cannot verify the identity of the applicant. We also propose to require States to deny enrollment to providers, unless States determine in writing that denial of enrollment is not in the best interests of the State's Medicaid program, in these circumstances: (1) The provider or a person with an ownership or control interest or who is an agent or managing employee of the provider fails to provide accurate information; (2) the provider fails to provide access to the provider's locations for site visits, or (3) the provider, or any person with an ownership or control interest, or who is an agent or managing employee of the provider has been convicted of a criminal offense related to that person's involvement in Medicare, Medicaid, or CHIP in the last ten years. We believe that providers can significantly reduce the likelihood of fraud, waste or abuse by providing and maintaining timely and accurate Medicaid enrollment information. We believe the Medicaid program will be better protected by not allowing persons with serious criminal offenses related to Medicare, Medicaid, and CHIP to serve as providers.

We propose at § 455.416 that the State be allowed to deny an initial enrollment application or agreement submitted by a provider or terminate the Medicaid enrollment of a provider, including an individual physician or non-physician practitioner, if CMS or the State is not able to verify an individual's identity, eligibility to participate in the Medicaid program, or determines that information on the Medicaid enrollment application was falsified.

In § 455.420, we propose to require that any providers whose enrollment has been denied or terminated must undergo screening and pay all appropriate application fees again to enroll or re-enroll as a Medicaid provider.

We propose at § 455.422 that in the event of termination under § 455.416, the State Medicaid agency must give a provider any appeal rights available under State law or rule.

As stated above, pursuant to section 2107(e)(1) of the Act, all provisions that apply to Medicaid under sections 1902(a)(77) and 1902(ii) of the Act apply to CHIP. Because we are proposing a new regulation in Part 457 under which all provider screening requirements that apply to Medicaid providers will apply to providers that participate in CHIP, these requirements for provider enrollment, provider termination, and provider appeal rights under §§ 455.414, 455.416, 455.420, and 455.422 will apply in CHIP.

4. Criminal Background Checks and Fingerprinting—Medicaid and CHIP

Section 1866(j)(2)(B)(ii)(II) of the Act allows the Secretary to use fingerprinting during the screening process; and while several States have implemented procedures to require fingerprinting of physicians and non-physician practitioners as a condition of licensure, we maintain that if a State designates a provider as within the "high" level of risk as described previously, each person with an ownership or control interest of that provider or who is an agent or managing employee of the provider should be subject to fingerprinting.

We maintain that adding fingerprinting to State screening processes for those providers that pose the greatest risk to the Medicaid program will allow CMS and the State to: (1) Verify The individual's identity;

(2) determine whether the individual is eligible is participate in the Medicaid program; (3) ensure the validity of information collected during the Medicaid enrollment process; and (4) prevent and detect identity theft. Ensuring the identity of "high" risk Medicaid providers through fingerprinting protects both the Medicaid program and providers whose identities might otherwise be stolen as part of a scheme to defraud Medicaid.

In addition, while § 455.106 requires providers to submit information to the Medicaid agency on criminal convictions related to Medicare and Medicaid and title XX, current regulations do not require States to verify data submitted as part of the Medicaid enrollment application and they are sometimes not able to verify information that was purposefully omitted or changed in a manner to obfuscate any previous criminal activity. According to fiscal year (FY) 2008 SPIA data, at least 20 States report that they conduct some type of criminal background check as part of their Medicaid enrollment practices.

Elements of a robust criminal background check could include, but are not necessarily limited to: (1) Conducting national and State criminal records checks; and (2) requiring submission of fingerprints to be used for conducting the criminal records check and verification of identity.

We are proposing in § 455.434 and § 455.450 for those categories of providers that a State Medicaid agency determines is within the "high" level of risk, the State must: (1) Conduct a criminal background check of each person with an ownership or control interest or who is an agent or managing employee of the provider, and (2) require that each person with an ownership or control interest or who is an agent or managing employee of the provider to submit his or her fingerprints. While the FD–258 fingerprint card is recognized nationally and can be found at local, county, or State law enforcement agencies where, for a fee, agencies will supply the card and take the fingerprints, the State Medicaid agency has the discretion to determine the form and manner of submission of fingerprints.

At § 455.434, we propose that the State Medicaid agency must require providers or any person with an ownership or control interest or who is an agent or managing employee of the provider to submit fingerprints in response to a State's or CMS' request.

We are seeking public comment on the appropriateness of using criminal background checks in the provider enrollment screening process, including the instances when such background checks might be appropriate, the process of notifying a provider or individual that a criminal background check is to be performed, and the frequency of such checks.

We are also seeking comment on the use of fingerprinting as a screening measure. We recognize that requesting, collecting, analyzing, and checking fingerprints from providers are complex and sensitive undertakings that place certain burdens on affected individuals. There are privacy concerns and operational concerns about how to assure individual privacy, how to check fingerprints against appropriate law enforcement fingerprint databases, and how to store the results of the query of the databases and also how to handle the subsequent analysis of the results. As a result, we are soliciting comments on how CMS or a State Medicaid agency should maintain and store fingerprints, what security processes and measures are needed to protect the privacy of individuals, and any other issues related to the use of fingerprints in the enrollment screening process. As indicated in other portions of the document, we think fingerprints would be useful in situations where a provider's identity has been compromised or potentially compromised. We are interested in comments on this and other possible circumstances in which fingerprinting would be potentially useful in provider screening or other fraud prevention efforts. Our proposed screening approach contemplates requesting fingerprints from providers categorized as presenting a "high" risk of fraud. We are seeking comment on whether this is an appropriate requirement, the circumstances under which it might be appropriate or inappropriate, and any alternatives to the proposed approach regarding fingerprints. Our proposed approach would allow States to deny enrollment to newly-enrolling providers and to terminate existing providers if individuals who have an ownership or control interest in the provider or who are agents or managing employees of the provider refuse to submit fingerprints when requested to do so. We are seeking comments on this proposal including its appropriateness and utility as a fraud prevention tool.

In addition, we are also seeking comment on the applicability and appropriateness of using, in addition to or in lieu of fingerprinting, other enhanced identification techniques and secure forms of identification including but not limited to passports, United States Military identification, or Real ID drivers licenses. As technology and secure identification techniques change, the tools we or State Medicaid agencies use may change to reflect changes in technology or in risk identification. We are seeking comment on the appropriate uses of these techniques and the ways in which we should notify the public about any tools CMS or State Medicaid agencies would adopt. We also welcome comments on whether there should be differences allowed between Federal and State techniques, or among States, and if so, on what basis.

As stated above, pursuant to section 2107(e)(1) of the Act, all provisions that apply to Medicaid under sections 1902(a)(77) and 1902(ii) of the Act apply to CHIP. Because we are proposing a new regulation in Part 457 under which all provider screening requirements that apply to Medicaid providers will apply to providers that participate in CHIP, these requirements for criminal background checks and fingerprinting under § 455.434 will apply in CHIP.

5. Deactivation and Reactivation of Provider Enrollment—Medicaid and CHIP

Section 1902(ii)(1) of the Act requires the screening of Medicaid providers to ensure they are eligible to provide services and receive payments. While the ACA does not specifically require it, we maintain that it is important to the protection of the Medicaid program and consistent with longstanding Medicare requirements to identify and deactivate the enrollment of inactive Medicaid providers.

Accordingly, in § 455.418, we propose that any Medicaid provider that has not submitted any claims or made a referral that resulted in a Medicaid claim for a period of 12 consecutive months must have its Medicaid provider enrollment deactivated. Further, we propose that any such provider wishing to be reinstated to the Medicaid program must first undergo all disclosures and screening required of any other applicant. In addition, the provider must pay any associated application fees under § 455.426.

As stated above, pursuant to section 2107(e)(1) of the Act, all provisions that apply to Medicaid under sections 1902(a)(77) and 1902(ii) of the Act apply to CHIP. Because we are proposing a new regulation in Part 457 under which all provider screening requirements that apply to Medicaid providers will apply to providers that participate in CHIP, this requirement for deactivation of provider enrollment under § 455.418 will apply in CHIP.

6. Enrollment and NPI of Ordering or Referring Providers—Medicaid and CHIP

Section 1902(ii)(7) of the Act provides that States must require all ordering or referring physicians or other professionals to be enrolled under a Medicaid State plan or waiver of the plan as a participating provider. Further, the NPI of such ordering or referring provider or other professional must be on any Medicaid claim for payment based on an order or referral from that physician or other professional.

Providers and suppliers under Medicare and providers in the Medicaid program are already subject to the requirement that the NPI be on applications to enroll and on all claims for payment, pursuant to section 6402(a) of the ACA, amending section 1128J of the Act, and under § 424.506, § 424.507, and § 431.107, as amended by the May 5, 2010 interim final rule with comment (75 FR 24437).

In § 455.410, we propose that any physician or other professional ordering or referring services for Medicaid beneficiaries must be enrolled as a participating provider by the State in the Medicaid program. This applies equally to fee-for-service providers or MCE network-level providers.

Additionally, we propose to amend § 438.6 to require that States must include in their contracts with MCEs a requirement that all ordering and referring network-level MCE providers be enrolled in the Medicaid program, as are fee-for-service providers, and thus are screened directly by the State.

Although the NPI requirements in section 6402(a) of the ACA did not extend to CHIP providers, section 6401 of the ACA does apply equally to CHIP, and the proposed requirement herein for ordering and referring physicians or other professionals under the Medicaid program would apply equally under CHIP.

In addition, in § 455.440, we propose that all claims for payment for services ordered or referred by such a physician or other professional must include the NPI of the ordering or referring physician or other professional. This applies equally to fee-for-service providers or MCE network-level providers.

It is essential that all such claims have the ordering or referring NPI and that the State has properly screened the ordering or referring physician or other professional. Without such assurances, it is difficult for CMS or the State to determine the validity of individual claims for payment or to conduct effective data mining to identify patterns of fraud, waste, and abuse.

As stated above, pursuant to section 2107(e)(1) of the Act, all provisions that apply to Medicaid under sections 1902(a)(77) and 1902(ii) of the Act apply to CHIP. Because we are proposing a new regulation in Part 457 under which all provider screening requirements that apply to Medicaid providers will apply to providers that participate in CHIP, these requirements for provider enrollment and NPI under §§ 455.410 and 455.440 will apply in CHIP.

7. Other State Screening—Medicaid and CHIP

Section 1902(ii)(8) of the Act establishes that States are not limited in their abilities to engage in provider screening beyond those required by the Secretary. Accordingly, in § 455.452, we propose that States may utilize additional screening methods, in accordance with their approved State plan.

As stated above, pursuant to section 2107(e)(1) of the Act, all provisions that apply to Medicaid under sections 1902(a)(77) and 1902(ii) of the Act apply to CHIP. Because we are proposing a new regulation in Part 457 under which all provider screening requirements that apply to Medicaid providers will apply to providers that participate in CHIP, this requirement for other State screening under § 455.452 will apply in CHIP.

B. Application Fee—Medicare, Medicaid, and CHIP

1. Statutory Changes

Section 6401(a) of the ACA, as amended by section 10603 of the ACA, amended section 1866(j) of the Act and requires the Secretary of DHHS to impose a fee on each "institutional provider of medical or other items or services or supplier," The fee would be used by the Secretary to cover the cost of screening and to carry out the screening and other program integrity efforts under section 1866(j) and section 1128J of the Act. Since section 10603 of the ACA excludes eligible professionals, such as physicians and nurse practitioners, from paying an enrollment application fee, we maintain that an "institutional provider of medical or other items or services or supplier" would be any health care provider that bills Medicare, Medicaid, or CHIP on a fee-for-service basis, with the exception of Part B medical groups or clinics and physician and nonphysician practitioners who submit the CMS 855I to enroll in Medicare.

Section 1866(j)(2)(D)(i) of the Act states that the new screening procedures implemented pursuant to section 6401 of the ACA would be applicable to newly enrolling providers, suppliers, and eligible professionals who are not enrolled in Medicare, Medicaid, or CHIP by March 23, 2011. Accordingly, the enrollment application fees for newly enrolling institutional providers and suppliers would be applicable on that date as well.

Section 1866(j)(2)(D)(ii) of the Act states that the new screening procedures will apply to currently enrolled Medicare, Medicaid, and CHIP providers, suppliers, and eligible professionals beginning on March 23, 2012. However, because the new procedures will be applicable beginning on March 23, 2011 for those providers, suppliers, (and eligible professionals) currently enrolled in Medicare, Medicaid and CHIP that revalidate their enrollment information, we will begin collecting the application fee for those revalidating entities for all revalidation activities beginning after March 23, 2011.

Section 1866(j)(2)(C)(ii) of the Act permits the Secretary, acting through CMS, to, on a case-by-case basis, exempt a provider or supplier from the imposition of an application fee if CMS determines that the imposition of the enrollment application fee would result in a hardship. It also permits the Secretary to waive the enrollment application fee for Medicaid providers for whom the State demonstrates that imposition of the fee would impede Medicaid beneficiaries' access to care.

Section 1866(j)(2)(C)(i)(I) of the Act establishes a $500 application fee for providers and suppliers in 2010. For 2011 and each subsequent year, the amount of the fee would be the amount for the preceding year, adjusted by the percentage change in the consumer price index for all urban consumers (all items; United States city average), (CPI–U) for the 12-month period ending with June of the previous year. To ease the administration of the fee, if the adjustment sets the fee at an uneven dollar amount, CMS will round the fee to the nearest whole dollar amount.

2. Proposed Provisions

In § 424.502, we also propose to establish a definition for an "institutional provider" as it relates to the submission of an application fee. We propose that an "institutional provider" means any provider or supplier that submits a paper Medicare enrollment application using the CMS–855A, CMS–855B (but not physician and nonphysician practitioner

organizations), or CMS–855S or associated Internet-based PECOS enrollment application.

For purposes of Medicare, Medicaid, and CHIP, we interpret the statutory reference to "institutional provider[s] of medical or other items or services or supplier" to include, but not be limited to: the range of ambulance service suppliers; ASCs; CMHCs; CORFs; DMEPOS suppliers; ESRD facilities; FQHCs; histocompatibility laboratories; HHAs; hospices; hospitals, including but not limited to acute inpatient facilities, inpatient psychiatric facilities (IPFs), inpatient rehabilitation facilities (IRFs), and physician-owned specialty hospitals; CAHs; independent clinical laboratories; IDTFs; mammography centers; mass immunizers (roster billers); OPOs; outpatient physical therapy/occupational therapy/speech pathology services, portable x-ray suppliers; SNFs; slide preparation facilities; radiation therapy centers; RNHCIs; and RHCs.

In addition to the providers and suppliers listed above, for purposes of Medicaid and CHIP, we propose that a State may impose the application fee on any institutional entity that bills the State Medicaid program or CHIP on a fee-for-service basis, such as: Personal care agencies, non-emergency transportation providers, and residential treatment centers, in accordance with the approved Medicaid or CHIP State plan.

We propose that an application fee will not be required from an eligible professional who reassigns Medicare benefits to another individual or organization, since it would not create a new enrollment of an institutional provider or supplier that would result in an application fee. In addition, we propose that in no case would the application fee be required from any individual physician or Part B medical group/clinic.

We propose that an application fee will be required with the submission of an initial enrollment application, the application to establish a new practice location, as a part of revalidation, or in response to a Medicare contractor revalidation request.

We are proposing that prospective institutional providers and suppliers as well as currently enrolled providers who are re-enrolling or revalidating their enrollment in Medicare must submit the applicable application fee or submit a request for a hardship exception to the application fee at the time of filing a Medicare enrollment application on or after March 23, 2011 in the case of prospective providers or suppliers, and in the case of revalidations. We believe that it is essential that a Medicare contractor be able to receive and deposit the application fee or consider the institutional provider's request for a hardship exception prior to initiating an application review. Therefore, Medicare contractors would not begin processing an application for either a new provider or supplier, or for a provider or supplier that is currently enrolled, until the enrollment application fee is received and is credited to the United States Treasury.

The fee would accompany the certification statement that the provider or supplier signs, dates, and mails to the Medicare contractor if the provider or supplier uses Internet-based PECOS to enroll or revalidate. The fee would accompany the paper CMS–855 provider enrollment application if the provider or supplier enrolls or revalidates by paper. Because the statutory provisions are effective for newly enrolling providers and suppliers effective March 23, 2011 institutional providers and suppliers will not be required to furnish the application fee with applications submitted before that date. However, because the ACA provides that the new procedures will be applicable beginning on March 23, 2011 for those providers and suppliers, (and eligible professionals) currently enrolled in Medicare, Medicaid, and CHIP that revalidate their enrollment information, CMS will begin collecting the application fee for those revalidating entities for all revalidation activities beginning after March 23, 2011. We will not collect the fee from individual physicians and eligible professionals.

We propose that the Medicare contractor reject and return to the provider or supplier an initial enrollment application submitted by a provider or supplier, without further review as to whether the provider or supplier qualifies to enroll in the Medicare program, when the Medicare enrollment application or the Certification Statement is received by the Medicare contractor and the provider or supplier did not include a request for hardship exception to the application fee, did not include the application fee or the appropriate number of application fees, if applicable. We do not believe that it is appropriate for a Medicare contractor to begin the application review process without first having received the application fee.

We propose that the Medicare contractor reject any initial enrollment applications submitted after March 23, 2011, if a provider or a supplier did not furnish the application fee at the time of filing, using § 424.525(a)(3) as the legal basis for the rejection.

In § 424.525(a)(3), we propose adding a new reason why a Medicare contractor could reject an initial enrollment application or an application to establish a new practice location. Specifically, we are proposing a new § 424.525(a)(3) to state, "The prospective institutional provider or supplier does not submit an application fee in the appropriate amount or a hardship exception request with the Medicare enrollment application at the time of filing."

We also believe that a Medicare contractor should be allowed to reject an initial enrollment application received from a provider or supplier on or after March 23, 2011, using § 424.525(a)(1) as the legal basis, if, for any reason, CMS or the Medicare contractor is not able to deposit the full application amount into a government-owned account and credited to the U.S. Treasury. In the case where a provider or supplier did not submit the application fee because they requested a hardship exception that is not granted, a provider or supplier has 30 days from the date on which the contractor sends notice of the rejection of the hardship exception request to send in the required application fee and application forms.

In § 424.535, we propose adding a new reason why a Medicare contractor can revoke Medicare billing privileges. Specifically, we are proposing a new § 424.535(a)(6)(i) to state that billing privileges may be revoked if "An institutional provider does not submit an application fee or hardship exception request that meets the requirements set forth in § 424.514 with the Medicare revalidation application or the hardship exception is not granted."

In addition, in § 424.535, we are proposing a new § 424.535(a)(6)(ii) to state that billing privileges shall be revoked if "The Medicare contractor is not able to deposit the full application amount into a government-owned account or the funds are not able to be credited to the U.S. Treasury."

In § 424.514(b), we are proposing that currently enrolled institutional providers and suppliers that are subject to CMS revalidation efforts must submit the applicable application fee or submit a request for a hardship exception to the application fee at the time of filing a Medicare enrollment application on or after March 23, 2011.

In § 424.514(d)(2)(iii), we propose that institutional providers and suppliers submit the application fee with each initial application, application to establish a new practice location, or

with the submission of an application in response to a Medicare contractor revalidation request.

In § 424.514(d)(2), we propose that the application fee be based on the amount calculated by CMS using the CPI–U as of June 30 of the previous year and adjusted annually to be effective January 1st of the following year. The application fee for a given year will be effective from January 1 to December 31 of a calendar year.

In § 424.514(d)(2)(v), we propose that the application fee be non-refundable. Neither the Federal government, its Medicare contractors, State Medicaid agencies or CHIP should be liable for reimbursement of the application fee to the provider or supplier if the application fee has been received by the Medicare contractor and deposited into a Government-owned account and, later, during the course of verifying, validating, and processing the information in the enrollment application, CMS or its Medicare contractor appropriately denies the enrollment application. Appropriate denial requires a substantive reason and applications will not be denied over inconsequential errors or omissions or over errors or omissions corrected timely.

In § 424.514(d)(4)(vi), we propose that a provider or supplier must submit a new application fee if the provider or supplier resubmits a Medicare enrollment application because a previously-submitted enrollment application was appropriately denied or rejected. In some cases, a rejected application would be returned to the provider or supplier along with the application fee; in other cases, the application would be denied and the application fee retained by the Federal government because the processing of the application would have already begun. In those latter cases, CMS funds would have been expended for some or all of the required screening involved in processing the application. For example, if a home health agency enrollment application is rejected because the enrollment application, or the certification statement generated by Internet-based PECOS, was not signed, the enrollment application would be rejected and it and the check for the application fee would both be returned to the home health agency. If a home health agency enrollment application is denied based on non-compliance with a provider enrollment requirement or because the HHA did not meet the conditions of participation for its provider type, the enrollment would be denied and the application fee would be retained by the Federal government. If the HHA wishes to send a new enrollment application, it would have to include another application fee with that new enrollment application. Similarly, we propose that a provider or supplier would be required to submit to the Medicare contractor a new application fee with a subsequent enrollment application if, among other things, the previous enrollment application was rejected because the provider or supplier did not timely furnish the Medicare contractor with the applicable supporting documentation or information necessary to complete its review and verification of the previous enrollment application.

In § 424.514(d)(6)(vii), we propose that the application fee must be able to be deposited into a government-owned account.

Because we are proposing that a State may rely on the results of the screening conducted by the Medicare contractor to meet the screening requirements for participation in a State Medicaid program or CHIP, we propose that, for dually participating providers, the application fee would be imposed at the time of the Medicare enrollment application, consistent with the procedures described above. Additionally, because the purpose of the application fee is to, in part, cover the costs of conducting the provider and supplier screening activities, we propose that a provider or supplier enrolled in more than one program (that is, Medicare and Medicaid or CHIP, or all three programs) would only be subject to the application fee under Medicare and that the fee would cover screening activities for enrollment in all programs.

Section 1866(j)(2)(C)(iii) of the Act also permits the Secretary to grant, on a case-by-case basis, exceptions to the application fee for institutional providers and suppliers enrolled in the Medicare and Medicaid programs and CHIP if the Secretary determines that imposition of the fee would result in a hardship. One instance that might support a request for hardship exception is in the event of a national public health emergency where a provider or supplier is enrolling for purposes of furnishing services required as a result of the national public health emergency situation. Such requests will be considered on a case-by-case basis, as required by the statute. In addition, we are soliciting comments on the appropriate objective criteria that should be used in making a hardship determination and if there are any other circumstances in which such exemptions should be allowed. We are also seeking comment on the kinds of documents to be submitted to CMS or its contractor to exhibit hardship, including any comments on the financial or legal records that might be needed to make a determination of hardship. Section 1866(j)(2)(C)(iii) of the Act also permits the Secretary to waive the application fee for providers enrolled in a State Medicaid program for whom the State demonstrates that imposition of the fee would impede beneficiary access to care. We are soliciting comments on how waivers from the application fee should be implemented for Medicaid-only or dually-participating Medicare and Medicaid providers and suppliers specifically those seeking to furnish services where beneficiary access issues are prevalent, either geographically or in the provision of the services.

We are committed to assuring access to care for program beneficiaries. We are in the process of undertaking a review of promising practices related to ensuring access in the Medicaid program and CHIP. We will incorporate information from that review into developing appropriate access criteria for purposes of the required fee. We are also soliciting comments on the appropriate criteria that we should consider. We are particularly interested in hearing from States, providers, advocates, and other stakeholders relating to concrete examples based on experiences in using specific access criteria.

Based on the statutory requirements for calculating the application fee, we offer the following example for purely illustrative purposes. The initial application fee beginning in 2010 is established by law at $500. However, for the following year, when the annual Consumer Price Index (CPI–U) is calculated for the period ending June 2010, we would recalculate the application fee using the CPI–U. Thus, if the CPI increased by 2.34 percent for the 12-month period ending June 2010, the application fee would be calculated by multiplying the fee for the year by the CPI–U. The $500 application fee established by law in 2010 would be multiplied by 1.0234 to give $511.70. We would then round to the nearest dollar amount of $512.00. This would be the amount of the fee in effect for 2011, and would apply to applications received after the effective date of the statute—March 23, 2011 for newly enrolling providers and suppliers and for revalidating providers and suppliers. A similar process, based on the CPI–U for the period of July 1, 2010 through June 30, 2011 would be used to calculate the fee that would become effective on January 1, 2012, and that

would apply to new and currently enrolled providers or suppliers that submit applications on or after March 23, 2012. In § 424.514(d)(2), we propose that the annually recalculated application fee amount would be effective for the calendar year during which the application for enrollment is being submitted.

The amount of the application fee that is required of enrolling providers or suppliers, would be the amount that is in effect on the day the provider or supplier mails an enrollment application or Certification Statement, postmarked by the USPS, or if mailed through a private mail service, the date of receipt by the Medicare contractor. Because the application fee will become an integral part of the enrollment process, we believe that it is essential that we notify State Medicaid agencies and the public about any changes in the application fee prior to implementing a change in the fee. Accordingly, we would afford States and the public with at least 30 days' notice of any impending change in the application fee. We will make such notification annually in the **Federal Register** and by issuing guidance to the State Medicaid and CHIP Directors, issuing CMS provider and supplier listserv messages, making announcements at CMS Open Door Forums, and placing information on the CMS Provider/Supplier Enrollment Web page (*http://www.cms.gov/MedicareProviderSupEnroll*).

We are proposing that a provider or supplier that believes it is entitled to a hardship exception from the application fee enclose a letter with the enrollment application or, if using Internet-based PECOS, with the Certification Statement, explaining the nature of the hardship. Further, we propose that we would not begin to process an enrollment application submitted with a letter requesting a hardship exception from the application fee until it makes a decision on whether to grant the exception. Further, we are proposing that we make a hardship exception determination within 60 days from receipt of the request from an institutional provider and CMS contractor notify the applicant or enrolled institutional provider or supplier by letter approving or denying the request for a hardship exception. Moreover, if we deny the request for hardship exception, we would provide our reason(s) for denying the hardship exception.

In § 424.530(a)(8), we propose adding a new reason why a Medicare contractor can deny Medicare billing privileges. Specifically, we are proposing a new § 424.530(a)(8) to state, "An institutional provider's or supplier's 'hardship exception' request is not granted."

In 424.535(a)(6)(i), we propose adding a new reason why a Medicare contractor can revoke Medicare billing privileges. Specifically, we are proposing a new § 424.535(a)(6)(i) to state, "An institutional provider does not submit an application fee or 'hardship exception' request that meets the requirements set forth in § 424.514 with the Medicare revalidation application or the hardship exception request is not granted and the institutional provider or supplier does not submit the required application fee within 30 days of being notified that the exception request was not approved.

We are also proposing that an institutional provider may appeal the determination not to grant a hardship exception from the application fee using the provider enrollment appeals process established in § 405.874 and found in 1866(j)(2) of the Act.

In § 455.460, we are proposing that, for those providers who do not participate in Medicare, the State may collect the fee established by the Secretary as outlined above as the State will be responsible for conducting the provider screening activities for these providers. Total fees collected will be used to offset the cost of the Medicaid and CHIP screening programs. The fees represent an applicable credit under OMB Circular A–87, entitled "Cost Principles for State, Local, and Indian Tribal Governments" (August 31, 2005 (70 FR 51910)), codified at 2 CFR part 225, and made applicable to States by 45 CFR 92.22(b). The cost principles require that the costs a State claims must be reduced by "applicable credits," or "those receipts or reduction of expenditure-type transactions that offset or reduce expense items allocable to Federal awards as direct or indirect costs", (Paragraphs C.1.i., C.4.a. and D.1. of Appendix A to 2 CFR part 225). If the fees collected by a State agency exceed the cost of the screening program, the State agency must return that portion of the fees to the Federal Government. CMS will direct these fees to support program integrity efforts as permitted by the ACA.

C. Temporary Moratoria on Enrollment of Medicare Providers and Suppliers, Medicaid and CHIP Providers

1. Statutory Changes

Section 6401(a) of the ACA amended section 1866(j) of the Act by adding a new section 1866(j)(7) of the Act, which provides that the Secretary may impose temporary moratoria on the enrollment of new Medicare, Medicaid, or CHIP providers and suppliers, including categories of providers and suppliers, if the Secretary determines such moratoria are necessary to prevent or combat fraud, waste, or abuse under the programs.

Section 6401(b)(1) of the Act adds specific moratorium language applicable to Medicaid at section 1902(ii)(4) of the Act, requiring States to comply with any temporary moratorium imposed by the Secretary unless the State determines that the imposition of such moratorium would adversely affect Medicaid beneficiaries' access to care. Section 1902(ii)(4)(B) of the Act further permits States to impose temporary enrollment moratoria, numerical caps, or other limits, for providers identified by the Secretary as being at high risk for fraud, waste, or abuse, if the State determines that the imposition of such moratorium, cap, or other limits would not adversely impact Medicaid beneficiaries' access to care.

Section 1866(j)(7) of the Act uses the term "providers of services and suppliers." Although, as noted above, the Medicaid program does not use the term "suppliers," section 1902(ii)(4) of the Act refers to "providers and suppliers." In this regulation, for uniformity with sections II A. and B. of the proposed rule, we are using the term "providers and suppliers" in lieu of the term "provider of services and suppliers." We will use the term "provider" or "Medicaid provider" or "CHIP provider" in lieu of the term "provider or supplier" when referring to all Medicaid or CHIP health care providers, including, but not limited to, providers and suppliers of Medicaid items or services, individual practitioners, and institutional providers.

2. Proposed Requirements

a. Medicare

We propose at § 424.570(a) that CMS may impose a moratorium on the enrollment of new Medicare providers and suppliers in 6- month increments in situations where—(1) CMS, based on its review of existing data, without limitation, indentifies a trend that appears to be associated with a high risk of fraud, waste or abuse, such as highly disproportionate number of providers or suppliers in a category relative to the number of beneficiaries or a rapid increase in enrollment applications within a category determines that there is a significant potential for fraud, waste or abuse with respect to a particular provider or supplier type or particular geographic area or both; (2) a State has

imposed a moratorium on enrollment in a particular geographic area or on a particular provider of supplier type or both; or (3) CMS, in consultation with the HHS OIG or the Department of Justice (DOJ) or both identifies either or both of the following as having a significant potential for fraud, waste or abuse in the Medicare program:

- A particular provider or supplier type.
- Any particular geographic area.

As part of the CMS decision-making process, we will consider any recommendation from the DOJ, HHS OIG, or the GAO to impose a temporary moratorium for a specific provider or supplier type in a specific geographic area.

We believe that imposing moratoria will, among other things, allow us to review and consider additional programmatic initiatives, including the development of additional regulatory and subregulatory provisions to ensure that Medicare providers and suppliers are meeting program requirements, beneficiaries receive quality care, and that an adequate number of providers of suppliers exists to furnish services to Medicare beneficiaries.

We also propose that enrollment moratoria be limited to: (1) Newly enrolling providers and suppliers (that is., initial enrollment applications); and (2) the establishment of new practice locations, not to a change of practice locations. The temporary moratoria would not apply to existing providers or suppliers of services unless they were attempting to expand operations to new practice locations where a temporary moratorium was imposed. Moreover, the temporary moratoria would not apply in situations involving changes in ownership of existing providers or suppliers, mergers, or consolidations.

We also propose at § 424.570(b) that a moratorium would be imposed for a period of 6 months, and such moratorium could be extended by CMS in 6-month increments if CMS continues to believe that a moratorium is needed to prevent or combat fraud, waste, or abuse. The Secretary will re-evaluate whether a moratorium should continue prior to each 6 month expiration date.

We also propose at § 424.570(c) that CMS will deny enrollment applications received from providers or suppliers covered by an existing moratorium. We note that denial of Medicare billing privileges is subject to the administrative review process established in § 405.874. Accordingly, we believe that denial of Medicare billing privileges is also afforded the right to appeal a Medicare contractor determination to deny enrollment into the Medicare program.

In § 424.530(a)(9), we propose adding a new reason why CMS can deny Medicare billing privileges. Specifically, we are proposing a new § 424.530(a)(9) to state, "A provider or supplier submits an enrollment application for a practice location in a geographic area where CMS has imposed a temporary moratorium." Further, in § 498.5(l)(4), we propose that the scope of review for appeals of denials under § 424.530(a)(9) based upon a provider or supplier being subject to a temporary moratorium will be limited to whether the temporary moratoria applies to that particular provider or supplier.

We note that section 1866(j)(7) of the Act provides that there shall be no judicial review of a temporary moratorium. Accordingly, we propose that a provider or supplier may administratively appeal an adverse determination based on the imposition of a temporary moratorium up to and including the Department Appeal Board (DAB) level of review.

Finally, we propose at § 424.570(d) that we may lift a moratorium in the following circumstances: (1) In the case of a Presidentially- declared disaster under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121 through 5206 (Stafford Act); (2) circumstances warranting the imposition of a moratorium have abated or CMS has implemented program safeguards to address any program vulnerability that was the basis for the moratorium; or (3) in the judgment of the Secretary, the moratorium is no longer needed.

We also recognize that in a limited number of circumstances a State Medicaid agency may enroll a provider or supplier into Medicaid during the temporary moratorium period established by Medicare. If this occurs and the prospective Medicare provider or supplier applies to enroll in the Medicare program after the temporary moratorium is lifted, we would use the screening tools described in section II.A. of this proposed rule.

We are also seeking public comment on specific exemptions to the temporary moratoria criteria proposed above. Prior to imposing a moratorium, we would assess Medicare beneficiary access to the type(s) of services that are furnished by the provider or supplier type and/or within the geographic area to which the moratorium would apply.

We would announce the implementation of a moratorium at any time. The announcement would be made in the **Federal Register** and we would also address it in other methods or forums, such as Press Releases, at CMS Provider Open Door Forums, in CMS provider listservs, and on the CMS Provider/Supplier Enrollment Web page (*http://www.cms.gov/MedicareProviderSupEnroll*). We would also require our Medicare contractors to post the moratorium announcement or note the expiration of a moratorium on their Web sites. Our **Federal Register** announcement would explain in detail the rationale for the moratorium and the rationale for the geographic area(s) in which it would apply.

b. Medicaid and CHIP

Pursuant to section 1902(ii)(4)(A) of the Act, we are proposing at § 455.470(a)(2) and (3) that a State Medicaid agency will comply with a temporary moratorium imposed by the Secretary unless it determines that the imposition of such a moratorium would adversely affect beneficiaries' access to medical assistance.

Where the Secretary has imposed a temporary moratorium in accordance with § 424.570, and the State has determined that compliance with such a moratorium would adversely impact Medicaid beneficiaries', or CHIP participants', as the case may be, access to medical assistance, section 1902(ii)(4)(A)(ii) of the Act creates an exception for the State from complying with the moratorium. We propose that the State provide the Secretary with written details of the moratorium's adverse impact on Medicaid beneficiaries. Prior to the Secretary imposing such a moratorium in any State, we propose at § 455.470(a)(1) that the Secretary consult with the State, so that the State may have an opportunity to seek an exception from the moratorium.

Pursuant to section 1902(ii)(4)(B) of the Act, States have authority to impose moratoria, numerical caps, or other limits for providers that are identified by the Secretary as being at "high" risk for fraud, waste, or abuse. We propose that where the State identifies a category of providers as posing a significant risk of fraud, waste, or abuse, the State must seek CMS' concurrence with that determination and provide CMS with written details of the proposed moratorium, including the anticipated duration, and with a substantial justification explaining why disallowing newly enrolling providers would reduce the risk of fraud. We propose at § 455.470 that States' moratoria would be imposed for a period of 6 months and may be extended in 6-month increments.

Section 2107(e)(1) of the Act provides that all provisions that apply to Medicaid under sections 1902(a)(77) and 1902(ii) of the Act apply to CHIP. Accordingly, we propose in new regulation § 457.990 that all the provider screening, provider application, and moratorium regulations that apply to Medicaid providers will apply in providers that participate in CHIP.

D. Suspension of Payments

1. Medicare

a. Background

In section 6402(h) of the ACA, Congress amended section 1862 of the Social Security Act by adding a new paragraph (o), under which the Secretary may suspend payments to a provider or supplier pending an investigation of a credible allegation of fraud unless the Secretary determines that there is good cause not to suspend payments. This section requires that the Secretary consult with the HHS OIG in determining whether there is a credible allegation of fraud against a provider or supplier.

b. Current Medicare Regulations

We have long been authorized to suspend payments in cases of suspected fraudulent activity. On December 2, 1996, we finalized regulations § 405.370 through § 405.379 that provides for suspension of payments to providers and suppliers for several scenarios, including when we possess reliable information that fraud or willful misrepresentation exists. The rule provides that we may suspend payments to a provider or supplier in whole or in part based upon possession of reliable information that an overpayment or fraud or willful misrepresentation exists or that the payments to be made may not be correct, although additional evidence may be needed for a determination.

The existing rule provides that a suspension of payments is limited to 180 days, unless it meets one of several exceptions. A Medicare contractor may request a one-time-only extension of the suspension period for up to 180 additional days if it is unable to complete its examination of the information that serves as the basis for the suspension. Also, OIG or a law enforcement agency may request a one-time-only extension for up to 180 additional days to complete its investigation in cases of fraud and willful misrepresentation. The rule provides that these time limits do not apply if the case has been referred to and is being considered by the OIG for administrative action, such as civil monetary penalties. We may also grant an extension beyond the 180 additional days if DOJ requests that the suspension of payments be continued based on the ongoing investigation and anticipated filing of criminal or civil actions. The DOJ extension is limited to the amount of time needed to implement the criminal or civil proceedings.

c. Proposed Requirements

Section 6402(h) of the ACA requires that the Secretary consult with the OIG in determining whether there is a credible allegation of fraud against a provider or supplier. If a credible allegation of fraud exists, the Secretary may impose a suspension of payments pending an investigation of the allegations, unless the Secretary determines that there is good cause not to suspend payments. We are proposing to revise § 405.370 to add a definition of what constitutes a "credible allegation of fraud," to include an allegation from any source, including but not limited to fraud hotline complaints, claims data mining, patterns identified through provider audits, civil false claims cases, and law enforcement investigations. Allegations are considered to be credible when they have an indicia of reliability. Many issues related to this definition will need to be determined on a case-by-case basis by looking at all the factors, circumstances and issues at hand. We continue to believe that CMS or its contractors must review all allegations, facts, and information carefully and act judiciously on a case-by-case basis when contemplating a payment suspension, mindful of the impact that payment suspension may have upon a provider.

We additionally propose modifying the existing § 405.370 to add a definition for "resolution of an investigation." The ACA provides for the suspension of payments pending the investigation of a credible allegation of fraud, and we believe that this provision necessitates defining when an investigation has concluded and the basis for the suspension of payments no longer exists. The definition proposed here is that a resolution of an investigation occurs when legal action is terminated by settlement, judgment, or dismissal, or when the case is closed or dropped because of insufficient evidence. We are seeking comments on an alternative definition of the term "resolution of an investigation" which is that it occurs when a legal action is initiated or the case is closed or dropped because of insufficient evidence to support the allegations of fraud.

We propose modifying the existing § 405.371(a) to differentiate between suspensions based on either reliable information that an overpayment exists or that payments to be made may not be correct, and suspensions based upon a credible allegation of fraud. As required by the ACA, we propose in this section that CMS or its contractor must consult with the OIG, and as appropriate, the Department of Justice (DOJ) in determining whether a credible allegation of fraud exists prior to suspending payments on the basis of alleged fraud.

We also propose in accordance with the ACA that CMS retains discretion regarding whether or not to impose a suspension or continue a suspension, as there may be good cause not to suspend payments or not to continue to suspend payments to providers or suppliers in certain circumstances. We propose to add a new § 405.371(b) to describe circumstances that may qualify as good cause not to suspend payments or not to continue to suspend payments despite credible allegations of fraud.

In paragraph (b)(1), we propose a good cause exception based upon specific requests by law enforcement that CMS not suspend payments. There are numerous reasons for which law enforcement personnel might make such a request, including that imposing a payment suspension might alert a potential perpetrator to an investigation at an inopportune or particularly sensitive time, jeopardize an undercover investigation, or potentially expose whistleblowers or confidential sources.

In paragraph (b)(2), we propose a good cause exception not to suspend payments if CMS determines that beneficiary access to necessary items or services may be jeopardized. We envision there may be scenarios in which a payment suspension to a provider might jeopardize a provider's ability to continue rendering services to Medicare beneficiaries whose access to items or services would be so jeopardized as to cause a danger to life or health.

In paragraph (b)(3), we propose a good cause exception not to suspend payments if CMS determines that other available remedies implemented by or on behalf of CMS more effectively or quickly protect Medicare funds than would implementing a payment suspension. For example, law enforcement personnel might request that a court immediately enjoin potentially unlawful conduct or prevent the withdrawal, removal, transfer, disposal, or dissipation of assets, either or both of which might protect Medicare

funds more fully or quickly than would imposition of a payment suspension.

More generally, in paragraph (b)(4), we propose a good cause exception based upon a determination by CMS that a payment suspension or continuation of a payment suspension is not in the best interests of the Medicare program. We further propose that CMS will conduct an evaluation of whether there is good cause not to continue a suspension every 180 days after the initiation of a suspension based on credible allegations of fraud. We believe that circumstances surrounding a specific case may change as an investigation progresses, and it may become in the best of interests of the Medicare program to terminate a payment suspension prior to the resolution of an investigation. As part of this ongoing evaluation, CMS will request a certification from the OIG or other law enforcement agency as to whether that agency continues to investigate the matter.

We are considering additional specific circumstances and scenarios that may qualify as good cause not to continue a payment suspension prior to the resolution of an investigation, and solicit comments on this approach. For example, one scenario that we are considering as additional good cause not to continue a suspension is when a suspension has been in place for a specific length of time, such as 2 years or 3 years, and the investigation has not been resolved. We anticipate that on a case by case basis, CMS will evaluate the status of a particular investigation and the nature of the alleged fraud in determining whether keeping a payment suspension in effect beyond a certain length of time may not be in the best interests of the Medicare program. We have chosen not to propose specific language on duration in the regulatory text. However, we solicit comment on this approach.

We propose modifying the existing § 405.372 to reflect the changes made in § 405.371 which divides the payment suspension authority into situations involving overpayments and situations involving allegations of fraud. In § 405.372(c) we clarify the subsequent action requirements to distinguish between suspensions based on credible allegations of fraud and those that are based on other factors, such as overpayments. For suspensions that are not based on credible allegations of fraud, CMS and its contractors will continue to take timely action to obtain additional information needed to make an overpayment determination and make all reasonable efforts to expedite the determination. Once the determination is made, notice of the determination will be given to the provider or supplier and the payment suspension will be terminated. If the payment suspension is based on credible allegations of fraud, CMS and its contractors will take subsequent action to determine if an overpayment exists or if the payments may be made, however the termination of the suspension and the issuance of a final determination notice to the provider or supplier may be delayed until resolution of the investigation. At the end of the fraud investigation, it is possible that the Medicare contractor will not have completed its overpayment determination, but will have reliable evidence of an overpayment or will have evidence that the payments to be made may not be correct. This typically occurs when a law enforcement investigation results in civil or criminal resolution prior to the Medicare contractor having had sufficient time to complete its overpayment determination. In such a situation, we would allow the suspension to continue as an overpayment suspension.

We propose modifying the existing § 405.372(d) concerning the duration of suspension of payment. In § 405.372(d)(3) we except suspensions based on credible allegations of fraud from the established time limits specified in paragraphs (d)(1) and (d)(2). We believe the strict time constraints found in paragraphs (d)(1) and (d)(2) should only be applied to suspensions based on reliable information of an overpayment or where payments to be made may not be correct both of which require a speedy overpayment determination. When credible allegations of fraud are present, we believe that CMS should have the flexibility to maintain a suspension beyond these established time limits in order for an investigation to be completed or the matter to be resolved. However, we note that by excepting suspensions based on credible allegations of fraud from these previously established timeframes, we do not intend to suspend payments to providers and suppliers indefinitely. We will be actively evaluating the progress of any investigation to determine if good cause exists to no longer continue the suspension of payments, as suspensions are designed to be a temporary measure. As part of this recurring evaluation, CMS will request a certification from the OIG or other law enforcement agency that the matter continues to be under investigation.

We also propose eliminating the two other existing scenarios in paragraph (d)(3) for extending payment suspensions beyond the time limits in paragraphs (d)(1) and (d)(2), which are when the OIG is considering administrative action such as civil monetary penalties and also when the DOJ requests an extension based on an ongoing investigation and the anticipated filing of criminal and/or civil actions. We believe that both of these reasons under the existing rule for extending suspensions will be captured in the new rule which will allow for payment suspensions to extend until the resolution of an investigation and are unnecessary given the other proposed changes.

2. Medicaid

a. Background

In section 6402(h) of the ACA, the Congress amended section 1903(i)(2) of the Act to provide that Federal Financial Participation (FFP) in the Medicaid program shall not be made with respect to any amount expended for items or services (other than an emergency item or service, not including items or services furnished in an emergency room of a hospital) furnished by an individual or entity to whom a State has failed to suspend payments under the plan during any period when there is pending an investigation of a credible allegation of fraud against the individual or entity as determined by the State in accordance with these regulations, unless the State determines in accordance with these regulations that good cause exists not to suspend such payments.

b. Current Medicaid Regulations

State Medicaid agencies have long been authorized to withhold payments in cases of fraud or willful misrepresentation. On December 28, 1987, DHHS finalized regulations at § 455.23 that they described as specifically encouraging State Medicaid agencies to withhold program payments to providers without first granting administrative review where the State agency has reliable evidence of fraudulent activity by the provider. The regulations were issued by the HHS OIG based on a concern that State administrative hearings could interfere with investigations conducted by HHS OIG's Office of Investigations or by the State's Medicaid fraud control unit (MFCU). The requirements of an administrative hearing could jeopardize criminal cases and investigators were reluctant to agree to a State's withholding payment, thus risking additional overpayments. (See the December 28, 1987 final rule (52 FR

48814)). The December 28, 1987 final rule remains in effect and has remained unchanged since it was promulgated.

At the time the rule was proposed, the Department was in the process of reorganizing its fraud and abuse regulations to reflect authorities transferred to HHS OIG in 1983, as well as those retained by CMS. HHS OIG authorities were transferred to a new 42 CFR chapter V, while CMS' Medicaid program integrity authorities were retained at 42 CFR part 455. (See the September 30, 1986 final rule (51 FR 34764)).

This current rule provides that a State Medicaid agency may withhold payments to a provider in whole or in part based upon receipt of reliable evidence that the need for withholding payments involves fraud or willful misrepresentation under the Medicaid program. At the time this rule was published, commenters questioned what constituted "reliable evidence of fraud." The HHS OIG declined to provide a specific definition, noting that what constitutes "reliable evidence" is not easily and readily definable. The HHS OIG noted that while the existence of an ongoing criminal or civil investigation against a provider may be a factor in determining whether reliable evidence exists, that reliable evidence should be determined on a case-by-case basis with the State agency looking at all the factors, circumstances, and issues at hand, and acting judiciously on this information.

The 1987 regulations also permitted payments to be suspended in whole or in part. Commenters had suggested that "clean claims" continue to be processed without delay, and that any withholding ought be targeted to only the type of Medicaid claims under investigation. The HHS OIG responded that it is usually difficult to determine which claims are "clean" until after an investigation has been completed, but noted that where an investigation is solely and definitively centered upon a specific type of claim that a State could, at its discretion, withhold payments on just those types of claims. The HHS OIG also agreed to commenters' requests to clarify that the withholding provisions apply only to alleged fraud or willful misrepresentation related to improperly received Medicaid payments and not to ancillary unrelated matters such as deceptive advertising.

c. Proposed Requirements

The current regulation at § 455.23 forms the framework for these proposed regulations. State Medicaid agencies have long had the authority to withhold payments in cases of alleged fraud or willful misrepresentation. Section 6402(h)(2) of the ACA now mandates that States not receive FFP in cases where they fail to suspend Medicaid payments during any period when there is pending an investigation of a credible allegation of fraud against an individual or entity as determined by the State in accordance with these proposed regulations unless the State determines that good cause exists for a State not to suspend such payments. To conform the existing regulation to the terminology of the ACA, we propose to change the phrase "withhold payments" to "suspend payments," a change we believe is merely semantic.

We propose to implement section 6402(h)(2) of the ACA by modifying the existing § 455.23(a) to make payment suspensions mandatory where an investigation of a credible allegation of fraud under the Medicaid program exists. Based on the ACA's use of just the term "fraud," we do not propose to retain the existing term "willful misrepresentation." We believe that fraud and willful misrepresentation are largely indistinguishable, thus we do not believe this proposal represents a substantive change nor do we intend it to have a substantive effect insofar as reducing or limiting a State's authority to suspend Medicaid payments. We solicit comments on this approach.

To conform the proposed regulation to the requirements of the ACA, we propose to modify terminology in the existing § 455.23(a) that now refers to "receipt of reliable evidence" to instead refer to a "pending investigation of a credible allegation of fraud." In contrast to the semantic change from "withhold payments" to "suspend payments," in this case we believe that there is a substantive difference between the threshold level of certainty or proof necessary to identify a "credible allegation" versus the heightened requirement of "reliable evidence" in the current regulation.

We do not believe that the phrase "when there is pending an investigation of a credible allegation of fraud" necessarily demands that an investigation originate in or with a law enforcement agency. Rather, State Medicaid agencies have program integrity units that, in the normal course of business, receive, and conduct investigations based upon, tips alleging fraud, and which also conduct proactive investigations based upon internal data analyses and other fraud detection techniques. We believe that State agency investigations, though they may be preliminary in the sense that they lead to a referral to a law enforcement agency for continued investigation, are adequate vehicles by which it may be determined that a credible allegation of fraud exists sufficient to trigger a payment suspension to protect Medicaid funds.

This threshold by which a State agency investigation may give rise to a payment suspension is a somewhat lesser threshold than that in the current regulation. The preamble to the current regulation specified that it was anticipated the State agency would confer with, and receive the concurrence of, investigative or prosecuting authorities prior to imposing a withholding action. However, that preamble also stated that it was establishing mere minimum requirements, and that States could exercise broader power where State law or regulation so provided. Most States have availed themselves of the existing Federal authority (or broader state authority) to withhold payments, and we believe that experience over the past 20 years offers no indication this authority has been misused against providers. Moreover, we believe this proposed threshold is consistent with the phrase "investigation of a credible allegation of fraud" of the ACA. We do anticipate that payment suspension authority will be used more frequently because the ACA dictates that where there is a pending investigation of credible allegations of fraud against a provider, a State that fails to suspend payments to that provider will not receive FFP with respect to such payments unless good cause exists not to suspend them.

We propose to adopt at § 455.2 the same broad definition of "credible allegation" proposed above in the context of the Medicare program. In many cases, what constitutes a "credible allegation" must be determined on a case-by-case basis with the State agency looking at all the factors, circumstances, and issues at hand. Guided by the experience of more than 20 years, we are aware that States have been able to identify "reliable evidence" through a variety of means including, but not limited to, fraud hotline complaints, Medicaid claims data mining, and patterns identified through provider audits, along with the appropriate level of additional investigation that accompanies each of these. Moreover, States have received referrals from State MFCUs, other law enforcement agencies, and other State benefits program investigative units. We continue to believe that State agencies must review all allegations, facts, and evidence carefully and act judiciously on a case-by-case basis when contemplating a payment suspension,

mindful of the impact that payment suspension may have upon a provider.

In paragraph (b), we propose that the State agency notify a provider of a payment suspension in a way very similar to the mechanism currently specified in regulation by which the State agency is required to notify a provider, specifying certain details, within 5 days of taking such action. However, we do propose to provide for a 30-day period, renewable in writing up to twice for a total not to exceed 90 days, by which law enforcement may, in writing, request the State agency to delay notification to a provider. We propose this because we believe that occasionally an investigation may be at a sensitive stage, perhaps involving undercover personnel or a confidential informant, where required notification to the provider at a particular time might jeopardize the investigation. We do not believe we should extend the delay notification beyond 90 days out of fairness to a provider and, in any event, a provider deriving any significant revenue stream from Medicaid is likely to itself discern the fact of a payment suspension well in advance of 90 days.

We are proposing only minor changes to the current provisions in § 455.23(c) on the duration of a suspension. To comport with the ACA, we change the term "withholding" to "suspension"; this is a semantic change that, as noted above, has been made throughout. In the proposed new § 455.23(c)(2), we propose to require a State to notify a provider of the termination of a payment suspension and, where applicable, to specify the availability to a provider of any appeal rights under State law and regulation.

Substantively, we do not propose significant change to the existing duration provisions, which specify that withholding (now, suspension) will be temporary and will not continue after: (1) Authorities discern that there is insufficient evidence of fraud upon which to base a legal action; or (2) legal proceedings related to the alleged fraud are completed.

We believe that maintaining the existing duration provisions is consistent with the ACA that requires that FFP not be made when a State fails to suspend payments "during any period when there is pending an investigation of a credible allegation of fraud against an individual or entity." We further recognize that the Act applies a very similar standard to the Medicare program. We solicit comments on our proposal to maintain the existing duration provisions.

In paragraph (d), we propose to require a State to make a formal, written suspected fraud referral to its MFCU or, where a State does not have a MFCU to an appropriate law enforcement agency, for each instance of payment suspension as the result of a State agency's preliminary investigation of a credible allegation of fraud. This will ensure that an appropriate full investigation by a law enforcement agency timely ensues. If the MFCU or other law enforcement agency declines to accept the referral, we propose to require the State to immediately release the payment suspension unless the State refers the matter to another law enforcement entity or unless the State has alternative Federal or State authority by which it may impose a suspension. In the latter case, the requirements of that alternative authority, including any notice and due process or other safeguards, would be applicable.

We propose to require that a State's formal, written suspected fraud referral meets fraud referral performance standards issued by the Secretary. The currently applicable fraud referral performance standards were issued by CMS on September 30, 2008. In a January 2007 report entitled "Suspected Medicaid Fraud Referrals," (OEI 07–04–00181) the HHS OIG expressed concern with the lack of CMS criteria specific to the referral of suspected fraud issues from State Medicaid agencies to MFCUs such that it was unable to determine the adequacy of State Medicaid agencies' performance. CMS agreed in response to that report to work towards the establishment of fraud referral performance standards (which it has now issued) to which States will be required to conform in making referrals under this regulation.

In paragraph (d)(3), we propose that on a quarterly basis a State must request a certification from the MFCU or other law enforcement agency that any matter accepted on the basis of a referral continues to be under investigation or in the course of enforcement proceedings warranting continuation of the payment suspension. We recognize that due to various constraints, law enforcement agencies may not be able to provide specific updates on matters under investigation. In recognition of the fact that payment suspensions are only temporary, however, we propose to require such quarterly certifications to ensure, for example, that a suspension will not be continued long after a law enforcement agency has closed an investigation but neglected to alert a State agency of that fact. To maximize State flexibility to implement this requirement, we are not prescribing the precise format such certifications must take.

Consistent with the new Affordable Care Act provision, we also propose to create several "good cause" exceptions by which States may determine good cause exists not to suspend payments or to suspend payments only in part. In new paragraph (e) we have included several circumstances that we believe constitute "good cause" for a State to determine not to suspend payments, or not to continue a payment suspension previously imposed, to an individual or entity despite a pending investigation of a credible allegation of fraud. In paragraph (e)(1), we propose a good cause exception based upon specific requests by law enforcement that State officials not suspend (or continue to suspend) payment. There are numerous reasons for which law enforcement personnel might make such a request, including that imposing a payment suspension might alert a potential perpetrator to an investigation at an inopportune or particularly sensitive time, jeopardize an undercover investigation, or potentially expose whistleblowers or confidential sources.

In paragraph (e)(2), we propose a good cause exception if a State determines that other available remedies implemented by the State could more effectively or quickly protect Medicaid funds than would implementing (or continuing) a payment suspension. For example, law enforcement personnel might request that a court immediately enjoin potentially unlawful conduct or prevent the withdrawal, removal, transfer, disposal, or dissipation of assets, either or both of which might protect Medicaid funds more fully or quickly than would imposition of a payment suspension.

Paragraph (e)(3) proposes a good cause exception based upon a determination by the State agency that a payment suspension is not in the best interests of the Medicaid program. It is conceivable that a State may, in rare situations, face exigent circumstances with respect to a suspension situation not addressed by the other good cause exceptions specified here but where it otherwise determines suspension would not be in the State Medicaid's programs best interests. This broad standard is intended to reflect that payment suspension is a very serious action that can potentially lead to dire consequences, but that it is impossible to specify detailed contingencies with respect to every possible scenario that might arise. We do not anticipate that States will frequently make use of this exception; however where this exception is utilized we do require that States document their use of this exception, and will closely monitor its

implementation to determine whether further regulation is necessary. We solicit comments on this approach.

In paragraph (e)(4), we propose a good cause exception based upon a determination by the State of an adverse effect of the suspension on beneficiary access to necessary items or services. We envision there may be scenarios in which a payment suspension to a provider might jeopardize a provider's ability to continue rendering services to Medicaid beneficiaries, thus threatening Medicaid beneficiaries' access to care. Utilizing a standard identical to that which CMS and the HHS OIG apply in assessing requests for waivers of exclusion at Parts 402 and 1001 of Title 42, for example, we posit one basis for a good cause exception from payment suspension is if a provider under investigation is a sole community physician or the sole source of specialized services available in a community. Likewise, in Federally-designated medically underserved areas the potential impact of a payment suspension upon a large provider might equally threaten recipient access, thus this underlies a second access exception. We welcome comments on this approach, including comments with respect to other metrics by which to assess potential beneficiary jeopardy in terms of access to necessary items or services.

Finally, in paragraph (e)(5) we propose a good cause exception that would permit (but not require) a State to discontinue an existing suspension to the extent law enforcement declines to cooperate in certifying under the requirements of paragraph (d)(3) that a matter continues to be under investigation and therefore warrants continuing the suspension.

We do not interpret the new provision in the ACA as mandating that a State must always suspend payments in toto in cases of an investigation of a credible allegation of fraud. In general, we continue to believe a payment suspension should apply to all claims consistent with the HHS OIG's responses to comments in the 1987 regulations that it is usually difficult to determine which claims are clean claims until after an investigation is completed, and one purpose of payment suspension is to build a type of escrow account out of which any overpayments can be deducted when an investigation is concluded.

With certain new constraints, we have chosen to continue to allow States the flexibility to suspend payments in part. For example, as stated in the preamble to the current regulation, there may be times where an investigation is solely and definitively centered on only a specific type of claim in which case a State may determine it is appropriate to impose a payment suspension on only that type of claim. Likewise, a State might determine that an investigation of a credible allegation of fraud is limited to a particular business unit or component of a provider such that a suspension need not apply to certain business units or components of a provider.

Balancing these approaches, we propose to allow States to implement a partial payment suspension, or, where appropriate, to convert a previously imposed full payment suspension to a partial payment suspension, if justified via a good cause exception. The good cause exceptions for partial suspension at paragraphs (f)(1) and (2) mirror those at paragraphs (e)(4) and (3), respectively, and allow the State to adopt a partial payment suspension where suspension in whole would so jeopardize a recipient's access to items or services as to endanger the recipient's life or health, or where the State deems it in the best interests of the Medicaid program. At paragraph (f)(3), we propose that a State may avail itself of the good cause exception to suspend payments only in part if the nature of the credible allegation is focused solely and definitively on only a specific type of claim or arises from only a specific business unit of a provider, and the State determines and documents in writing that a payment suspension in part would effectively ensure that potentially fraudulent claims were not continuing to be paid. Many such cases will still demand suspension in full, but this provision, which we anticipate States would exercise sparingly, gives States flexibility to act otherwise in those limited circumstances where appropriate. Finally, at paragraph (f)(4), we propose that a State may avail itself of the good cause exception to convert a payment suspension in whole to one only in part to the extent law enforcement declines to cooperate in certifying under the requirements of paragraph (d)(3) that a matter continues to be under investigation. We solicit comment on these proposed approaches.

We propose in new paragraph (g) to add several reporting and document retention guidelines to § 455.23. Payment suspension authority is critically important to protect Medicaid funds, but payment suspension can have dire consequences to a provider. Payment suspension authority, including a State's exercise of a good cause exception to otherwise address a suspension situation, must be exercised responsibly by a State at all stages, from the inception to the termination of the suspension. Through, among other things, its State Program Integrity Reviews, we expect to maintain close oversight of State utilization of suspension authority. However, to be clear, we expressly and explicitly do not expect State compliance (or noncompliance) with these documentation or retention provisions to give rise to any enforceable right of a provider aggrieved by any real or perceived failures with respect to these requirements to seek any form of redress (administratively, judicially, or otherwise).

Under these proposed reporting and retention guidelines, States are required to maintain for a minimum of 5 years from the date of issuance all materials documenting the life cycle of a payment suspension that is imposed, including: (1) All notices of suspension of payment in whole or part; (2) all fraud referrals to MFCUs or other law enforcement agencies; (3) all quarterly certifications by law enforcement that a matter continues to be under investigation; and (4) all notices documenting the termination of a suspension. Likewise, we propose to require States to maintain for the same period all documentation justifying the exercise of the good cause exceptions. Finally, we propose to require States to annually report to the Secretary information regarding the life cycle of each payment suspension imposed and any determinations to exercise the good cause exceptions not to suspend payment, to suspend payment only in part, or to discontinue a payment suspension.

To effectuate section 6402(h)(2) of the ACA's prohibition on expenditure of FFP where a State fails to suspend payments that should, by virtue of the ACA standard and this proposed rule, have been suspended, we propose to add a new § 447.90 that contains both the general rule and which refers to the exceptions found in § 455.23 for "good cause." Paragraph (a) specifies the basis and purpose for the new provision. Paragraph (b) specifies the general rule that FFP would not be available with respect to items or services furnished by an individual or entity to whom the State has failed to suspend Medicaid payments during any period where there is pending an investigation of a credible allegation of fraud against the individual or entity except in specified circumstances that include certain emergency circumstances, or if good cause exists as specified at § 455.23(e) or (f).

As mentioned, we anticipate that CMS' enforcement and monitoring of

these provisions will largely be accomplished through measures such as State Program Integrity reviews conducted by CMS. Such reviews will, among other things, evaluate States' complaint intake and investigation efforts, and assess whether States have an effective process to move matters where there are found to be credible allegations of fraud to the point where they are evaluated for payment suspension. However, we do not believe it is viable to require States to report and document to CMS every instance of where any allegation of fraud arises and further qualify which ones rise to the level of credible allegation. We want to foster effective and efficient State program integrity efforts with respect to which payment suspension is an integral component, but we do not want to create a system so procedurally onerous that it overwhelms a State's ability to substantively perform this critical work. Nevertheless, we will thoroughly investigate and act by, among other things, deferring and/or disallowing FFP in accordance with § 430.40 and § 430.42, if program integrity reviews or other methods of ensuring State compliance with Medicaid program requirements reveal a State is failing to suspend payments (or inappropriately applying a good cause exception) where pending investigations of credible allegations of fraud do exist. A State may not claim (on its Form CMS–64) FFP for payments that are suspended. Any State that does not suspend payments, or that suspends payments but continues to claim FFP with respect to what would have been paid had no suspension been in place, puts that FFP at risk. In such cases, we would pursue a deferral and/or disallowance to reclaim the Federal portion of such payment. We solicit comments on CMS' proposed oversight approach.

Finally, three provisions are proposed to be added to the regulations at § 1007.9 that specify the State MFCU's relationship to, and agreement with, the State Medicaid agency. These proposed revisions are necessary to effectuate the proposed revisions under § 455.23. The regulations at 42 CFR part 1007 are enforced by HHS OIG as part of its delegated authority to certify and fund the State MFCUs. (*See* August 15, 1979 final rule (44 FR 47811)). However, we are including amendments to part 1007 here to ensure a comprehensive regulatory package that sets forth in one location the Department's implementation of the suspension provisions of section 6402(h) of the ACA.

The first of these provisions proposes to add a new paragraph (e) to § 1007.9 that specifies that the MFCU may refer to the State agency any provider against which there is pending an investigation of a credible allegation of fraud for purposes of payment suspension in accord with § 455.23. Allegations of potential fraud may first be identified by the MFCU rather than by the State agency, so this provision merely formalizes a path from the MFCU to the State agency so a payment suspension may be implemented where appropriate. This provision also proposes that any referral to the State agency for consideration of a payment suspension be in writing. The written referral need not be extensive, but must include information adequate to enable the State agency to identify the provider and a brief explanation of the credible allegations forming the grounds for the payment suspension. The second proposed addition to § 1007.9 proposes to add a new paragraph (f) providing that any request by the unit to the State agency to delay notification of suspension to a provider pursuant to the provisions of the proposed § 455.23(b)(1)(ii) come in writing. Proposing to require that such requests need be made in writing (which could take the form of an e-mail) provides for an audit trail to ensure that proper procedures are followed. However, we expressly do not intend for this requirement to create any substantive right upon which a provider might lodge objection or other legal challenge to the extent the proper procedures were not followed. Last, a new paragraph (g) is proposed to require the unit to notify the State agency in writing when it has accepted or declined a case referred by the State agency. Aside from also creating an audit trail, this proposed provision would be important in that it would alert the State agency as to the status of a referral, which would shape how the State agency would handle a suspension under the proposed revisions to § 455.23.

E. Proposed Approach and Solicitation of Comments for Sections 6102 and 6401(a) of the ACA—Ethics and Compliance Program

Under section 6102 of the ACA which established new section 1128I of the Act, a nursing facility (NF) or SNF shall have in operation a compliance and ethics program that is effective in preventing and detecting criminal, civil, and administrative violations and in promoting quality of care, consistent with regulations developed by the Secretary, working jointly with the HHS OIG. The regulations to establish the compliance and ethics program for operating organizations may include a model compliance program. The statute requires that in the case of an organization that has five or more facilities, the formality or specific elements of the program vary with the size of the organization. The statute also requires that not later than 3 years after the effective date of the regulations, the Secretary shall complete an evaluation of the programs to determine if such programs led to changes in deficiency citations, changes in quality performance, or changes in the quality of resident care. The Secretary shall submit to Congress a report on such evaluation with recommendations for changes in the requirements, as the Secretary deems appropriate.

Similarly, under section 6401(a) of the ACA, which established a new section 1866(j)(8) of the Act, a provider of medical or other items or services or a supplier shall, as a condition of enrollment in Medicare, Medicaid or CHIP, establish a compliance program that contains certain "core elements." The statute requires the Secretary, in consultation with the HHS OIG, to establish the core elements for providers or suppliers within a particular industry or category. The statute allows the Secretary to determine the date that providers and suppliers need to establish the required core elements as a condition of enrollment in Medicare, Medicaid, and CHIP. The statute requires the Secretary to consider the extent to which the adoption of compliance programs by providers or suppliers is widespread in a particular industry sector or particular provider or supplier category. Please note, NFs and SNFs are subject to both compliance plan requirements under sections 6102 and 6401(a) since section 6401(a) of the ACA includes all providers and suppliers enrolling into Medicare, Medicaid and CHIP. We intend to establish compliance program core elements per section 6401(a) of the ACA for NFs and SNFs that closely match the required components of a compliance program per section 6102 of the ACA.

In order to consider the views of industry stakeholders, we are soliciting comments on compliance program requirements included in the ACA. We do not intend to finalize compliance plan requirements when the other proposals in this proposed rule are finalized; rather, we intend to do further rulemaking on compliance plan requirements and will advance specific proposals at some point in the future. We are most interested in receiving comments on the following:

The use of the seven elements of an effective compliance and ethics program as described in Chapter 8 of the U.S. Federal Sentencing Guidelines Manual (*http://www.ussc.gov/2010guid/20100503_Reader_Friendly_Proposed_Amendments.pdf,* pp. 31–35) as the basis for the core elements of the required compliance programs for Medicare, Medicaid and CHIP enrollment. These elements instill a commitment to prevent, detect and correct inappropriate behavior and ensure compliance with all applicable laws, regulations and requirements, and include—

- The development and distribution of written policies, procedures and standards of conduct to prevent and detect inappropriate behavior;
- The designation of a chief compliance officer and other appropriate bodies (for example a corporate compliance committee) charged with the responsibility of operating and monitoring the compliance program and who report directly to high-level personnel and the governing body;
- The use of reasonable efforts not to include any individual in the substantial authority personnel whom the organization knew, or should have known, has engaged in illegal activities or other conduct inconsistent with an effective compliance and ethics program;
- The development and implementation of regular, effective education and training programs for the governing body, all employees, including high-level personnel, and, as appropriate, the organization's agents;
- The maintenance of a process, such as a hotline, to receive complaints and the adoption of procedures to protect the anonymity of complainants and to protect whistleblowers from retaliation;
- The development of a system to respond to allegations of improper conduct and the enforcement of appropriate disciplinary action against employees who have violated internal compliance policies, applicable statutes, regulations or Federal health care program requirements;
- The use of audits and/or other evaluation techniques to monitor compliance and assist in the reduction of identified problem areas; and
- The investigation and remediation of identified systemic problems including making any necessary modifications to the organization's compliance and ethics program.

In addition, we are particularly interested in comments about the following:

- The extent to which, and the manner in which, providers and suppliers already incorporate each of the seven U.S. Federal Sentencing Guidelines elements into their compliance programs or business operations. We are interested in how and to what degree each element has been incorporated effectively into the compliance programs of different types of providers and suppliers considering their risk areas, business model and industry sector or particular provider or supplier category.
- Any other suggestions for compliance program elements beyond, or related to, the seven elements referenced above considering provider or supplier risk areas, business model and industry sector or particular provider or supplier category including whether external and/or internal quality monitoring should be a required for hospitals and long-term care facilities.
- The costs and benefits of compliance programs or operations including aggregate or component costs and benefits of implementing particular elements and how these costs and benefits were measured.
- The types of systems necessary for effective compliance, the costs associated with these systems and the degree to which providers and suppliers already have these systems including, but not limited to, tracking systems, data capturing systems and electronic claims submission systems. We anticipate having providers and suppliers evaluate the effectiveness of their compliance plans using electronic data.
- The existence of and experience with state or other compliance requirements for various providers and suppliers and foreseeable conflicts or duplication from multiple requirements.
- The criteria we should consider when determining whether, and if so, how to divide providers and suppliers into groupings that would be subject to similar compliance requirements including whether individuals should have different compliance obligations from corporations.
- Available research or individual experience regarding the current rate of adoption and level of sophistication of compliance programs for providers or suppliers based on their business model and industry sector or particular provider or supplier category.
- How effective compliance programs have been for varied providers and suppliers and how the level of effectiveness was measured.
- The extent to which providers and suppliers currently use third party resources, such as consultants, review organizations, and auditors, in their compliance efforts.
- The extent to which providers and suppliers have already identified staff responsible for compliance and, for those who already have staff responsible for compliance, the positions of these staff.
- A reasonable timeline for establishment of a required compliance program for various types and sizes of providers and suppliers, assuming the compliance program core elements were based on the aforementioned U.S. Federal Sentencing Guidelines' seven elements of an effective compliance and ethics program, considering business model and industry sector or particular provider or supplier category.

We welcome any information concerning how the industry views compliance program elements and how we can establish required compliance program elements to protect Medicare, Medicaid, and CHIP from fraud and abuse.

F. Termination of Provider Participation Under the Medicaid Program and CHIP if Terminated Under the Medicare Program or Another State Medicaid Program or CHIP

1. Discussion

Effective provider screening prevents excluded providers from enrolling in government health care programs and being paid with Federal and State funds. Providers barred from participating because of effective screening cannot abuse Medicare, Medicaid, or CHIP.

When a State terminates a provider but does not share that information with any other State, all other States become vulnerable to potential fraud, waste, and abuse committed by that provider. Similarly, a provider, supplier, or eligible professional that has been terminated from Medicare or has had Medicare billing privileges revoked may enroll with a State Medicaid program or with CHIP when a State is not aware of the Medicare termination or revocation. We may terminate or revoke the billing privileges of a provider, supplier, or eligible professional under Medicare for a number of reasons, as set forth at § 424.535, including exclusion from health care programs, government-wide debarment, and conviction of violent felonies and financial crimes.

Section 6501 Affordable Care Act requires a State's Medicaid program to terminate an individual or entity's participation in the program (subject to certain limitations on exclusions in sections 1128(c)(2)(B) and 1128(d)(2)(B) of the Act), if the individual or entity has been terminated under Medicare or

another State's Medicaid program. Although the term "termination" only applies to providers under Medicare whose billing privileges have been revoked (and does not apply to Medicare suppliers or eligible professionals), we believe it was the intent of the Congress that this requirement also be applicable to suppliers and eligible professionals that have had their billing privileges under Medicare revoked as well. Therefore, we are proposing that "termination" be inclusive of situations where an individual's or entity's billing privileges have been revoked. The requirement for States to terminate would only apply in cases where providers, suppliers, or eligible professionals were terminated or had their billing privileges revoked for cause, for example, for reasons based upon fraud, integrity or quality, and not in cases where the providers, suppliers, or eligible professionals were terminated or had their billing privileges revoked based upon a failure to submit claims over a period of 12 months or more, or any other voluntary action taken by the provider to end its participation in the program, except where that voluntary action is taken to avoid a sanction.

In addition, State Medicaid programs would terminate a provider only after the provider had exhausted all available appeal rights in the State that originally terminated the provider.

Section 6501 of the ACA builds upon the requirements in section 6401(b)(2) of the ACA, which requires that CMS establish a process to make available Medicare provider, supplier, and eligible professional and CHIP provider termination information to State Medicaid programs. Section 1902(ii)(6) of the Act also requires States to report adverse provider actions to CMS, including criminal convictions, sanctions, and negative licensure actions.

When States are apprised of the terminations or revocations of billing privileges, as the case may be, of providers, suppliers, and eligible professionals that have occurred in other State Medicaid programs, CHIP, or in Medicare, States have the information they need to protect their programs.

2. Statutory Change

Section 6501 of the ACA amends section 1902(a)(39) of the Act to require a State Medicaid program to terminate any provider, be it an individual or entity, participating in that program, subject to the limitations on exclusions in sections 1128(c)(2)(B) and 1128(d)(2)(B) of the Act, if the provider's participation has been terminated under title XVIII of the Act or another State's Medicaid program.

3. Proposed Requirements

We propose at 42 CFR 455.416 that a State Medicaid program must deny enrollment or terminate the enrollment of a provider that is terminated on or after January 1, 2011 under Medicare, or has had its billing privileges revoked, or is terminated on or after January 1, 2011 under any other State's Medicaid program or CHIP.

While section 6501 of the ACA does not expressly require that individuals or entities that have been terminated under Medicare or Medicaid also be terminated from CHIP, we also propose, under our general rulemaking authority pursuant to section 1102 of the Act, to require in CHIP regulations that CHIP take similar action to terminate a provider terminated or revoked under Medicare, or terminated under any other State's Medicaid program or CHIP.

We also propose to add a definition at § 455.101 for termination for purposes of this section. That definition distinguishes between Medicaid providers and Medicare providers, suppliers, and eligible professionals and specifies that termination means a State Medicaid program or the Medicare program has taken action to revoke the Medicaid provider's or Medicare provider, supplier or eligible professional's billing privileges and the provider, supplier or eligible professional has exhausted all applicable appeal rights. There is no expectation on the part of the provider, supplier, or eligible professional or the State or Medicare program that the termination or revocation is temporary. The provider, supplier or eligible professional would be required to reenroll with the applicable program if they wish billing privileges to be reinstated.

G. Additional Medicare Provider Enrollment Provisions

In § 424.535(a)(11), we propose allowing CMS or its designated Medicare contractor to revoke Medicare billing privileges when a State Medicaid agency terminates, revokes, or suspends a provider or supplier's Medicaid enrollment or billing privileges. We believe that this approach works in tandem with section 6501 of the ACA which requires States to terminate a provider or supplier under the Medicaid program when the provider or supplier has been terminated by Medicare or by another State's Medicaid program. Moreover, we believe that providers and suppliers whose enrollment has been terminated by a State Medicaid program pose an increased risk to the Medicare program.

III. Collection of Information Requirements

Under the Paperwork Reduction Act of 1995, we are required to provide 60-day notice in the **Federal Register** and solicit public comment before a collection of information requirement is submitted to the Office of Management and Budget (OMB) for review and approval. In order to fairly evaluate whether an information collection should be approved by OMB, section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 requires that we solicit comment on the following issues:

- The need for the information collection and its usefulness in carrying out the proper functions of our agency.
- The accuracy of our estimate of the information collection burden.
- The quality, utility, and clarity of the information to be collected.
- Recommendations to minimize the information collection burden on the affected public, including automated collection techniques.

We are soliciting public comment on each of these issues for the following sections of this document that contain information collection requirements (ICRs):

A. ICRs Regarding Application Fee Hardship Exception (§ 424.514)

Proposed § 424.514(e) states that a provider or supplier that believes it has a hardship that justifies a waiver exception of the application fee must include with its enrollment application a letter that describes the hardship and why the hardship justifies a waiver exception. The burden associated with this proposed requirement would be the time and effort necessary to submit a Medicare enrollment application, which is required currently of any individual or entity enrolling in Medicare. In addition to the enrollment application, a provider or supplier would have the new burden of drafting and submitting a letter to justify its hardship waiver request should it choose to submit one. The burden associated with submitting Medicare enrollment applications is approved under both 0938–0685 and 0938–1056, the CMS Forms 855–A, B, and the CMS–855–S (or their associated Internet-based PECOS enrolment application), respectively. Although we have no way of knowing for certain how many entities will actually submit an application with a letter requesting a waiver, we know that initially there are likely to be more such requests in the early years of implementation than in later years. We estimate that in the first

year, 12,000 providers or suppliers –or slightly over 50 percent of the total number of providers and suppliers that we believe (as discussed in the section V. of this proposed rule) will be subject to the application fee—will submit waiver request letters as part of their application packages. We also estimate that it will take each provider or supplier 1 hour to develop the letter. The total estimated annual burden associated with this requirement is therefore 12,000 hours at a cost of $600,000, or $50.00 per waiver request.

B. ICRs Regarding Fingerprinting (§ 424.518 and § 455.434)

Proposed § 424.518(c) which reads: "In addition to the "limited" and "moderate" screening requirements described in (a) and (b) above, the Medicare enrollment contractor shall conduct a criminal background check or require the submission of set of fingerprints using the FD–258 standard fingerprint card when a prospective home health agency or supplier of DMEPOS is enrolling into the Medicare program or is establishing a new practice location and is not publicly-traded on the NYSE or NASDAQ," would allow CMS, its agents or its designated contractors to require the submission of a set of fingerprints using the FD–258 standard fingerprint card. Similarly, proposed § 424.518(d) which reads in part: "An individual must submit a set of fingerprints using the FD–258 standard fingerprint card with the Medicare enrollment application or within 30 days of a Medicare contractor request. An individual who does not submit a set of fingerprints using the FD–258 standard fingerprint card with the Medicare enrollment revalidation or revalidation application or within 30 days of a Medicare contractor request, may have his/her Medicare billing privileges denied," would allow CMS, its agents or its designated contractors to require that each owner, authorized official, delegated official, and managing employee, of a provider or supplier to submit a set of fingerprints using the FD–258 standard fingerprint card. We estimate that CMS or its designated contractors will make 7,000 such requests per year. This is predicated on our projection that—based on 2009 statistics—roughly 7,000 DMEPOS suppliers and HHAs will annually enroll in Medicare. For purposes of this ICR statement only, and to ensure that we do not underestimate the possible burden, we will estimate that all of these providers and suppliers will be required to submit the standard fingerprint card. We further estimate that an average of five individuals per provider or supplier will be required to comply with this request, though we do seek comments—for purposes of this ICR and the RIA below—on whether the estimate of 5 individuals per applicant is accurate. Additionally, we estimate that it will take each of the 35,000 respondents (7,000 × 5) a total of 2 hours to obtain a set of fingerprints using the FD–258 standard fingerprint card and to submit the card to CMS or its designated contractor. Consequently, the total estimated annual burden associated with this requirement is 70,000 hours (35,000 respondents × 2 hours) at a cost of $3.5 million (70,000 hours × an estimated per hour cost of $50).

Similarly, proposed § 424.518(c)(3)(iv) (new providers in "high" risk category after lifting of moratoria) would allow CMS, its agents or its designated contractors to require that each owner, authorized official, delegated official, and managing employee, of a provider or supplier to submit a set of fingerprints using the FD–258 standard fingerprint card. The burden associated with the proposed requirement is the time and effort necessary for the owner, authorized official, delegated official, and managing employee of a provider or supplier to submit the required information upon request. We estimate that CMS or its designated contractors will make 2,000 requests per year. This is based on the number of providers and suppliers that we estimate will attempt to enroll in Medicare after the lifting of a moratorium for their respective provider or supplier type. This estimate of course, cannot be conclusively quantified because it is impossible for us to say with certainty which provider and supplier types will be subject to a moratorium. To ensure that we do not underestimate the potential burden, we will calculate projections should 5,000 or even 10,000 requests be made.

We estimate that an average of five individuals per provider or supplier will be required to comply with this request. We further project that it will take each of the 10,000 respondents (2,000 × 5) a total of 2 hours to obtain a set of fingerprints using the FD–258 standard fingerprint card and to submit the card to CMS or its designated fee-for-service contractor. The estimate annual burden associated with this requirement, based on 2000 requests, is 20,000 hours (10,000 respondents × 2 hours) at a cost of $1 million (20,000 × $50 per hour). If 5,000 requests are made, the burden is 50,000 hours at a cost of $2.5 million (5,000 × 5 respondents × 2 hours × $50 per hour.) If 10,000 requests are made, the burden is 100,000 hours at a cost of $5 million (10,000 × 5 respondents × 2 hours × $50 per hour).

In addition, there are some limited circumstances when CMS could ask a physician to submit fingerprints. For example, a provider or supplier that is being enrolled in Medicare after the lifting of a temporary moratorium could automatically be classified as "high" risk and as such would be subject to criminal background checks and fingerprinting of owners and other officials in the company. If a physician were to be the owner or other official of the company, CMS would have the authority to request fingerprints from the company official. Other circumstances where physicians might be subject to a request for finger printing are when the physician is an official of an entity in the "high" risk category, or if CMS or its agent(s) determine that a particular provider or supplier in the "high" risk category is possibly engaged in fraud. We estimate that CMS or its designated contractors will make 500 such requests for finger prints per year. We further estimate that it will take each of the 500 respondents a total of 2 hours to obtain a set of fingerprints using the FD–258 standard fingerprint card and to submit the card to CMS or its contractor. The total estimate annual burden associated with this requirement is 1,000 hours (500 respondents × 2 hours) at a cost of $50,000 (1,000 hours × $50 per hour).

Assuming that 2,000 post-moratorium requests for fingerprints are made, the total estimated annual burden associated with the requirements in this ICR is 103,000 hours at a cost of $5,150,000. If 5,000 post-moratorium requests are made, the estimated annual burden is 133,000 hours at a cost of $6,650,000. If 10,000 post-moratorium requests are made, the estimated annual burden is 183,000 hours at a cost of $9,150,000.

Proposed § 455.434 states that when a State Medicaid agency determines that a provider is "high" risk, the State Medicaid agency will require that provider to submit fingerprints. We anticipate that States will be collecting fingerprints on a significantly smaller number of providers. However, as with our estimate on potential burden discussed for Medicare, we prefer to overestimate the potential burden rather than underestimate it. Therefore, we anticipate that States may require an additional 26,000 individuals to submit fingerprints prior to enrolling in a State's Medicaid program or CHIP. The total estimate annual burden associated with this requirement for Medicaid and CHIP is 52,000 hours (26,000 respondents × 2 hours) at a cost of

$2,600,000 (52,000 hours × $50 per hour).

C. ICRs Regarding Suspension of Payments in Cases of Fraud or Willful Misrepresentation (§ 455.23)

As stated in proposed § 455.23(a), a State Medicaid agency shall suspend all Medicaid payments to a provider when there is pending an investigation of a credible allegation of fraud under the Medicaid program against an individual or entity unless it has good cause to not suspend payments or to suspend payment only in part. The State Medicaid agency may suspend payments without first notifying the provider of its intention to suspend such payments. A provider may request, and must be granted, administrative review where State law so requires.

The burden associated with this requirement is the time and effort necessary for a provider to request administrative review were State law so requires. While this requirement is subject to the PRA, we believe the associated burden is exempt in accordance with 5 CFR 1320.4; information collected subsequent to an administrative action is not subject.

D. ICRs Regarding Collection of SSNs and DOBs for Medicaid and CHIP Providers (§ 455.104)

As stated in proposed § 455.104(b)(1), the State Medicaid agency must require that all persons with an ownership or control interest in a provider submit their SSN and DOB. The burden associated with the Medicaid requirements in § 455.104(b)(1) is the time and effort necessary for a provider to report the SSN and DOB for all persons with an ownership or control interest in a provider.

Although our data on Medicaid provider enrollment at the national level is very limited, we do collect annual data on State Medicaid program integrity activities. This annual data collection, known as the State Program Integrity Assessment (SPIA) program approved, under OCN 0938–1033, consists of self-reported data by States regarding a variety of program integrity related activities. The information is self-reported and has not been independently verified by CMS, and it undoubtedly represents some unknown degree of duplication among providers across States. Consequently, the estimated number of Medicaid providers nationally is likely overstated. According to SPIA data for FFYs 2007 and 2008, there has been an average of 1,855,070 existing Medicaid providers nationally over the 2-year period of FFY 2007 and FFY 2008. We estimate that one-fifth, or 371,014 (1,855,070 × 20 percent) of existing Medicaid providers would be required to re-enroll each year. Additionally, we estimate that there will be 56,250 newly enrolling Medicaid providers each year, for a total of 427,264 Medicaid providers that will be subject to the SSN and DOB reporting requirements each year. We further estimate that it will take each provider an average of 2 minutes to report the SSN and DOB for all persons with an ownership or control interest. Thus, the estimate annual burden associated with this requirement for Medicaid providers is 14,242 hours (427,264 × 2 minutes, divided by 60 minutes per hr) at a cost of $712,100 (14,242 hours × $50 per hour).

E. ICRs Regarding Site Visits for Medicaid-Only or CHIP-Only Providers (§ 455.450)

As stated in proposed in § 455.450(b), a State Medicaid agency must conduct on-site visits for providers it determines to be "moderate" or "high" categorical risk. We anticipate that Medicare contractors will perform the screening activities for the overwhelming majority of providers that are dually enrolled in both Medicare and Medicaid, and thus, we estimate that State Medicaid agencies will conduct approximately 5,000 site visits for Medicaid-only providers nationally per year. We further estimate that it will take one individual 8 hours to perform each on-site visit (including travel time). Thus, the total estimate annual burden associated with this requirement for Medicaid is 40,000 hours (5,000 site visits × 8 hours) at a cost of $2,000,000 (40,000 hours × $50 per hour).

F. ICRs Regarding the Rescreening of Medicaid Providers Every 5 Years (§ 455.414)

As stated in proposed § 455.414, a State Medicaid agency must screen all providers at least every 5 years. This requirement is consistent with the Medicare requirement that providers, suppliers, and eligible professionals must re-enroll at least every 5 years (more often for certain types of suppliers). The burden associated with this proposed requirement would be the time and effort necessary for Medicaid-only providers to re-enroll in Medicaid, and the time and effort necessary for a State to conduct the provider screening,

Although our data on Medicaid provider enrollment at the national level is very limited, we do collect annual data on State Medicaid program integrity activities. This annual data collection, known as the State Program Integrity Assessment (SPIA) program, consists of self-reported data by States regarding a variety of program integrity related activities. The information is self-reported and has not been independently verified by CMS, and it undoubtedly represents some unknown degree of duplication among providers across States. Consequently, the estimated number of Medicaid providers nationally is likely overstated. According to SPIA data for FFYs 2007 and 2008, there has been an average of 1,855,070 existing Medicaid providers nationally over the 2-year period of FFY 2007 and FFY 2008. We estimate that one-fifth, or 371,014 (1,855,070 × 20 percent) of existing Medicaid provider would be required to re-enroll each year, Although provider enrollment requirements vary by State, we further estimate that it will take each provider an average of 2 hours to complete the Medicaid re-enrollment requirements. Thus, the estimate annual burden associated with this requirement for Medicaid providers is 742,028 hours (371,014 × 2 hours) at a cost of $37,101,400 (742,028 hours × $50 per hour).

We estimate that 80 percent of Medicaid providers also participate in Medicare, and thus would have provider screening activities performed by the Medicare contractors. Thus, we estimate that States would be required to conduct provider screening activities for 74,203 (371,014 × 20 percent) re-enrolling Medicaid-only providers each year. We further estimate that it will take States, on average, 4 hours to perform the required provider screening activities—noting that currently enrolled providers would generally be categorized as lower risk than newly-enrolling providers. The estimated burden associated with this requirement for State Medicaid agencies is 296,812 hours (74,203 × 4 hours) at a cost of $14,840,600 (296,812 hours × $50 per hour). We believe that the burden on States will be in large part offset by the application fees collected and by the Federal share for the amounts not covered by the application fee.

The total estimate annual burden associated with this requirement is 1,038,840 hours at a cost of $51,942,000.

TABLE 6—ESTIMATED ANNUAL REPORTING/RECORDKEEPING BURDEN

Regulation section(s)	OMB Control No.	Respondents	Responses	Burden per response (hours)	Total annual burden (hours)	Hourly labor cost of reporting ($)	Total labor cost of reporting ($)	Total capital/ maintenance costs ($)	Total cost ($)
§ 424.514(e)**	0938–0685; 0938–1056.	12,000	12,000	1	12,000	50	600,000	0	600,000
§ 424.518(c)(2)(b) and (d).	0938–New	35,000	35,000	2	70,000	50	3,500,000	0	3,500,000
§ 424.518(c)(3)(iv) and (d).	0938–New	10,500	10,500	2	21,000	50	1,050,000	0	1,050,000
§ 455.434	0938–New	26,000	26,000	2	52,000	50	2,600,000	0	2,600,000
§ 455.104	0938–New	427,264	427,264	.033	14,242	50	712,100	0	712,100
§ 455.450	0938–New	5,000	5,000	8	40,000	50	2,000,000	0	2,000,000
§ 455.414 (Providers)	0938–New	371,014	371,014	2	742,028	50	37,101,400	0	37,101,400
§ 455.414 (State Medicaid Agencies).	0938–New	74,203	74,203	4	296,812	50	14,840,600		14,840,600
Total		960,981	960,981		1,248,082				62,404,100

** Denotes that we will be submitting revisions of the currently approved information collection requests for OMB review and approval.

IV. Response to Comments

Because of the large number of public comments we normally receive on **Federal Register** documents, we are not able to acknowledge or respond to them individually. We will consider all comments we receive by the date and time specified in the **DATES** section of this preamble, and, when we proceed with a subsequent document, we will respond to the comments in the preamble to that document.

V. Regulatory Impact Analysis

A. Overall Impact

We have examined the impact of this rule as required by Executive Order 12866 on Regulatory Planning and Review (September 1993), the Regulatory Flexibility Act (RFA) (September 19, 1980, Pub. L. 96–354), section 1102(b) of the Social Security 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 (U.S.C. 804(s).

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 ($100 million or more in any 1 year). This rule does reach the economic threshold and thus is considered an economically significant rule.

The RFA requires agencies to analyze options for regulatory relief for small businesses. Under the RFA, we must either prepare an Initial Regulatory Flexibility Analysis or certify that the proposed rule will not have a significant impact on a substantial number of small entities. For purposes of the RFA, small entities include small businesses, nonprofit organizations, and government agencies. Most hospitals and most other providers and suppliers are small entities, either by nonprofit status or by having revenues of less than $7.0 to $34.5 million (depending on provider type) in any one year. Individuals and States are not included in the definition of a small entity. HHS practice is to assume that all providers affected by our rules are small entities, since we know that the vast majority meet the criteria used under the RFA. We do not believe that our application fees will have a significant impact on any small entities. Likewise, we do not believe that other screening provisions, such as the provision of fingerprints or accommodating unannounced visits, will have a significant impact on any small entities. We think this proposed rule could have significant impact on a relatively small proportion of small businesses in terms of restrictions on Federal health monies paid to small businesses participating in the Medicare or Medicaid programs or CHIP. Clearly, imposition of an enrollment moratorium would have an impact on a small business that is attempting to do business with any of the Federal health programs. Similarly, suspension of payments to any small entity could create a significant impact on that entity. We have, however, no basis for estimating how many entities might be affected by these provisions. Finally, we believe that this proposed rule will reduce fraud and abuse among potential providers. Clearly, there will be a significant impact on their ability to defraud the taxpayer in several ways. First, closer screening of certain high-risk providers and suppliers will better enable CMS to detect those individuals and entities that pose a risk to the Medicare program. Preventing unqualified providers and suppliers from enrolling in Medicare will protect the Medicare Trust Fund and save the taxpayers millions of dollars. Second, an application fee will help reduce the costs of administering the Medicare program. Third, the temporary moratoria provisions will enable CMS to restrict the entry of certain providers and suppliers into Medicare in order to prevent or combat fraud, waste, and abuse, thus, again, saving millions of Federal dollars. While we cannot quantify with exactitude the amount of money that the Medicare program will save as a result of these measures, we do believe that the figure will exceed the costs outlined in this RIA. We are seeking comment on the overall proposed screening processes described in section II.A. of this proposed rule, including how the risk of fraud is determined, the administrative interventions proposed to address the risk, and the criteria for exceptions to the enrollment application fee and any temporary enrollment moratoria. We ask small businesses to comment on these provisions and offer suggestions about how to mitigate what they might see as adverse administrative or financial impacts. This RIA, taken together with the remainder of the preamble, constitutes an Initial Regulatory Flexibility Analysis under the RFA.

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 603 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. We are not preparing an analysis for section 1102(b) of the Act because we have determined that this final rule will 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 also requires that agencies assess anticipated costs and benefits before issuing any rule that may result in expenditure in any 1 year by State, local, or tribal governments, in the aggregate, or by the private sector, of $135 million. This rule does mandate expenditures by State and local governments, in order to enforce the Medicaid-related provisions, but we believe that those expenditures will be relatively minor. The mandated costs on providers—primarily for application fees—may approach or exceed the threshold for the private sector. Accordingly, this RIA constitutes the required assessment of costs and benefits under UMRA.

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. Since this proposed rule would not impose any substantial direct requirement costs on State or local governments, preempt State law, or otherwise have Federalism implication, the requirements of E.O. 13132 are not applicable.

B. Anticipated Effects

1. Medicare

a. Enhanced Screening Procedures—Medicare

Based on statistics obtained from PECOS and our Medicare contractors, there are approximately 400,000 providers and suppliers currently enrolled in the Medicare program. (This does not include eligible professionals.) This figure includes ambulance service suppliers; ambulatory surgical centers; community mental health centers; comprehensive outpatient rehabilitation facilities; suppliers of DMEPOS; end-stage renal disease facilities; federally qualified health centers; histocompatibility laboratories; home health agencies; hospices; hospitals, including physician-owned specialty hospitals; critical access hospitals; independent clinical laboratories; independent diagnostic testing facilities; Indian health service facilities; mammography centers; mass immunizers (roster billers); medical groups/clinics, including single and multi-specialty clinics; organ procurement organizations; outpatient physical therapy/occupational therapy/speech pathology services; portable X-ray suppliers; skilled nursing facilities; radiation therapy centers; religious non-medical health care institutions; and rural health clinics. We note the following in section III. of this proposed rule:

- Based on 2009 experience we estimate that there will be 7,000 DMEPOS suppliers and HHAs that will submit an application to become a new Medicare enrolled provider in 2011. We would require approximately 35,000 individuals (7,000 providers/suppliers × 5 individuals per applicant) to undergo fingerprinting to participate in the Medicare program as an owner, authorized official, delegated official, or managing employee of an HHA or supplier of DMEPOS. We have found that the cost of having a set (two prints) of fingerprints done through a local law enforcement office is approximately $50.00 per individual. The cost of this fingerprinting requirement would therefore be $1.75 million per year (35,000 individuals × $50).
- We estimate that 10,000 individuals (2,000 providers or suppliers × 5 individuals per applicant) would undergo fingerprinting following the lifting of a moratorium on a particular provider or supplier type, at a cost of $500,000 per year (10,000 × $50). Should requests be made of 5,000 providers or suppliers, the annual figure would be $1,250,000 (5,000 × 5 individuals per applicant × $50). Should requests be made of 10,000 providers or suppliers, the annual figure would be $2.5 million (10,000 × 5 × $50).
- We estimate that 500 physicians would undergo fingerprinting per year, at a cost of $25,000.

This results in a total cost of the fingerprinting requirement of $2,275,000 per year ($1,750,000 + $500,000 + $25,000), or $11,375,000 over 5 years. If 5,000 post-moratorium requests are made, the annual cost is $3,025,000, with a 5-year cost of $15,125,000. Should 10,000 post-moratorium requests be made, the annual cost is $4,275,000, with a 5-year cost of $21,375,000.

As we believe that 2,000 post-moratorium requests is the most likely scenario, we will hereafter use the $2,275,000 amount as the annual cost of this requirement. This results in an estimated 5-year cost of $11,375,000.

b. Application Fee—Medicare

The Secretary shall impose an application fee on each institutional provider. The amount of the fee is $500 per provider or supplier for 2010. For 2011 and each subsequent year, the fee amount will be determined by the statutorily-required formula using the consumer price index for all urban consumers (CPI–U). The enrollment application fee does not apply to individual eligible professionals (for example, physicians). The fee is to be paid by institutional providers only. The new screening provisions are applicable to new and revalidating providers and suppliers effective March 23, 2011, and to currently enrolled providers and suppliers as of March 23, 2012. We intend to begin collecting the enrollment application fee for new providers and suppliers and for currently enrolled providers revalidating enrollment effective March 23, 2011.

c. General Enrollment Framework

(1) New Enrollment

Medicare contractors report that over the last several years, approximately 32,000 is the annual number of newly enrolling providers and suppliers that would—without accounting for the possible granting of waivers—be subject to the enrollment application fee—(approximately 20,000 for Medicare Part B, approximately 7,000 DMEPOS suppliers and HHAs (as explained in the Collection of Information section above), and approximately 5,000 non-HHA Medicare Part A providers).

We assume that no more than 2.5 percent of these 32,000 providers and suppliers—or 800—will receive a hardship exception; as indicated earlier, exceptions will only be approved infrequently.

In FY 2011, we reduced the estimate number of institutional providers subject to the application fee by 25 percent because the application fee will not begin until March 23, 2011. Accordingly, the number of institutional providers that we anticipate paying the application fee will be 23,400 (or 31,200 X .75) in FY 2011. In FY 2011, we reduced the estimate number of institutional providers subject to the application fee by 25 percent because the application fee will not begin until March 23, 2011. Accordingly, the number of institutional providers that we anticipate paying the application fee will be 24,000 in FY 2011.

Therefore, the impacts of the enrollment application fee are as follows. If we use 23,400 as the number of newly enrolling providers and

suppliers in 2011, multiply this number by the $500 application fee, we get $11,700,000 collected for the first year (that is, CY 2011). If we assume that the number of newly enrolling providers and suppliers will remain constant at 31,200 for years 2012 through 2015, then the cost to the number of newly enrolling providers and suppliers would be approximately $78.87 million. These estimates are displayed in the table below, and account for a projected annual CPI–U rate increase of 3 percent from FY 2012 to FY 2015—knowing, of course, that this figure could fluctuate significantly based on national economic conditions.

Although we have no way to predict that the number of new enrollments will change in future years, it is possible that the number of enrolling providers and suppliers vary from what has been the norm. If our estimate of the number of newly enrolling providers is inaccurate and we enroll a different number of providers and suppliers after the effective date of the new screening and other provisions contained in the ACA, we estimate based on the $500 enrollment application fee—a rough difference of $1 million for each increment of 2000 new enrollments, whether fewer or greater.

TABLE 7—CUMULATIVE APPLICATION FEES FOR NEWLY ENROLLING MEDICARE PROVIDERS AND SUPPLIERS FOR THE FIRST 5 YEARS OF THE PROVISION

Year	Newly enrolling institutional providers and suppliers	Newly enrolling institutional providers and suppliers paying the application fee (based on a 2.5% hardship exception rate)	Consumer price index adjusted fee in dollars (estimated 3% annual increase in CPI)	Total fees for each year in dollars	Cumulative fees in dollars
2011	24,000	23,400	$500	$11,700,000	$11,700,000
2012	32,000	31,200	515	16,068,000	27,768,000
2013	32,000	31,200	530	16,536,000	44,304,000
2014	32,000	31,200	546	17,035,200	61,339,200
2015	32,000	31,200	562	17,534,400	78,873,600
Total	.....	.....	.....	78,873,600	78,873,600

(2) Revalidation

There are approximately 100,000 currently enrolled suppliers of DMEPOS who are required to revalidate their enrollment every 3 years and 300,000 additional providers and suppliers that do not provide DMEPOS that are required to revalidate their enrollment every 5 years. On a yearly basis, we estimate that approximately 33,000 DMEPOS suppliers (one-third of the total) and 60,000 other, non-DMEPOS providers/suppliers (one-fifth of the total) would revalidate their enrollment in Medicare, for an annual total of 93,000. Since, as explained earlier, we estimate that no more than 2.5 percent of these providers and suppliers will receive a waiver from the application fee, we project that 90,675 such providers and suppliers will be subject to the fee.

This proposed rule contemplates collecting the application fee for currently enrolled providers that revalidate their enrollment on or after March 23, 2011—almost 3 months into CY 2011. Therefore, we have adjusted the number of existing Medicare institutional providers subject to an application fee by 25 percent, from 90.675 to 68.006 (or $90.675 \times .75$) in FY 2011. Further accounting for: (1) A projected annual CPI–U rate increase of 3 percent, as stated above; and (2) our assumption that the number of revalidating providers and suppliers will remain at 90,675 between CY 2012 and 2015, the cost associated with these fees for revalidating providers and suppliers would be approximately $183,548,740 over the first 5 years that the ACA provisions are in effect, as shown in Table 8 below.

TABLE 8—CUMULATIVE APPLICATION FEES FOR REVALIDATING MEDICARE PROVIDERS AND SUPPLIERS FOR THE FIRST 5 YEARS OF THE PROVISION

Year	Revalidating institutional providers and suppliers	Revalidating institutional providers & suppliers paying application fee (based on 2.5% hardship exception rate)	Consumer price index adjusted fee in dollars (estimated 3% annual increase in CPI)	Total fees for each year (in dollars)	Cumulative fees (in dollars)
2011	69,750	68,006	$500	$34,003,000	$34,003,000
2012	93,000	90,675	515	46,697,625	80,700,625
2013	93,000	90,675	530	48,057,750	128.758,375
2014	93,000	90,675	546	49,508,550	178,266,925
2015	93,000	90,675	562	50,959,350	229,226,275
Total	.....	.....	.....	229,226,275	229,226,275

Therefore, we estimate that the total impact of the proposed provisions for the application fee to be approximately $308,099,875 over the next 5 years. This number was approximated by adding the cumulative application fees for newly enrolling providers and suppliers ($78,873,600 as shown in Table 6) to the cumulative application fees for revalidating providers and suppliers ($229,226,275).

2. Medicaid

a. Enhanced Screening Procedures

Although our data on Medicaid provider enrollment at the national level is very limited, we do collect annual data on State Medicaid program integrity activities. This annual data collection, known as the State Program Integrity Assessment (SPIA) program, consists of self-reported data by States regarding a variety of program integrity related activities. The information is self-reported and has not been independently verified by CMS, and it undoubtedly represents some unknown degree of duplication among providers across States. Consequently, the estimated number of Medicaid providers nationally is likely overstated. According to SPIA data for FFYs 2007 and 2008, there has been an average of 1,855,070 existing Medicaid providers nationally over the 2-year period of FFY 2007 and FFY 2008. This universe of Medicaid providers includes all provider types, both institutional providers and individual practitioners. In the Medicare program, eligible practitioners make up approximately 70 percent of the total universe of providers, suppliers, and eligible practitioners. Because we do not have detailed information regarding the breakdown of Medicaid providers by type nationally, we will apply the same ratio to determine the percentage of institutional Medicaid providers. Therefore, we estimate that there are approximately 556,521 Medicaid-only providers nationally that are not individual practitioners.

We also estimate almost all CHIP providers are also Medicaid providers. So, for purposes of this section, we are considering CHIP providers to also be Medicaid providers and will subsequently refer to them only as Medicaid providers.

As previously stated in the Medicare section of the analysis, we estimate that we would require the following:

- Approximately 35,000 individuals will undergo fingerprinting to enroll in the Medicare program as owners, authorized officials, delegated officials, or managing employees of a home health agency or supplier of DMEPOS. Based on data collected as part of the State survey and certification activities for home health agencies, less than 1 percent of home health agencies are Medicaid-only. And, although there is no data available on the number of Medicaid-only suppliers of DMEPOS, we estimate that the number is minimal as well, as a number of States require suppliers of DMEPOS to be enrolled in Medicare prior to enrolling in Medicaid. Therefore, we estimate that States may require approximately 1,000 additional individuals with ownership or control interests in the suppliers of DMEPOS, or home health agencies, or persons who are agents of or managing employees of the suppliers of DMEPOS, or home health agencies, to undergo fingerprinting for enrollment in the Medicaid program. The cost of this fingerprinting requirement would be approximately $50,000 (1,000 × $50 = $50,000), though we seek comments on the accuracy of this figure.
- We anticipate that Medicare contractors will perform the screening activities for the overwhelming majority of providers following the lifting of a Secretary-imposed temporary moratorium and for the limited circumstances in which physicians may be fingerprinted. However, given that States may also classify certain Medicaid-only providers as "high" categorical risks, we are estimating that States may require approximately 25,000 additional individuals to undergo fingerprinting prior to enrolling in a State's Medicaid program, at a cost of $1,250,000 (25,000 × $50 = $1,250,000).

Consequently, we estimate that fingerprinting individuals for purposes of Medicaid enrollment will cost $1,300,000.

When averaged across 50 States, the District of Columbia and Puerto Rico, the annual cost of fingerprinting per State will be $26,000.

b. Application Fee—Medicaid

For those providers not screened by Medicare, the State may impose a fee on each institutional provider being screened. The amount of the fee is $500 per provider for 2010. For 2011 and each subsequent year, the amount will be determined by the statutorily-required formula using the consumer price index for all urban consumers (CPI–U).

c. General Enrollment Framework

For purposes of this section, we assume that 80 percent of institutional Medicaid providers will be dually participating in both Medicare and Medicaid, and thus will be subject to the application fee as part of the Medicare screening and enrollment. Therefore we estimate that 20 percent, or 111,304 (556,521 × 20 percent), of the institutional Medicaid-only providers will not be screened by Medicare and thus will be subject to the application fee under Medicaid. We project that a significant number of existing and future Medicaid providers will request a hardship exception, or that a State will request a waiver of the application fee for certain Medicaid provider types of the application fee on the basis of ensuring access to care. For purposes of this section, although we have no way to estimate the exact number of providers that will ultimately request and be approved for a hardship exception, or the number of States that will request a waiver of the fee for certain Medicaid provider types, we predict that 25 percent of all Medicaid providers subject to the fee will receive the hardship exception or be granted a waiver of the fee on the basis of ensuring beneficiary access to care. We recognize that this 25 percent figure is significantly higher than the 2.5 percent waiver rate we are using for Medicare application fees. Yet we believe the difference is justified because of the greater access to care issues that may arise in Medicaid. Consequently, we estimate that 83,478 existing Medicaid providers will be required to pay the application fee (111,304 existing Medicaid providers that are not dually enrolled less 25 percent or 27,826 existing providers).

(1) New Enrollments

We apply the 80 percent rate for newly-enrolling Medicaid institutional providers that will be dually participating in both Medicare and Medicaid and thus not subject to the fee under Medicaid, and 25 percent hardship exception rate to the annual number of newly-enrolling Medicaid institutional providers not dually enrolled. The 45,000 newly-enrolling Medicare institutional providers annually represent 80 percent of the total newly-enrolling Medicaid institutional providers annually. Therefore, we estimate that there will be 11,250 newly-enrolling Medicaid institutional providers annually that are subject to the application fee under Medicaid (45,000 providers divided by 80 percent, −45,000 = 11,250). We project another 25 percent will be exempted for hardship or be granted a waiver of the fee on the basis of ensuring beneficiary access to care, resulting in 8,438 newly-enrolling Medicaid institutional providers being

subject to the application fee each year nationally.

Consistent with the Medicare analysis, in FY 2011, we reduced the estimated number of institutional providers subject to the application fee by 25 percent because the application fee will not begin until March 23, 2011. Accordingly, the number of institutional providers that we anticipate paying the application fee will be 6,329 in FY 2011. Consequently, we project the dollars due from application fees for newly-enrolling Medicaid institutional providers who are not dually enrolled to be $21,331,514 for the first 5 years in total. When averaged across 50 States, the District of Columbia and Puerto Rico, the total application fees for the 5 years in total per State will be approximately $410,221.

TABLE 9—CUMULATIVE APPLICATION FEES FOR NEWLY ENROLLED MEDICAID PROVIDERS FOR THE FIRST 5 YEARS OF THE PROVISION

Fiscal year	New Medicaid providers not exempted from the application fee	Consumer Price Index adjusted fee [5] (in dollars) (estimated 3 percent annual increase in CPI)	Total fees for each year (in dollars)	Cumulative fees (in dollars)
2011	6,329	500	3,164,500	3,164,500
2012	8,438	515	4,345,570	7,510,070
2013	8,438	530	4,472,140	11,982,210
2014	8,438	546	4,607,148	16,589,358
2015	8,438	562	4,742,156	21,331,514
Total	.....	.....	21,331,514	21,331,514

(2) Re-Enrollment

This proposed rule contemplates that States would require Medicaid providers to re-enroll every 5 years. On a yearly basis, we estimate that approximately 16,696 Medicaid institutional providers (one fifth of the total) would re-enroll with the State Medicaid agency.

We contemplate collecting the application fee for currently enrolled providers beginning on March 24, 2011. States would not collect an application fee with any re-enrollments until that time—almost 3 months into CY 2011. Therefore, we have adjusted the number of existing Medicaid institutional providers subject to an application fee by 25 percent, from 16,696 to 12,522 in FY 2011. Consequently, we project the dollars due from application fees for currently-enrolled Medicaid institutional providers who are not dually enrolled is $42,207,488 for the first 5 years in total. When averaged across 50 States, the District of Columbia and Puerto Rico, the total application fees for the 5 years in total per State will be approximately $811,682.

TABLE 10—CUMULATIVE APPLICATION FEES FOR RE-ENROLLING MEDICAID PROVIDERS FOR THE FIRST 5 YEARS OF THE PROVISION

Year	Existing Medicaid providers not exempted from the application fee	Consumer Price index adjusted fee (in dollars) (Estimated 3 percent annual increase in CPI)	Total fees for each year (in dollars)	Cumulative fees (in dollars)
2011	12,522	0	6,261,000	6,261,000
2012	16,696	515	8,598,440	14,859,440
2013	16,696	530	8,848,880	23,708,320
2014	16,696	546	9,116,016	32,824,336
2015	16,696	562	9,383,152	42,207,488
Total	.....	.....	42,207,488	42,207,488

[5] After the first year, the CPI–U is applied to the base fee of $500.

3. Medicare and Medicaid

a. Moratoria on Enrollment of New Medicare Providers and Suppliers and Medicaid Providers

Although we have no way of predicting the exact cost savings associated with enrollment moratoria, we expect there will be program savings achieved by implementation of this section. As stated previously, these provisions will enable CMS to restrict the entry of certain providers and suppliers into Medicare in order to prevent or combat fraud, waste, and abuse. However, there are no cost burdens to the public or to the provider community. Therefore, we have not estimated the cost impacts of this provision.

b. Suspension of Payments in Medicare and Medicaid

As with payment moratoria, although we have no way of predicting the exact cost savings to Medicare and Medicaid associated with implementation of the provisions contained in this proposed rule, we certainly expect that there will be program savings that result from implementation of this provision. CMS and its law enforcement partners already have a process for payment suspension when possible fraud is involved. The changes proposed in this rule will strengthen the existing process and its applicability to Medicaid, but it will not create any different impact or burden on the provider community in circumstances of payment suspension. There are no new cost burdens to the public or the provider community associated with this provision.

C. Accounting Statement and Table

As required by OMB Circular A–4 (available at *http://www.whitehouse.gov/sites/default/files/omb/assets/omb/circulars/a004/a4.pdf*), we have prepared an accounting statement. This statement only addresses: (1) The costs of the fingerprinting requirement, and (2) the monetary transfer associated with the application fee. It does not address the potential financial benefits of these two requirements from the standpoint of their possible effectiveness in deterring certain unscrupulous providers and suppliers from enrolling in or maintaining their enrollment in Medicare and Medicaid. This is because it is impossible for us to quantify these benefits in monetary terms. Moreover, we cannot predict how many potentially fraudulent providers and suppliers will be kept out of the Medicare and Medicaid programs due to these proposed requirements.

1. Medicare

As stated previously, we estimate a total cost of the fingerprinting requirement of $2,275,000 per year ($1,750,000 + $500,000 + $25,000), or $11,375,000 over 5 years, if 2,000 post-moratorium requests are made. If 5,000 post-moratorium requests are made, the annual cost is $3,025,000, with a 5-year cost of $15,125,000. Should 10,000 post-moratorium requests be made, the annual cost is $4,275,000, with a 5-year cost of $21,375,000. We also stated in the RIA that the expected total application fees:

- For newly enrolling providers and suppliers would be $11.7 million in 2011, $16,068,000 in 2012, $16,536,000 in 2013, $17,035,200 in 2014, and $17,534,400 in 2015. This results in a 5-year total of $78,873,600.
- For revalidating providers and suppliers would be $34,003,000 in 2011, $46,697,625 in 2012, $48,057,750 in 2013, $49,508,550 in 2014, and $50,959,350 in 2015. This results in a 5-year total of $229,226,275.

The accounting statement reflects the: (1) Annual cost of the fingerprinting requirement, and (2) the application of the 3 percent and 7 percent discount rate to the combined amounts of the application fees for FY 2015—that is, $17,534,400 plus $50,959,350 (revalidations), for a total of $68,493,750; this constitutes a transfer of funds to the Federal government. We chose the FY 2015 figures so as to reflect the maximum amount of transferred funds in a given year during the initial-5 year period.

2. Medicaid

As stated in the RIA, we estimate that the annual cost of the fingerprint requirement for Medicaid will be $1,300,000, or $6,500,000 over a 5-year period. We also stated in the RIA that the expected total application fees:

- For newly enrolling providers and suppliers would be $3,164,500 in 2011, $4,345,570 in 2012, $4,472,140 in 2013, $4,607,148 in 2014, and $4,742,156 in 2015. This results in a 5-year total of $21,331,514. For revalidating providers and suppliers would be $0 in 2011; $6,448,830 in 2012; $8,448,880 in 2013; $9,116,016 in 2014; and $9,383,152 in 2015. This results in a 5-year total of $33,796,878.

The accounting statement reflects: (1) The annual cost of the fingerprinting requirement, and (2) the application of the 3 percent and 7 percent discount rate to the combined amounts of the application fees for FY 2015—specifically, $4,742,156 (new applicants) plus $9,383,152 (revalidations), for a total of $14,125,308. This constitutes a transfer of funds to the Federal government. As with the Medicare figures, we chose to use those from FY 2015 for Medicaid so as to reflect the maximum amount of transferred funds in a given year during the initial-5 year period.

ACCOUNTING STATEMENT: CLASSIFICATION OF ESTIMATED EXPENDITURES AND COSTS FROM FY 2011 TO FY 2015

[In millions]

Medicare Fingerprint Requirement	COSTS	
Annualized Monetized Costs (2,000 post-moratorium requests)	3 percent Discount Rate $2.275	7 percent Discount Rate $2.275
Annualized Monetized Costs (5,000 post-moratorium requests)	$3.025	$3.025
Annualized Monetized Costs (10,000 post-moratorium requests)	$4.275	$4.275
Who is Affected?	Providers and Suppliers	
Medicare Application Fee	TRANSFERS	
Annualized Monetized Transfers	3 percent Discount Rate $48.2	7 percent Discount Rate $47.3
From Whom to Whom?	Providers and Suppliers to Federal Government	
Medicaid Fingerprint Requirement	COSTS	
Annualized Monetized Costs	3 percent Discount Rate $1.3	7 percent Discount Rate $1.3
Who is Affected?	Providers and Suppliers	
Medicaid Application Fee	TRANSFERS	
Annualized Monetized Costs	3 percent Discount Rate $10.1	7 percent Discount Rate $10.0
From Whom to Whom?	Providers and Suppliers to Federal Government	
	BENEFITS	

Qualitative: The above-referenced requirements will: (1) Allow CMS to more closely screen providers and suppliers that pose risks to the Medicare and Medicaid programs, and (2) help offset the costs of administering the Medicare and Medicaid programs. We believe these and other financial benefits outlined in this proposed rule will exceed the costs outlined above.

D. Conclusion

This proposed rule contains provisions that are of critical importance in the transition of CMS' antifraud activities from "pay and chase" to fraud prevention. "Pay and chase" refers to the traditional approach under which CMS met its obligations to provide beneficiaries access to qualified providers and suppliers and to pay claims quickly by making it relatively easy for providers to sign up to bill Medicare, Medicaid or CHIP, paying their claims rapidly, and then detecting overpayments or fraudulent bills and pursuing recoveries of overpayments after the fact. That system functions reasonably well when the problems arise with legitimate providers and suppliers that will be solvent and in business when CMS seeks to recover overpayments or law enforcement pursues civil or criminal penalties. It is not adequate when the fraud is committed by sham operations that provide no services or supplies and exist simply to steal from Medicare or Medicaid and thrive on stealing or subverting the identities of beneficiaries and providers.

This proposed rule strikes a balance that will permit CMS to continue to assure that eligible beneficiaries receive appropriate services from qualified providers whose claims are paid on a timely basis while implementing enhanced measures to prevent outright fraud. The new and strengthened provisions in the ACA that are the subject of this proposed rule will help assure that only legitimate providers and suppliers are enrolled in Medicare, Medicaid, and CHIP, and that only legitimate claims will be paid. These provisions are applied according to the level of risk of fraud, waste, and abuse posed by different provider and supplier types. CMS will use screening tools for a particular provider or supplier type based on 3 distinct categories of risk: (1) Limited; (2) moderate; and (3) high. Limited risk providers will have enrollment requirements, license and database verifications; moderate risk will have those verifications plus unscheduled site visits; high risk will have verifications, unscheduled site visits, criminal background check and fingerprinting. CMS and the States will impose moratoria on the enrollment of new providers in situations when doing so is necessary to protect against a high risk of fraud. Working in conjunction with the OIG, CMS, and States will suspend payments pending an investigation of a credible allegation of fraud. And legitimate providers will be assisted in avoiding problems by implementing effective compliance programs.

This proposed rule is an essential tool in protecting public resources and assuring that they are devoted to providing health care rather than enriching fraudulent actors.

In accordance with the provisions of Executive Order 12866, this regulation was reviewed by the Office of Management and Budget.

List of Subjects

42 CFR Part 405

Administrative practice and procedure, Health facilities, Health professions, Kidney diseases, Medical devices, Medicare, Reporting and recordkeeping requirements, Rural areas, X-rays.

42 CFR Part 424

Emergency medical services, Health facilities, Health professions, Medicare, and Reporting and recordkeeping requirements.

42 CFR Part 438

Grant programs—health, Medicaid, Reporting and recordkeeping requirements.

42 CFR Part 447

Accounting, Administrative practice and procedure, Drugs, Grant programs—health, Health facilities, Health professions, Medicaid, Reporting and recordkeeping requirements, and Rural areas.

42 CFR Part 455

Fraud, Grant programs—health, Health facilities, Health professions, Investigations, Medicaid, and Reporting and recordkeeping requirements.

42 CFR Part 457

Administrative practice and procedure, Grant programs—health, Health insurance, and Reporting and recordkeeping requirements.

42 CFR Part 498

Administrative practice and procedure, Health facilities, Health professions, Medicare, Reporting and recordkeeping requirements.

42 CFR Part 1007

Administrative practice and procedure, Fraud, Grant programs—health, Medicaid, and Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, the Centers for Medicare & Medicaid Services proposes to amend 42 CFR chapters IV and V as set forth below:

PART 405—FEDERAL HEALTH INSURANCE FOR THE AGED AND DISABLED

1. The authority citation for part 405 continues to read as follows:

Authority: Secs. 205(a), 1102, 1861, 1862(a), 1869, 1871, 1874, 1881, and 1886(k) of the Social Security Act (42 U.S.C. 405(a), 1302, 1395x, 1395y(a), 1395ff, 1395hh, 1395kk, 1395rr and 1395ww(k)), and sec. 353 of the Public Health Service Act (42 U.S.C. 263a).

Subpart C—Suspension of Payment, Recovery of Overpayments, and Repayment of Scholarships and Loans

2. The authority citation for subpart C is revised to read as follows:

Authority: Secs. 1102, 1815, 1833, 1842, 1862, 1866, 1870, 1871, 1879 and 1892 of the Social Security Act (42 U.S.C. 1302, 1395g, 1395l, 1395u, 1395y, 1395cc, 1395gg, 1395hh, 1395pp and 1395ccc) and 31 U.S.C. 3711.

3. In subpart C, remove the phrase "intermediary or carrier" and add the phrase "Medicare contractor" in its place.

4. Section 405.370 is amended as follows:

A. In paragraph (a), adding the definitions of "Credible allegation of fraud," "Medicare contractor," and "Resolution of an investigation" in alphabetical order.

B. In paragraph (a), revising the definitions of "Offset," "Recoupment," and "Suspension of payment".

The additions and revisions read as follows:

§ 405.370 Definitions.

(a) * * *

Credible allegation of fraud. A credible allegation of fraud is an allegation from any source, including but not limited to the following:

(1) Fraud hotline complaints.

(2) Claims data mining.

(3) Patterns identified through provider audits, civil false claims cases, and law enforcement investigations. Allegations are considered to be credible when they have indicia of reliability.

Medicare contractor. Unless the context otherwise requires, includes, but is not limited to the any of following:

(1) A fiscal intermediary.

(2) A carrier.

(3) Program safeguard contractor.

(4) Zone program integrity contractor.

(5) Part A/Part B Medicare administrative contractor.

Offset. The recovery by Medicare of a non-Medicare debt by reducing present or future Medicare payments and applying the amount withheld to the indebtedness. (Examples are Public Health Service debts or Medicaid debts recovered by HCFA).

Recoupment. The recovery by Medicare of any outstanding Medicare debt by reducing present or future Medicare payments and applying the amount withheld to the indebtedness.

Resolution of an investigation. An investigation of credible allegations of fraud will be considered resolved when legal action is terminated by settlement, judgment, or dismissal, or when the case is closed or dropped because of insufficient evidence to support the allegations of fraud.

Suspension of payment. The withholding of payment by a Medicare contractor from a provider or supplier of an approved Medicare payment amount before a determination of the amount of the overpayment exists, or until the resolution of an investigation of a credible allegation of fraud.

5. Section 405.371 is revised to read as follows:

§ 405.371 Suspension, offset, and recoupment of Medicare payments to providers and suppliers of services.

(a) *General rules.* Medicare payments to providers and suppliers, as authorized under this subchapter (excluding payments to beneficiaries), may be—

(1) Suspended, in whole or in part, by CMS or a Medicare contractor if CMS or the Medicare contractor possesses reliable information that an overpayment exists or that the payments to be made may not be correct, although additional information may be needed for a determination;

(2) In cases of suspected fraud, suspended, in whole or in part, by CMS or a Medicare contractor if CMS or the Medicare contractor has consulted with the OIG, and, as appropriate, the Department of Justice, and determined that a credible allegation of fraud exists against a provider or supplier, unless there is good cause not to suspend payments; or

(3) Offset or recouped, in whole or in part, by a Medicare contractor if the Medicare contractor or CMS has determined that the provider or supplier to whom payments are to be made has been overpaid.

(b) *Good cause not to suspend payments.* CMS may find that good cause exists not to suspend payments or not to continue to suspend payments to an individual or entity against which there are credible allegations of fraud if—

(1) OIG or other law enforcement agency has specifically requested that a payment suspension not be imposed because such a payment suspension may compromise or jeopardize an investigation;

(2) It is determined that beneficiary access to items or services would be so jeopardized by a payment suspension in whole or part as to cause a danger to life or health;

(3) It is determined that other available remedies implemented by CMS or a Medicare contractor more effectively or quickly protect Medicare

funds than would implementing a payment suspension; or

(4) CMS determines that a payment suspension or a continuation of a payment suspension is not in the best interests of the Medicare program. CMS will—

(i) Evaluate whether there is good cause not to continue a suspension of payments under this section every 180 days after the initiation of a suspension based on credible allegations of fraud; and

(ii) Request a certification from the OIG or other law enforcement agency that the matter continues to be under investigation warranting continuation of the suspension.

(c) *Steps necessary for suspension of payment, offset, and recoupment.*

(1) Except as provided in paragraph (d) of this section, CMS or the Medicare contractor suspends payments only after it has complied with the procedural requirements set forth at § 405.372.

(2) The Medicare contractor offsets or recoups payments only after it has complied with the procedural requirements set forth at § 405.373.

(d) *Suspension of payment in the case of unfiled cost reports.* (1) If a provider has failed to timely file an acceptable cost report, payment to the provider is immediately suspended in whole or in part until a cost report is filed and determined by the Medicare contractor to be acceptable.

(2) In the case of an unfiled cost report, the provisions of § 405.372 do not apply. (See § 405.372(a)(2) concerning failure to furnish other information.)

6. Section 405.372 is amended as follows:

A. Remove the phrase "intermediary, carrier" wherever it appears and adding the phrase "Medicare contractor" in its place.

B. Revising paragraphs (a)(4) and (d)(3).

C. In paragraph (e), removing the cross-reference "§ 405.371(b)" and adding the cross-reference "§ 405.371(a)".

§ 405.372 Proceeding for suspension of payment.

(a) * * *

(4) *Fraud.* If the intended suspension of payment involves credible allegations of fraud under § 405.371(a)(2), CMS—

(i) In consultation with OIG and, as appropriate, the Department of Justice, determines whether to impose the suspension and if prior notice is appropriate;

(ii) Directs the Medicare contractor as to the timing and content of the notification to the provider or supplier; and

(iii) Is the real party in interest and is responsible for the decision.

* * * * *

(d) * * *

(3) *Exceptions to the time limits.* (i) The time limits specified in paragraphs (d)(1) and (d)(2) of this section do not apply if the suspension of payments is based upon credible allegations of fraud under § 405.371(a)(2).

(ii) Although the time limits specified in (d)(1) and (d)(2) do not apply to suspensions based on credible allegations of fraud, all suspensions of payment in accordance with § 405.371(a)(2) will be temporary and will not continue after the resolution of an investigation, unless a suspension is warranted because of reliable evidence of an overpayment or that the payments to be made may not be correct, as specified in § 405.371(a)(1).

* * * * *

PART 424—CONDITIONS FOR MEDICARE PAYMENT

7. The authority of citation for part 424 continues to read as follows:

Authority: Secs. 1102 and 1871 of the Social Security Act (42 U.S.C. 1302 and 1395hh).

8. Section 424.57 is amended by revising paragraph (e) to read as follows:

§ 424.57 Special payment rules for items furnished by DMEPOS suppliers and issuance of DMEPOS supplier billing privileges.

* * * * *

(e) *Revalidation of billing privileges.* A supplier must revalidate its application for billing privileges every 3 years after the billing privileges are first granted. (Each supplier must complete a new application for billing privileges 3 years after its last revalidation.)

* * * * *

9. Section 424.502 is amended by adding the definition of "Institutional provider" in alphabetical order to read as follows:

§ 424.502 Definitions.

* * * * *

Institutional provider means any provider or supplier that submits a paper Medicare enrollment application using the CMS–855A, CMS–855B (not including physician and nonphysician practitioner organizations), CMS–855S or associated Internet-based PECOS enrollment application.

* * * * *

10. Section 424.514 is added to read as follows:

§ 424.514 Application fee.

(a) *Application fee requirements for prospective institutional providers.* Beginning on or after March 23, 2011, prospective institutional providers who are submitting an initial application or an application to establish a new practice location must submit either of the following:

(1) The applicable application fee.

(2) A request for a hardship exception to the application fee at the time of filing a Medicare enrollment application.

(b) *Application fee requirements for revalidating institutional providers.* Beginning March 23, 2011, institutional providers that are subject to CMS revalidation efforts must submit either of the following:

(1) The applicable application fee.

(2) A request for a hardship exception to the application fee at the time of filing a Medicare enrollment application.

(c) *Hardship exception for disaster areas.* CMS will assess on a case-by-case basis whether institutional providers enrolling in a geographic area that is a Presidentially-declared disaster under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121–5206 (Stafford Act) should receive an exception to the application fee.

(d) *Application fee.* The application fee and associated requirements are as follows:

(1) For 2010, $500.00.

(2) For 2011 and subsequent years—

(i) Is adjusted by the percentage change in the consumer price index for all urban consumers (all items; United States city average) for the 12-month period ending with June of the previous year;

(ii) Is effective from January 1 to December 31 of a calendar year;

(iii) Is based on the submission of an initial application, application to establish a new practice location or the submission of an application in response to a Medicare contractor revalidation request;

(iv) Must be in the amount calculated by CMS in effect for the year during which the application for enrollment is being submitted;

(v) Is nonrefundable;

(vi) Must be resubmitted with an enrollment application that was previously denied or rejected; and

(vii) Must be able to be deposited into a Government-owned account and credited to the United States Treasury.

(e) *Denial or revocation based on application fee.* A Medicare contractor may deny or revoke Medicare billing privileges of a provider or supplier

based on noncompliance if, in the absence of a written request for a hardship exception from the application fee that accompanies a Medicare enrollment application the bank account on which the check that is submitted with the enrollment application is drawn does not contain sufficient funds to pay the application fee.

(f) *Information needed for submission of a hardship exception request.* A provider or supplier requesting an exception from the application fee must include with its enrollment application a letter that describes the hardship and why the hardship justifies an exception.

(g) *Failure to submit application fee or hardship exception request.* A Medicare contractor must—

(1) Reject an enrollment application from a provider or supplier that, with the exceptions described in § 424.514(b), is not accompanied by the application fee or by a letter requesting a hardship exception from the application fee.

(2) Revoke the billing privileges of a currently enrolled provider or supplier or deny the application to enroll and establish billing privileges in the case of providers or suppliers not currently enrolled, with the exceptions noted in § 424.514(b), if an enrollment application, including revalidation, is received that is not accompanied by the application fee or by a letter requesting a hardship exception from the application fee.

(h) *Consideration of hardship exception request.* CMS has 60 days in which to approve or disapprove a hardship exception request.

(1) A Medicare contractor does not—

(i) Begin processing an enrollment application that is accompanied by a hardship exception request until CMS has made a decision to approve or disapprove the hardship exception request; and

(ii) Deny an enrollment application that is accompanied by a hardship exception request unless the hardship exception request is denied by CMS and the provider or supplier fails to submit the required application fee within 30 days of being notified that the request for a hardship exception was denied.

(2) A hardship exception determination made by CMS is appealable using § 405.874.

11. Section 424.515 is amended by adding a new paragraph (e) to read as follows:

§ 424.515 Requirements for reporting changes and updates to, and the periodic revalidation of Medicare enrollment information.

* * * * *

(e) *Additional off-cycle revalidation.* On or after March 23, 2012, Medicare providers and suppliers, including DMEPOS suppliers, may be required to revalidate their enrollment outside the routine 5-year revalidation cycle (3-year DMEPOS supplier revalidation cycle).

(1) CMS will contact providers or suppliers to revalidate their enrollment for off-cycle revalidation.

(2) As with all revalidations, revalidations described in this paragraph are conducted in accordance with the screening procedures specified at § 424.518.

12. Section 424.518 is added to read as follows:

§ 424.518 Screening categories for Medicare providers and suppliers.

A Medicare contractor is required to screen all initial applications, including applications for a new practice location, and any applications received in response to a revalidation request based on a CMS categorical risk level of "limited," "moderate," or "high."

(a) *Limited categorical risk*—(1) *Limited categorical risk: Provider and supplier types.* CMS has designated the following providers and suppliers as "limited" categorical risk:

(i) Physician or nonphysician practitioners and medical groups or clinics.

(ii) Ambulatory surgical centers.

(iii) End-stage renal disease facilities.

(iv) Federally qualified health centers.

(v) Histocompatibility laboratories.

(vi) Hospitals including critical access hospitals.

(vii) Indian Health Service facilities.

(viii) Mammography screening centers.

(ix) Organ procurement organizations.

(x) Mass immunization roster billers.

(xi) Portable x-ray suppliers.

(xii) Religious non-medical health care institutions.

(xiii) Rural health clinics.

(xiv) Radiation therapy centers.

(xv) Public or government-owned or -affiliated ambulance services suppliers.

(xvi) Skilled nursing facilities.

(2) *Limited categorical risk: Screening requirements.* When CMS designates a provider or supplier as a "limited" categorical level of risk or the provider or supplier is publicly traded on the New York Stock Exchange (NYSE) or the National Association of Securities Dealers Automated Quotation System (NASDAQ), the Medicare contractor does all of the following:

(i) Verifies that a provider or supplier meets any applicable Federal regulations, or State requirement for the provider or supplier type prior to making an enrollment determination.

(ii) Conducts license verifications, including licensure verifications across State lines for physicians or nonphysician practitioners and providers and suppliers that obtain or maintain Medicare billing privileges as a result of State licensure, including State licensure in State other than where the provider or supplier is enrolling.

(iii) Conducts database checks on a pre- and post-enrollment basis to ensure that providers and suppliers continue to meet the enrollment criteria for their provider/supplier type.

(b) *Moderate categorical risk*—(1) *Moderate categorical risk: Provider and supplier types.* CMS has designated the following providers and suppliers as "moderate" categorical risk:

(i) The following prospective providers and suppliers that are not publicly-traded on the NYSE or NASDAQ:

(A) Community mental health centers.

(B) Comprehensive outpatient rehabilitation facilities.

(C) Hospice organizations.

(D) Independent diagnostic testing facilities.

(E) Nongovernment-owned or -affiliated ambulance service suppliers.

(F) Independent clinical laboratories.

(ii) The following revalidating providers and suppliers that are not publicly-traded on the NYSE or NASDAQ:

(A) Community mental health centers.

(B) Comprehensive outpatient rehabilitation facilities.

(C) Home health agencies.

(D) Hospice organizations.

(E) Independent diagnostic testing facilities.

(F) Nongovernment-owned or -affiliated ambulance service suppliers.

(G) Independent clinical laboratories.

(iii) Re-enrolling suppliers of DMEPOS that are not publicly-traded on the NYSE or NASDAQ.

(2) *Moderate categorical risk: Screening requirements.* When CMS designates a provider or supplier as a "moderate" categorical level of risk, the Medicare contractor does all of the following:

(i) Performs the "limited" screening requirements described in paragraph (a)(2) of this section.

(ii) Conducts an on-site visit.

(c) *High categorical risk*—(1) *High categorical risk: Provider and supplier types.* CMS has designated home health agencies or suppliers of DMEPOS that are not publicly-traded on the NYSE or NASDAQ as "high" categorical risk:

(A) Prospective providers or suppliers enrolling in the Medicare program.

(B) Providers or suppliers establishing a new practice location.

(2) *High categorical risk: Screening requirements.* When CMS designates a provider or supplier as a "high" categorical level of risk, the Medicare contractor does all of the following:

(i) Performs the "limited" and "moderate" screening requirements described in paragraphs (a)(2) and (b)(2) of this section.

(ii)(A) Conducts a criminal background check; and

(B) Requires the submission of sets of fingerprints using the FD–258 standard fingerprint card.

(3) *Adjustment in the categorical risk.* CMS adjusts the categorical risk level from "limited" or "moderate" to "high" if any of the following occur:

(i) CMS or its Medicare contractor has information from a physician or nonphysician practitioner that another individual is using their identity within the Medicare program.

(ii) CMS imposes a payment suspension on a provider or supplier.

(iii) The provider or supplier—

(A) Has been excluded from Medicare by the OIG; or

(B) Had its billing privileges denied or revoked by a Medicare contractor within the previous 10 years and is attempting to establish additional Medicare billing privileges by—

(*1*) Enrolling as a new provider or supplier; or

(*2*) Billing privileges for a new practice location.

(C) Has been terminated or is otherwise precluded from billing Medicaid.

(iv) CMS lifts a temporary moratorium for a particular provider or supplier type.

(d) *Fingerprinting requirements.* An individual subject to the fingerprints requirements specified in paragraph (c)(2)(ii)(B) of this section—

(1) Must submit a set of fingerprints using the FD–258 standard fingerprint card—

(i) With the Medicare enrollment application; or

(ii) Within 30 days of a Medicare contractor request.

(2) Who does not submit a set of fingerprints in accordance with paragraph (d)(1) of this section will have his or her Medicare billing privileges—

(i) Denied under § 424.530(a)(1); or

(ii) Revoked under § 424.535(a)(1).

13. Section 424.525 is amended by revising paragraph (a) as follows:

A. Revising paragraph (a) introductory text.

B. Adding a new paragraph (a)(3).

The revision and addition read as follows:

§ 424.525 Rejection of a provider or supplier's enrollment application for Medicare enrollment.

(a) *Reasons for rejection.* CMS may reject a provider or supplier's enrollment application for any of the following reasons:

* * * * *

(3) The prospective institutional provider or supplier does not submit the application fee in the designated amount or a hardship waiver request with the Medicare enrollment application at the time of filing.

* * * * *

14. Section 424.530 is amended by adding new paragraphs (a)(8) and (a)(9) to read as follows:

§ 424.530 Denial of enrollment in the Medicare program.

(a) * * *

(8) *Application fee/hardship exception.* An institutional provider or supplier's "hardship exception" request is not granted.

(9) *Temporary moratorium.* A provider or supplier submits an enrollment application for a practice location in a geographic area where CMS has imposed a temporary moratorium.

* * * * *

15. Section 424.535 is amended as follows:

A. Revising paragraph (a)(6).

B. Adding a new paragraph (a)(11).

C. Revising paragraph (c).

§ 424.535 Revocation of enrollment billing and billing privileges in the Medicare program.

(a) * * *

(6) *Grounds related to provider and supplier screening requirements.* (i)(A) An institutional provider does not submit an application fee or "hardship exception" request that meets the requirements set forth in § 424.514 with the Medicare revalidation application; or

(B) The "hardship exception" is not granted and the institutional provider does not submit the applicable application form or application fee within 30 days of being notified that the hardship exception request was denied.

(ii)(A) The Medicare contractor is not able to either of the following:

(*1*) Deposit the full application amount into a government-owned account.

(*2*) The funds are not able to be credited to the U.S. Treasury.

(B) The provider or supplier lacks sufficient funds in the account at the banking institution whose name is imprinted on the check or other banking instrument to pay the application fee; or

(C) There is any other reason why CMS or its Medicare contractor is unable to deposit the application fee into a government-owned account.

* * * * *

(11) *Medicaid termination.* Medicaid billing privileges are terminated or revoked by a State Medicaid Agency, not withstanding anything to the contrary in this section, must not apply unless and until a provider or supplier has exhausted all applicable appeal rights.

* * * * *

(c) *Reapplying after revocation.* (1) After a provider, supplier, delegated official, or authorizing official has had their billing privileges revoked, they are barred from participating in the Medicare program from the effective date of the revocation until the end of the re-enrollment bar.

(2) The re-enrollment bar is a minimum of 1 year, but not greater than 3 years depending on the severity of the basis for revocation.

(3) CMS may waive the re-enrollment bar if it has revoked a provider or supplier under § 424.535(a)(6)(i) based upon the failure of the provider or supplier to submit an application fee or a hardship exception request with an enrollment application upon revalidation.

* * * * *

16. A new § 424.570 is added to read as follows:

§ 424.570 Moratoria on newly enrolling Medicare providers and suppliers.

(a) *Temporary moratoria.* CMS may impose a moratorium on the enrollment of new Medicare providers and suppliers of a particular type or the establishment of new practice locations of a particular type in a particular geographic area or nationally if—

(1) CMS determines that there is a significant potential for fraud, waste or abuse with respect to a particular provider or supplier type or particular geographic area or both. CMS's determination is based on its review of existing data, and without limitation, identifies a trend that appears to be associated with a high risk of fraud, waste or abuse, such as a—

(i) Highly disproportionate number of providers or suppliers in a category relative to the number of beneficiaries; or

(ii) Rapid increase in enrollment applications within a category;

(2) A State Medicaid program has imposed a moratorium on a group of Medicaid providers or suppliers that are also eligible to enroll in the Medicare program;

(3) A State has imposed a moratorium on enrollment in a particular geographic area or on a particular provider or supplier type or both; or

(4) CMS, in consultation the HHS OIG or the Department of Justice or both and with the approval of the CMS Administrator identifies either or both of the following as having a significant potential for fraud, waste or abuse in the Medicare program:

(i) A particular provider or supplier type.

(ii) Any particular geographic area.

(b) *Duration of moratoria.* A moratorium under this section may be imposed for a period of 6 months and, if deemed necessary by CMS, may be extended in 6-month increments.

(c) *Denial of enrollment: Moratoria.* A Medicare contractor denies the enrollment application of a provider or supplier if the provider or supplier is subject to a moratorium as specified in paragraph (a) of this section.

(d) *Lifting moratoria.* CMS may lift a temporary moratorium in a specific geographic area or nationally if—

(1) The President declares an area a disaster under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121–5206 (Stafford Act); or

(2) Circumstances warranting the imposition of a moratorium have abated or CMS has implemented program safeguards to address the program vulnerability;

(3) In the judgment of the Secretary, the moratorium is no longer needed.

PART 438—MANAGED CARE

17. The authority for part 438 continues to read as follows:

Authority: Sec. 1102 of the Social Security Act (42 U.S.C. 1302).

18. Section 438.6 is amended by adding new paragraph (c)(5)(vi).

§ 438.6 Contract requirements.

* * * * *

(c) * * *

(5) * * *

(vi) Contracts with MCOs, PIHPs, and PAHPs must require all ordering or referring network providers to be enrolled as participating providers with the Medicaid program.

* * * * *

PART 447—PAYMENT FOR SERVICES

19. The authority citation for part 447 continues to read as follows:

Authority: Sec. 1102 of the Social Security Act (42 U.S.C. 1302).

20. A new § 447.90 is added to read as follows:

§ 447.90 FFP: Conditions related to pending investigations of credible allegations of fraud against the Medicaid program.

(a) *Basis and purpose.* This section implements section 1903(i)(2)(C) of the Act which prohibits payment of FFP with respect to items or services furnished by an individual or entity with respect to which there is pending an investigation of a credible allegation of fraud except under specified circumstances.

(b) *Denial of FFP.* No FFP is available with respect to any amount expended for an item or service furnished by any individual or entity to whom a State has failed to suspend payments in whole or part as required by § 455.23 unless:

(1) The item or service is furnished as an emergency item or service, but not including items or services furnished in an emergency room of a hospital; or

(2) The State determines and documents that good cause as specified at § 455.23(e) or (f) exists not to suspend such payments, to suspend payments only in part, or to discontinue a previously imposed payment suspension.

PART 455—PROGRAM INTEGRITY: MEDICAID

21. The authority citation for part 455 continues to read as follows:

Authority: Sec. 1102 of the Social Security Act (42 U.S.C. 1302).

22. Section 455.2 is amended by adding the definition of "Credible allegation of fraud" to read as follows:

§ 455.2 Definitions.

* * * * *

Credible allegation of fraud. A credible allegation of fraud is an allegation from any source, including but not limited to the following:

(1) Fraud hotline complaints.

(2) Claims data mining.

(3) Patterns identified through provider audits, civil false claims cases, and law enforcement investigations. Allegations are considered to be credible when they have indicia of reliability.

* * * * *

23. Section 455.23 is revised to read as follows:

§ 455.23 Suspension of payments in cases of fraud.

(a) *Basis for suspension.* (1) The State Medicaid agency must suspend all Medicaid payments to a provider when there is pending an investigation of a credible allegation of fraud under the Medicaid program against an individual or entity unless it has good cause to not suspend payments or to suspend payment only in part.

(2) The State Medicaid agency may suspend payments without first notifying the provider of its intention to suspend such payments.

(3) A provider may request, and must be granted, administrative review where State law so requires.

(b) *Notice of suspension.* (1) The State agency must send notice of its suspension of program payments within the following timeframes:

(i) Five days of taking such action unless requested in writing by a law enforcement agency to temporarily withhold such notice.

(ii) Thirty days if requested by law enforcement in writing to delay sending such notice, which request for delay may be renewed in writing up to twice and in no event may exceed 90 days.

(2) The notice must include or address all of the following:

(i) State that payments are being suspended in accordance with this provision.

(ii) Set forth the general allegations as to the nature of the suspension action, but need not disclose any specific information concerning an ongoing investigation.

(iii) State that the suspension is for a temporary period, as stated in paragraph (c) of this section, and cite the circumstances under which suspension will be terminated.

(iv) Specify, when applicable, to which type or types of Medicaid claims or business units of a provider suspension is effective.

(v) Inform the provider of the right to submit written evidence for consideration by State Medicaid Agency.

(c) *Duration of suspension.* (1) All suspension of payment actions under this section will be temporary and will not continue after either of the following:

(i) The agency or the prosecuting authorities determine that there is insufficient evidence of fraud by the provider.

(ii) Legal proceedings related to the provider's alleged fraud are completed.

(2) A State must document in writing the termination of a suspension including, where applicable and appropriate, any appeal rights available to a provider.

(d) *Referrals to the Medicaid fraud control unit.* (1) Whenever a State Medicaid agency investigation leads to the initiation of a payment suspension in whole or part, the State Medicaid Agency must make a fraud referral to either of the following:

(i) To a Medicaid fraud control unit established and certified under part 1007 of this Title; or

(ii) In States with no certified Medicaid fraud control unit, to an appropriate law enforcement agency.

(2) The fraud referral made under paragraph (d)(1) of this section must meet all of the following requirements:

(i) Be made in writing and provided to the Medicaid fraud control unit not later than the next business day after the suspension is enacted.

(ii) Conform to fraud referral performance standards issued by the Secretary.

(3)(i) If the Medicaid fraud control unit or other law enforcement agency accepts the fraud referral for investigation, the payment suspension may be continued until such time as the investigation and any associated enforcement proceedings are completed.

(ii) On a quarterly basis, the State must request a certification from the Medicaid fraud control unit or other law enforcement agency that any matter accepted on the basis of a referral continues to be under investigation thus warranting continuation of the suspension.

(4) If the Medicaid fraud control unit or other law enforcement agency declines to accept the fraud referral for investigation the payment suspension must be discontinued unless the State Medicaid agency makes a fraud referral to another law enforcement agency. In that situation, the provisions of paragraph (d)(3) of this section apply equally to that referral as well.

(5) A State's decision to exercise the good cause exceptions in paragraphs (e) or (f) of this section not to suspend payments or to suspend payments only in part does not relieve the State of the obligation to refer any credible allegation of fraud as provided in paragraph (d)(1) of this section.

(e) *Good cause not to suspend payments.* A State may find that good cause exists not to suspend payments, or not to continue a payment suspension previously imposed, to an individual or entity against which there is an investigation of a credible allegation of fraud if any of the following are applicable:

(1) Law enforcement officials have specifically requested that a payment suspension not be imposed because such a payment suspension may compromise or jeopardize an investigation.

(2) Other available remedies implemented by the State more effectively or quickly protect Medicaid funds.

(3) The State determines that payment suspension is not in the best interests of the Medicaid program.

(4) Recipient access to items or services would be jeopardized by a payment suspension because of either of the following:

(i) An individual or entity is the sole community physician or the sole source of essential specialized services in a community.

(ii) The individual or entity serves a large number of recipients within a HRSA-designated medically underserved area.

(5) Law enforcement declines to certify that a matter continues to be under investigation per the requirements of paragraph (d)(3) of this section.

(f) *Good cause to suspend payment only in part.* A State may find that good cause exists to suspend payments in part, or to convert a payment suspension previously imposed in whole to one only in part, to an individual or entity against which there is an investigation of a credible allegation of fraud if any of the following are applicable:

(1) Recipient access to items or services would be jeopardized by a payment suspension in whole or part because of either of the following:

(i) An individual or entity is the sole community physician or the sole source of essential specialized services in a community.

(ii) The individual or entity serves a large number of recipients within a HRSA-designated medically underserved area;

(2) The State determines that payment suspension only in part is in the best interests of the Medicaid program.

(3)(i) The credible allegation focuses solely and definitively on only a specific type of claim or arises from only a specific business unit of a provider; and

(ii) The State determines and documents in writing that a payment suspension in part would effectively ensure that potentially fraudulent claims were not continuing to be paid.

(4) Law enforcement declines to certify that a matter continues to be under investigation per the requirements of paragraph (d)(3) of this section.

(g) *Documentation and record retention.* State Medicaid agencies must meet the following requirements:

(1) Maintain for a minimum of 5 years from the date of issuance all materials documenting the life cycle of a payment suspension that was imposed in whole or part, including the following:

(i) All notices of suspension of payment in whole or part.

(ii) All fraud referrals to the Medicaid fraud control unit or other law enforcement agency.

(iii) All quarterly certifications of continuing investigation status by law enforcement.

(iv) All notices documenting the termination of a suspension.

(2)(i) Maintain for a minimum of 5 years from the date of issuance all materials documenting each instance where a payment suspension was not imposed, imposed only in part, or discontinued for good cause.

(ii) This type of documentation must include, at a minimum, detailed information on the basis for the existence of the good cause not to suspend payments, to suspend payments only in part, or to discontinue a payment suspension and, where applicable, must specify how long the State anticipates such good cause will exist.

(3) Annually report to the Secretary summary information on each of following:

(i) Suspension of payment, including the nature of the suspected fraud, the basis for suspension, and the outcome of the suspension.

(ii) Situation in which the State determined good cause existed to not suspend payments, to suspend payments only in part, or to discontinue a payment suspension as described in this section, including describing the nature of the suspected fraud and the nature of the good cause.

24. Section 455.101 is amended as follows:

A. Adding introductory text.

B. Adding the definitions of "Health insuring organization (HIO)," "Managed care entity (MCE)," "Prepaid ambulatory health plan (PAHP)," "Primary care case manager (PCCM)," "Prepaid inpatient health plan (PIHP)," and "Termination" in alphabetical order to read as follows:

§ 455.101 Definitions.

For the purposes of this part—

* * * * *

Health insuring organization (HIO) has the meaning specified in § 438.2.

Managed care entity (MCE) means managed care organizations (MCOs), PIHPs, PAHPs, PCCMs, and HIOs.

* * * * *

Prepaid ambulatory health plan (PAHP) has the meaning specified in § 438.2.

Primary care case manager (PCCM) has the meaning specified in § 438.2.

Prepaid inpatient health plan (PIHP) has the meaning specified in § 438.2.

Termination means—

(1) For a—

(i) Medicaid provider, a State Medicaid program has taken an action to revoke the provider's billing privileges, and the provider has exhausted all applicable appeal rights; and

(ii) Medicare provider, supplier or eligible professional, the Medicare program has revoked the provider or supplier's billing privileges.

(2)(i) In both programs, there is no expectation on the part of the provider or supplier or the State or Medicare program that the revocation is temporary.

(ii) The provider, supplier, or eligible professional will be required to reenroll with the applicable program if they wish billing privileges to be reinstated.

25. Section 455.104 is revised to read as follows:

§ 455.104 Disclosure by Medicaid providers and fiscal agents: Information on ownership and control.

(a) *Who must provide disclosures.* The Medicaid agency must obtain disclosures from disclosing entities, fiscal agents, and managed care entities.

(b) *What disclosures must be provided.* The Medicaid agency must require that disclosing entities, fiscal agents, and managed care entities provide the following disclosures:

(1)(i) The name and address of any person (individual or corporation).

(ii) Date of birth and social security number (in the case of an individual).

(iii) Other tax identification number (in the case of a corporation) with an ownership or control interest in the disclosing entity (or fiscal agent or managed care entity) or in any subcontractor in which the disclosing entity (or fiscal agent or managed care entity) has a 5 percent or more interest.

(2) Whether the person (individual or corporation) with ownership or control interest in the disclosing entity (or fiscal agent or managed care entity) or in any subcontractor in which the disclosing entity (or fiscal agent or managed care entity) has a 5 percent or more interest is related to another as a spouse, parent, child, or sibling.

(3) The name of any other disclosing entity (or fiscal agent or managed care entity) in which an owner of the disclosing entity (or fiscal agent or managed care entity) has an ownership or control interest.

(4) The name and address of any managing employee of the disclosing entity (or fiscal agent or managed care entity).

(c) *When the disclosures must be provided*—(1) *Disclosures from providers.* Disclosure from any provider is due at any of the following times:

(i) Submits the provider application.

(ii) Executes the provider agreement.

(iii) Re-enrolls under § 455.12.

(iv) Within 35 days after any change in ownership of the disclosing entity.

(2) *Disclosures from fiscal agents.* Disclosures from fiscal agents are due at any of the following times:

(i) That the fiscal agent submits the proposal in accordance with the State's procurement process.

(ii) The fiscal agent executes the contract with the State

(iii) Upon renewal or extension of the contract.

(iv) Within 35 days after any change in ownership of the fiscal agent.

(3) *Disclosures from managed care entities.* Disclosures from managed care entities (MCOs, PIHPs, PAHPs, and HIOs), except PCCMs are due at any of the following times:

(i) The managed care entity submits the proposal in accordance with the State's procurement process.

(ii) The managed care entity executes the contract with the State.

(iii) Upon renewal or extension of the contract.

(iv) Within 35 days after any change in ownership of the managed care entity.

(4) *Disclosures from PCCMs.* PCCMs will comply with disclosure requirements under (c)(1) of this section.

(d) *To whom must the disclosures be provided.* All disclosures must be provided to the Medicaid agency.

(e) *Consequences for failure to provide required disclosures.* Federal financial participation (FFP) is not available in payments made to a disclosing entity that fails to disclose ownership or control information as required by this section.

26. A new subpart E is added to part 455 to read as follows:

Subpart E—Provider Screening and Enrollment

Sec.

455.400 Purpose.
455.405 State plan requirements.
455.410 Enrollment and screening of providers.
455.412 Verification of provider licenses.
455.414 Reenrollment.
455.416 Termination or denial of enrollment.
455.418 Deactivation of provider enrollment.
455.420 Reactivation of provider enrollment.
455.422 Appeal rights.
455.432 Site visits.
455.434 Criminal background checks.
455.436 Federal database checks.
455.440 National Provider Identifier.
455.450 Screening categories for Medicaid providers.
455.452 Other State screening methods.
455.460 Application fee.
455.470 Temporary moratoria.

Subpart E—Provider Screening and Enrollment

§ 455.400 Purpose.

This subpart implements sections 1866(j), 1902(a)(39), 1902(a)(77), and 1902(a)(78) of the Social Security Act. It sets forth State plan requirements regarding the following:

(a) Provider screening and enrollment requirements.

(b) Fees associated with provider screening.

(c) Temporary moratoria on enrollment of providers.

§ 455.405 State plan requirements.

A State plan must provide that the requirements of § 455.410 through § 455.450 and § 455.470 are met.

§ 455.410 Enrollment and screening of providers.

(a) The State Medicaid agency must require all enrolled providers to be screened under to this subpart.

(b) The State Medicaid agency must require all ordering or referring physicians or other professionals providing services under the State plan or under a waiver of the plan to be enrolled as participating providers.

(c) The State Medicaid agency may rely on the results of the provider screening performed by any of the following:

(1) Medicare contractors.

(2) Medicaid agencies or Children's Health Insurance Programs of other States.

§ 455.412 Verification of provider licenses.

The State Medicaid agency must—

(a) Have a method for verifying that any provider purporting to be licensed in accordance with the laws of any State is licensed by such State.

(b) Confirm that the provider's license has not expired and that there are no current limitations on the provider's license.

§ 455.414 Reenrollment.

The State Medicaid agency must screen all providers regardless of provider type at least every 5 years.

§ 455.416 Termination or denial of enrollment.

The State Medicaid agency—

(a) Must terminate the enrollment of any provider where any person with an ownership or control interest or who is an agent or managing employee of the provider did not submit timely and

accurate information and cooperate with any screening methods required under this subpart.

(b) Must deny enrollment or terminate the enrollment of any provider where any person with an ownership or control interest or who is an agent or managing employee of the provider has been convicted of a criminal offense related to that person's involvement with the Medicare, Medicaid, or title XXI program in the last 10 years, unless the State Medicaid agency determines that denial or termination of enrollment is not in the best interests of the Medicaid program and the State Medicaid agency documents that determination in writing.

(c) Must deny enrollment or terminate the enrollment of any provider that is terminated on or after January 1, 2011, under title XVIII of the Act or under the Medicaid program or CHIP of any other State.

(d) Must terminate the provider's enrollment or deny enrollment of the provider if the provider or a person with an ownership or control interest or who is an agent or managing employee of the provider fails to submit timely or accurate information, unless the State Medicaid agency determines that termination or denial of enrollment is not in the best interests of the Medicaid program and the State Medicaid agency documents that determination in writing.

(e) Must terminate or deny enrollment if the provider, or any person with an ownership or control interest or who is an agent or managing employee of the provider, fails to submit sets of fingerprints in a form and manner to be determined by the Medicaid agency within 30 days of a CMS or a State Medicaid agency request, unless the State Medicaid agency determines that termination or denial of enrollment is not in the best interests of the Medicaid program and the State Medicaid agency documents that determination in writing.

(f) Must terminate or deny enrollment if the provider fails to permit access to provider locations for any site visits under § 455.432, unless the State Medicaid agency determines that termination or denial of enrollment is not in the best interests of the Medicaid program and the State Medicaid agency documents that determination in writing.

(g) May terminate or deny the provider's enrollment if CMS or the State Medicaid agency—

(1) Determines that the provider has falsified any information provided on the application; or

(2) Cannot verify the identity of any provider applicant.

§ 455.418 Deactivation of provider enrollment.

The State Medicaid Agency must deactivate any provider enrollment number that has been inactive as a result of having submitted no claims or making no referrals that resulted in Medicaid claims for a period of 12 months.

§ 455.420 Reactivation of provider enrollment.

After deactivation of a provider enrollment number for any reason, before the provider's enrollment may be reactivated, the State Medicaid agency must re-screen the provider and require payment of associated provider application fees under § 455.460.

§ 455.422 Appeal rights.

The State Medicaid agency must give providers terminated under § 455.416, and with respect to enrollment, any appeal rights available under procedures established by State law or rule.

§ 455.432 Site visits.

The State Medicaid agency—

(a) Must conduct pre-enrollment and post-enrollment site visits of providers who are designated as "moderate" or "high" categorical risks to the Medicaid program. The purpose of the site visit will be to verify that the information submitted to the State Medicaid agency is accurate and to determine compliance with Federal and State enrollment requirements.

(b) Must require any enrolled provider to permit CMS, its agents, its designated contractors, or the State Medicaid agency to conduct unannounced on-site inspections of any and all provider locations.

§ 455.434 Criminal background checks.

The State Medicaid agency—

(a) As a condition of enrollment, must require providers to consent to criminal background checks including fingerprinting when required to do so under State law or by the level of risk determined for that category of provider.

(b) Must establish categorical risk levels for providers and provider types who pose an increased financial risk of fraud, waste or abuse to the Medicaid program.

(1) Upon the State Medicaid agency determining that a provider, or a person with an ownership or control interest or who is an agent or managing employee of the provider, meets the State Medicaid agency's criteria hereunder for criminal background checks as a "high" risk to the Medicaid program, the State Medicaid agency will require that each such provider or person submit fingerprints.

(2) The State Medicaid agency must require a provider, or any person with an ownership or control interest or who is an agent or managing employee of the provider, to submit two sets of fingerprints, in a form and manner to be determined by the State Medicaid agency, within 30 days upon request from CMS or the State Medicaid agency.

§ 455.436 Federal database checks.

The State Medicaid agency must do all of the following:

(a) Confirm the identity and determine the exclusion status of providers and any person with an ownership or control interest or who is an agent or managing employee of the provider through routine checks of Federal databases.

(b) Check applicable databases maintained by the Social Security Administration, the National Plan and Provider Enumeration System (NPPES), the List of Excluded Individuals/Entities (LEIE), the Excluded Parties List System (EPLS), and any such other databases as the Secretary may prescribe.

(c)(1) Consult appropriate databases to confirm identity upon enrollment and reenrollment; and

(2) Check the LEIE and EPLS no less frequently than monthly.

§ 455.440 National Provider Identifier.

The State Medicaid agency must require all claims for payment for items and services that were ordered or referred to contain the National Provider Identifier (NPI) of the physician or other professional who ordered or referred such items or services.

§ 455.450 Screening categories for Medicaid providers.

A State Medicaid agency must screen all initial applications, including applications for a new practice location, and any applications received in response to a re-enrollment request based on a categorical risk level of "limited," "moderate," or "high." If a provider could fit within more than one risk category described in this section, the risk category with the highest level of screening is applicable.

(a) *Screening for providers designated as limited categorical risk.* When the State Medicaid agency designates a provider as a "limited" categorical risk or the provider is publicly traded on the New York Stock Exchange (NYSE) or National Association of Securities Dealers Automated Quotation System (NASDAQ), the State Medicaid agency must do all of the following:

(1) Verify that a provider meets any applicable Federal regulations, or State requirements for the provider type prior to making an enrollment determination.

(2) Conduct license verifications, including State licensure verifications in States other than where the provider is enrolling, in accordance with § 455.412.

(3) Conduct database checks on a pre- and post-enrollment basis to ensure that providers continue to meet the enrollment criteria for their provider type, in accordance with § 455.436.

(b) *Screening for providers designated as moderate categorical risk.* When the State Medicaid agency designates a provider as a "moderate" categorical risk, a State Medicaid agency must do both of the following:

(1) Perform the "limited" screening requirements described in paragraph (a) of this section.

(2) Conduct on-site visits in accordance with § 455.432.

(c) *Screening for providers designated as high categorical risk.* When the State Medicaid agency designates a provider as a "high" categorical risk, a State Medicaid agency must do both of the following:

(1) Perform the "limited" and "moderate" screening requirements described in paragraphs (a) and (b) of this section.

(2)(i) Conduct a criminal background check; or

(ii) Require the submission of set of fingerprints in accordance with § 455.434.

(d) *Denial or termination of enrollment.* A provider, or any person with an ownership or control interest or who is an agent or managing employee of the provider, who is required by the State Medicaid agency or CMS to submit a set of fingerprints and fails to do so may have its—

(1) Application denied under § 455.434; or

(2) Enrollment terminated under § 455.416.

(e) *Adjustment of risk level.* The State agency must adjust the categorical risk level from "limited" or "moderate" to "high" when any of the following occurs:

(1) The State Medicaid agency imposes a payment suspension on a provider based on credible allegation of fraud, waste or abuse, the provider has an existing Medicaid overpayment, or the provider has been excluded by the OIG or another State's Medicaid program within the previous 10 years.

(2) The State Medicaid agency or CMS lifts a temporary moratorium for a particular provider type.

§ 455.452 Other State screening methods.

Nothing herein must restrict the State Medicaid agency from establishing provider screening methods in addition to or more stringent than those required by this subpart.

§ 455.460 Application fee.

(a) Beginning on or after March 23, 2011, States may collect the applicable application fee prior to executing a provider agreement from prospective or re-enrolling providers other than—

(1) Individual physicians or nonphysician practitioners.

(2) (i) Providers who are enrolled in either—

(A) Title XVIII of the Act; or

(B) Another State's title XIX or XXI plan.

(ii) Providers that have paid the applicable application fee to—

(A) A Medicare contractor; or

(B) Another State.

(b) If the fees collected by a State agency in accordance with paragraph (a) of this section exceed the cost of the screening program, the State agency must return that portion of the fees to the Federal government.

§ 455.470 Temporary moratoria.

(a)(1) The Secretary consults with any affected State Medicaid agency regarding imposition of temporary moratoria on enrollment of new providers or provider types prior to imposition of the moratoria, in accordance with § 424.570.

(2) The State Medicaid agency will impose temporary moratoria on enrollment of new providers or provider types identified by the Secretary as posing an increased risk to the Medicaid program.

(3)(i) The State Medicaid agency is not required to impose such a moratorium if the State Medicaid agency determines that imposition of a temporary moratorium would adversely affect beneficiaries' access to medical assistance.

(ii) If a State Medicaid agency makes such a determination, the State Medicaid agency must notify the Secretary in writing.

(b)(1) A State Medicaid agency may impose temporary moratoria on enrollment of new providers, or impose numerical caps or other limits that the State Medicaid agency identifies as having a significant potential for fraud, waste, or abuse and that the Secretary has identified as being at "high" risk for fraud, waste, or abuse.

(2) Before implementing the moratoria, caps, or other limits, the State Medicaid agency must determine that its action would not adversely impact beneficiaries' access to medical assistance.

(3) The State Medicaid agency must notify the Secretary in writing in the event the State Medicaid agency imposes such moratoria, including all details of the moratoria.

(c)(1) The State Medicaid agency must impose the moratorium for an initial period of 6 months.

(2) If the State Medicaid agency determines that it is necessary, the State Medicaid agency may extend the moratorium in 6-month increments.

(3) Each time, the State Medicaid agency must document in writing the necessity for extending the moratorium.

PART 457—ALLOTMENTS AND GRANTS TO STATES

27. The authority for part 457 continues to read as follows:

Authority: Section 1102 of the Social Security Act (42 U.S.C. 1302).

28. Section 457.900 is amended by adding a new paragraph (a)(2)(x) to read as follows:

§ 457.900 Basis, scope and applicability.

(a) * * *

(2) * * *

(x) Sections 1902(a)(77) and 1902(ii) relating to provider and supplier screening, oversight, and reporting requirements.

* * * * *

29. A new § 457.990 is added to subpart I to read as follows:

§ 457.990 Provider and supplier screening, oversight and reporting requirements.

The following provisions and their corresponding regulations apply to a State under title XXI of the Act, in the same manner as these provisions and regulations apply to a State under title XIX of the Act:

(a) Part 455 Subpart E of this chapter.

(b) Sections 1902(a)(77) and 1902(ii) of the Act pertaining to provider and supplier screening, oversight, and reporting requirements.

PART 498—APPEALS PROCEDURES FOR DETERMINATIONS THAT AFFECT PARTICIPATION IN THE MEDICARE PROGRAM AND FOR DETERMINATIONS THAT AFFECT THE PARTICIPATION OF ICFs/MR AND CERTAIN NFs IN THE MEDICAID PROGRAM

30. The authority citation for part 498 continues to read as follows:

Authority: Secs. 1102 and 1871 of the Social Security Act (42 U.S.C. 1302 and 1395hh).

31. Section 498.5 is amended by adding a new paragraph (l)(4) to read as follows:

* * * * *

(l) * * *

(4) *Scope of review.* For appeals of denials based on § 424.530(a)(9) related to temporary moratorium, the scope of review will be limited to whether the temporary moratoria applies to the provider or supplier appealing the denial. The agency's basis for imposing a temporary moratorium is not subject to review.

PART 1007—STATE MEDICAID FRAUD CONTROL UNITS

32. The authority for part 1007 continues to read as follows:

Authority: 42 U.S.C. 1320 and 1395hh.

33. Section 1007.9 is amended by adding paragraphs (e) through (g) to read as follows:

§ 1007.9 Relationship to, and agreement with, the Medicaid agency.

* * * * *

(e)(1) The unit may refer any provider with respect to which there is pending an investigation of a credible allegation of fraud under the Medicaid program to the State Medicaid agency for payment suspension in whole or part under § 455.23.

(2) Referrals may be brief, but must be in writing and include sufficient information to allow the State Medicaid agency to identify the provider and to explain the credible allegations forming the grounds for the payment suspension.

(f) Any request by the unit to the State Medicaid agency to delay notification to the provider of a payment suspension under § 455.23 of this Title must be in writing.

(g) When the unit accepts or declines a case referred by the State Medicaid agency, the unit notifies the State Medicaid agency in writing of the acceptance or declination of the case.

(Catalog of Federal Domestic Assistance Program No. 93.778, Medical Assistance Program) (Catalog of Federal Domestic Assistance Program No. 93.773, Medicare—Hospital Insurance; and Program No. 93.774, Medicare—Supplementary Medical Insurance Program)

Dated: September 13, 2010.

Donald Berwick,

Administrator, Centers for Medicare & Medicaid Services.

Approved: September 15, 2010.

Kathleen Sebelius,

Secretary.

[FR Doc. 2010–23579 Filed 9–17–10; 11:15 am]

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Federal Register

Thursday,
September 23, 2010

Part V

Department of the Interior

Fish and Wildlife Service

50 CFR Part 20

Migratory Bird Hunting; Final Frameworks for Late–Season Migratory Bird Hunting Regulations; Final Rule

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 20

[Docket No. FWS–R9–MB–2010–0040; 91200–1231–9BPP–L2]

RIN 1018–AX06

Migratory Bird Hunting; Final Frameworks for Late-Season Migratory Bird Hunting Regulations

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: The Fish and Wildlife Service (Service or we) prescribes final late-season frameworks from which States may select season dates, limits, and other options for the 2010–11 migratory bird hunting seasons. These late seasons include most waterfowl seasons, the earliest of which commences on September 25, 2010. The effect of this final rule is to facilitate the States' selection of hunting seasons and to further the annual establishment of the late-season migratory bird hunting regulations.

DATES: This rule takes effect on September 23, 2010.

ADDRESSES: States should send their season selections to: Chief, Division of Migratory Bird Management, U.S. Fish and Wildlife Service, ms MBSP–4107–ARLSQ, 1849 C Street, NW., Washington, DC 20240. You may inspect comments received on the migratory bird hunting regulations during normal business hours at the Service's office in room 4107, Arlington Square Building, 4501 N. Fairfax Drive, Arlington, VA. You may obtain copies of referenced reports from the street address above, or from the Division of Migratory Bird Management's Web site at *http://www.fws.gov/migratorybirds/,* or at *http://www.regulations.gov* at Docket No. FWS–R9–MB–2010–0040.

FOR FURTHER INFORMATION CONTACT: Robert Blohm, Chief, or Ron W. Kokel, Division of Migratory Bird Management, U.S. Fish and Wildlife Service, (703) 358–1714.

SUPPLEMENTARY INFORMATION:

Regulations Schedule for 2010

On May 13, 2010, we published in the **Federal Register** (75 FR 27144) a proposal to amend 50 CFR part 20. The proposal provided a background and overview of the migratory bird hunting regulations process, and addressed the establishment of seasons, limits, and other regulations for hunting migratory game birds under §§ 20.101 through 20.107, 20.109, and 20.110 of subpart K. Major steps in the 2010–11 regulatory cycle relating to open public meetings and **Federal Register** notifications were also identified in the May 13 proposed rule. Further, we explained that all sections of subsequent documents outlining hunting frameworks and guidelines were organized under numbered headings.

On June 10, 2010, we published in the **Federal Register** (75 FR 32872) a second document providing supplemental proposals for early- and late-season migratory bird hunting regulations. The June 10 supplement also provided detailed information on the 2010–11 regulatory schedule and announced the Service Migratory Bird Regulations Committee (SRC) and Flyway Council meetings.

On June 23 and 24, 2010, we held open meetings with the Flyway Council Consultants at which the participants reviewed information on the current status of migratory shore and upland game birds and developed recommendations for the 2010–11 regulations for these species plus regulations for migratory game birds in Alaska, Puerto Rico, and the Virgin Islands; special September waterfowl seasons in designated States; special sea duck seasons in the Atlantic Flyway; and extended falconry seasons. In addition, we reviewed and discussed preliminary information on the status of waterfowl as it relates to the development and selection of the regulatory packages for the 2010–11 regular waterfowl seasons. On July 29, 2010, we published in the **Federal Register** (75 FR 44856) a third document specifically dealing with the proposed frameworks for early-season regulations. On August 30, 2010, we published in the **Federal Register** (75 FR 52873) a final rule which contained final frameworks for early migratory bird hunting seasons from which wildlife conservation agency officials from the States, Puerto Rico, and the Virgin Islands selected early-season hunting dates, hours, areas, and limits. Subsequently, on August 31, 2010, we published a final rule in the **Federal Register** (75 FR 53226) amending subpart K of title 50 CFR part 20 to set hunting seasons, hours, areas, and limits for early seasons.

On July 28–29, 2010, we held open meetings with the Flyway Council Consultants at which the participants reviewed the status of waterfowl and developed recommendations for the 2010–11 regulations for these species. Proposed hunting regulations were discussed for late seasons. On August 25, 2010, we published in the **Federal Register** (75 FR 52398) the proposed frameworks for the 2010–11 late-season migratory bird hunting regulations. This document establishes final frameworks for late-season migratory bird hunting regulations for the 2010–11 season. There are no substantive changes from the August 25 proposed rule. We will publish State selections in the **Federal Register** as amendments to §§ 20.101 through 20.107, and 20.109 of title 50 CFR part 20.

Population Status and Harvest

A brief summary of information on the status and harvest of waterfowl excerpted from various reports was included in the August 25 supplemental proposed rule. For more detailed information on methodologies and results, complete copies of the various reports are available at the street address indicated under **ADDRESSES** or from our Web site at *http://www.fws.gov/migratorybirds/NewsPublicationsReports.html.*

Review of Public Comments and Flyway Council Recommendations

The preliminary proposed rulemaking, which appeared in the May 13, 2010, **Federal Register,** opened the public comment period for migratory game bird hunting regulations. The supplemental proposed rule, which appeared in the June 10, 2010, **Federal Register,** discussed the regulatory alternatives for the 2010–11 duck hunting season. Late-season comments are summarized below and numbered in the order used in the May 13 and June 10 **Federal Register** documents. We have included only the numbered items pertaining to late-season issues for which we received written comments. Consequently, the issues do not follow in successive numerical or alphabetical order.

We received recommendations from all four Flyway Councils. Some recommendations supported continuation of last year's frameworks. Due to the comprehensive nature of the annual review of the frameworks performed by the Councils, support for continuation of last year's frameworks is assumed for items for which no recommendations were received. Council recommendations for changes in the frameworks are summarized below. Wherever possible, they are discussed under headings corresponding to the numbered items in the May 13 and June 10, 2010, **Federal Register** documents.

General

Council Recommendations: The Central Flyway Council recommended increasing the possession limit for all migratory birds from twice the daily bag limit to three times the daily bag limit for the 2011–12 hunting seasons.

The Pacific Flyway Council recommended increasing the possession limit for ducks and geese from twice the daily bag limit to three times the daily bag limit, beginning with the 2010–11 season.

Written Comments: The Animal Legal Defense Fund (ALDF) urged us to reduce bag limits and institute a hunting moratorium for those species potentially affected by the Deepwater Horizon oil spill.

An individual questioned the annual variation we see in the population status of various species and requested that we keep all daily bag limits unchanged until several years of trends are evident.

Service Response: We are generally supportive of the Flyways' interest in increasing the possession limits for migratory game birds and appreciate the recent discussions to frame this important issue. However, we believe that there are many unanswered questions regarding how this interest can be fully articulated in a proposal that satisfies the harvest management community, while fostering the support of the law enforcement community and informing the general hunting public. Further, because of the current schedule and processes for establishing migratory bird hunting seasons (*i.e.,* early and late season processes), any changes to current possession limits would not be available for the 2010–11 seasons. Consequently, we are proposing the creation of a cross-agency working group, chaired by the Service, and comprised of staff from the Service's Migratory Bird Program, State Wildlife Agency representatives, and Federal and State law enforcement staff, to begin to frame a recommendation that fully articulates a potential change in possession limits. This effort would include a description of the current status and use of possession limits, which populations and/or species/species groups should not be included in any proposed modification of possession limits, potential law enforcement issues, and a reasonable timeline for the implementation of any such proposed changes. Results of the working group efforts would be reported at the January SRC meeting in 2011, and then forwarded to Flyway Technical Committee and Council meetings next winter for further review and refinement. We would present any resulting proposal next spring, with possible implementation during the 2011–12 hunting seasons.

Regarding the Deepwater Horizon oil spill, as we stated in the August 30, 2010 **Federal Register** (75 FR 52873) and reiterate here, the release of oil into the Gulf of Mexico following the explosion and sinking of the Deepwater Horizon mobile offshore drilling unit and impacts to Gulf wetlands and wildlife has led to concerns about the potential for increased mortality in waterfowl and other migratory game birds, particularly in the fall and winter when local populations increase. This potential for increased mortality of migrating and wintering game birds has led to further questions regarding the need to impose precautionary regulatory restrictions in anticipation of increased spill-related mortality. However, it is important to remember that waterfowl migration and habitat use are highly variable from year to year, not only at the Flyway level but at regional and local levels, and dependent on any number of environmental factors. It is also important to recognize that populations of many species of North American waterfowl naturally undergo large population fluctuations in response to variability in breeding habitat conditions across their range, especially within the important prairie-parkland region. In fact, during the drought-stricken years of the 1980s and early 1990s, many North American waterfowl species declined to population sizes less than one-half those recently experienced as a result of natural declines in productivity and ongoing mortality. Fortunately, waterfowl management has a rich and successful history of monitoring and assessment programs which provide annual updates on the status and health of waterfowl populations. Programs such as the May aerial breeding population survey, the continental bird banding program, the mid-winter waterfowl surveys, and the hunter harvest surveys, among others, all provide important pieces of information on the population status, productivity, and distribution of important waterfowl species. These data are integral in the process of establishing hunting regulations for waterfowl and other migratory game birds. Through the Adaptive Harvest Management process we currently utilize to establish waterfowl seasons, and other associated species-specific harvest strategies, monitoring and assessment data are explicitly linked to regulatory decision making, ensuring that appropriate regulatory actions will be taken if warranted by changes in continental population status. Therefore, from both a National and Flyway harvest-management perspective, we intend to respond to the Deepwater Horizon oil spill as we would any other non-hunting factor with potentially substantial effects on mortality or reproduction (*e.g.,* hurricane, disease, prairie drought, habitat loss), by monitoring abundance and vital rates of waterfowl and other migratory game birds and adjusting harvest regulations as needed on the basis of existing harvest strategies. We believe this is the most prudent course of action, and further, firmly believe that our existing monitoring and assessment programs are sufficient to help safeguard the long-term conservation of any potentially-affected waterfowl or other migratory game birds.

Recently obtained results of annual spring waterfowl population surveys indicate that population sizes of most duck species and breeding habitat conditions are good this year. While we believe that regulatory restrictions are currently unnecessary, we remain very concerned about both the short and long-term impacts of the oil spill on migratory birds, their habitats, and the resources upon which birds depend. There remains considerable uncertainty regarding the short-term and long-term impacts this spill will have on waterfowl and other migratory game birds that utilize the impacted region during all or part of their annual life cycle. We have been heavily engaged in the immediate response to the BP oil spill. The intent of these efforts is to document and minimize impacts to natural resources including migratory birds and their habitats. Large-scale efforts to influence bird migration and distribution at the flyway-level are likely fruitless given the importance of weather and photoperiod on the timing and speed of bird migrations. It is possible that re-distribution of birds at smaller scales could help reduce some oil exposure. Working with conservation partners, we are preparing to implement a range of on-the-ground habitat conservation or management measures near the oil-impact area intended to minimize the entrance of oil into managed habitats along the Gulf and to enhance the availability of food resources outside the oil impact area. The provision of additional, reliable food sources could also help buffer against the worst-case scenario of an early winter in northern portions of the Mississippi and Central Flyways and dry habitat conditions in the northern Mississippi Alluvial Valley that would

result in large wintering waterfowl populations along the Gulf Coast. We are working with partners to determine what portion of these projects should be available as "sanctuary" (areas closed to hunting) to encourage bird use of these areas and minimize redistribution due to disturbance.

Simultaneous with immediate response efforts, we are also working with partners to assess potential pathways for long-term acute and sub-lethal effects of the BP oil spill on the full suite of migratory birds utilizing Gulf (or other impacted) habitats during some portion of their life cycle. Effects may result from direct exposure of birds to oil or to the long-term accumulation of polycyclic aromatic hydrocarbons or other toxins at levels sufficient to cause physiological disorders impacting productivity or survival. The intent of this assessment is to assist in identifying potential mitigation and conservation measures as well as long-term monitoring and assessment needs for migratory birds.

Regardless of the eventual impact of the BP oil spill on migratory game birds, we recognize the importance of working with the States as well as other governmental and non-governmental conservation partners to ensure that reasonable and science-based measures are implemented in the face of the ongoing crisis in the Gulf, and that the rationale for decisions regarding harvest regulations or other actions are clearly communicated to the public. We will continue to do so.

Regarding the annual variation we see in species' population status, our long-term objectives continue to include providing opportunities to harvest portions of certain migratory game bird populations and to limit harvests to levels compatible with each population's ability to maintain healthy, viable numbers. Having taken into account the zones of temperature and the distribution, abundance, economic value, breeding habits, and times and lines of flight of migratory birds, we believe that the hunting seasons provided herein are compatible with the current status of migratory bird populations and long-term population goals.

1. Ducks

Categories used to discuss issues related to duck harvest management are: (A) Harvest Strategy Considerations, (B) Regulatory Alternatives, (C) Zones and Split Seasons, and (D) Special Seasons/Species Management. The categories correspond to previously published issues/discussion, and only those containing substantial recommendations are discussed below.

A. Harvest Strategy Considerations

Council Recommendations: The Atlantic, Central, and Pacific Flyway Councils and the Upper- and Lower-Region Regulations Committees of the Mississippi Flyway Council recommended the adoption of the "liberal" regulatory alternative.

Service Response: We are continuing development of an Adaptive Harvest Management (AHM) protocol that would allow hunting regulations to vary among Flyways in a manner that recognizes each Flyway's unique breeding-ground derivation of mallards. In 2008, we described and adopted a protocol for regulatory decision-making for the newly defined stock of western mallards (73 FR 43290). For the 2010 hunting season, we continue to believe that the prescribed regulatory choice for the Pacific Flyway should be based on the status of this western mallard breeding stock, while the regulatory choice for the Mississippi and Central Flyways should depend on the status of the recently redefined mid-continent mallard stock. We also recommend that the regulatory choice for the Atlantic Flyway continues to depend on the status of eastern mallards.

For the 2010 hunting season, we are continuing to consider the same regulatory alternatives as those used last year. The nature of the "restrictive," "moderate," and "liberal" alternatives has remained essentially unchanged since 1997, except that extended framework dates have been offered in the "moderate" and "liberal" regulatory alternatives since 2002. Also, in 2003, we agreed to place a constraint on closed seasons in the western three Flyways whenever the midcontinent mallard breeding-population size (as defined prior to 2008; traditional survey area plus Minnesota, Michigan, and Wisconsin) was ≥5.5 million.

Optimal AHM strategies for the 2010–11 hunting season were calculated using: (1) Harvest-management objectives specific to each mallard stock; (2) the 2010 regulatory alternatives; and (3) current population models and associated weights for midcontinent, western, and eastern mallards. Based on this year's survey results of 8.60 million midcontinent mallards (traditional survey area minus Alaska plus Minnesota, Wisconsin, and Michigan), 3.73 million ponds in Prairie Canada, 1,049,000 western mallards (443,000 and 606,000 respectively in California-Oregon and Alaska), and 763,000 eastern mallards, the prescribed regulatory choice for all four Flyways is the "liberal" alternative.

Therefore, we concur with the recommendations of the Atlantic, Mississippi, Central, and Pacific Flyway Councils regarding selection of the "liberal" regulatory alternative and adopt the "liberal" regulatory alternative, as described in the July 29, 2010, **Federal Register**.

C. Zones and Split Seasons

Council Recommendations: The Atlantic, Central, and Pacific Flyway Councils recommended that the Service allow 3 zones, with 2-way splits in each zone, and 4 zones with no splits as additional zone/split-season options for duck seasons during 2011–15.

The Upper- and Lower-Region Regulations Committees of the Mississippi Flyway Council recommended that the Service allow 3 zones with the season split into 2 segments in each zone, 4 zones with no splits, and 2 zones with the season split into 3 segments in each zone as additional zone/split-season options for duck seasons during 2011–15.

In addition, all four Flyway Councils recommended that States with existing grandfathered status be allowed to retain that status.

Service Response: In 1990, because of concerns about the proliferation of zones and split seasons for duck hunting, we conducted a cooperative review and evaluation of the historical use of zone/split options. This review did not show that the proliferation of these options had increased harvest pressure; however, the ability to detect the impact of zone/split configurations was poor because of unreliable response variables, the lack of statistical tests to differentiate between real and perceived changes, and the absence of adequate experimental controls. Consequently, we established guidelines to provide a framework for controlling the proliferation of changes in zone/split options. The guidelines identified a limited number of zone/split configurations that could be used for duck hunting and restricted the frequency of changes in these configurations to 5-year intervals.

In 1996, we revised the guidelines to provide States greater flexibility in using their zone/split arrangements. In 2005, in further response to recommendations from the Flyway Councils, we considered changes to the zone/split guidelines. After our review, however, we concluded that the current guidelines need not be changed. We further stated that the guidelines would be used for future open seasons (70 FR 55667).

However, while we continue to support the use of guidelines for providing a stable framework for controlling the number of changes to zone/split options, we note the consensus position among all the Flyway Councils on their proposal and are sensitive to the States' desires for flexibility in addressing concerns of the hunting public which, in part, provided the motivation for this recommendation. Furthermore, we remain supportive of the recommendations from the 2008 Future of Waterfowl Management Workshop that called for a greater emphasis on the effects of management actions on the hunting public. Thus, later this fall in a subsequent **Federal Register**, we plan to propose that two specific additional options be added to the existing zone and split season criteria governing State selection of waterfowl zones and splits. The additional options would include four zones with no splits and three zones with the option for 2-way (2-segment) split seasons in one or both zones. Otherwise, the criteria and rules governing the application of those criteria would remain unchanged.

While we are announcing our intention to propose adding the Flyway Councils' recommended two options to the existing zone and split season guidelines, we are not providing all the specifics of our proposal here for several reasons. First, because of the sensitive timing of the annual regulations process, and the necessary abbreviated public comment periods, we want to allow sufficient time for the Flyway Councils, the States, and the public to review and comment on our proposal. Second, because any new zone and split season criteria would not be used until the 2011–12 hunting season, we believe there is no pressing reason to finalize them in the next several months. However, we are also sensitive to providing the States sufficient time to interact with their affected hunting publics on any possible changes to existing zone and split season configurations they may wish to explore and to conduct any public processes needed to implement such changes. Finally, we need additional time to explore all the possible implications and impacts of such changes in the zone and split season guidelines in order to provide the public with all the necessary information for their consideration and comment.

We also note that existing human dimensions data on the relationship of harvest regulations, specifically zones and splits, to hunter recruitment, retention, and/or satisfaction are equivocal or lacking. In the face of uncertainty over the effects of management actions, the waterfowl management community has broadly endorsed adaptive management and the principles of informed decision-making as a means of accounting for and reducing that uncertainty. The necessary elements of informed decision-making include: Clearly articulated objectives, explicit measurable attributes for objectives, identification of a suite of potential management actions, some means of predicting the consequences of management actions with respect to stated objectives, and, finally, a monitoring program to compare observations with predictions as a basis for learning, policy adaptation, and more informed decision-making. Currently, none of these elements are used to support decision-making that involves human dimensions considerations. Accordingly, we see this as an opportunity to advance an informed decision-making framework that explicitly considers human dimensions issues.

To that end, we will request that the National Flyway Council marshal the expertise and resources of the Human Dimensions Working Group to develop explicit human dimensions objectives related to expanding zone and split options and a study plan to evaluate the effect of the proposed action in achieving those objectives. It is our hope that the study plan would include hypotheses and specific predictions about the effect of changing zone/split criteria on stated human dimensions objectives, and monitoring and evaluation methods that would be used to test those predictions.

We believe that insights gained through such an evaluation would be invaluable in furthering the ongoing dialogue regarding fundamental objectives of waterfowl management and an integrated and coherent decision framework for advancing those objectives. We will review the objectives and study plan at our January 2011 SRC meeting. We will consider this plan, along with public and Flyway comments on the proposed change to the zones and splits criteria, along with any required National Environmental Policy Act (NEPA; 42 U.S.C. 4321 *et seq.*) analysis, in making a final decision on a course of action next year. We anticipate our final decision sometime this winter.

D. Special Seasons/Species Management

iii. Black Ducks

In 2008, U.S. and Canadian waterfowl managers developed an interim harvest strategy that will be employed by both countries until a formal strategy based on the principles of AHM is completed. We detailed this interim strategy in the July 24, 2008, **Federal Register** (73 FR 43290). The interim harvest strategy is prescriptive, in that it calls for no substantive changes in hunting regulations unless the black duck breeding population, averaged over the most recent 3 years, exceeds or falls below the long-term average breeding population by 15 percent or more. The strategy is designed to share the black duck harvest equally between the two countries; however, recognizing incomplete control of harvest through regulations, it will allow realized harvest in either country to vary between 40 and 60 percent.

Each year in November, Canada publishes its proposed migratory bird hunting regulations for the upcoming hunting season. Thus, last fall the Canadian Wildlife Service (CWS) used the interim strategy to establish its proposed black duck regulations for the 2010–11 season, based on the most current data available at that time: Breeding population estimates for 2007, 2008, and 2009, and an assessment of parity based on harvest estimates for the 2004–08 hunting seasons. Although updates of both breeding population estimates and harvest estimates are now available, the United States will base its 2010–11 black duck regulations on the same data CWS used, to ensure comparable application of the strategy. The long-term (1998–2007) breeding population mean estimate is 717,450 and the 2007–09 3-year running mean estimate is 719,133. Based on these estimates, no restriction or liberalization of black duck harvest is warranted. The average proportion of the harvest during the 5-year period, 2004–08, was 0.56 in the United States and 0.44 in Canada, and this falls within the established parity bounds of 40 and 60 percent.

iv. Canvasbacks

Council Recommendations: The Atlantic, Central, and Pacific Flyway Councils and the Upper- and Lower-Region Regulations Committees of the Mississippi Flyway Council recommended a full season for canvasbacks with a 1-bird daily bag limit. Season lengths would be 60 days in the Atlantic and Mississippi Flyways, 74 days in the Central Flyway, and 107 days in the Pacific Flyway.

The Upper- and Lower-Region Regulations Committees of the Mississippi Flyway Council also recommended that we update the harvest estimates used to predict the canvasback harvest under the "liberal"

AHM regulatory alternative, as used in the existing canvasback harvest strategy, and utilize the most recent 5-year average U.S. canvasback harvest plus a constant accounting for the most recent available Canadian harvest estimates. They further recommended that our updates include canvasback harvest estimates for both full (1-bird bag limit) and partial seasons.

Service Response: Since 1994, we have followed a canvasback harvest strategy that if canvasback population status and production are sufficient to permit a harvest of one canvasback per day nationwide for the entire length of the regular duck season, while still attaining a projected spring population objective of 500,000 birds, the season on canvasbacks should be opened. A partial season would be permitted if the estimated allowable harvest was within the projected harvest for a shortened season. If neither of these conditions can be met, the harvest strategy calls for a closed season on canvasbacks nationwide. In 2008 (73 FR 43290), we announced our decision to modify the Canvasback Harvest Strategy to incorporate the option for a 2-bird daily bag limit for canvasbacks when the predicted breeding population the subsequent year exceeds 725,000 birds.

This year's spring survey resulted in an estimate of 585,000 canvasbacks. This was 12 percent below the 2009 estimate of 662,000 canvasbacks and 3 percent above the 1955–2009 average. The estimate of ponds in Prairie Canada was 3.7 million, which was 5 percent above last year and 9 percent above the long-term average. The canvasback harvest strategy predicts a 2011 canvasback population of 521,000 birds under a "liberal" duck season with a 1-bird daily bag limit and 485,000 with a 2-bird daily bag limit. Because the predicted 2011 population under the 1-bird daily bag limit is greater than 500,000, while the prediction under the 2-bird daily bag limit is less than 725,000, the canvasback harvest strategy stipulates a full canvasback season with a 1-bird daily bag limit for the upcoming season.

With regard to the Mississippi Flyway Council's request to update estimates used to predict canvasback harvest in the Service's harvest strategy, we agree that this feature of the canvasback strategy should be updated. Canvasback harvest estimates from recent hunting seasons are now available to be used in an update of the strategy. We hope to complete the update of the canvasback strategy in time for use in the 2011–12 hunting season, and will provide an update on this work at the next SRC meeting in January.

v. Pintails

Council Recommendations: The Atlantic, Central, and Pacific Flyway Councils and the Upper- and Lower-Region Regulations Committees of the Mississippi Flyway Council recommended a full season for pintails, consisting of a 2-bird daily bag limit with a 60-day season in the Atlantic and Mississippi Flyways, a 74-day season in the Central Flyway, and a 107-day season in the Pacific Flyway.

Service Response: The current derived pintail harvest strategy was adopted by the Service and Flyway Councils in 2010 (75 FR 44856). For this year, optimal regulatory strategies were calculated with: (1) An objective of maximizing long-term cumulative harvest, including a closed-season constraint of 1.75 million birds, (2) the regulatory alternatives and associated predicted harvest, and (3) current population models and their relative weights. Based on this year's survey results of 3.5 million pintails and a mean latitude of 54.4 degrees (latitude corrected breeding population of 4.30 million pintails), the optimal regulatory choice for all four Flyways is the "liberal" alternative with a 2-bird daily bag limit.

vi. Scaup

Council Recommendations: The Atlantic, Central, and Pacific Flyway Councils and the Upper- and Lower-Region Regulations Committees of the Mississippi Flyway Council recommended use of the "moderate" regulation package, consisting of a 60-day season with a 2-bird daily bag in the Atlantic and Mississippi Flyways, a 74-day season with a 2-bird daily bag limit in the Central Flyway, and an 86-day season with a 3-bird daily bag limit in the Pacific Flyway.

Service Response: In 2008, we adopted and implemented a new scaup harvest strategy (73 FR 43290 and 73 FR 51124) with initial "restrictive," "moderate," and "liberal" regulatory packages adopted for each Flyway. Further opportunity to revise these packages was afforded prior to the 2009–10 season and modifications by the Mississippi and Central Flyway Councils were endorsed by the Service in July 2009 (74 FR 36870). These packages will remain in effect for at least 3 years prior to their re-evaluation.

The 2010 breeding population estimate for scaup is 4.24 million, up 2 percent from, but similar to, the 2009 estimate of 4.17 million. Total estimated scaup harvest for the 2009–10 season was 277,000 birds. Based on updated model parameter estimates, the optimal regulatory choice for scaup is the "moderate" package recommended by the Councils in all four Flyways.

vii. Mottled Ducks

Written Comments: The ALDF stated that the combination of liberal bag limits, documented low survivorship, low reproductive rates, ongoing habitat loss, and observed population declines indicate that hunting for mottled ducks at current levels is probably not sustainable, especially considering the impacts of habitat destruction and direct mortality from exposure to oil from the Deepwater Horizon blowout. They urged us not to allow any harvest of mottled ducks until the short-term and long-term impacts of the Deepwater Horizon oil spill are determined.

Service Response: For many years, we have expressed concern about the long-term status of mottled ducks, especially the Western Gulf Coast Population. Last year, after consideration of long-term trends for this population, recent harvest levels, and breeding habitat conditions, we believed that a reduction in harvest levels for this population was necessary (September 24, 2009 **Federal Register**, 74 FR 48822). Thus, in the Mississippi Flyway, we reduced the daily bag limit of mottled ducks to one bird (projected to result in a harvest reduction of about 20 percent) and in the Central Flyway delayed the opening of the mottled duck season (expected to result in a similar harvest reduction). We stated then that we believe that this level of reduction was necessary across the entire range of the Western Gulf Coast Population. Further, we stated that an assessment should be conducted of whether desired reductions in harvest are achieved as a result of the harvest restrictions, and that the status of mottled ducks and their breeding habitat should be closely monitored and a determination made whether further restrictions are warranted. Should additional restrictions be needed, we will consider all regulatory options, including the potential for a closed season. We see no reason to deviate from this course of action.

4. Canada Geese

B. Regular Seasons

Council Recommendations: The Atlantic Flyway Council recommended a 107-day regular Canada goose hunting season, between the Saturday nearest September 24 and March 10, with a daily bag limit of 8 geese, in the Western Long Island Resident Population (RP) area of New York. The season could be split into three segments. The Council recommends this framework in lieu of

the current 30-day September season and 80-day regular season (between October 1 and February 15) offered for that area.

The Upper- and Lower-Region Regulations Committees of the Mississippi Flyway Council recommended several changes in goose frameworks. In Minnesota and Missouri, the Committees recommended an 85-day Canada goose season with a daily bag limit of 3 geese. In Iowa, they recommend a 107-day Canada goose season with a daily bag limit of 3 geese. In Arkansas, they recommended an 82-day Canada goose season in the Northwest Zone, and a 72-day season in the remainder of the State. The daily bag limit would be 2 Canada geese. All the recommended changes in Canada goose season lengths and bag limits, except in Arkansas, were made in response to changes in the Eastern Prairie Population (EPP) harvest strategy, which the Council approved this summer.

The Central Flyway Council recommended two changes to Canada goose frameworks. In the east-tier States, the Council recommended increasing the Canada goose daily bag limit from 3 to 5 geese. In the west-tier States of Colorado and Texas, the Council recommended raising the dark goose daily bag limit from 4 to 5 geese in the aggregate, with the exception of the Western Goose Zone of Texas, where no more than 1 could be a white-fronted goose (no change).

The Pacific Flyway Council recommended several changes to dark goose season frameworks. In Oregon's Northwest (NW) Permit Goose Zone, the Council recommended extending the framework ending date for dark geese from the Sunday nearest March 1 to March 10. In the Tillamook County Management Area of Oregon's NW Permit Goose Zone, they recommended increasing the dark goose daily bag limit from 2 to 3, with not more than 2 cackling or Aleutian geese per day. In California's Balance-of-State Zone, they recommended increasing the dark goose season framework from 100 to 107 days.

Service Response: We support the Atlantic Flyway's recommendation regarding season framework changes to the Western Long Island RP area of New York. We recognize that resident Canada geese are causing serious conflicts with human interests and activities in western Long Island, including threats to public health and safety (including airport safety) and property damage concerns. Currently, the State of New York (New York) employs a variety of control methods in this area, but resident Canada geese numbers remain abundant in that area. Further, the Council notes that negligible harvest of geese has occurred during September seasons in western Long Island, primarily due to most of the birds remaining in areas where hunting is not allowed or not feasible, and hunters wanting to avoid conflicts with other outdoor activities at that time of year. However, New York believes, and we agree, that opportunities and interest in hunting for resident geese in this area are greatest in mid to late winter, when geese are most likely to be forced out of inland ponds and lakes to more hunter-accessible coastal areas, and potential conflicts with other outdoor activities would be lowest. Hunting and harvest of RP geese in late winter would help provide some relief and control of geese that are most likely to nest and contribute to local population problems and conflicts. Since this area is already classified as an RP area, we believe that the potential harvest of Atlantic Population (AP) or North Atlantic Population (NAP) geese would be negligible.

In the Mississippi Flyway, we support the recommended changes to season frameworks in Minnesota, Missouri, Iowa, and Arkansas. The changes in Canada goose season lengths and bag limits, except in Arkansas, were made in response to changes in the EPP harvest strategy recently approved by the Council.

Regarding the Central Flyway Council's recommendation to increase the dark goose daily bag limit in the west-tier States of Colorado and Texas from 4 to 5 geese, we concur. Currently, all other west-tier States have a 5 dark goose daily bag limit and the Council's proposed modification is in the relevant goose management plans. Further, the 2008–10 averages of midwinter counts for Hi-Line Population Canada geese (244,107) and Short Grass Prairie Population (SGP) Canada geese (241,132), found mainly in the west tier, remain well above population objective levels (>80,000 and 150,000–200,000, respectively).

However, we do not support the Central Flyway's request to increase the dark goose daily bag limit in the east-tier States from 3 to 5 geese. While we agree that the Flyway's proposed bag limit increase would likely result in an increased harvest of resident Canada geese (Great Plains Population), there are other Canada goose populations that would also be subjected to additional harvest pressure, including the Tall Grass Prairie (TGP), Western Prairie (WP), and EPP populations. One of our primary concerns with the proposed increase relates to our current collective inability to adequately monitor the population status and harvest of all these various populations. We currently have no surveys that provide reliable estimates of population abundance for Great Plains resident geese in Kansas, Nebraska, Oklahoma, or Texas. Population abundance indices for the TGP (Richardson's Canada geese) are based on midwinter surveys that include unknown proportions of other Canada goose populations and yield highly variable estimates. Additionally, there is little information available about the abundance or harvest of WP geese. Without having this important information, we cannot reliably determine appropriate harvest levels or harvest regulations for the resident Canada goose population and meet management objectives for all the populations likely affected by the proposal. Furthermore, this liberalization would result in markedly disparate harvest regulations between the Central and Mississippi Flyways, which share the TGP and EPP populations. We believe that more coordination with the Mississippi Flyway, which shares the TGP with the Central Flyway, should be pursued prior to the proposed regulatory change. This coordination should include work toward a revision of the management plan for the TGP population, and improved abundance and harvest monitoring for all populations of Canada geese that would be impacted by this proposal.

Lastly, we encourage the States in the Central Flyway to fully utilize available tools provided to manage resident Canada geese, including special Canada goose hunting seasons, take of geese in August using management take, other control and depredation orders specifically relevant to resident Canada geese, and Statewide special Canada goose permits, to reduce the growth of resident Canada goose populations.

We do agree with the Pacific Flyway Council's recommendation to extend the framework closing date in Oregon's NW Permit Goose Zone to March 10. This change would allow Oregon's NW Permit Goose season to close 7–14 days later than currently allowed and is intended to help alleviate agricultural depredations caused by wintering geese in this area during this slightly later period when the Council believes that grazing by geese may be especially detrimental to crops. The Council does not expect the change to measurably increase harvest since goose harvest per week, as measured at the mandatory check stations in this zone, remains relatively constant during the season. We agree.

Similarly, we also agree with the Council's recommendation to increase the dark goose daily bag limit in the Tillamook County Management Area of Oregon's NW Permit Goose Zone from 2 to 3, with not more than 2 cackling or Aleutian Canada geese per day. This change is expected to have only a negligible impact on the harvest level of migrant Canada geese and an even smaller effect on the harvest of cackling and Aleutian Canada geese since it maintains the current NW Permit Zone restriction regarding cackling and Aleutian Canada geese. Harvest data collected during the first 3 seasons in which goose hunting was allowed in Tillamook County since 1982 indicates that the overall goose harvest has remained moderate, with 238, 297, and 285 geese taken during the last three seasons, respectively. The vast majority of these birds have been classified as either western Canada geese (52 percent) or lesser Canada geese (25 percent). It is the Council's and our belief that agricultural depredations in this area will likely be reduced due to the direct removal of some additional geese and the increased hazing effect of additional hunting.

Lastly, we agree with the minor increase in the dark season framework in California's Balance-of-State Zone, from 100 to 107 days. While most of California's Balance-of-State Zone is outside the historic nesting range of Canada geese, Canada goose breeding populations there have grown significantly in the last 20 years, causing increasing conflicts with humans. Since 1984, daily bag limits for large Canada geese have increased from 2 to 6, and season lengths have increased from 79 days to 100 days. The Council states that increasing the framework season length in this zone will allow for California to use up to 5 days in an early October Canada goose season—an option preferred over a September season because of typically hot September weather in the Central Valley.

C. Special Late Seasons

Council Recommendations: The Upper- and Lower-Region Regulations Committees of the Mississippi Flyway Council recommended changing Indiana's experimental late Canada goose season (February 1–15) from experimental to operational in the following 30 counties: Adams, Allen, Boone, Clay, De Kalb, Elkhart, Greene, Hamilton, Hancock, Hendricks, Huntington, Johnson, Kosciusko, La Porte, Lagrange, Madison, Marion, Marshall, Morgan, Noble, Parke, St. Joseph, Shelby, Steuben, Starke, Sullivan, Vermillion, Vigo, Wells, and Whitley.

Service Response: In large part, we concur with the Mississippi Flyway Council's recommendation to grant operational status for Indiana's late Canada goose season. However, results from the experiment indicate that the percentage of migrant geese harvested in the 6-county region surrounding Terre Haute exceeds the 20 percent threshold identified in the criteria for special late Canada goose seasons. When we developed the criteria for special late Canada goose seasons, we indicated that States must agree to close any areas to hunting where evidence from band recoveries or other sources indicates unacceptable harvest of non-target populations during the special season (60 FR 45020). Because the Terre Haute region does not meet established criteria, we cannot grant operational status for these 6 counties (Clay, Greene, Parke, Sullivan, Vermillion, and Vigo Counties). For the remaining 24 of the 30 counties involved in the experiment, we do agree with the Mississippi Flyway Council's recommendation and grant them operational status.

We recognize that the recently published Draft Supplemental Environmental Impact Statement (SEIS) on migratory bird hunting contains a proposal to remove evaluation criteria for special Canada goose seasons (75 FR 39577). In light of this proposal, we would be amenable to allowing the special late season to continue in the Terre Haute region on an experimental basis until the status of evaluation criteria for such seasons has been resolved. In the interim, we will require the same intensity of data collection in the Terre Haute region with regard to morphometric measurements on harvested birds, and analysis of band-recovery and harvest data.

5. White-Fronted Geese

Council Recommendations: The Pacific Flyway Council recommended increasing the daily bag limit for white-fronted geese from 2 to 4 for hunting days occurring after the last Sunday in January in the Klamath County Zone of Oregon. They also made several other dark goose recommendations affecting white-fronted geese (*see* 4. Canada Geese, B. Regular Seasons for further discussion).

Service Response: Specific to white-fronted geese, we concur with the Pacific Flyway Council's recommended changes in the Klamath County Zone of Oregon. The Pacific Population of greater white-fronted geese is currently above population goal and the index for the population increased substantially this year. The 3-year average is now greater than twice the management goal and we expect excellent production this summer. The Council notes that agricultural depredations caused by spring staging geese in the Klamath Basin continue to be a serious issue and believes that increasing the daily bag limits in Oregon's Klamath Zone will help contribute to addressing this conflict. We note that potential concerns over Tule geese were addressed by the Oregon Department of Fish and Wildlife and California Department of Fish and Game, in cooperation with the Service, completing three seasons of harvest monitoring and flock distribution monitoring during the late-winter in Oregon's Klamath County Zone. Monitoring indicated that very few harvested white-fronted geese (as measured by biologists) were determined to be Tule geese from morphological measurements (4 of 329 geese). Additionally, monitoring of radio-marked Tule geese has shown their preference for habitats in the California portion of the Klamath Basin where they are unavailable for harvest in Oregon. The harvest of Canada geese after the last Sunday in January would continue to be prohibited under the change.

6. Brant

Council Recommendations: The Atlantic Flyway Council recommended continuation of a 50-day season with a 2-bird daily bag limit for Atlantic brant.

Service Response: We concur with the Atlantic Flyway Council's recommendation. The 2010 Mid-Winter Index (MWI) for Atlantic brant was 139,400, about 8 percent lower than the 2009 estimate of 151,300. However, conditions appeared to be favorable in most of the breeding range this spring; thus, average to above average brant production is expected this year. The Atlantic Flyway Management Plan calls for a 50-day season and a 2-bird daily bag limit at the current mid-winter index, and we support the season length and bag limit prescribed by the management plan.

7. Snow and Ross's (Light) Geese

Council Recommendations: The Atlantic Flyway Council recommended a 107-day regular season with a 25-bird daily bag limit and no possession limit for light geese in the Atlantic Flyway.

The Pacific Flyway Council made several recommendations concerning light geese. In the Klamath County Zone of Oregon, the Council recommended increasing the daily bag limit for light geese from 4 to 6 for hunting days occurring after the last Sunday in

January. The Council also recommended in Oregon's newly created Malheur County Zone, increasing the daily bag limit for light geese from 6 to 10 and specifying that all hunt days occurring after the last Sunday in January should be concurrent with Idaho's Zone 2.

Service Response: We support the Atlantic Flyway Council's recommendation to increase the daily bag limit for light geese from 15 to 25. Greater snow geese are above both the Atlantic Flyway and North American Waterfowl Management Plan desired population objectives. Additionally, we have declared light geese (including greater snow geese) an overabundant species and implemented special Conservation Order measures to increase the take of light geese (73 FR 65926 and 73 FR 65954). Given their current population status and our desire to reduce populations, we believe that there is no reason to constrain the daily bag limit to 15 birds and believe that this change may help contribute to higher light goose harvest during regular hunting seasons.

In Oregon, we agree with the Pacific Flyway Council's light goose proposals intended to assist landowners with depredation issues, reduce goose numbers, and enhance goose hazing effects. Taken together, these proposals would allow Oregon the flexibility to hold differential seasons for light geese in the newly proposed Malheur County Zone and the modified Harney and Lake County Zone, and institute a late-winter light goose season in the Malheur County Zone to help address agricultural depredations caused by light geese. By requiring that the Oregon hunt coincide with the current late-winter light goose season in adjacent areas of Idaho, the Council believes that this should help alleviate agricultural depredations caused by staging light geese in adjacent areas of Oregon and Idaho by not allowing geese to simply move into closed areas. We agree. While past light goose harvest has historically been minimal in this area, the Council expects their proposals to significantly increase light goose harvest in Malheur County. They note that during the late winter and early spring, light geese are abundant in portions of Malheur County, especially near agricultural lands in proximity to the Snake River, as the geese stage during migration en route to breeding areas in the Arctic. We note that all 3 populations of light geese in the Pacific Flyway are currently above their respective population goals.

NEPA Consideration

NEPA considerations are covered by the programmatic document "Final Supplemental Environmental Impact Statement: Issuance of Annual Regulations Permitting the Sport Hunting of Migratory Birds (FSES 88–14)," filed with the Environmental Protection Agency on June 9, 1988. We published a notice of availability in the **Federal Register** on June 16, 1988 (53 FR 22582). We published our Record of Decision on August 18, 1988 (53 FR 31341). In addition, an August 1985 environmental assessment entitled "Guidelines for Migratory Bird Hunting Regulations on Federal Indian Reservations and Ceded Lands" is available from the address indicated under the caption **ADDRESSES**.

In a notice published in the September 8, 2005, **Federal Register** (70 FR 53376), we announced our intent to develop a new Supplemental Environmental Impact Statement (SEIS) for the migratory bird hunting program. Public scoping meetings were held in the spring of 2006, as detailed in a March 9, 2006, **Federal Register** (71 FR 12216). We released the draft SEIS on July 9, 2010 (75 FR 39577). The draft SEIS is available by either writing to the address indicated under **ADDRESSES** or by viewing our Web site at *http://www.fws.gov/migratorybirds.*

Endangered Species Act Consideration

Section 7 of the Endangered Species Act, as amended (16 U.S.C. 1531–1543; 87 Stat. 884), provides that, "The Secretary shall review other programs administered by him and utilize such programs in furtherance of the purposes of this Act" (and) shall "insure that any action authorized, funded, or carried out * * * is not likely to jeopardize the continued existence of any endangered species or threatened species or result in the destruction or adverse modification of [critical] habitat. * * *." Consequently, we conducted formal consultations to ensure that actions resulting from these regulations would not likely jeopardize the continued existence of endangered or threatened species or result in the destruction or adverse modification of their critical habitat. Findings from these consultations are included in a biological opinion, which concluded that the regulations are not likely to jeopardize the continued existence of any endangered or threatened species. Additionally, these findings may have caused modification of some regulatory measures previously proposed, and the final frameworks reflect any such modifications. Our biological opinions resulting from this section 7 consultation are public documents available for public inspection at the address indicated under **ADDRESSES**.

Executive Order 12866

The Office of Management and Budget has determined that this rule is significant and has reviewed this rule under Executive Order 12866. OMB bases its determination of regulatory significance upon the following four criteria: (a) Whether the rule will have an annual effect of $100 million or more on the economy or adversely affect an economic sector, productivity, jobs, the environment, or other units of the government; (b) Whether the rule will create inconsistencies with other Federal agencies' actions; (c) Whether the rule will materially affect entitlements, grants, user fees, loan programs, or the rights and obligations of their recipients; and (d) Whether the rule raises novel legal or policy issues.

An economic analysis was prepared for the 2008–09 season. This analysis was based on data from the 2006 National Hunting and Fishing Survey, the most recent year for which data are available (*see* discussion in Regulatory Flexibility Act section below). This analysis estimated consumer surplus for three alternatives for duck hunting (estimates for other species are not quantified due to lack of data). The alternatives are (1) Issue restrictive regulations allowing fewer days than those issued during the 2007–08 season, (2) Issue moderate regulations allowing more days than those in alternative 1, and (3) Issue liberal regulations identical to the regulations in the 2007–08 season. For the 2008–09 season, we chose alternative 3, with an estimated consumer surplus across all flyways of $205–$270 million. Based on population status information, there were no significant changes to the season frameworks for the 2010–11 season, and as such, we again considered these three alternatives. For these reasons, we have not conducted a new economic analysis, but the 2008–09 analysis is part of the record for this rule and is available at *http://www.fws.gov/migratorybirds/NewReportsPublications/SpecialTopics/SpecialTopics.html#HuntingRegs* or at *http://www.regulations.gov* at Docket No. FWS–R9–MB–2010–0040.

Regulatory Flexibility Act

The regulations have a significant economic impact on substantial numbers of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). We analyzed the economic impacts of the annual hunting regulations on small business entities in detail as part of the 1981 cost-benefit analysis. This analysis was revised

annually from 1990–95. In 1995, the Service issued a Small Entity Flexibility Analysis (Analysis), which was subsequently updated in 1996, 1998, 2004, and 2008. The primary source of information about hunter expenditures for migratory game bird hunting is the National Hunting and Fishing Survey, which is conducted at 5-year intervals. The 2008 Analysis was based on the 2006 National Hunting and Fishing Survey and the U.S. Department of Commerce's County Business Patterns, from which it was estimated that migratory bird hunters would spend approximately $1.2 billion at small businesses in 2008. Copies of the Analysis are available upon request from the Division of Migratory Bird Management (*see* **ADDRESSES**) or from our Web site at *http://www.fws.gov/migratorybirds/NewReportsPublications/SpecialTopics/SpecialTopics.html#HuntingRegs* or at *http://www.regulations.gov* at Docket No. FWS–R9–MB–2010–0040.

Small Business Regulatory Enforcement Fairness Act

This rule is a major rule under 5 U.S.C. 804(2), the Small Business Regulatory Enforcement Fairness Act. For the reasons outlined above, this rule has an annual effect on the economy of $100 million or more. However, because this rule establishes hunting seasons, we do not plan to defer the effective date under the exemption contained in 5 U.S.C. 808(1).

Paperwork Reduction Act

We examined these regulations under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). The various recordkeeping and reporting requirements imposed under regulations established in 50 CFR part 20, subpart K, are utilized in the formulation of migratory game bird hunting regulations. Specifically, OMB has approved the information collection requirements of our Migratory Bird Surveys and assigned control number 1018–0023 (expires 2/28/2011). This information is used to provide a sampling frame for voluntary national surveys to improve our harvest estimates for all migratory game birds in order to better manage these populations. A Federal 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.

Unfunded Mandates Reform Act

We have determined and certify, in compliance with the requirements of the Unfunded Mandates Reform Act, 2 U.S.C. 1502 *et seq.,* that this rulemaking will not impose a cost of $100 million or more in any given year on local or State government or private entities. Therefore, this rule is not a "significant regulatory action" under the Unfunded Mandates Reform Act.

Civil Justice Reform—Executive Order 12988

The Department has determined that this rule will not unduly burden the judicial system and that it meets the requirements of sections 3(a) and 3(b)(2) of Executive Order 12988.

Takings Implication Assessment

In accordance with Executive Order 12630, this rule, authorized by the Migratory Bird Treaty Act, does not have significant takings implications and does not affect any constitutionally protected property rights. This rule will not result in the physical occupancy of property, the physical invasion of property, or the regulatory taking of any property. In fact, these rules allow hunters to exercise otherwise unavailable privileges and, therefore, reduce restrictions on the use of private and public property.

Energy Effects—Executive Order 13211

Executive Order 13211 requires agencies to prepare Statements of Energy Effects when undertaking certain actions. While this rule is a significant regulatory action under Executive Order 12866, it is not expected to adversely affect energy supplies, distribution, or use. Therefore, this action is not a significant energy action and no Statement of Energy Effects is required.

Government-to-Government Relationship With Tribes

In accordance with the President's memorandum of April 29, 1994, "Government-to-Government Relations with Native American Tribal Governments" (59 FR 22951), Executive Order 13175, and 512 DM 2, we have evaluated possible effects on Federally recognized Indian tribes and have determined that there are no effects on Indian trust resources. However, in the May 13 **Federal Register**, we solicited proposals for special migratory bird hunting regulations for certain Tribes on Federal Indian reservations, off-reservation trust lands, and ceded lands for the 2010–11 migratory bird hunting season. The resulting proposals were contained in a separate proposed rule (75 FR 47682). By virtue of these actions, we have consulted with Tribes affected by this rule.

Federalism Effects

Due to the migratory nature of certain species of birds, the Federal Government has been given responsibility over these species by the Migratory Bird Treaty Act. We annually prescribe frameworks from which the States make selections regarding the hunting of migratory birds, and we employ guidelines to establish special regulations on Federal Indian reservations and ceded lands. This process preserves the ability of the States and Tribes to determine which seasons meet their individual needs. Any State or Indian Tribe may be more restrictive than the Federal frameworks at any time. The frameworks are developed in a cooperative process with the States and the Flyway Councils. This process allows States to participate in the development of frameworks from which they will make selections, thereby having an influence on their own regulations. These rules do not have a substantial direct effect on fiscal capacity, change the roles or responsibilities of Federal or State governments, or intrude on State policy or administration. Therefore, in accordance with Executive Order 13132, these regulations do not have significant federalism effects and do not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Regulations Promulgation

The rulemaking process for migratory game bird hunting must, by its nature, operate under severe time constraints. However, we intend that the public be given the greatest possible opportunity to comment. Thus, when the preliminary proposed rulemaking was published, we established what we believed were the longest periods possible for public comment. In doing this, we recognized that when the comment period closed, time would be of the essence. That is, if there were a delay in the effective date of these regulations after this final rulemaking, States would have insufficient time to select season dates and limits; to communicate those selections to us; and to establish and publicize the necessary regulations and procedures to implement their decisions. We therefore find that "good cause" exists, within the terms of 5 U.S.C. 553(d)(3) of the Administrative Procedure Act, and these frameworks will, therefore, take effect immediately upon publication.

Therefore, under authority of the Migratory Bird Treaty Act (July 3, 1918), as amended (16 U.S.C. 703–711), we prescribe final frameworks setting forth

the species to be hunted, the daily bag and possession limits, the shooting hours, the season lengths, the earliest opening and latest closing season dates, and hunting areas, from which State conservation agency officials will select hunting season dates and other options. Upon receipt of season selections from these officials, we will publish a final rulemaking amending 50 CFR part 20 to reflect seasons, limits, and shooting hours for the conterminous United States for the 2010–11 season.

List of Subjects in 50 CFR Part 20

Exports, Hunting, Imports, Reporting and recordkeeping requirements, Transportation, Wildlife.

Dated: September 16, 2010.

Thomas L. Strickland,

Assistant Secretary for Fish and Wildlife and Parks.

PART 20—[AMENDED]

■ The rules that eventually will be promulgated for the 2010–11 hunting season are authorized under 16 U.S.C. 703–712 and 16 U.S.C. 742 a–j.

Final Regulations Frameworks for 2010–11 Late Hunting Seasons on Certain Migratory Game Birds

Pursuant to the Migratory Bird Treaty Act and delegated authorities, the Department has approved the following frameworks for season lengths, shooting hours, bag and possession limits, and outside dates within which States may select seasons for hunting waterfowl and coots between the dates of September 1, 2010, and March 10, 2011.

General

Dates: All outside dates noted below are inclusive.

Shooting and Hawking (taking by falconry) Hours: Unless otherwise specified, from one-half hour before sunrise to sunset daily.

Possession Limits: Unless otherwise specified, possession limits are twice the daily bag limit.

Flyways and Management Units

Waterfowl Flyways

Atlantic Flyway—includes Connecticut, Delaware, Florida, Georgia, Maine, Maryland, Massachusetts, New Hampshire, New Jersey, New York, North Carolina, Pennsylvania, Rhode Island, South Carolina, Vermont, Virginia, and West Virginia.

Mississippi Flyway—includes Alabama, Arkansas, Illinois, Indiana, Iowa, Kentucky, Louisiana, Michigan, Minnesota, Mississippi, Missouri, Ohio, Tennessee, and Wisconsin.

Central Flyway—includes Colorado (east of the Continental Divide), Kansas, Montana (Counties of Blaine, Carbon, Fergus, Judith Basin, Stillwater, Sweetgrass, Wheatland, and all counties east thereof), Nebraska, New Mexico (east of the Continental Divide except the Jicarilla Apache Indian Reservation), North Dakota, Oklahoma, South Dakota, Texas, and Wyoming (east of the Continental Divide).

Pacific Flyway—includes Alaska, Arizona, California, Idaho, Nevada, Oregon, Utah, Washington, and those portions of Colorado, Montana, New Mexico, and Wyoming not included in the Central Flyway.

Management Units

High Plains Mallard Management Unit—roughly defined as that portion of the Central Flyway that lies west of the 100th meridian.

Definitions

For the purpose of hunting regulations listed below, the collective terms "dark" and "light" geese include the following species:

Dark geese: Canada geese, white-fronted geese, brant (except in California, Oregon, Washington, and the Atlantic Flyway), and all other goose species except light geese.

Light geese: Snow (including blue) geese and Ross's geese.

Area, Zone, and Unit Descriptions: Geographic descriptions related to late-season regulations are contained in a later portion of this document.

Area-Specific Provisions: Frameworks for open seasons, season lengths, bag and possession limits, and other special provisions are listed below by Flyway.

Waterfowl Seasons in the Atlantic Flyway

In the Atlantic Flyway States of Connecticut, Delaware, Maine, Maryland, Massachusetts, New Jersey, North Carolina, Pennsylvania, and Virginia, where Sunday hunting is prohibited statewide by State law, all Sundays are closed to all take of migratory waterfowl (including mergansers and coots).

Special Youth Waterfowl Hunting Days

Outside Dates: States may select 2 consecutive days (hunting days in Atlantic Flyway States with compensatory days) per duck-hunting zone, designated as "Youth Waterfowl Hunting Days," in addition to their regular duck seasons. The days must be held outside any regular duck season on a weekend, holiday, or other non-school day when youth hunters would have the maximum opportunity to participate. The days may be held up to 14 days before or after any regular duck-season frameworks or within any split of a regular duck season, or within any other open season on migratory birds.

Daily Bag Limits: The daily bag limits may include ducks, geese, tundra swans, mergansers, coots, moorhens, and gallinules and would be the same as those allowed in the regular season. Flyway species and area restrictions would remain in effect.

Shooting Hours: One-half hour before sunrise to sunset.

Participation Restrictions: Youth hunters must be 15 years of age or younger. In addition, an adult at least 18 years of age must accompany the youth hunter into the field. This adult may not duck hunt but may participate in other seasons that are open on the special youth day. Tundra swans may only be taken by participants possessing applicable tundra swan permits.

Atlantic Flyway

Ducks, Mergansers, and Coots

Outside Dates: Between the Saturday nearest September 24 (September 25) and the last Sunday in January (January 30).

Hunting Seasons and Duck Limits: 60 days. The daily bag limit is 6 ducks, including no more than 4 mallards (2 hens), 1 black duck, 2 pintails, 1 mottled duck, 1 fulvous whistling duck, 3 wood ducks, 2 redheads, 2 scaup, 1 canvasback, and 4 scoters.

Closures: The season on harlequin ducks is closed.

Sea Ducks: Within the special sea duck areas, during the regular duck season in the Atlantic Flyway, States may choose to allow the above sea duck limits in addition to the limits applying to other ducks during the regular duck season. In all other areas, sea ducks may be taken only during the regular open season for ducks and are part of the regular duck season daily bag (not to exceed 4 scoters) and possession limits.

Merganser Limits: The daily bag limit of mergansers is 5, only 2 of which may be hooded mergansers. In States that include mergansers in the duck bag limit, the daily limit is the same as the duck bag limit, only two of which may be hooded mergansers.

Coot Limits: The daily bag limit is 15 coots.

Lake Champlain Zone, New York: The waterfowl seasons, limits, and shooting hours shall be the same as those selected for the Lake Champlain Zone of Vermont.

Connecticut River Zone, Vermont: The waterfowl seasons, limits, and shooting hours shall be the same as

those selected for the Inland Zone of New Hampshire.

Zoning and Split Seasons: Delaware, Florida, Georgia, Maryland, North Carolina, Rhode Island, South Carolina, and Virginia may split their seasons into three segments; Connecticut, Maine, Massachusetts, New Hampshire, New Jersey, New York, Pennsylvania, Vermont, and West Virginia may select hunting seasons by zones and may split their seasons into two segments in each zone.

Canada Geese

Season Lengths, Outside Dates, and Limits: Specific regulations for Canada geese are shown below by State. These seasons also include white-fronted geese. Unless specified otherwise, seasons may be split into two segments. In areas within States where the framework closing date for Atlantic Population (AP) goose seasons overlaps with special late-season frameworks for resident geese, the framework closing date for AP goose seasons is January 14.

Connecticut

North Atlantic Population (NAP) Zone: Between October 1 and January 31, a 60-day season may be held with a 2-bird daily bag limit.

Atlantic Population (AP) Zone: A 45-day season may be held between the fourth Saturday in October (October 23) and January 31, with a 3-bird daily bag limit.

South Zone: A special season may be held between January 15 and February 15, with a 5-bird daily bag limit.

Resident Population (RP) Zone: An 80-day season may be held between October 1 and February 15, with a 5-bird daily bag limit. The season may be split into 3 segments.

Delaware: A 45-day season may be held between November 15 and January 31, with a 2-bird daily bag limit.

Florida: An 80-day season may be held between November 15 and February 15, with a 5-bird daily bag limit. The season may be split into 3 segments.

Georgia: In specific areas, an 80-day season may be held between November 15 and February 15, with a 5-bird daily bag limit. The season may be split into 3 segments.

Maine: A 60-day season may be held Statewide between October 1 and January 31, with a 2-bird daily bag limit.

Maryland

RP Zone: An 80-day season may be held between November 15 and March 10, with a 5-bird daily bag limit. The season may be split into 3 segments.

AP Zone: A 45-day season may be held between November 15 and January 31, with a 2-bird daily bag limit.

Massachusetts

NAP Zone: A 60-day season may be held between October 1 and January 31, with a 2-bird daily bag limit. Additionally, a special season may be held from January 15 to February 15, with a 5-bird daily bag limit.

AP Zone: A 45-day season may be held between October 20 and January 31, with a 3-bird daily bag limit.

New Hampshire: A 60-day season may be held statewide between October 1 and January 31, with a 2-bird daily bag limit.

New Jersey

Statewide: A 45-day season may be held between the fourth Saturday in October (October 23) and January 31, with a 3-bird daily bag limit.

Special Late Goose Season Area: A special season may be held in designated areas of North and South New Jersey from January 15 to February 15, with a 5-bird daily bag limit.

New York

NAP Zone: Between October 1 and January 31, a 60-day season may be held, with a 2-bird daily bag limit in the High Harvest areas; and between October 1 and February 15, a 70-day season may be held, with a 3-bird daily bag limit in the Low Harvest areas.

Special Late Goose Season Area: A special season may be held between January 15 and February 15, with a 5-bird daily bag limit in designated areas of Suffolk County.

AP Zone: A 45-day season may be held between the fourth Saturday in October (October 23), except in the Lake Champlain Area where the opening date is October 20, and January 31, with a 3-bird daily bag limit.

Western Long Island RP Zone: A 107-day season may be held between the Saturday nearest September 24 (September 25) and March 10, with an 8-bird daily bag limit. The season may be split into 3 segments.

Rest of State RP Zone: An 80-day season may be held between the fourth Saturday in October (October 23) and March 10, with a 5-bird daily bag limit. The season may be split into 3 segments.

North Carolina

SJBP Zone: A 70-day season may be held between October 1 and December 31, with a 5-bird daily bag limit.

RP Zone: An 80-day season may be held between October 1 and March 10, with a 5-bird daily bag limit. The season may be split into 3 segments.

Northeast Hunt Unit: A 7-day season may be held between the Saturday prior to December 25 (December 18) and January 31, with a 1-bird daily bag limit.

Pennsylvania

SJBP Zone: A 70-day season may be held between the second Saturday in October (October 9) and February 15, with a 3-bird daily bag limit.

RP Zone: An 80-day season may be held between the fourth Saturday in October (October 23) and March 10, with a 5-bird daily bag limit. The season may be split into 3 segments.

AP Zone: A 45-day season may be held between the fourth Saturday in October (October 23) and January 31, with a 3-bird daily bag limit.

Rhode Island: A 60-day season may be held between October 1 and January 31, with a 2-bird daily bag limit. A special late season may be held in designated areas from January 15 to February 15, with a 5-bird daily bag limit.

South Carolina: In designated areas, an 80-day season may be held during November 15 to February 15, with a 5-bird daily bag limit. The season may be split into 3 segments.

Vermont: A 45-day season may be held between October 20 and January 31 with a 3-bird daily bag limit in the Lake Champlain Zone and Interior Zone. A 60-day season may be held in the Connecticut River Zone between October 1 and January 31, with a 2-bird daily bag limit.

Virginia

SJBP Zone: A 40-day season may be held between November 15 and January 14, with a 3-bird daily bag limit. Additionally, a special late season may be held between January 15 and February 15, with a 5-bird daily bag limit.

AP Zone: A 45-day season may be held between November 15 and January 31, with a 2-bird daily bag limit.

RP Zone: An 80-day season may be held between November 15 and March 10, with a 5-bird daily bag limit. The season may be split into 3 segments.

West Virginia: An 80-day season may be held between October 1 and January 31, with a 5-bird daily bag limit. The season may be split into 2 segments in each zone.

Light Geese

Season Lengths, Outside Dates, and Limits: States may select a 107-day season between October 1 and March 10, with a 25-bird daily bag limit and no possession limit. States may split their seasons into three segments.

Brant

Season Lengths, Outside Dates, and Limits: States may select a 50-day season between the Saturday nearest September 24 (September 25) and January 31, with a 2-bird daily bag limit. States may split their seasons into two segments.

Mississippi Flyway

Ducks, Mergansers, and Coots

Outside Dates: Between the Saturday nearest September 24 (September 25) and the last Sunday in January (January 30).

Hunting Seasons and Duck Limits: The season may not exceed 60 days, with a daily bag limit of 6 ducks, including no more than 4 mallards (no more than 2 of which may be females), 1 mottled duck, 1 black duck, 2 pintails, 3 wood ducks, 1 canvasback, 2 scaup, and 2 redheads.

Merganser Limits: The daily bag limit is 5, only 2 of which may be hooded mergansers. In States that include mergansers in the duck bag limit, the daily limit is the same as the duck bag limit, only 2 of which may be hooded mergansers.

Coot Limits: The daily bag limit is 15 coots.

Zoning and Split Seasons: Alabama, Illinois, Indiana, Iowa, Kentucky, Louisiana, Michigan, Minnesota, Missouri, Ohio, Tennessee, and Wisconsin may select hunting seasons by zones.

In Alabama, Indiana, Iowa, Kentucky, Louisiana, Michigan, Minnesota, Ohio, Tennessee, and Wisconsin, the season may be split into two segments in each zone.

In Arkansas and Mississippi, the season may be split into three segments.

Geese

Split Seasons: Seasons for geese may be split into three segments.

Season Lengths, Outside Dates, and Limits: States may select seasons for light geese not to exceed 107 days, with 20 geese daily between the Saturday nearest September 24 (September 25) and March 10; for white-fronted geese not to exceed 72 days with 2 geese daily or 86 days with 1 goose daily between the Saturday nearest September 24 (September 25) and the Sunday nearest February 15 (February 13); and for brant not to exceed 70 days, with 2 brant daily or 107 days with 1 brant daily between the Saturday nearest September 24 (September 25) and January 31. There is no possession limit for light geese. Specific regulations for Canada geese and exceptions to the above general provisions are shown below by State. Except as noted below, the outside dates for Canada geese are the Saturday nearest September 24 (September 25) and January 31.

Alabama: In the SJBP Goose Zone, the season for Canada geese may not exceed 70 days. Elsewhere, the season for Canada geese may extend for 70 days in the respective duck-hunting zones. The daily bag limit is 2 Canada geese.

Arkansas: In the Northwest Zone, the season for Canada geese may extend for 82 days. In the remainder of the State, the season may not exceed 72 days. The season may extend to February 15. The daily bag limit is 2 Canada geese.

Illinois: The season for Canada geese may extend for 85 days in the North and Central Zones and 66 days in the South Zone. The daily bag limit is 2 Canada geese.

Indiana: The season for Canada geese may extend for 74 days. The daily bag limit is 2 Canada geese.

Late Canada Goose Season Areas

(a) A special Canada goose season of up to 15 days may be held during February 1–15 in Steuben, Lagrange, Elkhart, St. Joseph, La Porte, Starke, Marshall, Kosciusko, Noble, De Kalb, Allen, Whitley, Huntington, Wells, Adams, Boone, Hamilton, Madison, Hendricks, Marion, Hancock, Morgan, Johnson, and Shelby Counties. During this special season the daily bag limit cannot exceed 5 Canada geese.

(b) An experimental special Canada goose season of up to 15 days may be held during February 1–15 in Clay, Greene, Parke, Sullivan, Vermillion, and Vigo Counties. During this special season the daily bag limit cannot exceed 5 Canada geese.

Iowa: The season for Canada geese may extend for 107 days. The daily bag limit is 3 Canada geese.

Kentucky

(a) Western Zone—The season for Canada geese may extend for 70 days (85 days in Fulton County). The season in Fulton County may extend to February 15. The daily bag limit is 2 Canada geese.

(b) Pennyroyal/Coalfield Zone—The season may extend for 70 days. The daily bag limit is 2 Canada geese.

(c) Remainder of the State—The season may extend for 70 days. The daily bag limit is 2 Canada geese.

Louisiana: The season for Canada geese may extend for 44 days. The daily bag limit is 1 Canada goose.

Michigan

(a) North Zone—The framework opening date for all geese is September 16 and the season for Canada geese may extend for 45 days. The daily bag limit is 2 Canada geese.

(b) Middle Zone—The framework opening date for all geese is September 16 and the season for Canada geese may extend for 45 days. The daily bag limit is 2 Canada geese.

(c) South Zone—The framework opening date for all geese is September 16 and the season for Canada geese may extend for 45 days. The daily bag limit is 2 Canada geese.

(1) Allegan County and Muskegon Wastewater GMU—The framework opening date for all geese is September 16 and the season for Canada geese may extend for 45 days. The daily bag limit is 2 Canada geese.

(2) Saginaw County and Tuscola/Huron GMUs—The framework opening date for all geese is September 16 and the season for Canada geese may extend for 45 days through December 30 and an additional 30 days may be held between December 31 and February 7. The daily bag limit is 2 Canada geese.

(d) Southern Michigan Late Season Canada Goose Zone—A 30-day special Canada goose season may be held between December 31 and February 7. The daily bag limit may not exceed 5 Canada geese.

Minnesota: The season for Canada geese may extend for 85 days. The daily bag limit is 3 Canada geese.

Mississippi: The season for Canada geese may extend for 70 days. The daily bag limit is 3 Canada geese.

Missouri: The season for Canada geese may extend for 85 days. The daily bag limit is 3 Canada geese.

Ohio

(a) Lake Erie Zone–The season may extend for 74 days. The daily bag limit is 2 Canada geese.

(b) North Zone–The season may extend for 74 days. The daily bag limit is 2 Canada geese.

(c) South Zone—The season may extend for 74 days. The daily bag limit is 2 Canada geese.

Tennessee

(a) Northwest Zone—The season for Canada geese may not exceed 72 days, and may extend to February 15. The daily bag limit is 2 Canada geese.

(b) Southwest Zone—The season for Canada geese may extend for 72 days. The daily bag limit is 2 Canada geese.

(c) Kentucky/Barkley Lakes Zone—The season for Canada geese may extend for 72 days. The daily bag limit is 2 Canada geese.

(d) Remainder of the State—The season for Canada geese may extend for 72 days. The daily bag limit is 2 Canada geese.

Wisconsin

(a) Horicon Zone—The framework opening date for all geese is September 16. The season may not exceed 92 days. All Canada geese harvested must be tagged. The season limit will be 6 Canada geese per permittee.

(b) Collins Zone—The framework opening date for all geese is September 16. The season may not exceed 70 days. All Canada geese harvested must be tagged. The season limit will be 6 Canada geese per permittee.

(c) Exterior Zone—The framework opening date for all geese is September 16. The season may not exceed 85 days. The daily bag limit is 2 Canada geese.

Additional Limits: In addition to the harvest limits stated for the respective zones above, an additional 4,500 Canada geese may be taken in the Horicon Zone under special agricultural permits.

Central Flyway

Ducks, Mergansers, and Coots

Outside Dates: Between the Saturday nearest September 24 (September 25) and the last Sunday in January (January 30).

Hunting Seasons

(1) High Plains Mallard Management Unit (roughly defined as that portion of the Central Flyway which lies west of the 100th meridian): 97 days. The last 23 days may start no earlier than the Saturday nearest December 10 (December 11).

(2) Remainder of the Central Flyway: 74 days.

Bag Limits: The daily bag limit is 6 ducks, with species and sex restrictions as follows: 5 mallards (no more than 2 of which may be females), 2 redheads, 2 scaup, 3 wood ducks, 2 pintails, and 1 canvasback. In Texas, the daily bag limit on mottled ducks is 1, except for the first 5 days of the season when it is closed.

Merganser Limits: The daily bag limit is 5 mergansers, only 2 of which may be hooded mergansers. In States that include mergansers in the duck daily bag limit, the daily limit may be the same as the duck bag limit, only two of which may be hooded mergansers.

Coot Limits: The daily bag limit is 15 coots.

Zoning and Split Seasons: Kansas (Low Plains portion), Montana, Nebraska (Low Plains portion), New Mexico, Oklahoma (Low Plains portion), South Dakota (Low Plains portion), Texas (Low Plains portion), and Wyoming may select hunting seasons by zones.

In Kansas, Montana, Nebraska, New Mexico, North Dakota, Oklahoma, South Dakota, Texas, and Wyoming, the regular season may be split into two segments.

In Colorado, the season may be split into three segments.

Geese

Split Seasons: Seasons for geese may be split into three segments. Three-way split seasons for Canada geese require Central Flyway Council and U.S. Fish and Wildlife Service approval, and a 3-year evaluation by each participating State.

Outside Dates: For dark geese, seasons may be selected between the outside dates of the Saturday nearest September 24 (September 25) and the Sunday nearest February 15 (February 13). For light geese, outside dates for seasons may be selected between the Saturday nearest September 24 (September 25) and March 10. In the Rainwater Basin Light Goose Area (East and West) of Nebraska, temporal and spatial restrictions that are consistent with the late-winter snow goose hunting strategy cooperatively developed by the Central Flyway Council and the Service are required.

Season Lengths and Limits

Light Geese: States may select a light goose season not to exceed 107 days. The daily bag limit for light geese is 20 with no possession limit.

Dark Geese: In Kansas, Nebraska, North Dakota, Oklahoma, South Dakota, and the Eastern Goose Zone of Texas, States may select a season for Canada geese (or any other dark goose species except white-fronted geese) not to exceed 107 days with a daily bag limit of 3. Additionally, in the Eastern Goose Zone of Texas, an alternative season of 107 days with a daily bag limit of 1 Canada goose may be selected. For white-fronted geese, these States may select either a season of 72 days with a bag limit of 2 or an 86-day season with a bag limit of 1.

In Colorado, Montana, New Mexico and Wyoming, States may select seasons not to exceed 107 days. The daily bag limit for dark geese is 5 in the aggregate.

In the Western Goose Zone of Texas, the season may not exceed 95 days. The daily bag limit for Canada geese (or any other dark goose species except white-fronted geese) is 5. The daily bag limit for white-fronted geese is 1.

Pacific Flyway

Ducks, Mergansers, Coots, Common Moorhens, and Purple Gallinules

Hunting Seasons and Duck Limits: Concurrent 107 days. The daily bag limit is 7 ducks and mergansers, including no more than 2 female mallards, 2 pintails, 3 scaup, 1 canvasback, and 2 redheads. For scaup, the season length would be 86 days, which may be split according to applicable zones/split duck hunting configurations approved for each State.

The season on coots and common moorhens may be between the outside dates for the season on ducks, but not to exceed 107 days.

Coot, Common Moorhen, and Purple Gallinule Limits: The daily bag and possession limits of coots, common moorhens, and purple gallinules are 25, singly or in the aggregate.

Outside Dates: Between the Saturday nearest September 24 (September 25) and the last Sunday in January (January 30).

Zoning and Split Seasons: Arizona, California, Idaho, Nevada, Oregon, Utah, Washington, and Wyoming may select hunting seasons by zones. Arizona, California, Idaho, Nevada, Oregon, Utah, Washington, and Wyoming may split their seasons into two segments.

Colorado, Montana, and New Mexico may split their seasons into three segments.

Colorado River Zone, California: Seasons and limits shall be the same as seasons and limits selected in the adjacent portion of Arizona (South Zone).

Geese

Season Lengths, Outside Dates, and Limits

California, Oregon, and Washington

Dark geese: Except as subsequently noted, 100-day seasons may be selected, with outside dates between the Saturday nearest October 1 (October 2), and the last Sunday in January (January 30). The basic daily bag limit is 4 dark geese, except the dark goose bag limit does not include brant.

Light geese: Except as subsequently noted, 107-day seasons may be selected, with outside dates between the Saturday nearest October 1 (October 2), and March 10. The daily bag limit is 6 light geese.

Arizona, Colorado, Idaho, Montana, Nevada, New Mexico, Utah, and Wyoming:

Dark geese: Except as subsequently noted, 107-day seasons may be selected, with outside dates between the Saturday nearest September 24 (September 25), and the last Sunday in January (January 30). The basic daily bag limit is 4 dark geese.

Light geese: Except as subsequently noted, 107-day seasons may be selected, with outside dates between the Saturday nearest September 24 (September 25),

and March 10. The basic daily bag limit is 10 light geese.

Split Seasons: Unless otherwise specified, seasons for geese may be split into up to 3 segments. Three-way split seasons for Canada geese and white-fronted geese require Pacific Flyway Council and U.S. Fish and Wildlife Service approval and a 3-year evaluation by each participating State.

Brant Season

Oregon may select a 16-day season, Washington a 16-day season, and California a 30-day season. Days must be consecutive. Washington and California may select hunting seasons by up to two zones. The daily bag limit is 2 brant and is in addition to dark goose limits. In Oregon and California, the brant season must end no later than December 15.

Arizona: The daily bag limit for dark geese is 3.

California

Northeastern Zone: The daily bag limit is 6 dark geese and may include no more than 1 cackling Canada goose or 1 Aleutian Canada goose.

Balance-of-State Zone: A 107-day season may be selected. Limits may not include more than 6 dark geese per day. In the Sacramento Valley Special Management Area, the season on white-fronted geese must end on or before December 14, and the daily bag limit shall contain no more than 2 white-fronted geese. In the North Coast Special Management Area, 107-day seasons may be selected, with outside dates between the Saturday nearest October 1 (October 2) and March 10. Hunting days that occur after the last Sunday in January shall be concurrent with Oregon's South Coast Zone.

Colorado: The daily bag limit for dark geese is 3.

Idaho

Zone 2: Hunting days that occur after the last Sunday in January shall be concurrent with Oregon's Malheur County Zone.

Nevada: The daily bag limit for dark geese is 3.

New Mexico: The daily bag limit for dark geese is 3.

Oregon

Except as subsequently noted, the dark goose daily bag limit is 4, including not more than 1 cackling or Aleutian goose.

Harney and Lake County Zone: For Lake County only, the daily dark goose bag limit may not include more than 1 white-fronted goose.

Klamath County Zone: A 107-day season may be selected, with outside dates between the Saturday nearest October 1 (October 2), and March 10. A 3-way split season may be selected. For hunting days after the last Sunday in January, the daily bag limit may not include Canada geese.

Malheur County Zone: The daily bag limit of light geese is 10. Hunting days that occur after the last Sunday in January shall be concurrent with Idaho's Zone 2.

Northwest Special Permit Zone: Outside dates are between the Saturday nearest October 1 (October 2) and March 10. The daily bag limit of dark geese is 4 including not more than 2 cackling or Aleutian geese and daily bag limit of light geese is 4. In those designated areas of Tillamook County open to hunting, the daily bag limit of dark geese is 3, including not more than 2 cackling or Aleutian geese.

South Coast Zone: The daily dark goose bag limit is 4 including cackling and Aleutian geese. In Oregon's South Coast Zone 107-day seasons may be selected, with outside dates between the Saturday nearest October 1 (October 2) and March 10. Hunting days that occur after the last Sunday in January shall be concurrent with California's North Coast Special Management Area. A 3-way split season may be selected.

Southwest Zone: The daily dark goose bag limit is 4 including cackling and Aleutian geese.

Utah: The daily bag limit for dark geese is 3.

Washington: The daily bag limit is 4 geese.

Area 1: Outside dates are between the Saturday nearest October 1 (October 2), and the last Sunday in January (January 30).

Areas 2A and 2B (Southwest Quota Zone): Except for designated areas, there will be no open season on Canada geese. See section on quota zones. In this area, the daily bag limit may include 2 cackling geese. In Southwest Quota Zone Area 2B (Pacific County), the daily bag limit may include 1 Aleutian goose.

Areas 4 and 5: A 107-day season may be selected for dark geese.

Wyoming: The daily bag limit for dark geese is 3.

Quota Zones

Seasons on geese must end upon attainment of individual quotas of dusky geese allotted to the designated areas of Oregon (90) and Washington (45). The September Canada goose season, the regular goose season, any special late dark goose season, and any extended falconry season, combined, must not exceed 107 days, and the established quota of dusky geese must not be exceeded. Hunting of geese in those designated areas will be only by hunters possessing a State-issued permit authorizing them to do so. In a Service-approved investigation, the State must obtain quantitative information on hunter compliance of those regulations aimed at reducing the take of dusky geese. If the monitoring program cannot be conducted, for any reason, the season must immediately close. In the designated areas of the Washington Southwest Quota Zone, a special late goose season may be held between the Saturday following the close of the general goose season and March 10. In the Northwest Special Permit Zone of Oregon, the framework closing date is March 10. Regular goose seasons may be split into 3 segments within the Oregon and Washington quota zones.

Swans

In portions of the Pacific Flyway (Montana, Nevada, and Utah), an open season for taking a limited number of swans may be selected. Permits will be issued by the State and will authorize each permittee to take no more than 1 swan per season with each permit. Nevada may issue up to 2 permits per hunter. Montana and Utah may only issue 1 permit per hunter. Each State's season may open no earlier than the Saturday nearest October 1 (October 2). These seasons are also subject to the following conditions:

Montana: No more than 500 permits may be issued. The season must end no later than December 1. The State must implement a harvest-monitoring program to measure the species composition of the swan harvest and should use appropriate measures to maximize hunter compliance in reporting bill measurement and color information.

Utah: No more than 2,000 permits may be issued. During the swan season, no more than 10 trumpeter swans may be taken. The season must end no later than the second Sunday in December (December 12) or upon attainment of 10 trumpeter swans in the harvest, whichever occurs earliest. The Utah season remains subject to the terms of the Memorandum of Agreement entered into with the Service in August 2001, regarding harvest monitoring, season closure procedures, and education requirements to minimize the take of trumpeter swans during the swan season.

Nevada: No more than 650 permits may be issued. During the swan season, no more than 5 trumpeter swans may be taken. The season must end no later than the Sunday following January 1 (January 2) or upon attainment of 5

trumpeter swans in the harvest, whichever occurs earliest.

In addition, the States of Utah and Nevada must implement a harvest-monitoring program to measure the species composition of the swan harvest. The harvest-monitoring program must require that all harvested swans or their species-determinant parts be examined by either State or Federal biologists for the purpose of species classification. The States should use appropriate measures to maximize hunter compliance in providing bagged swans for examination. Further, the States of Montana, Nevada, and Utah must achieve at least an 80-percent compliance rate, or subsequent permits will be reduced by 10 percent. All three States must provide to the Service by June 30, 2011, a report detailing harvest, hunter participation, reporting compliance, and monitoring of swan populations in the designated hunt areas.

Tundra Swans

In portions of the Atlantic Flyway (North Carolina and Virginia) and the Central Flyway (North Dakota, South Dakota [east of the Missouri River], and that portion of Montana in the Central Flyway), an open season for taking a limited number of tundra swans may be selected. Permits will be issued by the States that authorize the take of no more than 1 tundra swan per permit. A second permit may be issued to hunters from unused permits remaining after the first drawing. The States must obtain harvest and hunter participation data. These seasons are also subject to the following conditions:

In the Atlantic Flyway:

—The season may be 90 days, from October 1 to January 31.

—In North Carolina, no more than 5,000 permits may be issued.

—In Virginia, no more than 600 permits may be issued.

In the Central Flyway:

—The season may be 107 days, from the Saturday nearest October 1 (October 2) to January 31.

—In the Central Flyway portion of Montana, no more than 500 permits may be issued.

—In North Dakota, no more than 2,200 permits may be issued.

—In South Dakota, no more than 1,300 permits may be issued.

Area, Unit, and Zone Descriptions

Ducks (Including Mergansers) and Coots

Atlantic Flyway

Connecticut

North Zone: That portion of the State north of I–95.

South Zone: Remainder of the State.

Maine

North Zone: That portion north of the line extending east along Maine State Highway 110 from the New Hampshire and Maine State line to the intersection of Maine State Highway 11 in Newfield; then north and east along Route 11 to the intersection of U.S. Route 202 in Auburn; then north and east on Route 202 to the intersection of Interstate Highway 95 in Augusta; then north and east along I–95 to Route 15 in Bangor; then east along Route 15 to Route 9; then east along Route 9 to Stony Brook in Baileyville; then east along Stony Brook to the United States border.

South Zone: Remainder of the State.

Massachusetts

Western Zone: That portion of the State west of a line extending south from the Vermont State line on I–91 to MA 9, west on MA 9 to MA 10, south on MA 10 to U.S. 202, south on U.S. 202 to the Connecticut State line.

Central Zone: That portion of the State east of the Berkshire Zone and west of a line extending south from the New Hampshire State line on I–95 to U.S. 1, south on U.S. 1 to I–93, south on I–93 to MA 3, south on MA 3 to U.S. 6, west on U.S. 6 to MA 28, west on MA 28 to I–195, west to the Rhode Island State line; except the waters, and the lands 150 yards inland from the high-water mark, of the Assonet River upstream to the MA 24 bridge, and the Taunton River upstream to the Center St.-Elm St. bridge shall be in the Coastal Zone.

Coastal Zone: That portion of Massachusetts east and south of the Central Zone.

New Hampshire

Coastal Zone: That portion of the State east of a line extending west from the Maine State line in Rollinsford on NH 4 to the city of Dover, south to NH 108, south along NH 108 through Madbury, Durham, and Newmarket to NH 85 in Newfields, south to NH 101 in Exeter, east to NH 51 (Exeter–Hampton Expressway), east to I–95 (New Hampshire Turnpike) in Hampton, and south along I–95 to the Massachusetts State line.

Inland Zone: That portion of the State north and west of the above boundary and along the Massachusetts State line crossing the Connecticut River to Interstate 91 and northward in Vermont to Route 2, east to 102, northward to the Canadian border.

New Jersey

Coastal Zone: That portion of the State seaward of a line beginning at the New York State line in Raritan Bay and extending west along the New York State line to NJ 440 at Perth Amboy; west on NJ 440 to the Garden State Parkway; south on the Garden State Parkway to the shoreline at Cape May and continuing to the Delaware State line in Delaware Bay.

North Zone: That portion of the State west of the Coastal Zone and north of a line extending west from the Garden State Parkway on NJ 70 to the New Jersey Turnpike, north on the turnpike to U.S. 206, north on U.S. 206 to U.S. 1 at Trenton, west on U.S. 1 to the Pennsylvania State line in the Delaware River.

South Zone: That portion of the State not within the North Zone or the Coastal Zone.

New York

Lake Champlain Zone: That area east and north of a continuous line extending along U.S. 11 from the New York-Canada International boundary south to NY 9B, south along NY 9B to U.S. 9, south along U.S. 9 to NY 22 south of Keesville; south along NY 22 to the west shore of South Bay, along and around the shoreline of South Bay to NY 22 on the east shore of South Bay; southeast along NY 22 to U.S. 4, northeast along U.S. 4 to the Vermont State line.

Long Island Zone: That area consisting of Nassau County, Suffolk County, that area of Westchester County southeast of I–95, and their tidal waters.

Western Zone: That area west of a line extending from Lake Ontario east along the north shore of the Salmon River to I–81, and south along I–81 to the Pennsylvania State line.

Northeastern Zone: That area north of a line extending from Lake Ontario east along the north shore of the Salmon River to I–81, south along I–81 to NY 31, east along NY 31 to NY 13, north along NY 13 to NY 49, east along NY 49 to NY 365, east along NY 365 to NY 28, east along NY 28 to NY 29, east along NY 29 to I–87, north along I–87 to U.S. 9 (at Exit 20), north along U.S. 9 to NY 149, east along NY 149 to U.S. 4, north along U.S. 4 to the Vermont State line, exclusive of the Lake Champlain Zone.

Southeastern Zone: The remaining portion of New York.

Pennsylvania

Lake Erie Zone: The Lake Erie waters of Pennsylvania and a shoreline margin along Lake Erie from New York on the east to Ohio on the west extending 150 yards inland, but including all of Presque Isle Peninsula.

Northwest Zone: The area bounded on the north by the Lake Erie Zone and including all of Erie and Crawford Counties and those portions of Mercer and Venango Counties north of I–80.

North Zone: That portion of the State east of the Northwest Zone and north of a line extending east on I–80 to U.S. 220, Route 220 to I–180, I–180 to I–80, and I–80 to the Delaware River.

South Zone: The remaining portion of Pennsylvania.

Vermont

Lake Champlain Zone: The U.S. portion of Lake Champlain and that area north and west of the line extending from the New York State line along U.S. 4 to VT 22A at Fair Haven; VT 22A to U.S. 7 at Vergennes; U.S. 7 to the Canadian border.

Interior Zone: That portion of Vermont west of the Lake Champlain Zone and eastward of a line extending from the Massachusetts State line at Interstate 91; north along Interstate 91 to US 2; east along US 2 to VT 102; north along VT 102 to VT 253; north along VT 253 to the Canadian border.

Connecticut River Zone: The remaining portion of Vermont east of the Interior Zone.

West Virginia

Zone 1: That portion outside the boundaries in Zone 2.

Zone 2 (Allegheny Mountain Upland): That area bounded by a line extending south along U.S. 220 through Keyser to U.S. 50; U.S. 50 to WV 93; WV 93 south to WV 42; WV 42 south to Petersburg; WV 28 south to Minnehaha Springs; WV 39 west to U.S. 219; U.S. 219 south to I–64; I–64 west to U.S. 60; U.S. 60 west to U.S. 19; U.S. 19 north to I–79, I–79 north to I–68; I–68 east to the Maryland State line; and along the State line to the point of beginning.

Mississippi Flyway

Alabama

South Zone: Mobile and Baldwin Counties.

North Zone: The remainder of Alabama.

Illinois

North Zone: That portion of the State north of a line extending west from the Indiana border along Peotone-Beecher Road to Illinois Route 50, south along Illinois Route 50 to Wilmington-Peotone Road, west along Wilmington-Peotone Road to Illinois Route 53, north along Illinois Route 53 to New River Road, northwest along New River Road to Interstate Highway 55, south along I–55 to Pine Bluff-Lorenzo Road, west along Pine Bluff-Lorenzo Road to Illinois Route 47, north along Illinois Route 47 to I–80, west along I–80 to I–39, south along I–39 to Illinois Route 18, west along Illinois Route 18 to Illinois Route 29, south along Illinois Route 29 to Illinois Route 17, west along Illinois Route 17 to the Mississippi River, and due south across the Mississippi River to the Iowa border.

Central Zone: That portion of the State south of the North Zone to a line extending west from the Indiana border along Interstate Highway 70 to Illinois Route 4, south along Illinois Route 4 to Illinois Route 161, west along Illinois Route 161 to Illinois Route 158, south and west along Illinois Route 158 to Illinois Route 159, south along Illinois Route 159 to Illinois Route 156, west along Illinois Route 156 to A Road, north and west on A Road to Levee Road, north on Levee Road to the south shore of New Fountain Creek, west along the south shore of New Fountain Creek to the Mississippi River, and due west across the Mississippi River to the Missouri border.

South Zone: The remainder of Illinois.

Indiana

North Zone: That portion of the State north of a line extending east from the Illinois State line along State Road 18 to U.S. Highway 31, north along U.S. 31 to U.S. 24, east along U.S. 24 to Huntington, then southeast along U.S. 224 to the Ohio State line.

Ohio River Zone: That portion of the State south of a line extending east from the Illinois State line along Interstate Highway 64 to New Albany, east along State Road 62 to State Road 56, east along State Road 56 to Vevay, east and north on State 156 along the Ohio River to North Landing, north along State 56 to U.S. Highway 50, then northeast along U.S. 50 to the Ohio State line.

South Zone: That portion of the State between the North and Ohio River Zone boundaries.

Iowa

North Zone: That portion of the State north of a line extending east from the Nebraska border along State Highway 175 to State Highway 37, southeast along State Highway 37 to State Highway 183, northeast along State Highway 183 to State Highway 141, east along State Highway 141 to U.S. Highway 30, then east along U.S. Highway 30 to the Illinois border.

South Zone: The remainder of Iowa.

Kentucky

West Zone: All counties west of and including Butler, Daviess, Ohio, Simpson, and Warren Counties.

East Zone: The remainder of Kentucky.

Louisiana

West Zone: That portion of the State west and south of a line extending south from the Arkansas State line along Louisiana Highway 3 to Bossier City, east along Interstate Highway 20 to Minden, south along Louisiana 7 to Ringgold, east along Louisiana 4 to Jonesboro, south along U.S. Highway 167 to Lafayette, southeast along U.S. 90 to the Mississippi State line.

East Zone: The remainder of Louisiana.

Michigan

North Zone: The Upper Peninsula.

Middle Zone: That portion of the Lower Peninsula north of a line beginning at the Wisconsin State line in Lake Michigan due west of the mouth of Stony Creek in Oceana County; then due east to, and easterly and southerly along the south shore of Stony Creek to Scenic Drive, easterly and southerly along Scenic Drive to Stony Lake Road, easterly along Stony Lake and Garfield Roads to Michigan Highway 20, east along Michigan 20 to U.S. Highway 10 Business Route (BR) in the city of Midland, easterly along U.S. 10 BR to U.S. 10, easterly along U.S. 10 to Interstate Highway 75/U.S. Highway 23, northerly along I–75/U.S. 23 to the U.S. 23 exit at Standish, easterly along U.S. 23 to the centerline of the Au Gres River, then southerly along the centerline of the Au Gres River to Saginaw Bay, then on a line directly east 10 miles into Saginaw Bay, and from that point on a line directly northeast to the Canadian border.

South Zone: The remainder of Michigan.

Minnesota

North Duck Zone: That portion of the State north of a line extending east from the North Dakota State line along State Highway 210 to State Highway 23, east along State Highway 23 to State Highway 39, then east along State Highway 39 to the Wisconsin State line at the Oliver Bridge.

South Duck Zone: The remainder of Minnesota.

Missouri

North Zone: That portion of Missouri north of a line running west from the

Illinois State line (Lock and Dam 25) on Lincoln County Highway N to Missouri Highway 79; south on Missouri Highway 79 to Missouri Highway 47; west on Missouri Highway 47 to Interstate 70; west on Interstate 70 to the Kansas State line.

South Zone: That portion of Missouri south of a line running west from the Illinois State line on Missouri Highway 34 to Interstate 55; south on Interstate 55 to U.S. Highway 62; west on U.S. Highway 62 to Missouri Highway 53; north on Missouri Highway 53 to Missouri Highway 51; north on Missouri Highway 51 to U.S. Highway 60; west on U.S. Highway 60 to Missouri Highway 21; north on Missouri Highway 21 to Missouri Highway 72; west on Missouri Highway 72 to Missouri Highway 32; west on Missouri Highway 32 to U.S. Highway 65; north on U.S. Highway 65 to U.S. Highway 54; west on U.S. Highway 54 to the Kansas State line.

Middle Zone: The remainder of Missouri.

Ohio

North Zone: That portion of the State north of a line extending east from the Indiana State line along U.S. Highway 33 to State Route 127, south along SR 127 to SR 703, south along SR 703 to SR 219, east along SR 219 to SR 364, north along SR 364 to SR 703, east along SR 703 to SR 66, north along SR 66 to U.S. 33, east along U.S. 33 to SR 385, east along SR 385 to SR 117, south along SR 117 to SR 273, east along SR 273 to SR 31, south along SR 31 to SR 739, east along SR 739 to SR 4, north along SR 4 to SR 95, east along SR 95 to SR 13, southeast along SR 13 to SR 3, northeast along SR 3 to SR 60, north along SR 60 to U.S. 30, east along U.S. 30 to SR 3, south along SR 3 to SR 226, south along SR 226 to SR 514, southwest along SR 514 to SR 754, south along SR 754 to SR 39/60, east along SR 39/60 to SR 241, north along SR 241 to U.S. 30, east along U.S. 30 to SR 39, east along SR 39 to the Pennsylvania State line.

South Zone: The remainder of Ohio.

Tennessee

Reelfoot Zone: All or portions of Lake and Obion Counties.

State Zone: The remainder of Tennessee.

Wisconsin

North Zone: That portion of the State north of a line extending east from the Minnesota State line along U.S. Highway 10 into Portage County to County Highway HH, east on County Highway HH to State Highway 66 and then east on State Highway 66 to U.S. Highway 10, continuing east on U.S. Highway 10 to U.S. Highway 41, then north on U.S. Highway 41 to the Michigan State line.

South Zone: The remainder of Wisconsin.

Central Flyway

Colorado (Central Flyway Portion)

Eastern Plains Zone: That portion of the State east of Interstate 25, and all of El Paso, Pueblo, Heurfano, and Las Animas Counties.

Mountain/Foothills Zone: That portion of the State west of Interstate 25 and east of the Continental Divide, except El Paso, Pueblo, Heurfano, and Las Animas Counties.

Kansas

High Plains Zone: That portion of the State west of U.S. 283.

Low Plains Early Zone: That area of Kansas east of U.S. 283, and generally west of a line beginning at the Junction of the Nebraska border and KS 28; south on KS 28 to U.S. 36; east on U.S. 36 to KS 199; south on KS 199 to Republic Co. Road 563; south on Republic Co. Road 563 to KS 148; east on KS 148 to Republic Co. Road 138; south on Republic Co. Road 138 to Cloud Co. Road 765; south on Cloud Co. Road 765 to KS 9; west on KS 9 to U.S. 24; west on U.S. 24 to U.S. 281; north on U.S. 281 to U.S. 36; west on U.S. 36 to U.S. 183; south on U.S. 183 to U.S. 24; west on U.S. 24 to KS 18; southeast on KS 18 to U.S. 183; south on U.S. 183 to KS 4; east on KS 4 to I–135; south on I–135 to KS 61; southwest on KS 61 to KS 96; northwest on KS 96 to U.S. 56; southwest on U.S. 56 to KS 19; east on KS 19 to U.S. 281; south on U.S. 281 to U.S. 54; west on U.S. 54 to U.S. 183; north on U.S. 183 to U.S. 56; southwest on U.S. 56 to Ford Co. Road 126; south on Ford Co. Road 126 to U.S. 400; northwest on U.S. 400 to U.S. 283.

Low Plains Late Zone: The remainder of Kansas.

Montana (Central Flyway Portion)

Zone 1: The Counties of Blaine, Carbon, Carter, Daniels, Dawson, Fallon, Fergus, Garfield, Golden Valley, Judith Basin, McCone, Musselshell, Petroleum, Phillips, Powder River, Richland, Roosevelt, Sheridan, Stillwater, Sweet Grass, Valley, Wheatland, Wibaux, and Yellowstone.

Zone 2: The remainder of Montana.

Nebraska

High Plains Zone: That portion of Nebraska lying west of a line beginning at the South Dakota-Nebraska border on U.S. 183, south on U.S. 183 to U.S. 20, west on U.S. 20 to NE 7, south on NE 7 to NE 91, southwest on NE 91 to NE 2, southeast on NE 2 to NE 92, west on NE 92 to NE 40, south on NE 40 to NE 47, south on NE 47 to NE 23, east on NE 23 to U.S. 283 and south on U.S. 283 to the Kansas-Nebraska border.

Low Plains Zone 1: That portion of Dixon County west of NE 26E Spur and north of NE 12; those portions of Cedar County north of NE 12; those portions of Knox County north of NE 12 to intersection of Niobrara River; all of Boyd County; Keya Paha County east of U.S. 183. Both banks of the Niobrara River in Keya Paha, Boyd, and Knox Counties east of U.S. 183 shall be included in Zone 1.

Low Plains Zone 2: Area bounded by designated Federal and State highways and political boundaries beginning at the Kansas-Nebraska border on U.S. 75 to U.S. 136; east to the intersection of U.S. 136 and the Steamboat Trace (Trace); north along the Trace to the intersection with Federal Levee R–562; north along Federal Levee R–562 to the intersection with the Trace; north along the Trace/Burlington Northern Railroad right-of-way to NE 2; west to U.S. 75; north to NE 2; west to NE 43; north to U.S. 34; east to NE 63; north and west to U.S. 77; north to NE 92; west to U.S. 81; south to NE 66; west to NE 14; south to County Road 22 (Hamilton County); west to County Road M; south to County Road 21; west to County Road K; south U.S. 34; west to NE 2; south to U.S. I–80; west to Gunbarrel Road (Hall/Hamilton county line); south to Giltner Road; west to U.S. 281; south to U.S. 34; west to NE 10; north to County Road "R" (Kearney County) and County Road #742 (Phelps County); west to County Road #438 (Gosper County line); south along County Road #438 (Gosper County line) to County Road #726 (Furnas County line); east to County Road #438 (Harlan County line); south to U.S. 34; south and west to U.S. 136; east to NE 14; south to the Kansas-Nebraska border; west to U.S. 283; north to NE 23; west to NE 47; north to U.S. 30; east to NE 14; north to NE 52; west and north to NE 91 to U.S. 281; south to NE 22; west to NE 11; northwest to NE 91; west to Loup County Line; north to Loup-Brown County line; east along northern boundaries of Loup, Garfield, and Wheeler Counties; south on the Wheeler-Antelope county line to NE 70; east to NE 14; south to NE 39; southeast to NE 22; east to U.S. 81; southeast to U.S. 30; east to U.S. 75; north to the Washington County line; east to the Iowa-Nebraska border; south along the Iowa-Nebraska border; to the beginning at U.S. 75 and the Kansas-Nebraska border.

Low Plains Zone 3: The area east of the High Plains Zone, excluding Low Plains Zone 1, north of Low Plains Zone 2.

Low Plains Zone 4: The area east of the High Plains Zone and south of Zone 2.

New Mexico (Central Flyway Portion)

North Zone: That portion of the State north of I–40 and U.S. 54.

South Zone: The remainder of New Mexico.

North Dakota

High Plains Unit: That portion of the State south and west of a line from the South Dakota State line along U.S. 83 and I–94 to ND 41, north to U.S. 2, west to the Williams/Divide County line, then north along the County line to the Canadian border.

Low Plains Unit: The remainder of North Dakota.

Oklahoma

High Plains Zone: The Counties of Beaver, Cimarron, and Texas.

Low Plains Zone 1: That portion of the State east of the High Plains Zone and north of a line extending east from the Texas State line along OK 33 to OK 47, east along OK 47 to U.S. 183, south along U.S.183 to I–40, east along I–40 to U.S. 177, north along U.S. 177 to OK 33, east along OK 33 to OK 18, north along OK 18 to OK 51, west along OK 51 to I–35, north along I–35 to U.S. 412, west along U.S. 412 to OK 132, then north along OK 132 to the Kansas State line.

Low Plains Zone 2: The remainder of Oklahoma.

South Dakota

High Plains Zone: That portion of the State west of a line beginning at the North Dakota State line and extending south along U.S. 83 to U.S.14, east on U.S.14 to Blunt, south on the Blunt-Canning road to SD 34, east and south on SD 34 to SD 50 at Lee's Corner, south on SD 50 to I–90, east on I–90 to SD 50, south on SD 50 to SD 44, west on SD 44 across the Platte-Winner bridge to SD 47, south on SD 47 to U.S.18, east on U.S. 18 to SD 47, south on SD 47 to the Nebraska State line.

North Zone: That portion of northeastern South Dakota east of the High Plains Unit and north of a line extending east along U.S. 212 to the Minnesota State line.

South Zone: That portion of Gregory County east of SD 47 and south of SD 44; Charles Mix County south of SD 44 to the Douglas County line; south on SD 50 to Geddes; east on the Geddes Highway to U.S. 281; south on U.S. 281 and U.S. 18 to SD 50; south and east on SD 50 to the Bon Homme County line; the Counties of Bon Homme, Yankton, and Clay south of SD 50; and Union County south and west of SD 50 and I–29.

Middle Zone: The remainder of South Dakota.

Texas

High Plains Zone: That portion of the State west of a line extending south from the Oklahoma State line along U.S. 183 to Vernon, south along U.S. 283 to Albany, south along TX 6 to TX 351 to Abilene, south along U.S. 277 to Del Rio, then south along the Del Rio International Toll Bridge access road to the Mexico border.

Low Plains North Zone: That portion of northeastern Texas east of the High Plains Zone and north of a line beginning at the International Toll Bridge south of Del Rio, then extending east on U.S. 90 to San Antonio, then continuing east on I–10 to the Louisiana State line at Orange, Texas.

Low Plains South Zone: The remainder of Texas.

Wyoming (Central Flyway Portion)

Zone C1: The Counties of Converse, Goshen, Hot Springs, Natrona, Platte, and Washakie; and the portion of Park County east of the Shoshone National Forest boundary and south of a line beginning where the Shoshone National Forest boundary meets Park County Road 8VC, east along Park County Road 8VC to Park County Road 1AB, continuing east along Park County Road 1AB to Wyoming Highway 120, north along WY Highway 120 to WY Highway 294, south along WY Highway 294 to Lane 9, east along Lane 9 to Powel and WY Highway 14A, and finally east along WY Highway 14A to the Park County and Big Horn County line.

Zone C2: The remainder of Wyoming.

Pacific Flyway

Arizona

Game Management Units (GMU) as follows:

South Zone: Those portions of GMUs 6 and 8 in Yavapai County, and GMUs 10 and 12B–45.

North Zone: GMUs 1–5, those portions of GMUs 6 and 8 within Coconino County, and GMUs 7, 9, 12A.

California

Northeastern Zone: In that portion of California lying east and north of a line beginning at the intersection of Interstate 5 with the California-Oregon line; south along Interstate 5 to its junction with Walters Lane south of the town of Yreka; west along Walters Lane to its junction with Easy Street; south along Easy Street to the junction with Old Highway 99; south along Old Highway 99 to the point of intersection with Interstate 5 north of the town of Weed; south along Interstate 5 to its junction with Highway 89; east and south along Highway 89 to Main Street Greenville; north and east to its junction with North Valley Road; south to its junction of Diamond Mountain Road; north and east to its junction with North Arm Road; south and west to the junction of North Valley Road; south to the junction with Arlington Road (A22); west to the junction of Highway 89; south and west to the junction of Highway 70; east on Highway 70 to Highway 395; south and east on Highway 395 to the point of intersection with the California-Nevada State line; north along the California-Nevada State line to the junction of the California-Nevada-Oregon State lines; west along the California-Oregon State line to the point of origin.

Colorado River Zone: Those portions of San Bernardino, Riverside, and Imperial Counties east of a line extending from the Nevada State line south along U.S. 95 to Vidal Junction; south on a road known as "Aqueduct Road" in San Bernardino County through the town of Rice to the San Bernardino-Riverside County line; south on a road known in Riverside County as the "Desert Center to Rice Road" to the town of Desert Center; east 31 miles on I–10 to the Wiley Well Road; south on this road to Wiley Well; southeast along the Army-Milpitas Road to the Blythe, Brawley, Davis Lake intersections; south on the Blythe-Brawley paved road to the Ogilby and Tumco Mine Road; south on this road to U.S. 80; east 7 miles on U.S. 80 to the Andrade-Algodones Road; south on this paved road to the Mexican border at Algodones, Mexico.

Southern Zone: That portion of southern California (but excluding the Colorado River Zone) south and east of a line extending from the Pacific Ocean east along the Santa Maria River to CA 166 near the City of Santa Maria; east on CA 166 to CA 99; south on CA 99 to the crest of the Tehachapi Mountains at Tejon Pass; east and north along the crest of the Tehachapi Mountains to CA 178 at Walker Pass; east on CA 178 to U.S. 395 at the town of Inyokern; south on U.S. 395 to CA 58; east on CA 58 to I–15; east on I–15 to CA 127; north on CA 127 to the Nevada State line.

Southern San Joaquin Valley Temporary Zone: All of Kings and Tulare Counties and that portion of Kern County north of the Southern Zone.

Balance-of-State Zone: The remainder of California not included in the

Northeastern, Southern, and Colorado River Zones, and the Southern San Joaquin Valley Temporary Zone.

Idaho

Zone 1: Includes all lands and waters within the Fort Hall Indian Reservation, including private inholdings; Bannock County; Bingham County, except that portion within the Blackfoot Reservoir drainage; and Power County east of ID 37 and ID 39.

Zone 2: Includes the following Counties or portions of Counties: Adams; Bear Lake; Benewah; Bingham within the Blackfoot Reservoir drainage; Blaine; Bonner; Bonneville; Boundary; Butte; Camas; Caribou except the Fort Hall Indian Reservation; Cassia within the Minidoka National Wildlife Refuge; Clark; Clearwater; Custer; Elmore within the Camas Creek drainage; Franklin; Fremont; Idaho; Jefferson; Kootenai; Latah; Lemhi; Lewis; Madison; Nez Perce; Oneida; Power within the Minidoka National Wildlife Refuge; Shoshone; Teton; and Valley Counties.

Zone 3: Includes the following Counties or portions of Counties: Ada; Boise; Canyon; Cassia except within the Minidoka National Wildlife Refuge; Elmore except the Camas Creek drainage; Gem; Gooding; Jerome; Lincoln; Minidoka; Owyhee; Payette; Power west of ID 37 and ID 39 except that portion within the Minidoka National Wildlife Refuge; Twin Falls; and Washington Counties.

Nevada

Lincoln and Clark County Zone: All of Clark and Lincoln Counties.

Remainder-of-the-State Zone: The remainder of Nevada.

Oregon

Zone 1: Clatsop, Tillamook, Lincoln, Lane, Douglas, Coos, Curry, Josephine, Jackson, Linn, Benton, Polk, Marion, Yamhill, Washington, Columbia, Multnomah, Clackamas, Hood River, Wasco, Sherman, Gilliam, Morrow and Umatilla Counties.

Columbia Basin Mallard Management Unit: Gilliam, Morrow, and Umatilla Counties.

Zone 2: The remainder of the State.

Utah

Zone 1: All of Box Elder, Cache, Daggett, Davis, Duchesne, Morgan, Rich, Salt Lake, Summit, Unitah, Utah, Wasatch, and Weber Counties, and that part of Toole County north of I–80.

Zone 2: The remainder of Utah.

Washington

East Zone: All areas east of the Pacific Crest Trail and east of the Big White Salmon River in Klickitat County.

Columbia Basin Mallard Management Unit: Same as East Zone.

West Zone: All areas to the west of the East Zone.

Wyoming

Snake River Zone: Beginning at the south boundary of Yellowstone National Park and the Continental Divide; south along the Continental Divide to Union Pass and the Union Pass Road (U.S.F.S. Road 600); west and south along the Union Pass Road to U.S.F.S. Road 605; south along U.S.F.S. Road 605 to the Bridger-Teton National Forest boundary; along the national forest boundary to the Idaho State line; north along the Idaho State line to the south boundary of Yellowstone National Park; east along the Yellowstone National Park boundary to the Continental Divide.

Balance of State Zone: Balance of the Pacific Flyway in Wyoming outside the Snake River Zone.

Geese

Atlantic Flyway

Connecticut

AP Unit: Litchfield County and the portion of Hartford County west of a line beginning at the Massachusetts border in Suffield and extending south along Route 159 to its intersection with Route 91 in Hartford, and then extending south along Route 91 to its intersection with the Hartford/Middlesex County line.

AFRP Unit: Starting at the intersection of I–95 and the Quinnipiac River, north on the Quinnipiac River to its intersection with I–91, north on I–91 to I–691, west on I–691 to the Hartford County line, and encompassing the rest of New Haven County and Fairfield County in its entirety.

NAP H–Unit: All of the rest of the State not included in the AP or AFRP descriptions above.

South Zone: Same as for ducks.

North Zone: Same as for ducks.

Maryland

Resident Population (RP) Zone: Garrett, Allegany, Washington, Frederick, and Montgomery Counties; that portion of Prince George's County west of Route 3 and Route 301; that portion of Charles County west of Route 301 to the Virginia State line; and that portion of Carroll County west of Route 31 to the intersection of Route 97, and west of Route 97 to the Pennsylvania line.

AP Zone: Remainder of the State.

Massachusetts

NAP Zone: Central and Coastal Zones (see duck zones).

AP Zone: The Western Zone (see duck zones).

Special Late Season Area: The Central Zone and that portion of the Coastal Zone (see duck zones) that lies north of the Cape Cod Canal, north to the New Hampshire line.

New Hampshire

Same zones as for ducks.

New Jersey

North: That portion of the State within a continuous line that runs east along the New York State boundary line to the Hudson River; then south along the New York State boundary to its intersection with Route 440 at Perth Amboy; then west on Route 440 to its intersection with Route 287; then west along Route 287 to its intersection with Route 206 in Bedminster (Exit 18); then north along Route 206 to its intersection with Route 94: then west along Route 94 to the tollbridge in Columbia; then north along the Pennsylvania State boundary in the Delaware River to the beginning point.

South: That portion of the State within a continuous line that runs west from the Atlantic Ocean at Ship Bottom along Route 72 to Route 70; then west along Route 70 to Route 206; then south along Route 206 to Route 536; then west along Route 536 to Route 322; then west along Route 322 to Route 55; then south along Route 55 to Route 553 (Buck Road); then south along Route 553 to Route 40; then east along Route 40 to route 55; then south along Route 55 to Route 552 (Sherman Avenue); then west along Route 552 to Carmel Road; then south along Carmel Road to Route 49; then east along Route 49 to Route 555; then south along Route 555 to Route 553; then east along Route 553 to Route 649; then north along Route 649 to Route 670; then east along Route 670 to Route 47; then north along Route 47 to Route 548; then east along Route 548 to Route 49; then east along Route 49 to Route 50; then south along Route 50 to Route 9; then south along Route 9 to Route 625 (Sea Isle City Boulevard); then east along Route 625 to the Atlantic Ocean; then north to the beginning point.

New York

Lake Champlain Goose Area: The same as the Lake Champlain Waterfowl Hunting Zone, which is that area of New York State lying east and north of a continuous line extending along Route 11 from the New York–Canada International boundary south to Route 9B, south along Route 9B to Route 9, south along Route 9 to Route 22 south of Keeseville, south along Route 22 to

the west shore of South Bay along and around the shoreline of South Bay to Route 22 on the east shore of South Bay, southeast along Route 22 to Route 4, northeast along Route 4 to the New York-Vermont boundary.

Northeast Goose Area: The same as the Northeastern Waterfowl Hunting Zone, which is that area of New York State lying north of a continuous line extending from Lake Ontario east along the north shore of the Salmon River to Interstate 81, south along Interstate Route 81 to Route 31, east along Route 31 to Route 13, north along Route 13 to Route 49, east along Route 49 to Route 365, east along Route 365 to Route 28, east along Route 28 to Route 29, east along Route 29 to Interstate Route 87, north along Interstate Route 87 to Route 9 (at Exit 20), north along Route 9 to Route 149, east along Route 149 to Route 4, north along Route 4 to the New York-Vermont boundary, exclusive of the Lake Champlain Zone.

East Central Goose Area: That area of New York State lying inside of a continuous line extending from Interstate Route 81 in Cicero, east along Route 31 to Route 13, north along Route 13 to Route 49, east along Route 49 to Route 365, east along Route 365 to Route 28, east along Route 28 to Route 29, east along Route 29 to Route 147 at Kimball Corners, south along Route 147 to Schenectady County Route 40 (West Glenville Road), west along Route 40 to Touareuna Road, south along Touareuna Road to Schenectady County Route 59, south along Route 59 to State Route 5, east along Route 5 to the Lock 9 bridge, southwest along the Lock 9 bridge to Route 5S, southeast along Route 5S to Schenectady County Route 58, southwest along Route 58 to the NYS Thruway, south along the Thruway to Route 7, southwest along Route 7 to Schenectady County Route 103, south along Route 103 to Route 406, east along Route 406 to Schenectady County Route 99 (Windy Hill Road), south along Route 99 to Dunnsville Road, south along Dunnsville Road to Route 397, southwest along Route 397 to Route 146 at Altamont, west along Route 146 to Albany County Route 252, northwest along Route 252 to Schenectady County Route 131, north along Route 131 to Route 7, west along Route 7 to Route 10 at Richmondville, south on Route 10 to Route 23 at Stamford, west along Route 23 to Route 7 in Oneonta, southwest along Route 7 to Route 79 to Interstate Route 88 near Harpursville, west along Route 88 to Interstate Route 81, north along Route 81 to the point of beginning.

West Central Goose Area: That area of New York State lying within a continuous line beginning at the point where the northerly extension of Route 269 (County Line Road on the Niagara-Orleans County boundary) meets the International boundary with Canada, south to the shore of Lake Ontario at the eastern boundary of Golden Hill State Park, south along the extension of Route 269 and Route 269 to Route 104 at Jeddo, west along Route 104 to Niagara County Route 271, south along Route 271 to Route 31E at Middleport, south along Route 31E to Route 31, west along Route 31 to Griswold Street, south along Griswold Street to Ditch Road, south along Ditch Road to Foot Road, south along Foot Road to the north bank of Tonawanda Creek, west along the north bank of Tonawanda Creek to Route 93, south along Route 93 to Route 5, east along Route 5 to Crittenden-Murrays Corners Road, south on Crittenden-Murrays Corners Road to the NYS Thruway, east along the Thruway 90 to Route 98 (at Thruway Exit 48) in Batavia, south along Route 98 to Route 20, east along Route 20 to Route 19 in Pavilion Center, south along Route 19 to Route 63, southeast along Route 63 to Route 246, south along Route 246 to Route 39 in Perry, northeast along Route 39 to Route 20A, northeast along Route 20A to Route 20, east along Route 20 to Route 364 (near Canandaigua), south and east along Route 364 to Yates County Route 18 (Italy Valley Road), southwest along Route 18 to Yates County Route 34, east along Route 34 to Yates County Route 32, south along Route 32 to Steuben County Route 122, south along Route 122 to Route 53, south along Route 53 to Steuben County Route 74, east along Route 74 to Route 54A (near Pulteney), south along Route 54A to Steuben County Route 87, east along Route 87 to Steuben County Route 96, east along Route 96 to Steuben County Route 114, east along Route 114 to Schuyler County Route 23, east and southeast along Route 23 to Schuyler County Route 28, southeast along Route 28 to Route 409 at Watkins Glen, south along Route 409 to Route 14, south along Route 14 to Route 224 at Montour Falls, east along Route 224 to Route 228 in Odessa, north along Route 228 to Route 79 in Mecklenburg, east along Route 79 to Route 366 in Ithaca, northeast along Route 366 to Route 13, northeast along Route 13 to Interstate Route 81 in Cortland, north along Route 81 to the north shore of the Salmon River to shore of Lake Ontario, extending generally northwest in a straight line to the nearest point of the International boundary with Canada, south and west along the International boundary to the point of beginning.

Hudson Valley Goose Area: That area of New York State lying within a continuous line extending from Route 4 at the New York-Vermont boundary, west and south along Route 4 to Route 149 at Fort Ann, west on Route 149 to Route 9, south along Route 9 to Interstate Route 87 (at Exit 20 in Glens Falls), south along Route 87 to Route 29, west along Route 29 to Route 147 at Kimball Corners, south along Route 147 to Schenectady County Route 40 (West Glenville Road), west along Route 40 to Touareuna Road, south along Touareuna Road to Schenectady County Route 59, south along Route 59 to State Route 5, east along Route 5 to the Lock 9 bridge, southwest along the Lock 9 bridge to Route 5S, southeast along Route 5S to Schenectady County Route 58, southwest along Route 58 to the NYS Thruway, south along the Thruway to Route 7, southwest along Route 7 to Schenectady County Route 103, south along Route 103 to Route 406, east along Route 406 to Schenectady County Route 99 (Windy Hill Road), south along Route 99 to Dunnsville Road, south along Dunnsville Road to Route 397, southwest along Route 397 to Route 146 at Altamont, southeast along Route 146 to Main Street in Altamont, west along Main Street to Route 156, southeast along Route 156 to Albany County Route 307, southeast along Route 307 to Route 85A, southwest along Route 85A to Route 85, south along Route 85 to Route 443, southeast along Route 443 to Albany County Route 301 at Clarksville, southeast along Route 301 to Route 32, south along Route 32 to Route 23 at Cairo, west along Route 23 to Joseph Chadderdon Road, southeast along Joseph Chadderdon Road to Hearts Content Road (Greene County Route 31), southeast along Route 31 to Route 32, south along Route 32 to Greene County Route 23A, east along Route 23A to Interstate Route 87 (the NYS Thruway), south along Route 87 to Route 28 (Exit 19) near Kingston, northwest on Route 28 to Route 209, southwest on Route 209 to the New York-Pennsylvania boundary, southeast along the New York-Pennsylvania boundary to the New York-New Jersey boundary, southeast along the New York-New Jersey boundary to Route 210 near Greenwood Lake, northeast along Route 210 to Orange County Route 5, northeast along Orange County Route 5 to Route 105 in the Village of Monroe, east and north along Route 105 to Route 32, northeast along Route 32 to Orange County Route 107 (Quaker Avenue), east along Route 107 to Route 9W, north along Route 9W to the south bank of Moodna Creek, southeast along the south bank of

Moodna Creek to the New Windsor-Cornwall town boundary, northeast along the New Windsor-Cornwall town boundary to the Orange-Dutchess County boundary (middle of the Hudson River), north along the county boundary to Interstate Route 84, east along Route 84 to the Dutchess-Putnam County boundary, east along the county boundary to the New York-Connecticut boundary, north along the New York-Connecticut boundary to the New York-Massachusetts boundary, north along the New York-Massachusetts boundary to the New York-Vermont boundary, north to the point of beginning.

Eastern Long Island Goose Area (NAP High Harvest Area): That area of Suffolk County lying east of a continuous line extending due south from the New York-Connecticut boundary to the northernmost end of Roanoke Avenue in the Town of Riverhead; then south on Roanoke Avenue (which becomes County Route 73) to State Route 25; then west on Route 25 to Peconic Avenue; then south on Peconic Avenue to County Route (CR) 104 (Riverleigh Avenue); then south on CR 104 to CR 31 (Old Riverhead Road); then south on CR 31 to Oak Street; then south on Oak Street to Potunk Lane; then west on Stevens Lane; then south on Jessup Avenue (in Westhampton Beach) to Dune Road (CR 89); then due south to international waters.

Western Long Island Goose Area (RP Area): That area of Westchester County and its tidal waters southeast of Interstate Route 95 and that area of Nassau and Suffolk Counties lying west of a continuous line extending due south from the New York-Connecticut boundary to the northernmost end of the Sunken Meadow State Parkway; then south on the Sunken Meadow Parkway to the Sagtikos State Parkway; then south on the Sagtikos Parkway to the Robert Moses State Parkway; then south on the Robert Moses Parkway to its southernmost end; then due south to international waters.

Central Long Island Goose Area (NAP Low Harvest Area): That area of Suffolk County lying between the Western and Eastern Long Island Goose Areas, as defined above.

South Goose Area: The remainder of New York State, excluding New York City.

Special Late Canada Goose Area: That area of the Central Long Island Goose Area lying north of State Route 25A and west of a continuous line extending northward from State Route 25A along Randall Road (near Shoreham) to North Country Road, then east to Sound Road and then north to Long Island Sound and then due north to the New York-Connecticut boundary.

North Carolina

SJBP Hunt Zone: Includes the following Counties or portions of Counties: Anson, Cabarrus, Chatham, Davidson, Durham, Halifax (that portion east of NC 903), Montgomery (that portion west of NC 109), Northampton, Richmond (that portion south of NC 73 and west of US 220 and north of US 74), Rowan, Stanly, Union, and Wake.

RP Hunt Zone: Includes the following Counties or portions of Counties: Alamance, Alleghany, Alexander, Ashe, Avery, Beaufort, Bertie (that portion south and west of a line formed by NC 45 at the Washington Co. line to US 17 in Midway, US 17 in Midway to US 13 in Windsor, US 13 in Windsor to the Hertford Co. line), Bladen, Brunswick, Buncombe, Burke, Caldwell, Carteret, Caswell, Catawba, Cherokee, Clay, Cleveland, Columbus, Craven, Cumberland, Davie, Duplin, Edgecombe, Forsyth, Franklin, Gaston, Gates, Graham, Granville, Greene, Guilford, Halifax (that portion west of NC 903), Harnett, Haywood, Henderson, Hertford, Hoke, Iredell, Jackson, Johnston, Jones, Lee, Lenoir, Lincoln, McDowell, Macon, Madison, Martin, Mecklenburg, Mitchell, Montgomery (that portion that is east of NC 109), Moore, Nash, New Hanover, Onslow, Orange, Pamlico, Pender, Person, Pitt, Polk, Randolph, Richmond (all of the county with exception of that portion that is south of NC 73 and west of US 220 and north of US 74), Robeson, Rockingham, Rutherford, Sampson, Scotland, Stokes, Surry, Swain, Transylvania, Vance, Warren, Watauga, Wayne, Wilkes, Wilson, Yadkin, and Yancey.

Northeast Hunt Unit: Includes the following Counties or portions of Counties: Bertie (that portion north and east of a line formed by NC 45 at the Washington County line to US 17 in Midway, US 17 in Midway to US 13 in Windsor, US 13 in Windsor to the Hertford Co. line), Camden, Chowan, Currituck, Dare, Hyde, Pasquotank, Perquimans, Tyrrell, and Washington.

Pennsylvania

Resident Canada Goose Zone: All of Pennsylvania except for SJBP Zone and the area east of route SR 97 from the Maryland State Line to the intersection of SR 194, east of SR 194 to intersection of US Route 30, south of US Route 30 to SR 441, east of SR 441 to SR 743, east of SR 743 to intersection of I–81, east of I–81 to intersection of I–80, and south of I–80 to the New Jersey State line.

SJBP Zone: The area north of I–80 and west of I–79 including in the city of Erie west of Bay Front Parkway to and including the Lake Erie Duck zone (Lake Erie, Presque Isle, and the area within 150 yards of the Lake Erie Shoreline).

AP Zone: The area east of route SR 97 from Maryland State Line to the intersection of SR 194, east of SR 194 to intersection of US Route 30, south of US Route 30 to SR 441, east of SR 441 to SR 743, east of SR 743 to intersection of I–81, east of I–81 to intersection of I–80, south of I–80 to New Jersey State line.

Rhode Island

Special Area for Canada Geese: Kent and Providence Counties and portions of the towns of Exeter and North Kingston within Washington County (see State regulations for detailed descriptions).

South Carolina

Canada Goose Area: Statewide except for Clarendon County, that portion of Orangeburg County north of SC Highway 6, and that portion of Berkeley County north of SC Highway 45 from the Orangeburg County line to the junction of SC Highway 45 and State Road S–8–31 and that portion west of the Santee Dam.

Vermont

Same zones as for ducks.

Virginia

AP Zone: The area east and south of the following line—the Stafford County line from the Potomac River west to Interstate 95 at Fredericksburg, then south along Interstate 95 to Petersburg, then Route 460 (SE) to City of Suffolk, then south along Route 32 to the North Carolina line.

SJBP Zone: The area to the west of the AP Zone boundary and east of the following line: the "Blue Ridge" (mountain spine) at the West Virginia-Virginia Border (Loudoun County-Clarke County line) south to Interstate 64 (the Blue Ridge line follows county borders along the western edge of Loudoun-Fauquier-Rappahannock-Madison-Greene-Albemarle and into Nelson Counties), then east along Interstate Rt. 64 to Route 15, then south along Rt. 15 to the North Carolina line.

RP Zone: The remainder of the State west of the SJBP Zone.

West Virginia

Same zones as for ducks.

Mississippi Flyway

Alabama

Same zones as for ducks, but in addition:

SJBP Zone: That portion of Morgan County east of U.S. Highway 31, north

of State Highway 36, and west of U.S. 231; that portion of Limestone County south of U.S. 72; and that portion of Madison County south of Swancott Road and west of Triana Road.

Arkansas

Northwest Zone: Baxter, Benton, Boone, Carroll, Conway, Crawford, Faulkner, Franklin, Johnson, Logan, Madison, Marion, Newton, Perry, Pope, Pulaski, Searcy, Sebastian, Scott, Van Buren, Washington, and Yell Counties.

Illinois

Same zones as for ducks.

Indiana

Same zones as for ducks but in addition:

Special Canada Goose Seasons

Indiana Late Canada Goose Season Zone: That part of the State encompassed by the following Counties: Steuben, Lagrange, Elkhart, St. Joseph, La Porte, Starke, Marshall, Kosciusko, Noble, De Kalb, Allen, Whitley, Huntington, Wells, Adams, Boone, Hamilton, Madison, Hendricks, Marion, Hancock, Morgan, Johnson, Shelby, Vermillion, Parke, Vigo, Clay, Sullivan, and Greene.

Iowa

Same zones as for ducks.

Kentucky

Western Zone: That portion of the State west of a line beginning at the Tennessee State line at Fulton and extending north along the Purchase Parkway to Interstate Highway 24, east along I–24 to U.S. Highway 641, north along U.S. 641 to U.S. 60, northeast along U.S. 60 to the Henderson County line, then south, east, and northerly along the Henderson County line to the Indiana State line.

Ballard Reporting Area: That area encompassed by a line beginning at the northwest city limits of Wickliffe in Ballard County and extending westward to the middle of the Mississippi River, north along the Mississippi River and along the low-water mark of the Ohio River on the Illinois shore to the Ballard-McCracken County line, south along the county line to Kentucky Highway 358, south along Kentucky 358 to U.S. Highway 60 at LaCenter, then southwest along U.S. 60 to the northeast city limits of Wickliffe.

Henderson-Union Reporting Area: Henderson County and that portion of Union County within the Western Zone.

Pennyroyal/Coalfield Zone: Butler, Daviess, Ohio, Simpson, and Warren Counties and all counties lying west to the boundary of the Western Goose Zone.

Michigan

(a) North Zone—Same as North duck zone.

(b) Middle Zone—Same as Middle duck zone.

(c) South Zone—Same as South duck zone.

Tuscola/Huron Goose Management Unit (GMU): Those portions of Tuscola and Huron Counties bounded on the south by Michigan Highway 138 and Bay City Road, on the east by Colwood and Bay Port Roads, on the north by Kilmanagh Road and a line extending directly west off the end of Kilmanagh Road into Saginaw Bay to the west boundary, and on the west by the Tuscola-Bay County line and a line extending directly north off the end of the Tuscola-Bay County line into Saginaw Bay to the north boundary.

Allegan County GMU: That area encompassed by a line beginning at the junction of 136th Avenue and Interstate Highway 196 in Lake Town Township and extending easterly along 136th Avenue to Michigan Highway 40, southerly along Michigan 40 through the city of Allegan to 108th Avenue in Trowbridge Township, westerly along 108th Avenue to 46th Street, northerly along 46th Street to 109th Avenue, westerly along 109th Avenue to I–196 in Casco Township, then northerly along I–196 to the point of beginning.

Saginaw County GMU: That portion of Saginaw County bounded by Michigan Highway 46 on the north; Michigan 52 on the west; Michigan 57 on the south; and Michigan 13 on the east.

Muskegon Wastewater GMU: That portion of Muskegon County within the boundaries of the Muskegon County wastewater system, east of the Muskegon State Game Area, in sections 5, 6, 7, 8, 17, 18, 19, 20, 29, 30, and 32, T10N R14W, and sections 1, 2, 10, 11, 12, 13, 14, 24, and 25, T10N R15W, as posted.

Special Canada Goose Seasons

Southern Michigan Late Season Canada Goose Zone: Same as the South Duck Zone excluding Tuscola/Huron Goose Management Unit (GMU), Allegan County GMU, Saginaw County GMU, and Muskegon Wastewater GMU.

Minnesota

Rochester Goose Zone: That part of the State within the following described boundary:

Beginning at the intersection of State Trunk Highway (STH) 247 and County State Aid Highway (CSAH) 4, Wabasha County; thence along CSAH 4 to CSAH 10, Olmsted County; thence along CSAH 10 to CSAH 9, Olmsted County; thence along CSAH 9 to CSAH 22, Winona County; thence along CSAH 22 to STH 74; thence along STH 74 to STH 30; thence along STH 30 to CSAH 13, Dodge County; thence along CSAH 13 to U.S. Highway 14; thence along U.S. Highway 14 to STH 57; thence along STH 57 to CSAH 24, Dodge County; thence along CSAH 24 to CSAH 13, Olmsted County; thence along CSAH 13 to U.S. Highway 52; thence along U.S. Highway 52 to CSAH 12, Olmsted County; thence along CSAH 12 to STH 247; thence along STH 247 to the point of beginning.

Missouri

Same zones as for ducks.

Ohio

Same zones as for ducks but in addition:

North Zone

Lake Erie Zone: That portion of the North Duck Zone encompassed by and north and east of a line beginning in Lucas County at the Michigan State line on I–75, and extending south along I–75 to I–280, south along I–280 to I–80, and east along I– 80 to the Pennsylvania State line in Trumbull County.

Tennessee

Southwest Zone: That portion of the State south of State Highways 20 and 104, and west of U.S. Highways 45 and 45W.

Northwest Zone: Lake, Obion, and Weakley Counties and those portions of Gibson and Dyer Counties not included in the Southwest Tennessee Zone.

Kentucky/Barkley Lakes Zone: That portion of the State bounded on the west by the eastern boundaries of the Northwest and Southwest Zones and on the east by State Highway 13 from the Alabama State line to Clarksville and U.S. Highway 79 from Clarksville to the Kentucky State line.

Wisconsin

Same zones as for ducks but in addition:

Horicon Zone: That area encompassed by a line beginning at the intersection of State Highway 21 and the Fox River in Winnebago County and extending westerly along State 21 to the west boundary of Winnebago County, southerly along the west boundary of Winnebago County to the north boundary of Green Lake County, westerly along the north boundaries of Green Lake and Marquette Counties to State 22, southerly along State 22 to State 33, westerly along State 33 to

Interstate Highway 39, southerly along Interstate Highway 39 to Interstate Highway 90/94, southerly along I–90/94 to State 60, easterly along State 60 to State 83, northerly along State 83 to State 175, northerly along State 175 to State 33, easterly along State 33 to U.S. Highway 45, northerly along U.S. 45 to the east shore of the Fond Du Lac River, northerly along the east shore of the Fond Du Lac River to Lake Winnebago, northerly along the western shoreline of Lake Winnebago to the Fox River, then westerly along the Fox River to State 21.

Collins Zone: That area encompassed by a line beginning at the intersection of Hilltop Road and Collins Marsh Road in Manitowoc County and extending westerly along Hilltop Road to Humpty Dumpty Road, southerly along Humpty Dumpty Road to Poplar Grove Road, easterly along Poplar Grove Road to Rockea Road, southerly along Rockea Road to County Highway JJ, southeasterly along County JJ to Collins Road, southerly along Collins Road to the Manitowoc River, southeasterly along the Manitowoc River to Quarry Road, northerly along Quarry Road to Einberger Road, northerly along Einberger Road to Moschel Road, westerly along Moschel Road to Collins Marsh Road, northerly along Collins Marsh Road to Hilltop Road.

Exterior Zone: That portion of the State not included in the Horicon or Collins Zones.

Mississippi River Subzone: That area encompassed by a line beginning at the intersection of the Burlington Northern & Santa Fe Railway and the Illinois State line in Grant County and extending northerly along the Burlington Northern & Santa Fe Railway to the city limit of Prescott in Pierce County, then west along the Prescott city limit to the Minnesota State line.

Brown County Subzone: That area encompassed by a line beginning at the intersection of the Fox River with Green Bay in Brown County and extending southerly along the Fox River to State Highway 29, northwesterly along State 29 to the Brown County line, south, east, and north along the Brown County line to Green Bay, due west to the midpoint of the Green Bay Ship Channel, then southwesterly along the Green Bay Ship Channel to the Fox River.

Central Flyway

Colorado (Central Flyway Portion)

Northern Front Range Area: All areas in Boulder, Larimer and Weld Counties from the Continental Divide east along the Wyoming border to U.S. 85, south on U.S. 85 to the Adams County line, and all lands in Adams, Arapahoe, Broomfield, Clear Creek, Denver, Douglas, Gilpin, and Jefferson Counties.

North Park Area: Jackson County.

South Park and San Luis Valley Area: All of Alamosa, Chaffee, Conejos, Costilla, Custer, Fremont, Lake, Park, Rio Grande and Teller Counties, and those portions of Saguache, Mineral and Hinsdale Counties east of the Continental Divide.

Remainder: Remainder of the Central Flyway portion of Colorado.

Eastern Colorado Late Light Goose Area: That portion of the State east of Interstate Highway 25.

Nebraska

Dark Geese

Niobrara Unit: That area contained within and bounded by the intersection of the South Dakota State line and the Cherry County line, south along the Cherry County line to the Niobrara River, east to the Norden Road, south on the Norden Road to U.S. Hwy 20, east along U.S. Hwy 20 to NE Hwy 137, north along NE Hwy 137 to the Niobrara River, east along the Niobrara River to the Boyd County line, north along the Boyd County line to the South Dakota State line. Where the Niobrara River forms the boundary, both banks of the river are included in the Niobrara Unit.

East Unit: That area north and east of U.S. 281 at the Kansas–Nebraska State line, north to Giltner Road (near Doniphan), east to NE 14, north to NE 66, east to U.S. 81, north to NE 22, west to NE 14 north to NE 91, east to U.S. 275, south to U.S. 77, south to NE 91, east to U.S. 30, east to Nebraska-Iowa State line.

Platte River Unit: That area south and west of U.S. 281 at the Kansas-Nebraska State line, north to Giltner Road (near Doniphan), east to NE 14, north to NE 66, east to U.S. 81, north to NE 22, west to NE 14 north to NE 91, west along NE 91 to NE 11, north to the Holt County line, west along the northern border of Garfield, Loup, Blaine and Thomas Counties to the Hooker County line, south along the Thomas–Hooker County lines to the McPherson County line, east along the south border of Thomas County to the western line of Custer County, south along the Custer–Logan County line to NE 92, west to U.S. 83, north to NE 92, west to NE 61, north along NE 61 to NE 2, west along NE 2 to the corner formed by Garden-Grant-Sheridan Counties, west along the north border of Garden, Morrill, and Scotts Bluff Counties to the intersection of the Interstate Canal, west to Wyoming State line.

North–Central Unit: The remainder of the State.

Light Geese

Rainwater Basin Light Goose Area (West): The area bounded by the junction of U.S. 283 and U.S. 30 at Lexington, east on U.S. 30 to U.S. 281, south on U.S. 281 to NE 4, west on NE 4 to U.S. 34, continue west on U.S. 34 to U.S. 283, then north on U.S. 283 to the beginning.

Rainwater Basin Light Goose Area (East): The area bounded by the junction of U.S. 281 and U.S. 30 at Grand Island, north and east on U.S. 30 to NE 14, south to NE 66, east to U.S. 81, north to NE 92, east on NE 92 to NE 15, south on NE 15 to NE 4, west on NE 4 to U.S. 281, north on U.S. 281 to the beginning.

Remainder of State: The remainder portion of Nebraska.

New Mexico (Central Flyway Portion)

Dark Geese

Middle Rio Grande Valley Unit: Sierra, Socorro, and Valencia Counties.

Remainder: The remainder of the Central Flyway portion of New Mexico.

North Dakota

Missouri River Canada Goose Zone: The area within and bounded by a line starting where ND Hwy 6 crosses the South Dakota border; thence north on ND Hwy 6 to I–94; thence west on I–94 to ND Hwy 49; thence north on ND Hwy 49 to ND Hwy 200; thence north on Mercer County Rd. 21 to the section line between sections 8 and 9 (T146N–R87W); thence north on that section line to the southern shoreline to Lake Sakakawea; thence east along the southern shoreline (including Mallard Island) of Lake Sakakawea to U.S. Hwy 83; thence south on U.S. Hwy 83 to ND Hwy 200; thence east on ND Hwy 200 to ND Hwy 41; thence south on ND Hwy 41 to U.S. Hwy 83; thence south on U.S. Hwy 83 to I–94; thence east on I–94 to U.S. Hwy 83; thence south on U.S. Hwy 83 to the South Dakota border; thence west along the South Dakota border to ND Hwy 6.

Rest of State: Remainder of North Dakota.

South Dakota

Canada Geese

Unit 1: Remainder of South Dakota.

Unit 2: Gregory, Hughes, Lyman, Perkins, and Stanley Counties; that portion of Potter County west of U.S. Highway 83; that portion of Sully County west of U.S. Highway 83; that portion of Bon Homme, Brule, Buffalo, Charles Mix, and Hyde County south and west of a line beginning at the Hughes-Hyde County line on SD Highway 34, east to Lees Boulevard, southeast to SD 34, east 7 miles to 350th

Avenue, south to I–90, south and east on SD Highway 50 to Geddes, east on 285th Street to U.S. Highway 281, south on U.S. Highway 281 to SD 50, east and south on SD 50 to the Bon Homme-Yankton County boundary; that portion of Fall River County east of SD Highway 71 and U.S. Highway 385; that portion of Custer County east of SD Highway 79 and south of French Creek; that portion of Dewey County south of BIA Road 8, BIA Road 9, and the section of U.S. 212 east of BIA Road 8 junction.

Unit 3: Bennett County.

Texas

Northeast Goose Zone: That portion of Texas lying east and north of a line beginning at the Texas-Oklahoma border at U.S. 81, then continuing south to Bowie and then southeasterly along U.S. 81 and U.S. 287 to I–35W and I–35 to the juncture with I–10 in San Antonio, then east on I–10 to the Texas-Louisiana border.

Southeast Goose Zone: That portion of Texas lying east and south of a line beginning at the International Toll Bridge at Laredo, then continuing north following I–35 to the juncture with I–10 in San Antonio, then easterly along I–10 to the Texas-Louisiana border.

West Goose Zone: The remainder of the State.

Wyoming (Central Flyway Portion)

Dark Geese:

Zone C1: Converse, Hot Springs, Natrona, and Washakie Counties, and the portion of Park County east of the Shoshone National Forest boundary and south of a line beginning where the Shoshone National Forest boundary crosses Park County Road 8VC, easterly along said road to Park County Road 1AB, easterly along said road to Wyoming Highway 120, northerly along said highway to Wyoming Highway 294, southeasterly along said highway to Lane 9, easterly along said lane to the town of Powel and Wyoming Highway 14A, easterly along said highway to the Park County and Big Horn County Line.

Zone C2: Albany, Campbell, Crook, Johnson, Laramie, Niobrara, Sheridan, and Weston Counties, and that portion of Carbon County east of the Continental Divide; that portion of Park County west of the Shoshone National Forest boundary, and that portion of Park County north of a line beginning where the Shoshone National Forest boundary crosses Park County Road 8VC, easterly along said road to Park County Road 1AB, easterly along said road to Wyoming Highway 120, northerly along said highway to Wyoming Highway 294, southeasterly along said highway to Lane 9, easterly along said lane to the town of Powel and Wyoming Highway 14A, easterly along said highway to the Park County and Big Horn County Line.

Pacific Flyway

Arizona

North Zone: Game Management Units 1–5, those portions of Game Management Units 6 and 8 within Coconino County, and Game Management Units 7, 9, and 12A.

South Zone: Those portions of Game Management Units 6 and 8 in Yavapai County, and Game Management Units 10 and 12B–45.

California

Northeastern Zone: In that portion of California lying east and north of a line beginning at the intersection of Interstate 5 with the California-Oregon line; south along Interstate 5 to its junction with Walters Lane south of the town of Yreka; west along Walters Lane to its junction with Easy Street; south along Easy Street to the junction with Old Highway 99; south along Old Highway 99 to the point of intersection with Interstate 5 north of the town of Weed; south along Interstate 5 to its junction with Highway 89; east and south along Highway 89 to main street Greenville; north and east to its junction with North Valley Road; south to its junction of Diamond Mountain Road; north and east to its junction with North Arm Road; south and west to the junction of North Valley Road; south to the junction with Arlington Road (A22); west to the junction of Highway 89; south and west to the junction of Highway 70; east on Highway 70 to Highway 395; south and east on Highway 395 to the point of intersection with the California-Nevada State line; north along the California-Nevada State line to the junction of the California-Nevada-Oregon State lines west along the California-Oregon State line to the point of origin.

Colorado River Zone: Those portions of San Bernardino, Riverside, and Imperial Counties east of a line extending from the Nevada border south along U.S. 95 to Vidal Junction; south on a road known as "Aqueduct Road" in San Bernardino County through the town of Rice to the San Bernardino-Riverside County line; south on a road known in Riverside County as the "Desert Center to Rice Road" to the town of Desert Center; east 31 miles on I–10 to the Wiley Well Road; south on this road to Wiley Well; southeast along the Army-Milpitas Road to the Blythe, Brawley, Davis Lake intersections; south on the Blythe-Brawley paved road to the Ogilby and Tumco Mine Road; south on this road to U.S. 80; east 7 miles on U.S. 80 to the Andrade-Algodones Road; south on this paved road to the Mexican border at Algodones, Mexico.

Southern Zone: That portion of southern California (but excluding the Colorado River Zone) south and east of a line extending from the Pacific Ocean east along the Santa Maria River to CA 166 near the City of Santa Maria; east on CA 166 to CA 99; south on CA 99 to the crest of the Tehachapi Mountains at Tejon Pass; east and north along the crest of the Tehachapi Mountains to CA 178 at Walker Pass; east on CA 178 to U.S. 395 at the town of Inyokern; south on U.S. 395 to CA 58; east on CA 58 to I–15; east on I–15 to CA 127; north on CA 127 to the Nevada border.

Imperial County Special Management Area: The area bounded by a line beginning at Highway 86 and the Navy Test Base Road; south on Highway 86 to the town of Westmoreland; continue through the town of Westmoreland to Route S26; east on Route S26 to Highway 115; north on Highway 115 to Weist Rd.; north on Weist Rd. to Flowing Wells Rd.; northeast on Flowing Wells Rd. to the Coachella Canal; northwest on the Coachella Canal to Drop 18; a straight line from Drop 18 to Frink Rd.; south on Frink Rd. to Highway 111; north on Highway 111 to Niland Marina Rd.; southwest on Niland Marina Rd. to the old Imperial County boat ramp and the water line of the Salton Sea; from the water line of the Salton Sea, a straight line across the Salton Sea to the Salinity Control Research Facility and the Navy Test Base Road; southwest on the Navy Test Base Road to the point of beginning.

Balance-of-State Zone: The remainder of California not included in the Northeastern, Southern, and the Colorado River Zones.

North Coast Special Management Area: The Counties of Del Norte and Humboldt.

Sacramento Valley Special Management Area: That area bounded by a line beginning at Willows south on I–5 to Hahn Road; easterly on Hahn Road and the Grimes-Arbuckle Road to Grimes; northerly on CA 45 to the junction with CA 162; northerly on CA 45/162 to Glenn; and westerly on CA 162 to the point of beginning in Willows.

Colorado (Pacific Flyway Portion)

West Central Area: Archuleta, Delta, Dolores, Gunnison, LaPlata, Montezuma, Montrose, Ouray, San Juan, and San Miguel Counties and those portions of Hinsdale, Mineral, and

Saguache Counties west of the Continental Divide.

State Area: The remainder of the Pacific-Flyway Portion of Colorado.

Idaho

Zone 1: Adams, Benewah, Bonner, Boundary, Clearwater, Idaho, Kootenai, Latah, Lewis, Nez Perce, Shoshone, and Valley Counties.

Zone 2: The Counties of Ada; Boise; Canyon; those portions of Elmore north and east of I–84, and south and west of I–84, west of ID 51, except the Camas Creek drainage; Gem; Owyhee west of ID 51; Payette; and Washington.

Zone 3: The Counties of Cassia except the Minidoka National Wildlife Refuge; those portions of Elmore south of I–84 east of ID 51, and within the Camas Creek drainage; Gooding; Jerome; Lincoln; Minidoka; Owyhee east of ID 51; and Twin Falls.

Zone 4: The Counties of Bear Lake; Bingham within the Blackfoot Reservoir drainage; Blaine; Bonneville, Butte; Camas; Caribou except the Fort Hall Indian Reservation; Cassia within the Minidoka National Wildlife Refuge; Clark; Custer; Franklin; Fremont; Jefferson; Lemhi; Madison; Oneida; and Teton.

Zone 5: All lands and waters within the Fort Hall Indian Reservation, including private inholdings; Bannock County; Bingham County, except that portion within the Blackfoot Reservoir drainage; and Power County.

Montana (Pacific Flyway Portion)

East of the Divide Zone: The Pacific Flyway portion of the State located east of the Continental Divide.

West of the Divide Zone: The remainder of the Pacific Flyway portion of Montana.

Nevada

Lincoln Clark County Zone: All of Lincoln and Clark Counties.

Remainder-of-the-State Zone: The remainder of Nevada.

New Mexico (Pacific Flyway Portion)

North Zone: The Pacific Flyway portion of New Mexico located north of I–40.

South Zone: The Pacific Flyway portion of New Mexico located south of I–40.

Oregon

Southwest Zone: Those portions of Douglas, Coos, and Curry Counties east of Highway 101, and Josephine and Jackson Counties.

South Coast Zone: Those portions of Douglas, Coos, and Curry Counties west of Highway 101.

Northwest Special Permit Zone: That portion of western Oregon west and north of a line running south from the Columbia River in Portland along I–5 to OR 22 at Salem; then east on OR 22 to the Stayton Cutoff; then south on the Stayton Cutoff to Stayton and due south to the Santiam River; then west along the north shore of the Santiam River to I–5; then south on I–5 to OR 126 at Eugene; then west on OR 126 to Greenhill Road; then south on Greenhill Road to Crow Road; then west on Crow Road to Territorial Hwy; then west on Territorial Hwy to OR 126; then west on OR 126 to Milepost 19; then north to the intersection of the Benton and Lincoln County line; then north along the western boundary of Benton and Polk Counties to the southern boundary of Tillamook County; then west along the Tillamook County boundary to the Pacific Coast.

Lower Columbia/N. Willamette Valley Management Area: Those portions of Clatsop, Columbia, Multnomah, and Washington Counties within the Northwest Special Permit Zone.

Tillamook County Management Area: All of Tillamook County is open to goose hunting except for the following area—beginning in Cloverdale at Hwy 101, west on Old Woods Rd to Sand Lake Rd at Woods, north on Sand Lake Rd to the intersection with McPhillips Dr, due west (~200 yards) from the intersection to the Pacific coastline, south on the Pacific coastline to Neskowin Creek, east along the north shores of Neskowin Creek and then Hawk Creek to Salem Ave, east on Salem Ave in Neskowin to Hawk Ave, east on Hawk Ave to Hwy 101, north on Hwy 101 at Cloverdale, to the point of beginning.

Northwest Zone: Those portions of Clackamas, Lane, Linn, Marion, Multnomah, and Washington Counties outside of the Northwest Special Permit Zone and all of Lincoln County.

Eastern Zone: Hood River, Wasco, Sherman, Gilliam, Morrow, Umatilla, Deschutes, Jefferson, Crook, Wheeler, Grant, Baker, Union, and Wallowa Counties.

Harney and Lake County Zone: All of Harney and Lake Counties.

Klamath County Zone: All of Klamath County.

Malheur County Zone: All of Malheur County.

Utah

Northern Utah Zone: All of Cache and Rich Counties, and that portion of Box Elder County beginning at I–15 and the Weber-Box Elder County line; east and north along this line to the Weber-Cache County line; east along this line to the Cache-Rich County line; east and south along the Rich County line to the Utah-Wyoming State line; north along this line to the Utah-Idaho State line; west on this line to Stone, Idaho-Snowville, Utah road; southwest on this road to Locomotive Springs Wildlife Management Area; east on the county road, past Monument Point and across Salt Wells Flat, to the intersection with Promontory Road; south on Promontory Road to a point directly west of the northwest corner of the Bear River Migratory Bird Refuge boundary; east along an imaginary line to the northwest corner of the Refuge boundary; south and east along the Refuge boundary to the southeast corner of the boundary; northeast along the boundary to the Perry access road; east on the Perry access road to I–15; south on I–15 to the Weber-Box Elder County line.

Remainder-of-the-State Zone: The remainder of Utah.

Washington

Area 1: Skagit, Island, and Snohomish Counties.

Area 2A (SW Quota Zone): Clark County, except portions south of the Washougal River; Cowlitz County; and Wahkiakum County.

Area 2B (SW Quota Zone): Pacific County.

Area 3: All areas west of the Pacific Crest Trail and west of the Big White Salmon River that are not included in Areas 1, 2A, and 2B.

Area 4: Adams, Benton, Chelan, Douglas, Franklin, Grant, Kittitas, Lincoln, Okanogan, Spokane, and Walla Walla Counties.

Area 5: All areas east of the Pacific Crest Trail and east of the Big White Salmon River that are not included in Area 4.

Brant

Pacific Flyway

California

North Coast Zone: Del Norte, Humboldt and Mendocino Counties.

South Coast Zone: Balance of the State.

Washington

Puget Sound Zone: Skagit County.

Coastal Zone: Pacific County.

Swans

Central Flyway

South Dakota: Aurora, Beadle, Brookings, Brown, Brule, Buffalo, Campbell, Clark, Codington, Davison, Deuel, Day, Edmunds, Faulk, Grant, Hamlin, Hand, Hanson, Hughes, Hyde, Jerauld, Kingsbury, Lake, Marshall, McCook, McPherson, Miner,

Minnehaha, Moody, Potter, Roberts, Sanborn, Spink, Sully, and Walworth Counties.

Pacific Flyway

Montana (Pacific Flyway Portion)

Open Area: Cascade, Chouteau, Hill, Liberty, and Toole Counties and those portions of Pondera and Teton Counties lying east of U.S. 287–89.

Nevada

Open Area: Churchill, Lyon, and Pershing Counties.

Utah

Open Area: Those portions of Box Elder, Weber, Davis, Salt Lake, and Toole Counties lying west of I–15, north of I–80, and south of a line beginning from the Forest Street exit to the Bear River National Wildlife Refuge boundary; then north and west along the Bear River National Wildlife Refuge boundary to the farthest west boundary of the Refuge; then west along a line to Promontory Road; then north on Promontory Road to the intersection of SR 83; then north on SR 83 to I–84; then north and west on I–84 to State Hwy 30; then west on State Hwy 30 to the Nevada–Utah State line; then south on the Nevada–Utah State line to I–80.

[FR Doc. 2010–23751 Filed 9–22–10; 8:45 am]

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Thursday,
September 23, 2010

Part VI

The President

Proclamation 8564—National Employer Support of the Guard and Reserve Week, 2010

Proclamation 8565—National Farm Safety and Health Week, 2010

Proclamation 8566—National Hispanic-Serving Institutions Week, 2010

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Presidential Documents

Title 3—

The President

Proclamation 8564 of September 17, 2010

National Employer Support of the Guard and Reserve Week, 2010

By the President of the United States of America

A Proclamation

Since our Nation's founding over 200 years ago, patriotic Americans have answered the call of duty when our country has needed it most. As family members, employees, and leaders in their communities, members of the National Guard and Reserve give of themselves at home and abroad to preserve the American way of life. These dedicated citizens leave the comfort of their civilian lives to wear the uniform of the United States, protect our freedoms around the world, and serve within our borders during times of peace as well as turmoil. As we celebrate National Employer Support of the Guard and Reserve Week, we honor those who serve in the National Guard and Reserve, and we give thanks to their employers, whose support and encouragement is critical to the strength of our Armed Forces.

Making up nearly half of our military force, the men and women in the National Guard and Reserve play a vital role in our national defense. Throughout the year, they train and prepare for new challenges faced in missions at home and across the globe. Whether providing assistance in response to natural disasters and emergencies, helping secure our borders to protect our homeland, or fighting on the front lines to defend our freedom, these gallant service members are willing to pay the ultimate sacrifice in the service of others. Their dedication commands the admiration of us all as they balance the demands of civilian and military life.

During this week, we pay special tribute to the employers of our Guardsmen and Reservists, whose support and flexibility bolster the contributions of these brave men and women. Through accommodating personnel policies that encourage National Guard and Reserve participation, and by bearing financial and organizational responsibilities, these employers ensure that our troops are mission-ready when they are activated, and that their families will have the support they need before and after their loved ones' mobilization.

Our Nation has always relied upon the service of citizen-soldiers to protect our lives and liberties. During National Employer Support of the Guard and Reserve Week, we recognize both the exceptional spirit of service that characterizes these individuals, and their employers' commitment to maintaining the safety and security of the United States by caring for those who defend it.

NOW, THEREFORE, I, BARACK OBAMA, President of the United States of America, by virtue of the authority vested in me by the Constitution and the laws of the United States, do hereby proclaim September 19 through September 25, 2010, as National Employer Support of the Guard and Reserve Week. I call upon all Americans to join me in expressing our heartfelt thanks to the members of the National Guard and Reserve and their civilian employers. I also call on State and local officials, private organizations, and all military commanders, to observe this week with appropriate ceremonies and activities.

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



[FR Doc. 2010–24095
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Presidential Documents

Proclamation 8565 of September 17, 2010

National Farm Safety and Health Week, 2010

By the President of the United States of America

A Proclamation

Every day, the lives of Americans are touched by the hard work and dedication of our Nation's farmers, ranchers, and farmworkers. The food they produce through their tireless efforts fuels our Nation, nourishes our bodies, and sustains millions at home and around the globe. As we celebrate National Farm Safety and Health Week, we recognize the tremendous contributions of these individuals and rededicate ourselves to ensuring their safety and health at all times.

Our farmers, ranchers, farmworkers, horticultural workers, and their families and communities are among the most productive in the world. Our agriculture industry employs only a tiny percentage of the United States workforce, yet its yield is worth billions of dollars a year and supports the growth and development of the American economy. Agricultural producers are stewards of our natural resources and precious open spaces, and they are playing a key role in developing renewable energy and moving America towards energy independence.

To safely continue this important work, those in the agriculture sector must take special precautions in their daily tasks. Despite the great advancements in modern agriculture, farming remains a labor-intensive and sometimes dangerous occupation. America's agricultural producers work in harsh weather conditions, handle dangerous chemicals and materials, and operate large machinery and equipment. I encourage these individuals and their families to conduct regular training on respiratory protection; proper handling and usage of pesticides and other hazardous materials; the inspection, maintenance, and safe operation of machinery and other equipment; and emergency response and rescue procedures. Additionally, farms and ranches with children or novice farmers should receive proactive health and safety instruction to prevent injury or illness.

By working together to ensure the highest standards of health and safety for our agricultural producers, we will build upon this vital industry and its contributions to make our Nation stronger, more secure, and more prosperous in the years to come.

NOW, THEREFORE, I, BARACK OBAMA, President of the United States of America, by virtue of the authority vested in me by the Constitution and the laws of the United States, do hereby proclaim September 19 through September 25, 2010, as National Farm Safety and Health Week. I call upon the agencies, organizations, businesses, and extension services that serve America's agricultural workers to strengthen their commitment to promoting farm safety and health programs. I also urge Americans to honor our agricultural heritage and express appreciation to our farmers, ranchers, and farmworkers for their remarkable contributions to our Nation.

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



[FR Doc. 2010–24096
Filed 9–22–10; 11:15 am]
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Presidential Documents

Proclamation 8566 of September 17, 2010

National Hispanic-Serving Institutions Week, 2010

By the President of the United States of America

A Proclamation

Education is critical to our children's future and to the continued growth and prosperity of our Nation. To maintain our leadership in the global economy, we have an obligation to provide a high-quality education to our children and ensure they can obtain higher education and job training. Currently, Hispanics are the largest and fastest growing minority group in our Nation, and they have been a vital force of innovation and development. As we look to deliver a world-class education that will determine America's success in the 21st century, we must ensure Hispanics have access to the resources and tools needed to compete and thrive.

Hispanic-Serving Institutions (HSIs) are key members of our higher education system and vital sources of strength for our Nation's students. They play an important role in attracting underrepresented Americans to science, technology, engineering, and math—fields that will be pivotal in the 21st-century economy. HSIs are committed to improving the lives of their students as well as helping revitalize the communities where they serve. Graduates of these institutions are helping expand our economy and enriching all aspects of our national life.

To prepare the next generation of great American leaders, my Administration has set a goal to have the highest proportion of college graduates in the world by 2020. Enhancing educational opportunities for Hispanics will be vital to achieving this objective, and we will need the continued leadership of our HSIs to increase the enrollment, retention, and graduation rates of our Hispanic students. Working together, we will open doors of opportunity for all our children and help them succeed on a global stage.

This week, we celebrate the contributions of the more than 200 Hispanic-Serving Institutions in communities across our country, and we recognize the students, alumni, parents, teachers, and school leaders whose vision and dedication has brightened countless futures. We will need their dreams and hard work, ideas and talents, perseverance and daring in the days ahead to build a stronger, more prosperous tomorrow for our Nation.

NOW, THEREFORE, I, BARACK OBAMA, President of the United States of America, by virtue of the authority vested in me by the Constitution and the laws of the United States, do hereby proclaim September 19 through September 25, 2010, as National Hispanic-Serving Institutions Week. I call upon all public officials, educators, and people of the United States to observe this week with appropriate programs, ceremonies, and activities that acknowledge the contributions these institutions and their graduates have made to our country.

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



[FR Doc. 2010–24098
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H.R. 511/P.L. 111–231
To authorize the Secretary of Agriculture to terminate certain easements held by the Secretary on land owned by the Village of Caseyville, Illinois, and to terminate associated contractual arrangements with the Village. (Aug. 16, 2010; 124 Stat. 2489)

H.R. 2097/P.L. 111–232
Star-Spangled Banner Commemorative Coin Act (Aug. 16, 2010; 124 Stat. 2490)

H.R. 3509/P.L. 111–233
Agricultural Credit Act of 2010 (Aug. 16, 2010; 124 Stat. 2493)

H.R. 4275/P.L. 111–234
To designate the annex building under construction for the Elbert P. Tuttle United States Court of Appeals Building in Atlanta, Georgia, as the ''John C. Godbold Federal Building''. (Aug. 16, 2010; 124 Stat. 2494)

H.R. 5278/P.L. 111–235
To designate the facility of the United States Postal Service located at 405 West Second Street in Dixon, Illinois, as the ''President Ronald W. Reagan Post Office Building''. (Aug. 16, 2010; 124 Stat. 2495)

H.R. 5395/P.L. 111–236
To designate the facility of the United States Postal Service located at 151 North Maitland Avenue in Maitland, Florida, as the ''Paula Hawkins Post Office Building''. (Aug. 16, 2010; 124 Stat. 2496)

H.R. 5552/P.L. 111–237
Firearms Excise Tax Improvement Act of 2010 (Aug. 16, 2010; 124 Stat. 2497)

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